

A
DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,
FROM 1910 TO 1921, INCLUSIVE.

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES
1836 1909

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

S WEBB JOHNSON, LL B (Hons)

SOLICITOR OF THE SUPREME COURT OF JUDICATURE AND ASSISTANT SOLICITOR TO THE GOVERNMENT
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1. Suit against an idol—Description of defendant—Amendment of plaint—Limitation—Practice. Inasmuch as an idol is a juristic person capable of holding property a suit respecting property in which an idol is interested is properly brought or defended in the name of the idol although *ex necessitate rei* the proceedings in the suit must be carried on by some person who represents the idol usually the manager of the temple in which the idol is installed. *Thakur Raghunathji Maharaj v Shah Lal Chand* I L R 19 All 330 overruled. *JODHI RAI v BASDEO PRASAD* (1911) I L R 33 All 735

Property dedicated to an idol—Decree against manager—Execution sale—Purchase by defendant—Suit by succeeding manager to recover possession—Defendant's possession adverse to the idol. The plaintiff a manager of a temple brought a suit in the year 1908 to recover possession of certain endowed property in the possession of the defendant. The defence was that the property was purchased at a Court sale in 1870 in execution of a decree against the then manager and that the defendant's possession was adverse to the idol. Held dismissing the suit that the defendant's possession was adverse to the idol. *Datta giri v Dattatraya* I L R 27 Bom 363 referred to. *PANDURANG BALAJI v DNYANU* (1911)

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IJMALI SHARE

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— *Ibadat*—Suit for arrears of rent—Consideration for grant of patta—Stipulation in *kabuliat* to pay sum as *mamuli* for the idol *Isuar Thakur*—Recovery of—Rents Act (Ben V of 1889) s 10—Regulation VIII of 1793 ss 52 54—Regulation V of 1812 s 3 In a suit

ILLEGAL CESS—contd

to recover Rs 3330 4 0 in arrears of patta rent the defendants pleaded that Ps 15 had been claimed in excess and that this sum was in the nature of an *advab* and not recoverable. The *labeliyat* on which this suit was based provided that an annual rent of Ps 3315 4 0 should be paid by 12 monthly instalments. In a subsequent clause it stipulated that in the month of *Bhadra* every year a further sum of Rs 15 should be paid as *mamuli* for the *Isicar Thakur* at the lessor's house and then went on to state that if the lessee failed to pay the said sum of Rs 15 amicably the lessor should deduct the same from the money remitted by the lessee as rent or add for the amount along with or separately from the arrears of rent and the lessee would not take objections thereto. Held that the sum of Ps 15 was not intended by the parties to be part of the consideration for the use and occupation of the land or as part of the rent. It did not form part of the rent nor was it treated as part of the rent and was not recoverable. Held also that s 3 of Regulation V of 1812 referred only to the amount which was by the contract fixed as the rent payable to the landlord. *Per SANDERSON C J*. The rule which has been followed in this Court is that each case must depend upon the proper construction of the contract before the Court and if upon a fair interpretation of the contract it can be seen that a particular sum is specified in the contract or agreed to be paid as the lawful consideration for the use and occupation of the land or if it is really part of the rent although not described as such the landlord can recover it. *Per CHATTERJEE J*. It is only the rent and not any other sum though not indefinite and though agreed upon to be paid in the written engagement which can be recovered. In determining whether an item does or does not form part of the rent the fact that it has been stipulated to be paid separately from the rent and also the fact that it is not included in the instalments of rent have an important bearing on the question. *Upendra Lal Gupta v Meharaj Bibi 21 C W N 103* explained. *Bisoy Sirona Duddhuria v Krishna Behari Biswas (1917)*.
I L R 45 Cal 259

ILLEGAL COMPOSITION

— of non compoundable offence—

See UNDOZ INFLUENCE

I L R 42 Cal 286

ILLEGAL CONSIDERATION

Contract—Illegal consideration—apprehension of prosecution for non compoundable offence. Where the consideration for an agreement is a promise not to prosecute for an offence which is not compoundable the agreement is not enforceable by law but this limitation of freedom of contract should only be enforced where it is quite clear that the consideration for the agreement was such an illegal promise. When an agreement has been come to on a mere threat to prosecute or on an apprehension that prosecution would take place such threat or apprehension is not sufficient to vitiate the agreement. The distinction between the motive for coming to an agreement and the actual consideration for the agreement must be carefully kept in view and this care must be particularly exercised in a case where there is a civil liability already existing which is discharged or remitted by the agreement. *SUKHDEO DAS v MANGAL CHAND 2 Pat. L J 630*

ILLEGAL OR IMMORAL DEBTS

See HINDU LAW—ALIENATION

I L R 40 Cal 283

See HINDU LAW—DEBT

See HINDU LAW—JOINT FAMILY

ILLEGALITY

See CRIMINAL PROCEDURE CODE

as 233 36 239 I L R 32 All 219

as 231 233 73 I L R 32 All 57

ILLEGITIMATE CHILDREN

See HINDU LAW

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— Maintenance of—

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I L R 2 Lab 243

— right of—

See HINDU LAW—INHERITANCE

I L R 38 Mad 1144

ILLEGITIMATE SON

See HINDU LAW—INHERITANCE

I L R 40 Bom 369

I L R 48 Cal 643

See HINDU LAW—MARRIAGE

I L R 2 Lab 207

See HINDU LAW—PARTITION

I L P 24 Mad 277

— gift to—

See HINDU LAW

I L R 39 Mad 1029

— of a Sudra—

See HINDU LAW—SUCCESSION

I L R 39 Mad 130

I L R 23 Mad 886

Held that under the Bengal School of Law an illegitimate son of a Sudra is entitled to a share of the inheritance provided his mother was in continuous and exclusive keeping of his father. *RAJANI NATH DAS AND OTHERS v NITAI CHANDRA DE AND ANOTHER 25 C W N 433*

ILLEGAL SALE

See OTHUM

I L R 37 Cal 881

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See DISMISSAL FOR DEFAULT

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of car's—

See HINDU LAW—MARRIAGE

I L R 39 Bom 538

IMMORAL OR ILLEGAL DEBT

See HINDU LAW—ALIENATION

I L R 40 Cal 253

See HINDU LAW—DEBT

I L R 60 Cal 862

See HINDU LAW—JOINT FAMILY

IMMORAL PROPOSAL

See LUKING HOUSE TRUSTS

I L R 44 Cal 338

IMMOVEABLE PROPERTYSee CHOTA NAGPUR UNCLIMBED STATES
ACT APPLICATION OF

I L R 46 Cal 1

See CRIMINAL PROCEDURE CODE s 51
18 C W N 1146See LIMITATION ACT 1908 Sch I Arts
14 AND 144 C Pat L J 239

See SALE I L R 43 Cal 790

See SALE OF IMMOVEABLE PROPERTY

— english mortgage of—

See ADMINISTRATION

I L R 45 Cal 653

— restoration of—

See CRIMINAL PROCEDURE CODE 1899
s 42 I L R 39 Cal 1050

— restoration of to judgment debtor—

See LIMITATION ACT 1908 Sch I Arts
16, 181 I L R 38 All 339

— sale of—

See SPECIFIC PERFORMANCE

I L R 30 Bom 110

See CIVIL PROCEDURE CODE (Act V of
1908) O XXI R 80

I L R 38 Mad 775

— suit for—

See MISCELLANEOUS PROFITS

I L R 50 Cal 220

*Sale of in Court
auction—Fraud sale vitiated by—Vendee benamidar
of purchaser—Suit to cancel sale—Who can sue—
Contract Act s 231 and 232 Where a sale of
property is vitiated by fraud on the part of the
vendor the person who bought the property at
Court auction though only a benamidar can
maintain an action to cancel the sale Pether
Permal Chetty v Munandy Serran I L R 35
Cal 551 distinguished A benami transaction
does not vest any title to immoveable property
the subject of such transaction in the benamidar
and therefore such a person cannot maintain a suit
which is based on title namely a suit in ejectment
But where an agent of an undi closed principal
enters into a contract for the purchase of land and
the land is conveyed to him in pursuance of the
contract he acquires rights and liabilities under
the contract (see s 231 and 232 Contract Act
of 1872) and can sue in respect thereof DATTA*

IMMOVEABLE PROPERTY—contdVENKATA SUPPANARAYANA JAGAPATHIRAJU v
GOLLIGERI BAPIRAJU (1910)

I L R 34 Mad 143

Order regarding possession of following acquired in case under 41, and 46 of the Local Code propriety of The accused were tried for offences under ss 41, and 46 Indian Local Code for having cut and removed some bamboos from a bamboo clump alleged by the complainant to be his The trying Magistrate acquitted the accused but directed that the complainant was to retain possession of the bamboo clump until ordered by the Civil Court The High Court set aside the order so far as it contained the direction about the bamboo clump PADMA KANTA GUIN v KANTHA GUIN (1910)

20 D W N 1802

IMPARTIBLE ESTATESee CIVIL PROCEDURE CODE 1857 s
1740 I L R 36 Bom 53

See HINDU LAW—IMPARTIBLE ESTATE

See HINDU LAW—INHERITANCE
I L R 34 All 65

I L R 42 Cal 1179

See HINDU LAW—MAINTENANCE
I L R 39 Mad 396See HINDU LAW—SUCCESSION
I L R 31 All 70

I L R 44 Mad 1

I L R 43 All 228

See HANOVERIA STATUTE
I L R 39 Cal 711See OUDH ESTATES ACT (I of 1909) s
7 & 10 a I L R 35 All 391See SUCCESSION CERTIFICATE
I L P 33 Cal 182

*Impartible property—
Transfer whether subject to right of maintenance
A transfer of impartible property is not subject
to rights of maintenance claimed by younger
members of the family of the transferor until a
family custom to that effect is established Thakur
Debendra Nath Shah Deo v Deomanandan Singh
(1918) 3 Pat L J 648*

*Alienation beyond alien-
enors life time validity of—Custom of inalienability
effect of—Regulation XVI of 1802 In the absence
of proof of a special custom of inalienability
the zamindar of an impartible zamina has power
to alienate the zamina for a legitimate family or
other necessary purpose beyond his life time
The estate held by him is not analogous to that
of an estate tail as it originally stood upon the
Statute de Donis (Statute of Westminster II
(1285) 13 Edw I c 1) The law relating to
estates held in impartible zamindaris reviewed
Where the subject of a court sale was stated to
be the right title and interest of the zamindar
there is no presumption that what was intended to
be sold was merely the life interest of the zamindar
in the zamina MALAYALA NAICKER v MURUGAPPA
CHETTIAR (1913) I L R 38 Mad 905*

*Coyjuncenary
estate An impartible zamindari is
of custom and it is of its essence that it*

INAM—contd

by the Nawab of the Carnatic in 1775 for the upkeep of a mosque the performance of services and ceremonies therein and the feeding of travellers and the poor was confirmed by the British Government permanently so long as the service was performed. Owing to persistent misappropriation of the income by the grantees successors and alienations by some of them of two of the villages included in the inam one on a usufructury mortgage in 1833 for thirty years and the other on a long lease of twelve years in 1861 for purposes not binding on the charity the Government resumed the inam in 1903 and credited the amount to its general revenues. It appeared however that the mosque was maintained in good repair services and ceremonies were regularly performed there though on a smaller scale. The present trustees disputing the power of the Government to resume the inam sued in 1913 the Secretary of State for India in Council for a declaration that the resumption was invalid and for recovery of possession of the inam villages the latter contended that the resumption was valid and that the suit was in any event barred by limitation under Art 14 of the Limitation Act. *Held* (1) that as the charity did not fail altogether the performance of the charity was not wholly discontinued and the alienations (mortgage and lease) did not permanently deprive the charity of the use of the property the Government was not authorized under the terms of the grant to resume the inam in the circumstances of this case and (2) that the resumption being a nullity and the suit being one for possession it was not barred by limitation as Art 141 and not Art 14 of the Limitation Act applied to the case. On a reasonable construction of the words of the grant any default in the performance of services of however minor a character would not entitle the Government to resume the grant but what was contemplated was that if the charity failed altogether or substantially as through the disappearance of the mosque or of persons who would resort to the institution for prayers etc. or if the charity was entirely discontinued then the Government would be entitled to resume the grant. **SECRETARY OF STATE FOR INDIA v. GULAM MAHMOOD KHAN SAKIB** (1919) **1 L R 42 Mad 673**

In inam it not presumed that it is of Government revenue only—*Reg XXI of 1807*—*Estate meaning of—Madras Rent Recovery Act (No I of 1903)* s. 2 (d)—*Kuduvaram and melvaram meaning of—Allegation by tenant of fraud and undue influence not substantiated by evidence*. There is no presumption of law that the grant of an inam (in the absence of the inam grant under which it was held) was of the Royal share of the revenue only. In respect of an inam grant of 1373 the grant itself could not be produced but it was recorded in Mr Oake's Inam Register kept under s. 1 of Reg XXI of 1807. *Held* that this was conclusive evidence that the grant was not only of the revenue but of the soil of the village and was not an estate within s. 3 sub s. 2 (d) of the Madras Estates Land Act (I of 1908 Mad.). A grant of a village by or on behalf of the Crown under the British rule is in law to be presumed to be subject to such rights of occupancy if any as the cultivators at the time of the grant may have had. *Kuduvaram* literally signifies a culti-

INAM—contd

vator's share in the produce of land held by him as distinguished from the landlord's share of the produce received by him as rent sometimes designated *melvaram*. Where it was alleged that the documents under which tenants held land under temporary tenures were not willingly executed by them or their predecessors or with knowledge of their provisions *Held* that the allegations amounted to saying that the landlord had by fraud and the exercise of undue influence procured the execution by the tenants of the agreements of tenancy under which the latter held the lands occupied by them allegations which in the absence of any evidence to sustain that there was any foundation of truth for them must be dismissed from consideration as unfounded. **ADUSUMILLI SETHUPATHY v. CHITTA POTHAIA** (1919) **23 C W N 273**

Shrotriya—Construction of Min rali—Enfranchisement effect of—Quarries on quarried stone—Mad Act VIII of 1869. A village was granted as a shrotriya inam in A.D. 1700 by the Nawab of the Carnatic. The grant the terms of which appeared from a translation produced from a Government register provided that its purpose was that the grantees having appropriated to his own use the produce of the seasons each year might pay for the prosperity of the Empire and that he should pay a fixed yearly sum to the sarkar. The inam was enfranchised in 1869 there being given to the inamfars title deeds which purported to convert the tenure into a permanent freehold upon payment of a quit rent. After the enfranchisement the Madras Government requiring stones acquired part of the village from the shrotriyaamdars under the Land Acquisition Act. In or about 1903 the Madras Government imposed and levied upon the shrotriyaamdars royalties in respect of stone which they had quarried in the village. *Held* (1) that upon the true construction of the grant the full right to the quarries and minerals did not pass to the grantees (2) that terms of the grant being in evidence neither the inam title deeds nor the land acquisition proceedings were evidence as to its effect (3) that having regard to Madras Act VIII of 1869 the inam title deed could not rest in the inamfars a subject matter not vested in them by the grant (4) that consequently the Government was entitled to impose royalties on stone quarried in the village. An inam grant may be no more than an assignment of revenue and even where it is or includes a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of the case. **THE SECRETARY OF STATE FOR INDIA IN COUNCIL v. SRINIVASA CHARAN** (1921) **1 L R 49 Mad 268**
1 L R 41 Mad 471

Presumption of Law—Whether grant is of both melvaram and kuduvaram. Although their Lordships of the Privy Council do not expressly lay down in *Suryanarayana v. Patanna* (1913) **1 L R 41 Mad 1012 (PC)** and *Venkata Sastrulu v. Seetharamudu* (1920) **1 L R 41 Mad 166 (PC)** that there is a presumption in law that in inam grants both the melvaram and kuduvaram are included such an initial presumption is deducible from the grounds on which these judgments are based. **MUTHU GONDAN v. PERUMAL IYER** (1921) **1 L R 44 Mad 588**

INCOME-TAX ACT (VII OF 1918)—contd

acquainted with the progress of the business and occasionally issues general instruction is not liable to be taxed under the Act where the income from such business is not remitted to British India. On a reference by the Board of Revenue under s. 51 of the Income tax Act the assessee and not the Board has the right to begin. **BOARD OF REVENUE MADRAS v RAMAIAH CHETTY (1920)**
I L R 43 Mad 75

ss. 4 and 2—Agricultural Income—

—Application under s. 51—Right to begin. In a reference by the Revenue Authorities under the Indian Income tax Act (VII of 1918) s. 51 sub s. (1) on a question whether the income from a tea garden, who's tea was grown and made ready for the market by mechanical process was assessable. **Held** that the income was to be apportioned and so much of it as was obtained by the manufacturing process was assessable. **Commissioners of Inland Revenue v Barson (1918) 2 A B 703** and **Commissioners of Inland Revenue v Marze (1919) 1 A B 61** followed. **Held** also that the counsel for the company was to begin. **Margus of Chavda v Inland Revenue Commissioners 6 A B 454** followed. **KELLY VALLEY TEA COMPANY v SECRETARY OF STATE FOR INDIA (1920)**
I L R 43 Cal 161

—ss. 5, 9 and 11—Income derived from the rent and Royalties of Collieries does not come within income derived from business within the meaning of s. 5 (iv) but within income from other sources of sub s. (vi) and in assessing such a income tax the amount paid in respect of Road Cess should not be deducted. **In the matter of the RAJA JYOTI PRASAD SINGH DEO OF KATKRE**
8 Pat. L J 62

—ss. 8, 9 and 11—Income tax—Amount of property assessable—Allowance in respect of annual value of business premises owned by firm—House property. **Held** by **KHOJ and GOVIL PRASAD J J (Proctor J, dubitante)** that as Act No VII of 1918 (the Indian Income tax Act) now stands the allowance on account of the annual value of business premises owned and occupied by a firm is not liable to assessment at all. **Per Proctor J**. **Sed quare** whether such business premises would not fall within the purview of section 8 of Act No VII of 1918 as being house property. **In the matter of A. JOSH AND COMPANY**
I L R 43 All 139

—s. 9 cl. 2 sub-cl. (ix)—Joint Stock Company—Increase of capital—Issue of new shares—Commission paid to underwriters whether allowable deduction—Assessment. Where a joint stock company increases its capital by the issue of new shares for which it pays commission to the underwriters of the shares the amount of the commission so paid cannot be allowed as an item of expenditure under section 9 clause 2 sub-clause (ix) of the Indian Income Tax Act (VII of 1918). **TATA IRON AND STEEL COMPANY LIMITED v ST**
I L R 45 Bom 1306

—ss. 24, 39 (d) 40 and 41—Failure to produce accounts—Prosecution under s. 39 (d)—Penal assessment—Lery of whether a bar to prosecution—Bar under s. 24 proviso 2 whether applicable. Section 24 proviso 2 of the Indian Income-tax Act, does not bar the prosecution of

INCOME-TAX ACT (VII OF 1918)—contd

an agent for an offence under s. 39 (d) of the Act for failure to produce accounts when penal assessment had been levied on him under s. 41 in consequence of his making a false return of his income. **HIND LAKHOTA & CO (19-0)**
I L R 43 Mad 439

—ss. 31, 33 and 34—Agent for principal non resident in British India—Agent who is agent if must be in receipt of income on behalf of principal. The applicant Company was assessed to super tax as agent for six share holders in the Company all of whom were non residents of British India in regard to the dividends payable to them by the Company. **Held per Woodroffe and GHAZAR J J** That as 31 and 34 of the Indian Income tax Act are to be read together the latter section merely defining who may be included as an agent under s. 31. That being so the agent must be in receipt of income within the terms of s. 31 and the Company was not in receipt of income on behalf of the share holders within the meaning of s. 31. That even if the two sections be read disjointly the Company was not in the circumstances of the case an agent within the terms of the Act. That in this view no question as to the propriety of assessment to super tax as agent arose. **THE IMPERIAL TOBACCO COMPANY OF INDIA LIMITED v THE SECRETARY OF STATE**
80 C W N 745

—s. 43—Profits framed by Government of Madras under s. 43 (2)—Company s. incorporated in England with branches in India and elsewhere—Total profits—Whether income tax and excess profits duty payable in England and income tax payable elsewhere to be excluded. Rule 2 framed by the Government of Madras under s. 43 (2) (c) of the Income tax Act provides that the profits of the Indian Branch of a foreign company may be assumed for income-tax purposes to bear the same proportion to the total profits of the company as its receipts bear to the total receipts. A company incorporated in England with branches in India and elsewhere cannot in calculating the total profits for the purposes of this rule claim deduction of the excess profits duty and the income tax payable by it in England and elsewhere. **CITE COMMISSIONER OF INCOME TAX MADRAS v THE EASTERN EXTENSION AUSTRALASIA AND CABLE TELEGRAPH CO LTD (19-1)**
I L R 43 Mad 489

—S. 51—

See 4 I L R 48 Cal 160

See EXCESS PROFITS DUTY ACT 1919—

3 I L R 45 Bom 1064

1 I L R 45 Bom 681

—Held that interest which accrues due to a money lending firm in the year of account is not assessable under s. 11 as profits of business unless received or realised in the year of account. **Secretary of State v Arundel Chetlar**

I L R 44 Mad 65

—ss. 51 (1) 52 103 (2) of the Government of India Act 5 and 6 George I Chapter 61—S. 45 (A) of the Specific Relief Act (1 of 1877)—English decisions on English Income tax Act guides to interpret Indian Income tax Act (Where a person who was assessed to income tax appealed to the Board of Revenue and the Board while dismissing the appeal refused to refer the

INCOME-TAX ACT (VII OF 1915)—*continued*

matter to the High Court under s. 51 of the Income-tax Act though required to do so *Held* that s. 103 (?) of the Government of India Act and s. 2 of the Income-tax Act prohibited the High Court from entertaining any application under s. 45 in the nature of a mandamus for the purpose of compelling the Revenue Board to refer the matter to the High Court under s. 51 of the Income Tax Act *Spoorer v Juddon* (1870) 1 M I 1 353 followed Issuing an order under s. 45 of the Specific Relief Act in the nature of a mandamus is an exercise of original jurisdiction within s. 103 (?) of the Government of India Act In application under s. 45 of the Specific Relief Act against the Board is a proceeding within s. 52 of the Income Tax Act *In re Orward Building Society* (1891) 2 Q B 463 applied Anything done in s. 52 includes anything omitted to be done. *Jaffe v Wallis & Local Board* (1873) L P 9 C 1 6^o followed English decisions are not decisions of Foreign Courts and as the Income Tax Act of India generally follows the lines of the English Income tax Act the decisions of English Courts on the latter Act are the best guides to the interpretation of the Indian Act The meaning of unnecessary in s. 51 of the Income tax Act considered **CHIEF COMMISSIONER OF INCOME TAX v NORTH AVANTARA GOLD MINES LIMITED** (1921) I L R 44 Mad 718

INCOME-TAX COLLECTOR

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s. 190 CLS (b) AND (c)
I L R 38 Bom 642

INCORPORATED COMPANY

See COMPANY
See SALE I L R 43 Calc 790

INCORPOREAL RIGHTS

See EASEMENTS

Incorporeal rights
enjoyment of for less than the statutory period—*Person* in such enjoyment entitled to protection against trespassers It is well settled law that a trespasser in enjoyment of land for less than the statutory period, is entitled to be maintained in possession against all persons except the true owner The same principle is applicable to incorporeal rights such as rights to light and water courses A person in enjoyment of a water course for less than 20 years is entitled to protection in such enjoyment against persons who have no right to such water-course **MONDAPA PAJAM NAIDU v DEVARAKONDA SURIYANARAYAN** (1910)
I L R 34 Mad 173

Of EASEMENT I L P 38 Mad 280

INCRIMINATING ARTICLES

possession of—

See DACOITY I L R 41 Calc 350

INCRIMINATING STATEMENTS IN CROSS EXAMINATION

See FALSE EVIDENCE.
I L R 37 Calc 878

INCUMBRANCE

See BENVOAL TENANCY ACT s 86
14 C W N 229

See HOMETEAD LAND
I L R 42 Calc 638

See LANDLORD AND TENANT
I L R 39 Calc 138
I L R 45 Calc 758

See MORTGAGE I L R 38 Calc 923

See SALE FOR ARREARS OF REVENUE
14 C W N 677
I L R 43 Calc 779

— avoidance of—

See PRESENT SALE
I L R 37 Calc 559

— by non occupancy riyat—

See LANDLORD AND TENANT
I L P 37 Calc 709

Putni Tenure—Customary right to cut and appropriate tree whether an incumbrance—I utni Regulation (VIII of 1819) s. 11—Right of an auction purchaser at a sale held under the Putni Regulation to avoid such incumbrance—Bond fide engagement made by the defaulting proprietor with resident and hereditary cultivators effect of A customary right to cut and appropriate trees is an incumbrance within the meaning of s. 11 of Regulation VIII of 1819 A purchaser of a putni taluq at a sale held under Regulation VIII of 1819 is not entitled to hold the property free from a customary right or a right recognised by usage which has grown up during the subsistence of the putni and under which occupancy riyats are entitled to appropriate and convert to their own use such trees as they have the right to cut down inasmuch as he is not entitled to cancel a bond fide engagement made by the defaulting proprietor with the resident and hereditary cultivators **PRADYOTE KUMAR TAGORE v GOPI KRISHNA MANDAL** (1910) I L R 37 Calc 822

*Absolute sale—Unregistered purchaser of portion of putni tenure interest of whether an incumbrance—Bengal Tenancy Act (VIII of 1835) ss 161 167—Civil Procedure Code (Act V of 1908) s. 98 Per JEVKINS C J and N R CHATTERJEE J (MULLICK J dissenting) The interest of an unregistered purchaser of a portion of a putni tenure is not an incumbrance within the meaning of s. 161 of the Bengal Tenancy Act **Chundra Sakas v Kallu Prasanno Chuckerbutty** I L R 23 Calc 264 distinguished A purchaser of a tenure at a sale held in execution of a rent decree is not therefore required to annul such an interest (i.e. of an unregistered purchaser of a portion of a putni) under the provisions of s. 167 in order to get a clear title **ABDUL PAHMAN CHOWDHURY v AHMADAR PAHMAN** (1915) I L R 43 Calc 558*

INCURABILITY

See HINDU LAW—INHERITANCE
I L R 38 Mad 250

INDEMNITY

See CONTRACT ACT s 124
See HINDU LAW (MITAKSHARA)
3 Pat L J 396

See SALE I L R 35 All 168

INDEMNITY—contd —

contract of—

See ESTOPPEL BY JUDGMENT
I L R 37 Mad 270

to Estate of sebast—

See PARTIES I L R 37 Calc 229

right to—

See EXECUTOR I L R 45 Calc 538

INDEMNITY BOND

See MAHOMEDAN LAW—WAKF
I L R 35 All 68

Suit to recover money payable under an indemnity bond—Decree passed against plaintiff but money not actually paid—Suit maintainable It is not necessary that before a suit on an indemnity bond can be filed the plaintiff should have already been compelled to make the payment in respect of which he is seeking to be indemnified It is sufficient that a decree has been passed against him for such payment British Union and National Insurance Co v Pawson [1916] 2 Ch D 476 and Tota Das v Babu Ganesh Prasad (unreported) Civil Decisions No 79 of 1907 decided on January 31st 1910 referred to CHITANJI LALL v NARAIN (1910) I L R 41 All 395

INDEPENDENT ADVICE

See GIFT (PUPDANASHY DOKOR)
I L R 39 Calc 933

See PAPDANASHY LADA
L R 46 I A 272

INDIAN ARMY OFFICER

attachment of pay of—

See ATTACHMENT I L R 38 Bom 667
See CIVIL PROCEDURE CODE (1909) s 60
I L R 39 All 308

INDIAN CIVIL SERVICE

salary derived from by member of Joint Family—

See HINDU LAW—JOINT FAMILY PROPERTY
I L R 33 Lah 40

INDIAN COMPANIES ACT

See COMPANIES ACT

INDIAN COUNCILS ACT 1861 (24 & 25 VIC c 67)

s 22—

See DEFENCE OF INDIA ACT
3 Pat L J 581

See JURY RIGHT OF TRIAL BY
I L R 37 Calc 467

See JURISDICTION OF CIVIL COURT
I L R 40 Calc 391

ss 22 and 42

See HINDU LAW—WILL
I L R 44 Mad 446

s 23—

See CONTRACT WITH ALIEN ENEMY
I L R 41 Bom 390

ss 42 and 44—

See BYE LAWS I L R 47 Calc 547

INDIAN COUNCILS ACT 1909 (9 EDW VII, c 4)

s 6—

See ELECTION I L R 41 Calc 384

INDIAN EXPLOSIVES ACT (IV OF 1884)

rule 3 (1) (b)—

See MAGISTRATE I L R 39 Calc 119

INDIAN HIGH COURTS ACT 1861 (24 & 25 VIC c 104)

See HIGH COURTS ACT

ss 9 11 13 & 15—

See DEFENCE OF INDIA ACT
3 Pat L J 581

s 104—

See DEFENCE OF INDIA ACT
3 Pat L J 537

INDIAN INSOLVENCY ACT 1848 (11 & 12 VIC c 21)

See INSOLVENCY I L R 32 Calc 72

See INSOLVENCY ACT

See PRESIDENCY TOWNS INSOLVENCY ACT (III of 1907) s 2, 3, 121
I L R 37 Bom 464

INDIAN LEGISLATURE

powers of—

See PROCESSION I L R 40 Calc 470

INDIAN MARINE SERVICE

See SERVICE OF SUMMONS
I L R 42 Calc 67

INDIAN STAFF CORPS

See INDIAN ARMY OFFICERS

INDIGO

cultivation of—

See LANDLORD AND TENANT
I L R 38 Calc 432

INDIVIDUAL COMMUNITY

See PUBLIC ROAD RIGHT TO USE
I L R 34 Bom 571

INFANT

See EVIDENCE L R 43 I A 256

See MAHOMEDAN LAW—MARRIAGE
I L R 42 Calc 351

See PROBATE 14 C W N 1068

In partnership concern—

See SALE OF GOODS
I L R 40 Calc 523

Golden Temple Amritsar—

I L R 1 Lah 511

Custody of—Mother parting with child under agreement not to take it back at loses her right to custody—Circumstances in which restoration will be refused It is well settled that a mother cannot be deprived of her natural right of absolute control over her own child by any agreement by which she makes over

INFANT—*con*

the child to another to be brought up as the latter's own even though she might have definitely stipulated never to claim back the child. But there may be circumstances in a particular case which would render it undesirable in the interests of the infant that she would resume her rights when she has once made over the child to another and associations or expectations have been created on the part of the infant. The mother of a posthumous boy made him over when two or three months old to her sister to be brought up as her own in order that she might go and have herself trained as a nurse and be thereby in a position to bring up her children of whom there were four others who were placed in various charitable institutions. When the boy whom the aunt was bringing up as her own child and for whom she had much affection was 7½ years old the mother being now in a position to maintain and bring up the child asked for the custody of the child. *Hill*—That in the circumstances of the case the child should be restored to the mother. **LAWY LUMINE INTERVIEW** **EARNETT HENRY SHAVE** 24 C W N 711

INFERENCE

from facts which are not evidence—

See EVIDENCE ACT (1 of 1872) s 48
I L R 42 Bom 352

of Law—

See PENT I L R 38 Calc 278

INFORMANT

See FALSE INFORMATION TO POLICE
I L R 46 Calc 807

See SANCTION FOR PROSECUTION
I L R 44 Calc 850

INFORMATION

Criminal Procedure Code s 200—Information means a charge of—
Compensation—Order if can be made against servant for information given on behalf of master—
Information subsequent to the original complaint—
The question whether a servant can be held responsible under s 200 Criminal Procedure Code for an information lodged on behalf of his master is a question of fact and depends on the question whether the servant is merely the mouthpiece of the master and is merely giving expression to his master's accusation or whether he joins personally in the accusation himself. In the former case no order of compensation should be made against the servants under s 200 Criminal Procedure Code. Information referred to in s 200 Criminal Procedure Code need not necessarily be the information on which the case is instituted. Where a person making a complaint against an accused person subsequently gives information leading to the accusation of others in the case he may be dealt with under s 200 Criminal Procedure Code in respect of his subsequent information. The words from information received in s 107 Criminal Procedure Code refers to the information given in s 164 Criminal Procedure Code. **JAGDAMI PERSHAD SINGH v. MANABHO KANDOO** (1909) 1 O W N 328

INFRINGEMENT

See JUDGMENT I L R 40 Calc 978

See SEARCH WARRANT
I L R 47 Calc 184

of rules—

See MUNICIPAL ELECTION
I L R 47 Calc 524

of Trade-mark—

See TRADE MARK
I L R 37 All 204 and 448
I L R 38 Calc 110

INHERENT JURISDICTION

See CIVIL PROCEDURE CODE 1908 s 151
AND O ALI 19
I L R 45 Bom 648

See HIGH COURT JURISDICTION OF
See PUNJAB I L R 44 Calc 929

INHERENT POWER

See APPEAL I L R 42 Calc 433

See CIVIL PROCEDURE CODE 1908—
s 144 I L R 35 Bom 255
141 and 141 I L R 1 Lah 339
O I P 8 I L R 1 Lah 580
O I P 10 I L R 35 Bom 393
O I P 8 AND O s 141
I L R 34 All 428

See DECREE AMENDMENT OF
I L R 39 Calc 265

See EXECUTION OF DECREE
14 C W N 836

See HIGH COURT POWER OF
See PRACTICE I L R 34 Bom 408

See STAY OF EXECUTION
I L R 40 Calc 955

criminal Court to release attachment—

See CRIMINAL PROCEDURE CODE 1898 s 140 AND 146 I L R 1 Lah 451

to amend decree—

See PRACTICE I L R 37 Calc 849

to restore application for execution dismissed for default—

See CIVIL PROCEDURE CODE 1908 s 141
AND 151 I L R 2 Lah 66

INHERITANCE

See ALIYASANTANA LAW
I L R 39 Mad 12

See BURNISH LAW
I L R 41 Calc 887
I L R 44 Calc 379

See CUSTOM I L R 39 Calc 418
I L R 44 Calc 749
I L P 45 Calc 450

See HINDU LAW—INHERITANCE

See HINDU LAW—STRIDHAN
I L R 40 Calc 82
I L R 43 Calc 64

INHERITANCE—contd*See* MAHOMADAN LAW—INHERITANCE*See* OCCUPANCY HOLDING

I L R 42 Calc 254

by mortgagor of decree for sale on prior mortgage—

See MORTGAGE I L R 37 All 309

right of women to—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII n 3

I L R 38 Mad 850

Sudra ascetic right of to—

See HINDU LAW—ADoption

I L R 40 Mad 846

INJUNCTION*See* ARBITRATION 23 C W N 811*See* CIVIL PROCEDURE CODE (ACT V OF 1908)—

s. 9 I L R 34 All 527

s. 11 I L R 36 Bom 223

s. 60 f I L R 37 Bom 246

s. 115 I L R 40 Bom 83

O XXXVIII n 5

I L R 37 All 423

O XXXIX n 1

I L R 35 All 425

I L R 33 All 70

I L R 42 All 134

I L R 43 All 382

1 Pat L J 560

O LXXIV n 2

I L R 38 Bom 381

O XL n 1 I L R 38 All 10

See CONSEQUENTIAL RELIEF PRAYER FOR

I L R 39 Calc 704

See CONTRACT ACT (IV OF 1872) s. 30

I L R 42 Bom 678

See DECREE FOR INJUNCTION*See* EASEMENTS I L R 36 Mad 11

I L R 44 Bom 496

See HINDU LAW I L R 44 Bom. 466*See* HINDU LAW—MARRIAGE

I L R 38 All 520

See INSOLVENCY PROCEEDINGS

3 Pat L J 456

See JURISDICTION

I L R 48 Calc 582

See LANDLORD AND TENANT

I L R 35 All 292

See LIMITATION ACT (XV OF 1877) Sch

II Art 178 I L R 34 All 436

See LIMITATION ACT (IX OF 1908)—

Sch I Arts 120 141

I L R 42 Bom 373

Sch I Art 181

I L R 42 All 564

See MADRAS IRRIGATION CESS ACT

I L R 33 Mad 366

See MINE 19 C W N 887*See* MUNICIPAL COUNCIL

I L R 38 Mad. 6

INJUNCTION—contd*See* PENAL CODE (ACT XLV OF 1860)—

ss 186 275 3 Pat L J 106

s 188 I L R 40 Mad 543

See PERPETUAL INJUNCTION*See* PRAOWAL I L R 43 All 20*See* PUBLIC ROAD RIGHT TO USE

I L R 34 Bom 571

See PROSTRATION

I L R 45 Bom 170

See RESTITUTION OF CONJUGAL RIGHT

I L R 44 Bom 454

See TEMPORARY INJUNCTION*See* TORT I L R 43 Bom 164*See* TRADE MARK

I L R 35 Bom 425

I L R 37 Calc 204

See TRADE NAME

I L R 40 Calc 570

See VITI I L R 45 Bom 224

against person wrongfully collecting rent—

See CIVIL PROCEDURE CODE 1908 s. 105

I L R 38 Lah 252

and declaration—

See DECLARATION ETC

I L R 38 Mad 922

Court fees payable—

See COURT FEES ACT 1870 s. 7

I L R 45 Bom 567

interlocutory disobedience of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XLIII n 1 (r) AND O

LXXIX n 2 cl. (3)

I L R 39 Mad 907

notice whether necessary—

See PRINCIPAL TOWNS INSOLVENCY ACT

III OF 1909 s. 38.

I L R 44 Bom 555

order for an account is not—

See PENAL CODE s. 180 225

3 Pat L J 106

prayer for—

See COURT FEE I L R 40 Calc 245

relief by—

See NUISANCE I L R 40 Bom 401

suit for—

See MAHATDARS COURTS ACT (BOM.

ACT II OF 1906) s. 23

I L R 27 Bom 595

See PRESIDENCY TOWNS INSOLVENCY ACT

1909 ss 38 AND 52

I L R 44 Bom 555

See TRADE NAME INFRINGEMENT OF

I L R 41 Bom 49

tree branches projecting—

See EASEMENT I L R 44 Bom 605

I ———— Restraining execution of a decree obtained in a previous suit—Against the plaintiff—Specific Relief Act (I of 1877) ss.

INJUNCTION—*contd*

31 *of (6)*. Where the defendant has not invaded or threatened to invade the plaintiff's right to or enjoyment of any property and there is no apprehension of a multiplicity of judicial proceedings to which the plaintiff need be subjected for the purpose of establishing or safeguarding his right or for preventing the acquisition of rights of the defendant—*Held* that a bill of the Specific Relief Act constitutes a manifest bar in the way of the plaintiff's suit for a declaration that the defendant has no title to lands in suit and for perpetual injunction restraining the defendant from taking possession of the lands by executing his decree. *Dharam Singh v Aggarwal* 1 L P & C 340 followed in principle. *Appar v Panna* 1 L P & C 340 & 3 not followed. **KARNAPUR HALDER v HARIPRAKASH ROY CHAUDHURI** (1910) 1 L R 3rd Cal 31

32 *of (6)*—Cases where injunction might be granted—*Plaintiff out of possession—Irreparable injury* Where the plaintiff is out of possession and claims possession the Court will refuse to interfere by grant of injunction against the defendant in possession under a claim of right but where the threatened injury will be irreparable an injunction will lie at the instance of a complainant out of possession. No injunction should be granted in a case where there is no foundation for any suggestion that the defendants are about to commit an act in the nature of waste. Where the plaintiff has another adequate remedy and where if an injunction were granted it would be of the rarest description no injunction ought to be granted in such cases. **KAZNO FRA AD BIGHI v SHIVIBASH PRASAD SINGH** (1911) 1 L R 38 Cal 91

33 *of (6)*—Jurisdiction—*Restraint of proceedings in a subordinate Court outside the jurisdiction of High Court—Injunction in personam* The High Court can restrain proceedings in a Court outside its jurisdiction only if the party sought to be restrained is within its jurisdiction and it is not sufficient that the party should have property within the jurisdiction. *Icon Iron Works v Dumbuthi & Podd* 1 L P & C 230 followed. *The Carron Iron Co v Macdonald* 5 H L C 416 referred to. *Mungle Chasi v Gopal Ram* 1 L R 34 Cal 101 not followed. **JUNKA DAS v HARCHARAN DAS** (1910) 1 L R 38 Cal 405

34 *of (6)*—Suit against Secretary of State for India—*Jurisdiction—Suit for—Civil Procedure Code (Act XIV of 1908) s 44—Notice—Injunction* The plaintiff an inamdar of a village was called upon by the Collector to hand over the management of the village to Government officials on the ground that in the events that had happened the inam had become resumable by Government. The plaintiff thereupon without giving the notice required by s 424 of the Civil Procedure Code (Act XIV of 1908) filed a suit against the Secretary of State for India in Council for a declaration that he was entitled to hold the village inam and for a permanent injunction restraining the defendant from resumming the village. *Held* that the suit was bad in absence of notice required by s 424 of the Civil Procedure Code (Act XIV of 1908). The term act used in s 424 of the Civil Procedure Code of 1908 relates only to the public officers not to the Secretary of

INJUNCTION—*contd*

State. The expression no suit shall be instituted against the Secretary of State in Council is wide enough to include suits for every kind whether for injunction or otherwise. *Per HEATON J*—Where there is a serious injury so imminent that it can only be prevented by an immediate injunction a Court will not be debarred from entertaining the suit and issuing the injunction though the section requires previous notice. It is owing to the immediate need of the injunction that the plaintiff has come to the Court for relief before giving the required notice. *Flower v Local Board of Law Leyton* 8 Ch D 347 followed. **SECRETARY OF STATE v CAJANAN KRISHNARAO** (1911) 1 L R 38 Bom 362

35 *of (6)*—Temporary—*Order by Revenue Court—Suit for setting aside—Competency of Civil Court to grant injunction—Temporary injunction* It may be granted when perpetual injunction is sought for—*Civil Procedure Code (Act IV of 1908) O XXIV s 2—Bengal Tenancy Act (VIII of 1855) s 11* Although a decree may have been passed by a Revenue Court when it is under execution in a Civil Court proceedings may be stayed by the Civil Court if a suit has been brought for a declaration that the decree was obtained by fraud or was made without jurisdiction and for a perpetual injunction to restrain the decree holder from executing the decree. In granting a temporary injunction the Court acts in aid of the legal right so that the property may be preserved in status quo. Where the plaintiffs sued for a declaration that a certain order by the Revenue Court was without jurisdiction but did not ask for a perpetual injunction it was not competent to them to ask for a temporary injunction during the pendency of the suit. **JITAL SINGH v KAMALESWARI PRASAD** (1912) 18 W N 92

36 *of (6)*—Wrongfully obtained—*Suit for damages if lies—Limitation* No suit lies for damages against a defendant for maliciously and without reasonable and probable cause obtaining a perpetual injunction which has been subsequently dissolved on appeal. A temporary injunction granted in such a suit is *in toto* dissolved by the Court's decree granting a perpetual injunction. In a suit for damages in respect of the temporary injunction limitation would therefore run from the date when the temporary injunction was dissolved by the decree granting perpetual injunction. *Per FLETCHER J* Nothing in the Limitation Act can give a party a right of suit unless such right exists independent of the Limitation Act. *And Kumar Shaha v Gour Sunkur* 13 W R 305 is questionable authority in so far as it decides that a plaintiff can maintain a suit for damages against a defendant for maliciously and without probable cause obtaining an interlocutory injunction. An allegation by the plaintiff that the defendants were actuated by malice and that their suit for perpetual injunction ultimately proved unsuccessful when the decree of the High Court in their favour was set aside by His Majesty in Council was not a sufficient allegation of want of reasonable and probable cause. Want of probable cause is not to be inferred because of mere evidence of malice. *Turner v Ambler* 10 Q B 252 referred to. *Per RICHARDSON J* S 95 Civil Procedure Code seems to contemplate the possibility of a suit being brought to recover compensation in respect of a temporary injunction applied for on insufficient

INJUNCTION—contd

grounds or in a suit instituted without reasonable or probable cause. It is at least doubtful whether such a suit is maintainable in the absence of an undertaking to pay compensation. A party is not liable in damages for procuring an erroneous decision. *Dhurmo Narain v Greenwally Doss* 18 W P 410 referred to. **MOHNI MOHAN MISSEER**
1. **SURPNDRA NARAYAN SINGH** (1914)

I L R 42 Calc 550
18 C W N 1189

2. **Temporary—Status quo main**
tenance of—Indian High Courts Act (24 and 5
Act 103) s 15—Jurisdiction of the High
Court to interfere. The plaintiffs were some of
superior landlords of the disputed property which
consisted of two plots of land and claimed to have
been in direct possession of about one third of the
property. The defendants who were in occupa-
tion of the remainder being alleged to have
obtained a permanent lease from some of the
co-sharers of the plaintiffs commenced to dig the
foundations for an extension of their factory
house. The plaintiffs sued for partition and
applied for a temporary injunction. The defend-
ants notwithstanding notice of the application
for injunction expedited the erection of the build-
ing. It appeared that on partition the plaintiffs
could not conveniently be allowed any share of
one of the plots but must be limited to an allot-
ment out of the other plot. Held that there was
a substantial question in controversy between
the parties and pending its determination the
status quo should be maintained to the neces-
sary extent. That it was desirable that the plot a
share of which only could be allotted to the plain-
tiff on partition should be retained in status quo
so that the Court might be free to grant such
relief as it might think proper and an injunction
should be granted restraining the defendants from
building on this plot for a period of one month
during which the partition suit was to be tried
out. That it was open to the High Court to give
the necessary directions under s 15 of the Indian
High Courts Act and in a case of this description
it was essential that the High Court should inter-
fere to prevent what might otherwise place one
of the litigating parties in an unfairly advan-
taged position and thus turn out in the end to be
the cause of an irredeemable injustice to the other.
HEMANTA KUMAR ROY v BARAVAGORE JUTE
FACTORY CO (1914) 19 C W N 442

3. **Temporary—In**
junction in mandatory form—Power of Indian
Courts to grant under O XXXI r 2 Civil
Procedure Code (Act V of 1908). Courts in India
can under O XXXIX r 2 Civil Procedure Code
issue temporary injunctions in a mandatory form.
Iraail v Shamser Rahman I L R 41 Calc 436
and *Champsey Bhimji & Co v Jamna Flour*
Mills & Co 16 Bom L R 566 referred to. The
view of **BEAMAN J** in *Rasul Korim v Pirubhai*
Amirbhai I L R 38 Bom 381 not followed.
KANDASWAMI v SUBRAMANYA (1917)
I L R 41 Mad 208

10. **Mandatory and prohibitory**
injunctions—Decree for injunction—Mode of en-
forcement—Execution—Civil Procedure Code (Act
V of 1908) s 47 O XXI r 3rd cls (1) (5)
—Limitation Act (IX of 1908) s 181 Arts
181 182. Where in a suit for declaration of title
to land the plaintiff contended that the defendant

INJUNCTION—contd

by raising a wall had disobeyed a permanent
injunction embodied in a decree dated September
1893 and prayed for the demolition of the wall
so far as it was above the height limited by the
aforesaid injunction—Held that the remedy lay
by way of execution under O XXI s 32 and
the enforcement of an injunction being a question
relating to the execution discharge or satisfaction
of the decree by which it was awarded a separate
suit was prohibited under s 47 of the Civil Pro-
cedure Code 1908. *Salarial Jagantrais v Bai*
Parrallibai I L R 26 Bom 283 Drga Das
Vand v Deenraj Agarwal I L R 33 Calc 306
Jamsetji Manekji v Hari Dayal I L R 3rd Bom
181 referred to. **PER PICHARDSON J** O XXI
r 32 cls (1) and (5) clearly applied to injunctions
both mandatory and prohibitory. The expression
the act required to be done in cl (5) meant
what had to be done to enforce the injunction.
SACHI PRASAD MCKHERJEE v AMARNATH ROY
CHOWDHURY (1918) I L R 46 Calc 103

11. **Jurisdiction of single Judge**
of a High Court to issue—Necessity of—Disobedience
to—Power of High Court to punish for contempt
a person who is a party before it but does not reside
within its jurisdiction—Civil Procedure Code
1908 O XXXI s 2—Rules of Court of the
18th January 1895 rr 1 and 1. Held (1) that
a Judge of the High Court sitting singly has
jurisdiction to issue an injunction to a party
before the Court restraining such party from
alienating his property subject to certain condi-
tions (2) that when such an injunction has been
ordered in open Court in the presence of counsel
for both parties it may be presumed that the
Court's order was communicated to the party
affected thereby and it is not sufficient excuse
for disobedience thereto that a formal notice
of the injunction has not been served upon him
personally (3) that the High Court has power
to punish disobedience to such an injunction
whether under O XXXI r 3 of the Code of
Civil Procedure or by virtue of its inherent juris-
diction to punish contempt of its own orders and
this power where the order in question has been
passed against a party to a proceeding before
it is not confined to persons living within the
limits of its territorial jurisdiction. *Vungle*
Chand v Gopal Ram I L R 34 Calc 101 and
Vulcan Iron Works v Bishambhar Prasad I L R
36 Calc 233 referred to. **RAM PRASAD SINGH**
1. **THE BEHARS BANK LTD**
I L R 42 All 111

12. **Abitration pro**
ceedings—Declaration suit—Contract the subject
matter of the arbitration denied—Competency
of the Court to grant injunction—Question of com-
petency raised for the first time on appeal—Specific
Relief Act (I of 1877) s 52 53 54 and 56. The
Court of Appeal cannot avoid the decision of a
pure question of law which does not depend on
the determination of a question of fact and which
goes to the root of the matter and raises the ques-
tion whether the Court was competent to grant
the injunction sought for by the plaintiffs. *Meen*
akshi Vaidoo v Subramaniam Sastri I L R
11 Mad 26 L R 14 I A 160 and *Connecticut*
Fire Insurance Company v Karanagh [1892]
1 O 473 referred to. Where there is a breach
of an existing legal right which is vested in the
applicants the breach thereof may be restrained

INJUNCTION—contd

Injunction—Impr of Cos I est and Coke Cycle v v Frodolet II L C 660 referred to. In a suit for declaration that a certain contract entered into between the plaintiffs and the defendants was not binding on the plaintiffs inasmuch as they did not enter into such a contract and that they were accordingly entitled to an injunction to restrain arbitration. *Held* that no injunction could be claimed under s 36 of the Specific Relief Act. *Held* also that the injunction claimed should not be granted in view of the provision of s (1) of s 3 which laid down that an injunction could not be granted when equally efficacious relief could certainly be obtained by any other usual mode of proceeding (except in case of breach of trust). *Held* also that if the plaintiffs' case that they did not enter into the alleged contract were well founded the arbitration proceedings before the Bengal Chamber of Commerce even if they resulted in an award could only terminate in an award which would be a nullity and could not possibly affect the rights of the plaintiffs if the arbitrators made an award in favour of the defendants (which itself was doubtful) the plaintiffs would have ample opportunity to protect themselves by an appropriate proceeding. *Held* also that s 54 and s 56 must be read together as supplementing each other and it would be an erroneous construction of the statute to hold that the right to an injunction should be determined independently of the provision of ss 54 and 56 by reference to the terms of s 3. *I AM HENRY JOHNSON v LOONAN MILL* (1920) I L R 47 Cal 733

13 ——— Device—Right as sole importer and seller—Misrepresentation effect of—Cycles sold as being made by a Company not in existence whether or not to misrepresentation—Injunction whether could be granted when there was misrepresentation. The Plaintiff (Respondent) who was the agent of the Veloce Limited of Birmingham for the sale of the Veloce Cycles arranged with them for the manufacture and sale in India of a cheap quality cycle and the name or transfer of Warrior Cycle was adopted. Letters were circulated by the plaintiff in India about December 1910 containing Warrior specification and were used in the name of Warrior Cycle Company Birmingham and described the Plaintiff as their agent in India. There was no warrior Cycle Company Birmingham but the name was adopted by the Veloce Limited to keep the two qualities separate. In December 1910 the Plaintiff also ordered the supply of Warrior Cycle with the same Warrior Transfer and specification from the Victoria Motor Cycle Company Limited Glasgow and these arrived in July 1911. In September 1911 the Plaintiff's agency with the Veloce Limited came to an end and the sole agency was placed with Levetus & Co. New lists were prepared upon which the Defendants (Appellants) were described as import agents. In October 1911 Veloce Limited registered in England the word Warrior as a trade mark in connection with cycles. The plaintiff claimed the exclusive use in India of the Warrior Transfer as being one employed by him and understood by the dealers and purchasers as indicating importation and sale by himself and asked for an injunction restraining the Defendants from passing off cycles not imported by the plaintiff with the same transfer on them for delivery of

INJUNCTION—contd

cycles in their custody and for other reliefs. *Held*—That the plaintiff had failed to prove that he was the owner of the mark or transfer or that he had a right to use the same alone in India. *Held* also—That as there was no Warrior Cycle Company in Birmingham there was a material misrepresentation on the part of the Plaintiff and he was not entitled to the relief asked for. *See AND LANDIT: L S OAKES*

24 C W N 155

14 ——— For stay of suit—On the ground of suit relating to same matter in foreign Court—Injunction regulating such injunction—Suit in Calcutta by Plaintiff and suit by the Defendant against Plaintiff about same subject matter in a foreign Court—Plaintiff's application for injunction and principle regulating it. The very sound principle laid down in *Hyman v Heim* 24 Ch D 331 (1890) and *Cardapulo v Cardapulo* 25 F L R 515 (1909) is that a Defendant in a pending suit here should not be restrained from commencing and prosecuting proceedings in a foreign Court to enforce rights which he acquired within the jurisdiction of the foreign Court against the Plaintiff under the law of that foreign country should not be impaired. In an application for an injunction to restrain the Defendant in a pending suit from prosecuting an action in a foreign Court about the same subject matter it is an essential condition that it should be applied for very promptly and that it should not be applied for after a considerable amount of time and trouble has been expended in the foreign suit. *TRUM CHAND SACTORECHAND v SACTORECHAND SINGH* [24 C W N 735]

15 ——— To restrain defendant from officiating as priest—In certain houses main sanctity of. Where in a suit between priests for enforcement of a partition both of the family *zajars* and of the family *birr* the court granted the plaintiff an injunction restraining the defendants from trespassing on certain areas within which the plaintiffs were by the terms of the partition deed entitled to sole control over the *jaymans* held that neither the injunction nor an order directing the ascertainment of the defendants' earnings from the specified area during the three years prior to the suit could be maintained. *LUFAN PANDEY v IRAYAO PANDEY* (1918) 4 Pat L J 53

INJUNCTION IN PERSONAM

See INJUNCTION I L R 38 Cal 405

INJURED PERSON

See SPECIFIC RELIEF ACT (I OF 1877) s 40 I L R 40 Mad 125

INJURY

See CRIMINAL PROCEDURE CODE ss 345 and 439 I L R 37 All 419

See TRADE NAME I L R 40 Cal 570

Irreparable—

See INJUNCTION I L R 38 Cal 791

to health—

See DIVORCE I L R 39 Cal 395

See NUISANCE I L R 35 Cal 286

INJURY—contd

to house—

See PROHIBITORY ORDER

I L R 38 Calc 876

IN PARI DELICTOSee KHOTI SETTLEMENT ACT (BOM ACT 1
of 1850) s 9 10

I L R 38 Bom 709

INQUIRYSee CRIMINAL PROCEDURE CODE ss
107 AND 117 I L R 37 All 30

See MAGISTRATE TRANSFER OF

I L R 37 Calc 812

by District Magistrate—

See CRIMINAL TRIBES

I L R 47 Calc 843

delegation of—

See SURETY I L R 46 Calc 1024

order passed without—

See LIMITATION ACT (LA OF 1909) s
18 ART 47 I L R 38 Mad 432**INQUISITION**

See LUNACY I L R 48 Calc 577

INSANITY

See CRIMINAL PROCEDURE CODE—

ss 14 15 154 161 etc

3 Pat L J 291

= 464 AND 465 I L R 42 All 127

See HINDU LAW—MARRIAGE

I L R 38 Calc 700

INSOLVENCY

See BANKRUPTCY

See CIVIL PROCEDURE CODE 1882 CH
X s 341 14 C W N 143

I L R 35 All 402

See CIVIL PROCEDURE CODE 1908 O
XII r 10 I L R 39 Bom 568

See CONTRACT ACT s 247

I L R 42 All 515

See COSTS I L R 46 Calc 156

See EXECUTION OF DECREE

I L R 41 Calc 50

See FORFEITURE L L R 39 Calc 1048

See INDIAN INSOLVENCY ACT

See INSOLVENT

See LIMITATION ACT (XV OF 1877
SCH II ART 179

I L R 39 Bom 20

See LIMITATION ACT 1908 s 19

I L R 35 Bom 383

See MINOR I L R 42 Calc 225

See OFFICIAL RECEIVER

I L R 38 Calc 887

See PRESIDENTY TOWNS INSOLVENCY
ACT) 1909—See PROVINCIAL INSOLVENCY ACT (III) OF
OF 1907—

See RECEIVER I L R 40 Calc 678

INSOLVENCY—contdSee TRANSFER OF PROPERTY ACT 1882
s 56 I L R 42 All 336

of Hindu in Singapore—

See BANKRUPTCY I L R 40 Mad 581

of partner—

See MINOR I L R 42 Calc 225

of purchaser—

See SALE OF GOODS

I L R 40 Calc 523

Rules (Calcutta)—

See INSOLVENCY I L R 47 Calc 721

transfer of petition for—

See PRESIDENTY TOWNS INSOLVENCY
ACT (III OF 1909) s 90

I L R 38 Mad 472

1 ——— Ad interim protection—*Provincial Insolvency Act (III of 1907) s 4 and s 1 cl (c) 47 48 16 (b) 13 18*—High Court if may grant interim protection and appoint receiver pending appeal—*Interim jurisdiction—Civil Procedure Code (I of 1908) s 151* Where an appeal has been preferred against an order refusing the appellant's application to be declared an insolvent the High Court has power in the exercise of its inherent jurisdiction as a Court of appeal to make an ad interim order for protection of the appellant and for the appointment of a receiver of his assets during the pendency of the appeal. *Panchanan Singh v Durka Nath Poy 3 C L J 29 Sukum Chauli Daul v Kamalanand Singh 3 O I J 67* relied on as there appeared to be substantial points in controversy in the case which required consideration the High Court granted ad interim protection pending appeal to the appellant and also appointed a receiver of his assets. *Ashtu Raju v Basiruddin Ahmed (1910) 14 C W N 588*

2 ——— Punjab Laws Act (IV of 1872) s 27—*Order of Insolvent Estates Court at Amritsar declaring debtors insolvents and appointing a Receiver—Subsequent order of High Court Bombay under 11 and 12 Act (Indian Insolvency Act) declaring some debtors insolvent and vesting their property in Official Assignee Bombay* By the provisions of the Punjab Laws Act (IV of 1872) as to the property in the Punjab of debtors who have by an order under the Act been declared insolvents the Court is entrusted (by s 27) with merely administrative powers with regard to it and no transfer of the property takes place. *Held* therefore by the Judicial Committee (reversing the decision of the Chief Court) that where such an order had been made by the Insolvent Estates Court at Amritsar in respect of certain debtors carrying on business at (amongst other places) Amritsar and Bombay and a receiver of their property had been appointed by the Court a subsequent order of the High Court of Bombay in its Insolvency Jurisdiction made under the Indian Insolvency Act II (and 12 Vict c 21) declaring the same debtors insolvents and vesting their property in the Official Assignee of Bombay had the effect notwithstanding that it was of later date than the order of the Punjab Court of vesting all the property of the debtors including that in the Punjab in the Official Assignee of Bombay. The High Court had rightly held that the Insolvent debtor sections of the Civil Procedure Code (Act

INSOLVENCY—cont'd

XIV of 1855) were not applicable to the case
OFFICIAL ASIGNEE COMPANY v. INDIAN
SMALL CAUSE COURT APPEAL (1910)

I L R 37 Cal 418

5. ————— Insolvency in foreign jurisdiction—Effect of a letter patent on discharge of debts—Insolvency does not operate as a discharge of debts in all jurisdictions. In the absence of authority that insolvency does not operate in a particular jurisdiction the Court is not entitled to assume in favour of a debtor that the debt is discharged by his insolvency in that jurisdiction. *LANGA PRASAD PARAYATHI v. NARAYANA RAMI PADAYATHI* (1910)

I L R 34 Mad 247

6. ————— Adjudication in England—Trustee in Bankruptcy—Effect on the Indian Court to act in aid and to be auxiliary to the English Court—Lombard v. Lloyds—Jurisdiction—Bankruptcy Act 1843 (46 and 47 Vict. c. 52) s. 114—In re J. J. J. Insolvency Act (111 of 1907) s. 16. The firm of L. King & Co. carrying on business in London as well as in Calcutta was adjudicated bankrupt in England and a Trustee in Bankruptcy of the property of the firm was appointed by the English Court. On an application of the Trustee in Bankruptcy to that Court it was ordered that the High Court of Judicature in Bengal be requested to act in aid and to be auxiliary to it. The Trustee in Bankruptcy thereupon petitioned the High Court in Bengal to grant the order of the English Court and seeking the assistance of the High Court in aid and to be auxiliary to it. He obtained an order that the High Court of Judicature in Bengal and its officers do act in aid and to be auxiliary to the High Court of Justice in England and further that James, the Manager in Calcutta of the firm of L. King & Co. do personally attend before this Court to be examined before it. L. J. James appearing on the date fixed for his examination and objecting that he ought not to be examined because the order ought not to have been made. Held that to get the jurisdiction to examine James as a witness there must be a request from the English Court to the High Court in aid and a letter of request from the one Court to the other ought to have been sent and that the order of the English Court presented by the Trustee in Bankruptcy was not sufficient to give this Court jurisdiction. *In re J. J. J. & Co. Bankrupts* (1911)

I L R 38 Cal 542

7. ————— Banker and customer—Money held by banker in suspense account—Fiduciary relationship—Certain monies were held by A. & Co. bankers in suspense on the claimant's account. Pending negotiations as to its investment the bankers failed. Held per MILLER & MUNRO JJ. (ABDUL RAHIM J. dissenting) that the money was not held in a fiduciary capacity and the relationship of banker and customer existed between the parties. Per MILLER J.—When a man pays money into a bank whether he is a customer or not the presumption is the absence of other evidence will be that he pay the money in to be held by the banker as bankers ordinarily hold the moneys of their customers. *Official Assignee v. Smith* I L R 32 Mad 68 followed. Per ABDUL RAHIM J.—Money held by a banker to a suspense account does not amount to payment to the bank. *Commercial Bank of Australia*

INSOLVENCY—cont'd

v. *Official Assignee of the Estate of Wilson & Co* (1905) I C 181 followed. *OFFICIAL ASIGNEE OF MARRAS v. MHAITARANNAHAR SATTAYANA SAKAYA NIDHI* (1910) I L R 34 Mad 125

8. ————— Insolvency in Presidency Towns—Appeal under the Letters Patent s. 15—Indian Insolvency Act II of 1907 Act 21—(H. J. Court Act 24 of 1907 Act 104)—Banker and customer relationship of—Fiduciary capacity—Money held in—A further appeal lies under s. 15 of the Letters Patent from the judgment of two Judges of the High Court who differ in opinion in an appeal from the Commissioner in Insolvency. Under s. 11 of the High Court Act 21 of 1907 Act 104 the Indian Insolvency Act s. 7 is not applicable to the High Court as being inconsistent with s. 15 of the Letters Patent. A customer instructed his banker to purchase a Government Promissory Note with money standing to his credit with the banker. Before doing so the banker failed. On a motion by the customer to have his amount paid in full. Held per MILLER J.—A mere direction by a customer to a banker to apply money at credit of the former's account in a particular way does not alter the relationship between banker and customer. Per MUNRO J. (dissenting from his judgment in the same case reported in I L R 33 Mad at p. 116). The mere undertaking of the banker to purchase a note could not have the effect of transferring the ownership of the sum of money necessary for the purchase from the banker to the customer. *OFFICIAL ASIGNEE OF MARRAS v. SATTAYANA* (1910)

I L R 34 Mad 121

9. ————— Effect of adjudication order—Property situate at Delhi attached by order of District Court of Delhi—Title of Official Assignee—Presidency Towns Insolvency Act (111 of 1907) s. 16—Auxiliary Act—Provincial Insolvency Act (111 of 1907) s. 16—Under s. 17 of the Presidency Towns Insolvency Act on the making of an order of adjudication by this Court the property of the insolvent situate in every part of British India vests in the Official Assignee of Bengal. *Official Assignee v. Lombay & Co. Proprietors* Small Cause Court Appeal I L R 37 Cal 413

I L R 37 Cal 413 followed. Where prior to the order of adjudication by this Court certain properties at Delhi belonged to the insolvent were attached under decrees of the District Court of Delhi and the subsequent application of the Official Assignee of Bengal for realisation of the insolvent's assets so attached was refused by the District Judge and the properties were thereafter sold in execution and the sale proceeds brought into the District Court an order was made under s. 126 of the Presidency Towns Insolvency Act requiring the District Judge of Delhi to act in aid under s. 16 of the Provincial Insolvency Act. *In re JIWANDAS JHAWAR* (1912)

I L R 40 Cal 78

10. ————— Title of official Assignee—Attachment under Mortgage decree and order for sale of mortgaged property—Fiduciary order under s. 7 of Insolvency Act (11 of 1907 Act 21) effect of—Sale after vesting order—Sale by Official Assignee to plaintiff—Title of purchaser from Official Assignee as against judgment creditor purchasing at sale in execution of his own decree—Notice—An attachment in execution of a money decree on a mortgage of land followed by an order

INSOLVENCY—contd

for sale of the interest of the judgment debtor does not create any charge on the land *Sarkies v Bundhoo Bacc* 1 A W P 172 referred to. An attachment prevents and avoids any private alienation but does not invalidate an alienation by operation of law such as is effected by a vesting order under the Indian Insolvency Act (11 C. L. Vict. 21) and an order for sale though it binds the parties does not confer title. Previous to the 8th September 1904 a colliery leased to the judgment debtors was attached under a mortgage decree by the respondents (judgment creditors) and an order for sale on 11th September was made but at the request of the judgment debtors the sale was postponed until the 10th. On 8th September the judgment debtors filed their petition in the Insolvency Court in Calcutta and the usual vesting order was made on the same day. On 17th September the execution proceedings were stayed. After issue of notice on the application of the respondent to the Official Assignee to show cause why he should not be substituted in the place of the judgment debtors the Subordinate Judge on 10th January 1905, finding that the notice had been duly served made the order for substitution and fixed the sale for 6th March 1905, on which day the property was sold and purchased by the respondents who in June were put into possession. Meanwhile on 23rd May 1905 the Official Assignee with leave from the Insolvency Court in March 1903 sold the property to a purchaser who on 4th June 1903 sold it to the plaintiffs by whom on 16th July 1903 the present suit was brought for possession of the colliery. *Hell* (reversing the decision of the High Court) that the notice calling on the Official Assignee to show cause why he should not be substituted for the judgment debtors was not a proper notice under s. 248 of the Civil Procedure Code 1885. A notice under that section should have called on him to show cause why the decree should not be executed against him. But as under the notice to have been duly served (which was denied) the sale was altogether irregular and inoperative. The property having vested in the Official Assignee it was wrong to allow the sale to proceed at all. The judgment creditors had no charge on the land and the Court could not properly give them such a charge at the expense of the other creditors of the insolvents. In the second place no proper steps had been taken to bring the Official Assignee before the Court and obtain an order binding on him and accordingly he was not bound by anything which had been done. In the third place the judgment debtors had at the time of the sale no right title or interest which could be sold to or vested in a purchaser and consequently the respondents acquired no title to the property. *Mallarjun v Narhari* 1 L R 25 Bom 337 1 R 27 I A 216 distinguished. No proper notice was served under s. 248 of the Civil Procedure Code and the respondent had full notice and was responsible for the irregularities of the procedure adopted. *RAGHU NATH DAS v SUNDAR DAS KHETRI* (1914)

I L R 42 Cal 72

9 ——— **Interim Receiver—Insolvent's money, attachment of before the adjudication order—Provincial Insolvency Act (III of 1907) s. 23 cl. (2) s. 36 cl. (2) s. 37 cl. (1)—Bankruptcy Act of 1883 (16 cl. 47 cl. 62) s. 40** An interim receiver is appointed for the protection of the

INSOLVENCY—contd

estate of the debtor for the benefit of the entire body of creditors. *Ex parte Fox* L P 17 Q B D 3 referred to. Cl. (1) of s. 34 of the Provincial Insolvency Act restricts the operation of s. 16 cl. (6) thereof, A creditor who had attached a sum of money due to the insolvent before his estate vested in the receiver appointed after the adjudication order is entitled to apply it exclusively in satisfaction of his debt. *MADHO SARDAR v KHITISH CHANDRA BAWERJE* (1914)

I L R 42 Cal 289

10 ——— **Practice—Insolvency—Towns Insolvency Act (III of 1909) s. 36 (4) (5) whether applicable to contentious matters** S 36 (4) and (5) of the Insolvency Towns Insolvency Act 1909 is intended to provide a summary procedure for ordering payment of debts due and delivery of property belonging to an insolvent where there is no dispute it is not intended for contentious matters or for following property the subject of fraudulent preference or dishonest concealment. *In re J. M. LUCAS AND ANOTHER* (1914)

I L R 42 Cal 109

11 ——— **Infant—Whether can be adjudicated an insolvent—An infant cannot be adjudicated an insolvent under any circumstances** *Ex parte Jones* L R 18 Ch D 109 followed. *SITAL PRASAD AND OTHERS* 1 c (1916)

I L R 43 Cal 1157

12 ——— **Security for costs—Appeal—Jurisdiction—Insolvency—Towns Insolvency Act (III of 1909) s. 8 (2) (b) Civil Procedure Code (1 cl. of 1908) ss. 117 151 and O. A. L. r. 10—Practice** On an application to the Court of Appeal for security for costs in an appeal from an order of a Judge in insolvency—*Held* that the Court has jurisdiction to entertain the application under s. 117 and O. A. L. r. 10 of the Code of Civil Procedure read with s. 8 (2) (b) of the Presidency Towns Insolvency Act. *Sesha Ayyar v. Nagarathna Lala* 1 F. J. 1, Mat 121 not followed. *LAKSHMIYA DAS v. RAJAKISHORE DAS* (1915)

I L R 43 Cal 243

13 ——— **Application to wrong Court—Limitation Act (11 of 1908) s. 14 inapplicability of to insolvency proceedings—Appeal notice of only to interested parties** S. 14 of the Limitation Act does not apply to proceedings under the Provincial Insolvency Act. Hence an application filed in a wrong Court to declare a debtor an insolvent and re-presented to a right Court can be said to be presented only on the date of its re-presentation and if on such date of its re-presentation the application is not maintainable for any reason such as that the act of fraudulent preference as in this case having occurred more than three months before the date of re-presentation it is liable to be rejected. In an appeal by a creditor in insolvency proceedings it is sufficient if notice is given of the appeal only to the parties directly affected by the order of the lower Court and not to all creditors who may have any remote or possible interest in the result of the appeal. *TRASI DEVA RAO v. PARAMESWARAYA* (1914)

I L R 39 Mad 74

14 ——— **Debtor presenting his own petition—Application for discharge—Abuse of process of Court—Jurisdiction to annual adjudication—Presidency Towns Insolvency Act (III of 1909) ss. 14 15 21 38—Rules of the Insolvency**

INSOLVENCY—contd

of execution of his decree before and after adjudication. In 1914 one B P attached in execution of his own decree a decree held by his judgment debtors against other parties. In the same year a petition in insolvency was filed against the judgment debtors and in 1915 an interim receiver was appointed. The judgment debtors deposited the amount due under the attached decree in Court to the credit of B P who proceeded to draw out a considerable part of it. After this the judgment debtors were declared insolvents and subsequently to the adjudication B P assumed his rights under the attached decree to one M S. Held that the receiver had no right to recover the money realized by B P prior to the adjudication but in respect of any balance of the decretal money remaining due after the date of the adjudication the assignee might prove his claim as against the insolvents. The assignee would however be bound to account for any part of the decretal money which he might have realized after the adjudication. *Sri Chand v. Murari Lal* (I L R 34 All 628) and *Dambar Singh v. Munawar Ali Khan* (I L R 40 All 88) referred to. *MUHAMMAD SHARIF v. RADHA MOHAN* (1918) I L R 41 All 274

23 ——— Jurisdiction—Order by Registrar. In oblique appeal from—Limitation—Reference under Sch II s 18 of Act III of 1909—Validity of mortgage question of—Consent of parties—Presidency Towns Insolvency Act (III of 1909) ss 6 101 Sch II s 18—The Calcutta Insolvency Bill 1910 r 5. The period of limitation prescribed by s 101 of the Presidency Towns Insolvency Act (III of 1909) for an appeal from an order made by the Registrar in Insolvency shall be computed not as from the date when the findings of the Registrar are signed or filed but as from the date when the report is signed by the Registrar and the matter is thereby completed. Upon application by certain persons claiming to be mortgagees of an insolvent's estate an order was made by the Court directing them to prove their mortgage before the Registrar in Insolvency under s 18 of the second schedule of the Presidency Towns Insolvency Act (III of 1909). Held that under such reference to him the Registrar had no jurisdiction to deal with the question of the validity or otherwise of the mortgage even with the consent of the parties before him so as to affect the interest of infants adversely by his decision. *LALBHAI SHAH IN re* (1920) I L P 47 Calc 721

24 ——— Procedure and Practice—Contempt—Verbal order by the Official Assignee to attend—Disobedience of order—Motion to commit to gaol—Application—Service of affidavits—Irregularity—Warrant—Presidency Towns Insolvency Act (III of 1909) s 33 (2) (c) (v) and (4)—Insolvency Rules Nos 36 and 37. Having regard to the terms of s 33 (2) (c) of the Presidency Towns Insolvency Act there is no need for the Official Assignee to apply to the Court for an order for the insolvent's attendance nor any need for the Court's order to be in writing or to be served personally on the insolvent and to contain a notice that unless the insolvent complied with it he would be committed for contempt. An order given by the Official Assignee to attend his office in pursuance of s 33 (2) (c) of the Presidency Towns Insolvency Act need not necessarily be in writing. If an order is given by him verbally

INSOLVENCY—contd

it is valid and there is a duty upon the insolvent to comply therewith. Non compliance with such order will render the insolvent liable to be punished for contempt of Court. There is no express provision that affidavits in support of the application for contempt should be served at the same time as the notice of application. *PER CURIAM*. In future if the Official Assignee intends to apply for a committal order for contempt of Court he will be well advised to put his order into writing and have it served on the persons intended to be proceeded against with a notice that if the order is not complied with proceedings for contempt will be taken. Further it is eminently desirable from all points of view that the procedure laid down by the Rules should be strictly complied with. *BUCHANAN BANKA v. THE OFFICIAL ASSIGNEE OF BENGAL* (1919)

I L R 47 Calc 50

25 ——— Appeal by a creditor—Receiver made party—Respondent—Appeal of incompetent because other creditors not made parties. In an appeal by one of the creditor against an order overruling his contention that he was in the position of a secured creditor the Appellant joined as party Respondent the Receiver. Two of the creditors appeared by leave to support the order appealed against but other creditors who did not appear to contest the Appellant's case in the lower Court were not made parties to the appeal. Held—That the appeal was competent and it was not necessary to make the last mentioned creditors parties to it. *THE EAST INDIA CIGARETTE MANUFACTURING CO. LD v. ANANDA MOHAN BASAK* 24 C W N 401

26 ——— Person who claims title to property attached by the Insolvency Court as belonging to the insolvent—Whether competent to bring a regular suit to establish his rights after the Insolvency Court has rejected his application to have the property released—Provincial Insolvency Act III of 1907—Punjab Laws Act IV of 1872. Held that the plaintiffs who claimed title to certain property attached by the Insolvency Court as belonging to an insolvent were competent to bring a regular suit to establish their rights and that the order of the Insolvency Court rejecting their application for the removal of the attachment was no bar to such suit whether the case was governed by the provisions of the Provincial Insolvency Act or of the Punjab Laws Act. *Duni Chand v. Muhammad Hussain* (22 P R 1917) *Aqbal Chohan v. Official Assignee* (I L P 35 Bom 473) *Barlow v. Cochrane* (2 Beng L R O C 56) *Satya Kumar v. Manager Benares Bank Ltd* (22 Calc W N 700) and *Ishad Hussain v. Cops Nath* (I L R 41 All 373) referred to. *Abdul Latif v. Official Assignee of Madras* (I L R 40 Mad 113) *Official Assignee of Madras v. Mangayyar Karasu* (47 Indian Cases 298) and *Pita Ram v. Jyoti Singh* (I L R 33 All 626) dissented from. *I AM PRASAD v. PUSANA MAL*

I L W 2 Lah 147

27 ——— Member of an agricultural tribe—Whether Insolvency Court can proceed against the land of the insolvent by making a temporary alienation without the intervention of the Collector—Provincial Insolvency Act III of 1907 ss 16 (2) (a) and 21 (2)—Punjab Alienation of Land Act XIII of 1900 s 15—Civil Procedure Code Act V of 1908 ss 60 and 72. Held

INSOLVENCY—*contd*

that an Insolvency Court is competent to proceed against the land of an insolvent who is a member of an ancestral tribe and effect a temporary alienation and it is not necessary that the receiver or the Court should proceed through the Collector. *Pudrappa v. I. R. 1013* (1913) referred to also *Punjab Act of Land Act 16* and *Provincial Insolvency Act 10* (2) (a) and 21. Provisions which turn on the usual jurisdiction of a Civil Court to execute its decrees or orders must be strictly construed. *See also* *Devi v. I. R. 1013* (1913) and *I. R. 1013* (1913) followed. *Held also* that a Court or receiver proceeding under the Insolvency Act should proceed as far as possible on the same lines as a Court acting in execution of a decree made under 21 (a) of the Provincial Insolvency Act—and that consequently a farm or mortgage sale of the insolvent's land should not be for a term exceeding 30 years and should be automatically redeemed by the profits the debt being in either case extinguished. *Maharaj v. Giridhar Lal*.

I L R 2 Lah 78

23 ———— **Whether sons of deceased insolvent have locus standi—Insolvency proceedings—Residence of Insolvency Act (III of 1903) s. 4.** On general principles as well as on the express provisions in s. 4 (3) read with the further provisions in s. 4 of the Provincial Insolvency Act it is incumbent on the Court to permit the representatives of the insolvent to appear at the enquiry held with a view to framing the schedule under s. 24 of the Act. *Quære* Whether the representatives of the insolvent have locus standi to submit a proposal for composition? *Pratap Singh and Another v. Jagdish Prasad Tagore* (1909).

I L R 48 Cal 87

24 ———— **Application for examination of witnesses—Residency Towns Insolvency Act (III of 1903) s. 4—Appeal.** Under the rules of the High Court an application for examination of a witness under s. 4 of the Residency Towns Insolvency Act (III of 1903) should be made *ex parte*. *In re Kishorey Mohan Roy* O C W N 116, referred to *Albert Ellis v. P. Dana & Co.* (1921).

I L R 48 Cal 1089

INSOLVENCY ACT (11 & 12 VICT c 21)

See INDIAN INSOLVENCY ACT

See INSOLVENCY I L R 42 Cal 72

See RESIDENCY TOWNS INSOLVENCY ACT 1903 s. 4 I L R 37 Bom 464

See INSOLVENCY I L R 42 Cal 72

25 7 27 49—**Salary earned by insolvent after vesting order and before discharge vests in Official Assignee who however must get an order under s. 27.** The earnings of an insolvent including salary after his insolvency and before his discharge vest in the Official Assignee under s. 7 of the Insolvency Act. The effect of s. 27 of the Act is not to cut down the operation of s. 7 but to require the Official Assignee before obtaining payment of any salary due to insolvent to obtain an Order of Court as to the amount necessary for the maintenance of the insolvent. A judgment creditor of the insolvent who is aware of the insolvency and whose judgment debt is included in the schedule cannot attach such salary without the giving Official Assignee an oppor-

INSOLVENCY ACT—*contd*——— ss 7, 27 49—*contd*

tunity of obtaining an order under s. 27. The insolvent debtor has the right to object to such attachment as it is open to him to show that property attached as his belongs to another. *Ranganatha Rao v. Vanda Chariar* (1910).

I L R 31 Mad 193

——— s 24—

See TRUSTEE I L R 35 Mad 712

26 39—**Set off—Right of set off exists against Official Assignee in respect of bills discounted before and dishonoured after insolvency.** Under ss 39 and 40 of the Indian Insolvency Act anything can be set off in India which can be set off in England and the Bankruptcy law in force for the time being. Mutual credits, which may be set off include credits which have a natural tendency to terminate in debt and not merely credits which must terminate in debts. Claims in respect of bills discounted for the insolvent before insolvency and dishonoured by the makers after insolvency can be set off under s. 39 of the Indian Insolvency Act. *Miller v. National Bank of India* I L R 19 Cal 119 disented from *Young v. Bank of Bengal* I Moo 148 referred to and explained. *Alayer v. Currie & Co.* I L R 751 followed. *In the matter of CANTON & Co.* (1909).

I L R 33 Mad 53

27 39 40—**Mutual credits—Relate to date of vesting order—Insolvency Small Cause Courts Act s. 69—Money deposited as security under section does not become the property of the decree holder—Right to set off claims for unliquidated damages.** Money deposited in Court under s. 63 of the Small Cause Courts Acts does not become the property of the decree holder. Before the date of the vesting order an insolvent had obtained two decrees against a debtor. In the case of one of the decrees, the debtor applied for a reference under s. 69 of the Presidency Small Cause Courts Act and the amount deposited by him remained in Court on the date of the vesting order. The High Court declining to express an opinion on the reference the decree became absolute and the money was paid to the Official Assignee. Before the date of the vesting order the debtor had brought a suit against the insolvent and a decree was passed therein against the insolvent after the vesting order. *Held* that the debtor was entitled under s. 39 of the Insolvency Act to set off against the amount of the two decrees obtained against him the amount due by the insolvent under the decree obtained by the debtor. The decree in respect of which the deposit was made remained unsatisfied in law on the date of the vesting order and was an item of credit within the meaning of s. 39 on such date. The subsequent payment to the Official Assignee did not deprive the debtor of his right of set off. *Per KRISHNASWAMY AYYAR J.*—Claims for unliquidated damages cannot be the subject of set off as mutual credits under s. 39 of the Indian Insolvency Act. Such claims are however mutual dealings within s. 38 of the English Acts of 1869 and 1883 and can form the subject of set off under s. 40 of the Indian Insolvency Act which makes the provisions of the subsequent English Acts applicable to the proof of claims under the Indian Insolvency Act. *Chinnayyaraya Mudaly v. The Official Assignee of Madras* (1910).

I L R 33 Mad 467

INSOLVENCY ACT—*contd*

s 73—'Person aggrieved'—Who is—Official Assignee right of to appeal as person aggrieved—Fiduciary relationship—Effect of Demand by creditor in creating fiduciary relationship between him and debtor A person aggrieved within the meaning of a 73 of the Indian Insolvency Act is a person against whom a decision has been pronounced which has wrongly refused him something which he had a right to demand Where a debtor whose claim to be paid in full was rejected by the Official Assignee moved the Insolvency Court making the Official Assignee a party and obtained an order directing payment in full the Official Assignee is a person aggrieved within the meaning of a 73 of the Act and is entitled to appeal against such order *Ex parte Sidebottom in re Sidebottom 14 Ch D 458 165* referred to in *Lamb Ex parte Board of Trade, [1894] 2 O B 805* referred to The Official Assignee in refusing the creditors claim does not act judicially and the notice of motion to Court cannot be considered as an appeal against a judicial or quasi-judicial proceeding of the Assignee Where a person pays money into a Bank without giving any directions the money becomes the property of the Bank and the relation between the Bank and the person paying is that of debtor and creditor *Per Mc Nair J—Where the person paying money without any directions makes a proper demand for payment after the money has become payable the debtor is bound to remit at once such money to the creditor and the debtor thereafter holds such money in a fiduciary capacity just as if the creditor had received payment and deposited it with directions to remit Per ADDUR RAHIM J—It is not competent to a creditor by making a demand upon his debtor to convert the latter into a trustee in respect of the amount due Such a change in the relationship can be brought about only by the debtor agreeing to accept the altered position and by his doing something towards effectuating the trust OFFICIAL ASSIGNER OF MADRAS = RAMACHANDRA IYER (1909)*

I L R 33 Mad 134

s 86—Judgment entered up under the above section—Insolvent absent After due notice being served by the Official Assignee an insolvent failed to appear at the hearing Judgment was entered up against the insolvent under s 86 of the Indian Insolvents Act *In re BALCHAND SUBBIA (1914)*

19 C W N 433

INSOLVENCY ACT (III OF 1909)

See INSOLVENCY TOWNS INSOLVENCY ACT

INSOLVENCY COURT

See CIVIL PROCEDURE CODE (1908)

s 11 I L R 39 All 628

sanction of—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) ss 17 103 and 104

I L R 55 Bom 63

INSOLVENCY PROCEEDINGS

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 19 (f) (c)

I L R 37 Mad 107

Attachment before judgment of sum due to debtor—Order directing payment

INSOLVENCY PROCEEDINGS—*contd*

In decree holder—Injunction restraining payment validity of—Provincial Insolvency Act (III of 1909), ss 34 35 and 47—Assets realized—Code of Civil Procedure (Act I of 1908) s 151 and O XXXI s 1—Injunction A instituted a suit against B in August 1916 and on 20th September 1916 attached in anticipation of judgment, a certain sum of money in the hands of the District Board which was due to B On the 12th April 1917 B filed an insolvency petition before the District Judge On the 21st June 1917 I got his decree and on the 6th the executing Court issued a precept to the District Board to pay to the decree holder the amount in deposit at the credit of B On the 17th B made an application to the District Judge asking for an injunction directing the District Board to stop payment The injunction was issued *Held* (1) that the District Judge had no power to issue an injunction upon the District Board as the District Board was not a party before him (2) That the District Judge had no power to issue an injunction on A as it did not appear that the conditions enumerated in O XXXI r 1 of the Code of Civil Procedure 1908 existed (3) That the facts of the case did not indicate that justice equity and good conscience required that the decree holder who instituted his suit before the insolvency petition was filed should be kept out of his money (4) That the case was not affected by ss 34 and 35 of the Provincial Insolvency Act 1907 as there had been no adjudication of insolvency and no receiver had been appointed (5) That from the 2nd June the amount in dispute became the decree holder's money and the District Board were merely trustees on his behalf (6) That in this case the assets were realized within the meaning of s 34 of the Provincial Insolvency Act 1907 *RAM SUDHAR RAI v RAM DYHTAN RAM (1918)*

N Pat L J 458

Order disallowing a claim to goods seized by the Official Assignee after adjudication—Suit to set aside the order maintainability of No suit lies to set aside an order made by the Insolvent Court dismissing on the merits a claim to goods seized by the Official Assignee after adjudication. Followed in *The Official Assignee of Madras v Mangayarkarasu Ammal I L R 40 Mad 117, ABDUL LATHEEF v THE OFFICIAL ASSIGNER OF MADRAS (1912)*

I L R 40 Mad 1173

Whether sons of deceased insolvent have locus standi in insolvency proceedings—Provincial Insolvency Act (III of 1907) s 21 27 47 On general principle as well as on the express provisions in s 21 (3) read with the further provisions in s 47 of the Provincial Insolvency Act it is incumbent on the Court to permit the representatives of the insolvent to appear at the enquiry held, with a view to framing the schedule under s 24 of the Act *Quere* Whether the representatives of the insolvent have locus standi to submit a proposal for composition? *SHARAT SINGH AND ANOTHER v PRODYAT JUMAR TAGORE (1920)*

I L R 48 Calc 87

INSOLVENCY RULES

rule 37—(Bom)

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) ss 6 27 36 and 121

I L R 37 Bom 464

See FILE JERRY T was 194-9207
ACT III of 1942, at 1 1/2 and 1 1/2
L. L. B. 25 P. 42

execution of actions sale deed
by:-

See PROVINCIAL INSOLVENCY ACT (111 &
1907) & 19 I L R 29 ALL 622

1. Second - The plaintiff is not entitled to an order of adjudication in respect of the amount claimed in excess of the amount proved in the Official Assignee's report. The plaintiff's claim is not a claim for the recovery of a sum due in respect of brokerage from the defendant and earned by him subsequent to his adjudication. The amount claimed being in excess of the amount of his debts provable in insolvency. The defendant applied for an order that the plaintiff be directed to give security for the costs of the suit. Held that the plaintiff was not a nominal plaintiff suing merely for the benefit of the Official Assignee and so no order for security for costs should be made. That the application is not covered by any provision in the Code of Civil Procedure but that Code is not exhaustive and it must be dealt with under the general law. That it is well settled in English law that a cause of action which accrues to a bankrupt subsequent to the adjudication in

[illegible]

B ----- I certainly know in
and my Act (III of 1908) In his case it is
the American Court will not sit as a court of ap-
peal against another court's decision in a foreign
court - For you must do so in relation of one day
creditor - American applying to Court granting
to have to restrain or enjoin creditor from proceed-
ing with his suit or execution & etc - whether
in the American Court to restrain process going
on foreign Court - Or if of direct injury to funds in
Court in Bond is not sitting on foreign Courts
in the absence of reciprocity - In fact it does
not restrain opponent creditor from taking pro-

INSOLVENT—contd

ings in a foreign State if the Official Assignee is unable to recover insolvent's property in that State—Equitable Jurisdiction to act in personam—Practice. On 27th November 1914 the appellant applied for insolvency in Bombay under the Presidency Towns Insolvency Act 1909. The respondent was one of the opposing creditors and his debt mentioned in the schedule was in respect of co's awarded to him by the High Court in a suit filed against him by the appellant. On 1st October 1918 the insolvency proceedings terminated and the appellant was granted his discharge. Thereafter the respondent sued the appellant for the amount of his debt in the Court of Sirohi State and obtained a decree for Rs 2834-10. The appellant thereupon took out a rule in the Insolvency Court at Bombay calling upon the respondent to show cause why he should not be restrained from proceeding in the suit filed against the appellant in the Sirohi Court and from executing the decree in the said suit. The respondent contended that the appellant had property in the Sirohi State which the State refused to hand over to the Official Assignee in Bombay and that under s 40 of the Presidency Towns Insolvency Act the Court had no jurisdiction to restrain the respondent from taking proceedings in the Sirohi State to recover his debt from the insolvent's property. The Trial Court discharged the rule on the respondent undertaking not to arrest the insolvent personally and to give notice to other creditors mentioned in the schedule of any property or money received in execution of the decrees to enable them to claim rateable distribution. On appeal *aff'd* confirming the order of the trial Court (1) that though an order of discharge granted by the Insolvency Court in Bombay would be recognised by all Courts in the British Empire still there would be no obligation on Courts outside British India to recognise the order of discharge as a complete release from debts mentioned in the order (2) that if the appellant insolvent has assets in the Sirohi State which the Official Assignee was unable to get hold of the respondent ought not to be restrained from taking proceedings in that State to recover his debt from any property of the insolvent situate in that State. Equitable jurisdiction of the Court to restrain a party before it from proceeding in an action in a foreign Court discussed. *Per MacLEOD C J*—It would be contrary to all ideas of equity that a party trading and incurring debts in Bombay and having property in foreign territory which the Official Assignee could not get hold of should be able to completely get rid of all his liabilities as regards his creditors inside British India and then proceed to enjoy his property outside British India free from all those liabilities. *Yenechand v Lakhmichand Vanechchand (1919) 44 Bom 272* and *Carron Iron Company v McLaren (1855) 5 H L C 416* referred to. *LAHMIRAM KEVAL RAM v POONANCHAND PITAMBAH (1920)*

I L R 45 Bom 550

Creditor causing seizure of property as that of an insolvent—Suit by real owner for damages—Liability of creditor. Where property is taken possession of as the property of an insolvent by the receiver in insolvency acting under orders of the court and loss is caused thereby to the real owner of the property it is not the receiver who is liable in respect of such loss but the person at whose instance the court

INSOLVENT—contd

directed the receiver to take possession of the property *Abdul Rahim v Sual Prasad I L R 41 All 658* followed *BINDA PRASAD v RAM CHANDAR I L R 45 All 452*

INSOLVENT PLAINTIFF

See Costs I L R 46 Calc 156

INSPECTION OF DOCUMENTS

See CIVIL PROCEDURE CODE (1 OF 1908)

O XI R 14 14 C W N 147

See DISCOVERY I L R 38 Calc 428

See SOLICITOR'S LIEN FOR COSTS

I L R 35 Bom 352

— made of—

See SUMMONS TO PRODUCE DOCUMENTS

I L R 47 Calc 647

INSTALMENT

See CIVIL PROCEDURE CODE (1908)

O XXIV I L R 38 Bom 32

See DEKKHAN AGRICULTURISTS RELIEF

ACT (XIII of 1879) s. 15B

I L R 35 Bom 190 310

See LIMITATION ACT (19 OF 1908)

SCH I ART 70 I L R 35 All 455

I L R 41 All 104

ART 2 13

I L R 43 All 671

— default in payment of—

See CIVIL PROCEDURE CODE (ACT V OF

1908) s 48 I L P 39 Bom 256

— payment by—

See DEKKHAN AGRICULTURISTS RELIEF

ACT (XVII of 1879) s. 15B

I L R 40 Bom 492

— power to grant—

See DEKKHAN AGRICULTURISTS RELIEF

ACT (XVII of 1879) s. 20

I L R 37 Bom 488

Contract—Default in payment of instalments—Waiver—Effect of the waiver. The plaintiff agreed to sell certain lands to the defendants for Rs 1000 in 1901 and put the latter in possession thereof the same day. The material stipulations in the contract were as follows—(i) that the purchase money should be paid annually by instalments of Rs 100 each on a certain day fixed in the contract (ii) that in case of default in the payment of the first instalment on the due date the plaintiff should be entitled to recover it as rent and sue for possession of the lands (iii) that in case of default in the payment of any three or four subsequent instalments on the due dates the plaintiff should be entitled to recover possession of the lands and claim the unpaid instalments as rent and (iv) that on payment of all the instalments the title to the lands should be treated as having passed to the respondent by sale but that in the meanwhile the plaintiff should continue owner thereof. In 1908 the plaintiff filed the present suit to recover possession of the lands, alleging default in the payment of the instalments which became due in 1904 1905 and 1906. The lower Courts dismissed the suit on the

INSTALLMENT—cont'd

providing that the plaintiff had waived the payment of the first two instalments and probable the third also. On appeal—*Held* confirming the decree that as to the first three instalments the plaintiff dealt with the defendant in such a way as to show that he did not insist on payment on the dates fixed in the contract that it referred after that course of conduct, he was not warranted in law in enforcing payment according to the strict terms of the contract without previous intimation to the defendant to that effect. *Commissioner of Revenue (1911) 2 C.A. 274 (H.W.)*

CINA AND SCKA VALAD BARZI (1911)

I L R 35 Bom 511

INSTALLMENT BOND

See CIVIL PROCEDURE CODE, 1908 O
XXXV R. 14

I L R 44 Bom 881

See DECREE I L R. 44 Bom 840

See INTEREST I L R 44 Bom 775

See LIMITATION I L R 38 Mad 374

See LIMITATION ACT (1908)

s 75 I L R. 36 Mad 66

See I Art 24

See I Art 132 I L R 3 All 400
I L R 43 All 598

*Consent not to sue on failure to pay instalment if would amount to waiver—Limitation Act (1908) Sch. 2, 1st proviso is consent to dispense with or forego something to which a person is entitled. Where it was proved that demand was made in three successive years in respect of three instalments due upon an instalment bond but the plaintiff consented not to sue for the whole amount as he was entitled to do under the bond for default on the first two occasions but refused to consent on the third. *Held* that this amounted to a waiver of the payment of the two earlier instalments. When the instalment bond was executed on the 6th of November 1908 and provided payment of Rs. 10,000 by annual instalments of Rs. 400 commencing from the 30th of September 1909 and further that in case of default the whole amount payable on the bond was to fall due and the plaintiff waived the payment of the first two instalments as aforesaid and filed a suit for the recovery of the whole amount on the 12th of November 1914. *Held* that this suit was not barred by limitation and it was decreed for Rs. 9,000. *PAM CHUNDER BAYKA & PAWATMULL (1916)**

1919 C W N 1172

INSTALLMENT DECREE

See CIVIL PROCEDURE CODE (1908) O
XXXV R. 2 O XXXIV R. 4 s

I L R 39 All 532

See DECREE I L R 42 Bom 728

Penalty clause—Failure to pay two instalments making the whole decree payable at once—First instalment not paid on due date but paid up before the second one fell due—Second instalment not paid on due date—Penalty clause not becoming operative. A decree payable by instalments provided that the instalments were

INSTALLMENT DECREE—cont'd

to be paid on certain fixed dates and that on failure to pay any two instalments at the period fixed, the whole amount of the decree remaining unsatisfied was to be paid up at once. The first instalment was not paid on the date fixed but was paid some time afterwards and before the second instalment fell due. On failure to pay the second instalment on the due date the decree holder applied for execution of the whole amount of the decree which remained unsatisfied. *Held* dismissing the application that the real intention of the parties was that before the penalty could be enforced two instalments must be in arrears together whereas in the present case only one instalment was in arrears. *SUBRAYA VENKATRAO & SUBRAYA (1915)*

I L R 42 Bom 304

INSTIGATION

See ARREST OF AN ARRESTMENT

I L R 46 Calc 607

INSTRUCTIONS TO COUNSEL

See BARRISTERS I L R 11 Calc 741

See COUNSEL I L R 47 Calc 828

Charges of misconduct by Counsel—Inconclusive grounds—Privilege against Court—Disciplinary action against Counsel The Court is entitled to ask counsel who during the conduct of a case makes charges of misconduct whether he makes the charges on instructions and if so on whom. It is not sufficient to plead in instruction Counsel have responsibility in the matter and are not justified in making serious charges of fraud and crime unless they are personally satisfied that there are reasonable grounds for putting them forward. Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent. There is no privilege as against the Court. The latter cannot use them as evidence in the case and for the purpose of the trial would have to treat them as confidential but they could be called for then and there and be used after the trial for determining whether disciplinary action should be taken against counsel by the Full Court. *WESTON AND OTHERS & PEARL MOHAY DASS (1912)*

I L R 40 Calc 898

INSTRUMENT

See ATTESTATION OF INSTRUMENT

I L R 37 All 850

INSTRUMENTS OF GAMING

See BOMBAY PREVENTION OF GAMBLING ACT (BOM IV OF 1887) s 3

I L R 40 Bom 263

See COTTON GAMBLING

I L R 39 Calc 968

See PUBLIC GAMBLING ACT 1867 ss 3 AND 10

I L R 42 All 470

INSTRUMENT OF TITLE

See RAILWAY RECEIPT

I L R 40 Bom 630

INSURABLE INTEREST

See INSURANCE I L R 36 Bom 484

INSURANCE

- See CONTRACT ACT (I of 1872) s. 28
I L R 38 Bom 344
- See JUTE I L R 44 Cal 98
- See LIFE INSURANCE
- See LIFE INSURANCE COMPANY
- See MARRIED WOMEN'S PROPERTY ACT
(III of 1874) s. 6
I L R 37 Mad 483
- See SALE OF GOODS
I L R 40 Bom 11
- See TRANSFER OF PROPERTY ACT (IV of
1882 AS AMENDED BY ACT II of 1900)
s. 130 I L R 37 Bom 198

INSURANCE—contd

The term perils of the sea refers only to fortuitous accidents or casualties of the sea. The words do not cover every loss of which the sea is the immediate cause and so wear and tear do not come within the meaning of those words. There must be some casualty something which could not be foreseen as one of the necessary accidents of adventure. *The Yantho* L R 12 A C 503 followed. *And soon v. Morice* 10 Com. Pleas 58. *Blackburn v. The Liverpool and Bristol River & Lake Steam Navigation Co* [1902] 1 A. B. 220 distinguished. *W. STEWART & THE NEW ZEALAND INSURANCE CO. LD* (1912)
18 C W N 991

Fire—Damage by fire—Possession of Insurance Company and their acts after fire is extinguished—Damage to machinery of mill by water used to extinguish fire—Omission to protect or clean machinery—Arbitration—Evidence taken by arbitrators alleged to be outside scope of reference—Petition to Court to revoke submission—Arbitration Act (I V of 1890) s. 10 The provisions in virtue of which under the conditions of a policy an Insurance Company takes and holds possession of premises damaged by a fire are for the purpose of enabling it to minimise the damage. As it has to bear the loss it is more than anyone directly interested in doing everything for the best not as a duty to the insured but in its own interest. Its powers are of the nature of a privilege to do that which is most for its own benefit under the circumstances so as to reduce the loss. After a fire in October 1906 at the Victory Mills Bombay which then belonged to the appellant he sent in his claim to the respondents who took possession of the premises under powers reserved to them in that behalf in the policy and retained possession for a considerable period for salvage purposes. The assessment of the damages was disputed and the matter was in accordance with the terms of the policy referred to arbitration in the course of which the appellant tendered evidence to prove that the machinery was seriously damaged not only by the actual fire but owing to the water used to extinguish the fire being allowed to remain on it the injury in that way being progressive. The evidence was objected to on the ground that damage so caused to the machinery did not come within the loss insured against in the policy but that the liability for damage to the property ceased when the fire was extinguished. The arbitrators admitted the evidence whereupon the respondents petitioned the High Court to revoke the submission to arbitration on the ground that the arbitrators had exceeded their jurisdiction in admitting evidence which would only relate to damage from some tortious act of the respondents which was outside the reference to arbitration. The Judge of the High Court before whom the matter came made no order on the petition being of opinion that the arbitrators had decided nothing by admitting the evidence and that there was no reason to interfere with their action. The respondents appealed and the appeal was allowed the appellate Bench of the High Court expressing in its decree an opinion that the jurisdiction of the arbitrators extended only to the dispute relating to loss and damage from fire under the policy and not to the question of any loss or damage alleged to have arisen from the neglect of the respondents to take care of the machinery after the fire had been extinguished and the respondents to have

Marine insurance—Insurable interest of agent in goods of principal—Effect of a Mahajan's Mayur—Local custom when enforced—Duties and rights of insurer and policy holder in case of total loss The plaintiffs as commission agents shipped certain goods on behalf of constituents on board the ship *Ali Madut* in the year 1899. The plaintiffs were instructed by their principals to insure these goods and accordingly by a policy dated February 7th 1899 the plaintiffs insured the goods with the defendants subject as stated in the policy to the custom of the port of Cutch Mandvi. The ship *Ali Madut* was wrecked off the coast of German East Africa and the wreck and the remains of the cargo was sold by the local authorities and the proceeds handed over to the owner of the vessel. The plaintiffs sued the defendants to recover Rs 3,000 as the value of the goods. The defendants besides certain other objections to the plaint objected that the plaintiffs as agents had no insurable interest in the goods that by the custom of the port of Cutch Mandvi the claim of the plaintiffs could not be established without the production of a Mahajan's Mayur and that the defendants were in any event entitled to credit for the sale proceeds of the wreck and cargo. Held that an agent who has authority from his principals express implied or ratified, can effect insurances on the goods of his principals that the custom of the port of Cutch Mandvi must be construed in a reasonable manner and that under it a Mahajan's Mayur could not be required in the case of total loss that the policy holder's duty was only to give intimation of total loss at the earliest possible opportunity to the insurer and that it was for the insurer to protect his interest and to recover whatever was left as the net balance of the sale proceeds of the cargo. *Panordas Bhogilal v. Kesarnag Mohan Lal* 1 Bom H C 299 referred to. *KANJI DWARKA DAS v. HARIDAS PURSHOTAM* (1911)

I L R 36 Bom 484

Policy of Marine insurance—Perils of the sea—Wear and tear not included within the words Where a boat was insured against the perils of the sea and it was proved that it sank in fair weather and smooth water without any assignable cause and where it was not proved that the bottom plates had sprung a leak in consequence of the alleged bumping of the boat and where also there was some evidence of the boat having been deliberately scuttled, which if not accepted would lead to the inference that the bottom plates had corroded in consequence of age and ordinary wear and tear. Held that the case was not covered by the terms of the policy

INSURANCE—contd

entered into possession of the premises. *Hill* (reversing the decision of the Appellate High Court and restoring that of the Original Court) that the finding that the loss was to be estimated from the condition of the machinery at the time the fire was extinguished, was erroneous. There was no question of tort on the part of the respondents. They may have thought it was not worthwhile to spend money in driving the machinery but right or wrong their neglect totally failed to power to take the course which in fact they did take. But having taken possession of the premises and done what in their opinion was wisest to minimize the damage they could not say that the actual damage done was not the natural and direct consequence of the fire. *AMSTERDAM MARITIME & JOBBAY FIRE AND MARINE INSURANCE COMPANY* I L R 37 Bom 183

Warning that premises would be set on fire—In insurance in consequence of warning—Duty of assured to disclose facts affecting risk and premium—Defective declaration under O XXX s 2 Civil Procedure Code its effect. It is the duty of a person who receives information or warning that his premises will be set on fire in consequence of which he insures his premises to disclose to the insurer the information so received. If he fails to do so the insurer is discharged from liability. *Greet v Cullens Insurance Co* Tupper & R (L C) 100 C A followed. *Killy v Hoche lona Fire Insurance Co* 24 L Can Jur 23 distinguished. Every circumstance which would influence or be likely to influence the judgment of a prudent insurer in fixing the premium and in determining whether he will take the risk or not, should be disclosed. There is a duty to disclose to the insurer all facts which bear upon their being a possibility of a fire greater than usual and which might indicate the motive of the assured in effecting the insurance. There is no obligation on an assured to disclose matters already known to the insurer. A suit need not be dismissed for incomplete disclosure of the names of partners according to the provisions of O XXX s 2 Civil Procedure Code. It is a defect which may be allowed to be corrected. *Abrams & Co v Dunlop Pneumatic Tyre Co* [1905] 1 K B 46 referred to *IMPERIAL PRESSING CO v BRITISH CROWN ASSURANCE CORPORATION LTD* (1913) I L R 41 Cal 581

Liability of Company for further loss. *Per CHANDAVARKAR, J*—The loss or damage by fire which is insured against in a policy of insurance cannot include loss caused by deterioration of the property insured consequent on neglect (if any) of the Insurance Companies to take care of it if they have taken possession. A loss so caused is not an inevitable or direct consequence of the mischief by fire. It is only where mischief arises from fire (in fire insurance cases) and from perils of the sea (in marine insurance cases) and the natural and almost inevitable consequence of that mischief is to create further mischievous results that underwriters become responsible for the further mischief so incurred. *Montoya v London Assurance Company* 6 Ex 451 458 referred to. *Per BATCHELOR, J*—The loss insured against is limited to the loss by fire (which includes the loss by water in extinguishing the fire) and cannot conveniently embrace all possible damages however remote which could by ingenuity be traced up to some connection with the fire as the ultimate *causa sine qua non*. It is im-

INSURANCE—contd

possible to hold that damages arising from the alleged negligence of Insurance Companies while in possession are properly claimable in pursuance of the contract of insurance for whereas this contract refers only to loss by fire those damages would arise from an error in totally different and wholly distinct and separable from the fire namely a neglect of some duty imposed on the companies after the loss by fire or water had become an accomplished fact. *ATLAS INSURANCE COMPANY LIMITED v AMSTERDAM MARITIME* (1908)

I L R 34 Bom 1

INSURANCE COMPANY

See TRADE NAME I L R 40 Cal 570

INSURANCE POLICYSee COMMON CARRIER, LIABILITIES OF
I L R 38 Cal 88**INTANGIBLE PROPERTY**See PALMS OR TREES OF WOODS
I L R 42 Cal 455**INTENT AND KNOWLEDGE**See LEGAL CODE (ACT XLV OF 1800)
s. 80 I L R 38 Mad 479**INTENTION**See CAUSE OF ACTION
I L R 41 Cal 825See CONSTRUCTION OF DOCUMENT
I L R 37 Mad 480

See FORFEITURE I L R 41 Cal 466

See FRAUDULENT PREFERENCE
I L R 43 Cal 640

See HIGH COURT I L R 34 Bom 378

See LURKING HOUSE TRESPASS
I L R 44 Cal 358See PENAL CODE ACT (XLV OF 1800)
s. 266 I L R 40 All 84

ss. 300 and 325 I L R 35 All 329

s. 302 I L R 40 All 360

ss. 304 and 351 I L R 40 All 103

s. 456 I L R 38 All 517
I L R 47 All 395See PRINTING PRESS AND NEWSPAPERS
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I L R 35 Bom 55See SECURITY TO KEEP THE PEACE
I L R 43 Cal 671

evidence of—

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See FORFEITURE I L R 47 Cal 190

necessity of—

See SECURITY FOR GOOD BEHAVIOUR.
I L R 43 Cal 591

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I L R 43 Calc 1085

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I L R 38 Calc 845

See MORTGAGE I L R 39 Calc 527

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ACT III OF 1938) ss 297 301

I L R 43 Bom 181

See C I F CONTRACTS

I L P 42 Bom 473

See CIVIL PROCEDURE CODE (1908) s 34
O XXXIV RR 2 4

I L R 36 ALL 220

O XXIV PR 1 2 AND 3

I L R 40 ALL 125

s 151 I L R 41 Mad 316

See CIVIL PROCEDURE CODE 1882 s 257
14 C W N 146

s 257A. I L R 38 Bom 219

See CIVIL PROCEDURE CODE (ACT V OF
1908) SCH III s 7 (1) (b) ss 69 70

I L R 37 Bom. 32

See CONTRACT ACT s 74

I L R 36 Bom. 164

See CONTRACT WITH ALIEN ENEMY

I L R 41 Bom. 390

See COMPROMISE 2 Pat L J 673

See DEKKHAN AGRICULTURISTS RELIEF
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I L R 35 Bom. 204

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I L R 43 Calc 201

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2 Pat L J 451

See HINDU LAW—JOINT FAMILY

I L R. 34 ALL 128

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2 Pat L J 212

See HINDU LAW—MORTGAGE

I L R 41 ALL 571, 609

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20 C W N 1067

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See LIMITATION ACT (IX OF 1908) s 20

I L R 35 ALL 378

I L R 41 ALL 111

See MADRAS PROPRIETARY ESTATES
LARGE SERVICE ACT (II OF 1894) ss
5 AND 10 CL (?)

I L R 39 Mad 930

See MAHOMEDAN LAW—DOWER

I L R 33 ALL 182

I L R 38 ALL 581

See MORTGAGE I L R 36 Calc 342

15 C W N 962

I L R 35 ALL 534

I L R 35 Bom 327

I L R 42 Calc 1148

I L R 46 Calc 448

I L R 45 Bom 523

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I L R 45 Bom. 523

See PENALTY I L R 44 Calc 162

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See PRINCIPAL AND SURETY

I L R 44 Calc 978

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I L R 43 Calc 401

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I L R 38 Mad 533

—liability of trustees for—

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I L R 47 Calc 914

—profits to be enjoyed in lieu of—

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I L R 45 Bom. 523

—on damages—

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—on ex parte decree—

See DECREE 6 Pat L J 676

—on enemy debt—

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I L R 44 Bom 1

—on our draft—

See BANKERS I L R 44 Bom 474

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power of Court to grant—

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I L R. 2 Lah. 25

right to depend on contract or statute—

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I L R. 43 ALL 437

1 ————— **Civil Procedure Code (Act I of 1908) s. 34—Int real award of—** *Set on of Court—Lard Acquisition Act (I of 1864)—Court d examining the amount of compensation—Payment of the amount to claimant—Subsequent reduction in amount on appeal—In case over the excess—Interest powers of the Court* A sum of money by way of compensation awarded under the Land Acquisition Act (I of 1864) and paid into Court was taken out by the claimant. Subsequently on appeal the H. H. Court reduced the amount of compensation payable to him but made no order as to interest. Government then applied to recover from the claimant interest over the excess drawn by the claimant from the Court. Held that if the interest claimed could be awarded inasmuch as the claimant had had the benefit of the money belonging to Government in excess of that to which the H. H. Court held him to be entitled and the benefit was represented not only by the excess wrong taken by the claimant from the District Court but also the amount of interest which the excess carried. *Mooloo Lal I L R. 14 Cal. 481 486* *Mahomed Sami Mohd I L R. 3 Bom. 40* referred to. *COLLECTOR OF AHMEDABAD v. LATJI MEHJI (1911)*

I L R. 35 Bom. 255

Interest right to claim (illgal) in or legal tender—Tender or agreement to waive it and must be of an ascertained sum—Valid tender must be unconditional. At common law where interest is payable by the terms of a contract it runs or accrues up to the date of payment. A valid tender must be an unconditional offer to pay a specific and ascertained sum. An offer to pay such amount as may be found due on a settlement of accounts if the price would execute an indemnity bond in accordance with law is not a valid tender. There can not be a tender or an agreement to waive tender of an unascertained sum. *Garuda Paddi v. Gudi Janakanya Garu I Mad. H. C. R. 121 distinguished* *Indurang Kri Anaji and another v. Dodaabhoj Anuroji I L R. 26 Bom. 413 distinguished* *IAI BATCHA HANU v. APPOR NARAYASWAMI MEDALIAN (1914)*

I L R. 34 Mad. 320

Usufructuary mortgage—Int real not stipulated for—Charge in the nature of mortgage must be in writing and registered. Where no interest is stipulated for in a mortgage bond no interest is recoverable. A charge in the nature of mortgage whether for principal or interest must be expressed in writing and registered and cannot be raised by implication. *Kuttiamma v. Madhava Menon II Mad. L. J. 186 followed* *Indad Hasan v. Badri Prasad I L R. 20 All. 401 distinguished* *MAKBUZ ALI v. ALI AHMAD (1913)*

I L R. 40 Cal. 514

Arrears of rent—Rate of interest—Evidence if admissible to explain kabulyat. Where a document recites that interest is to be paid by the tenant upon rent in arrears at the rate of one anna per rupee but does not ex-

INTEREST—contd.

pressly state whether interest at this rate is payable monthly or annually evidence is not admissible to show what was really intended. *Monappa Nalk Chouthury v. Yabin Chandra Sangal II C. H. J. 1100 discussed* *Mahomed Sumoudin v. Moonshee Abdul Huz (1864) II P. 379 not followed.* Evidence to construe the terms of a contract is not inadmissible in certain cases. *PRATAP CHANDRA SHANNA v. MAHOMMED ALI SARKAR (1913)*

I L R. 41 Cal. 342

Contract Act (IX of 1872) s. 36—Lawful influence presumption of—Excessiveness and usurious interest—Duty of the Court. Where there is ample security the exaction of excessive and usurious interest in itself raises a presumption of undue influence which it requires very little evidence to substantiate. The attempt to conceal the real rate of interest by describing it as one pice in the rupee per mensem or as in the present case 11 per mensem is evidence of an intention to get the better of the debtor. The law lays down that there must be a footing of complete equality between debtor and creditor and they must be so to speak at arms length to make a bargain which is in itself harsh and unconscionable enforceable at law. *Carrington I L R. 1900 I A B. 79* *In re a Debtor [1903] I A B. 705* referred to. Where there is ample security an excessive rate of interest has been held to be any thing over ten per cent. Where there is no security no rate of interest can be considered excessive. There can be no standard rate on personal loans and where the parties are reasonably on terms of equality a Judge cannot do better than adopt what they themselves have agreed on though of course when that is not the case he has to judge what is reasonable as best he can and under all the circumstances. Where the contract is for a temporary accommodation the stipulation that interest is to run at 12 per cent a month is one which necessitates the payment of interest not at 60 per cent per annum but at 12 in each month and a stipulation that in default of 12 months instalments of interest compound interest would begin to run is in the nature of a penalty. However technical this may be it is the duty of the Courts in India to enforce the letter of the law against obviously harsh and unconscionable bargains of this nature. The exploitation of the necessities of the careless and inexperienced is a trade to be extirpated in the interest of the whole community as contrary to individual morality as well as to public policy. *Muthu Krishna Iyer v. Sankaralingam Pillai I L R. 36 Mad. 229* *Samuel v. Newbold [1906] A C 461* *Kesavulu Naidu v. Arivindal Annal I L R. 36 Mad. 533* referred to. *ABDUL MAJEED v. KUTRODE CHANDRA PAI (1914)*

I L R. 42 Cal. 690

Stipulation in mortgage bond for interest at 75 per cent per annum whether penalty—Liquidated damages—Undue Influence—Unconscionable bargain—Contract Act (IX of 1872) s. 16 74 illus. (j) as amended by Act VI of 1899 s. 4 (1)—Act XXVIII of 1855 s. 2 Per MOOREJEE J. (BEACROFT J. agreeing to as to penalty). Notwithstanding the small group of cases where a restricted view was taken of the authority of the Court to relieve against a penalty the tide has turned back and the more modern cases repudiate the doctrine that any rate of interest however exorbitant cannot be deemed

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penal *Motoji v Sheik Hassan* 6 Bom H C 8 Para v *Govind* 10 Bom H C 382 followed. *Arjan Bidi v Asgar Ali* 1 L R 13 Calc. 200 *Gokul Chand v Akaya Ali* (1890) Punj Rec 32 *Sankaranarayana Vadhyar v Sankaranarayana Ayyar* 1 L R 25 Mad 343 *Chinna v Pedda* 1 L R 26 Mad 445 *Perasuams v Subramanian* 14 Mad L J 146 not followed. This principle is fairly deducible from the modern decisions that the Court is competent to grant relief whenever the rate of interest appears to the Court to be penal. *Mtajan Putari v Abdul Jubbar* 10 C W N 1020 *Velchand v Flagg* 1 L R 36 Bom 164 14 Bom L R 18 *Ganapathi v Sundara* 22 Mad L J 354 *Muthukrishna v Sankaralingam* 1 L R 36 Mad 229 followed. Although s 74 of the Contract Act was originally framed to deal with the doctrine of penalty and liquidated damages as understood in the law of England it is in its present form comprehensive enough to include the type of cases before the Court because it covers all cases where the contract contains any stipulation by way of penalty. It is obvious that each case must be treated on its own circumstances. The test is was the agreement to pay damages for the breach of contract unconscionable and extravagant such as no Court ought to allow to be entered into. *Webster v Bosanquet* [1912] A C 394 referred to. You are to consider whether it is extravagant exorbitant or unconscionable at the time when the stipulation is made—that is to say in regard to any possible amount of damages which may be conceived to have been within the contemplation of the parties when they made the contract. *Clydebank Engineering Co v Don Jose Castaneda* [1905] A C 6 referred to. A stipulation for merely accelerating payment of the whole debt in default of payment of one or more instalments is not by itself by way of penalty. *Ex parte Burden* 16 Ch D 816 *Sterne v Beck* 1 DeG J & S 395 *Wallingford v Mutual Society* 5 App Cas 635 referred to. But when the entire sum which the creditor had agreed to receive in instalments without interest is not only repayable in one sum but is also made to carry interest at an unusual rate the Court may in view of all the circumstances of the case regard the stipulation for payment of interest at an exorbitant rate as penalty. When (on an account originally made up very largely of interest at an exorbitant rate) the stipulation was made in the mortgage bond (no interest being payable up to due date) that upon default of payment of one or two instalments not only would the whole balance due become forthwith payable, but would carry interest at the rate of 75 per cent per annum. Held that the covenant for payment of interest at this rate was a penalty i.e. it did not represent the damages which the creditors were likely to suffer by reason of the default of the debtors but was rather intended as an effective means to secure punctual performance of the contract. *Per MOOREHEAD J*. Where the facts make it clear that the creditors were in a position to take advantage of the em-barrasment of their debtors and the bargain they made was unconscionable there is a concurrence of the two elements which must combine to attract the operation of s 16 of the Contract Act. *Davis v Maving Shi Koh* 1 L R 35 Calc 505 1 L R 35 J A 1 *Karubala Saidu v Arithulan Ammal* 1 L R 36 Mad 433 followed. *AKHAGARAM DAS v RAMBANKAR DAS* [1914] 1 L R 42 Calc 652

INTEREST—contd

Power of Court to grant relief where interest unconscionable—Creditor when his improper act or omission delays payment of debt. Where delay in the payment of the principal debt is caused by some improper act or omission of the creditors the accrual of interest will be suspended during such period as the debtor is so prevented. *Edwards v Warden* 1 App Cas 281 *Merry v Ryles* 1 Eden 1 *Marborough v Strong* 4 Brown P C 539 *Cameron v Smith* 2 B & Ald 305 *Bann v Dalal Moo & M* 228 *Anderson v Arrowsmith* 2 P & D 408 *Laing v Stone* 2 Man & Ry 561 *Moo & M* 229 *London Chatham and Dover Railway Company v South Eastern Railway* [1897] 1 Ch. 120 and *Webster v British Empire Mutual Life Assurance Co* 15 Ch D 169 referred to. A Court is competent to grant relief where the rate of interest appears to the Court to be of a penal character that is so unconscionable and extravagant that no Court should allow it. *Akhagaram Das v Rambankar Das* 1 L R 42 Calc 652 *Abdul Majed v Khrode Chandra Pal* 1 L R 42 Calc. 690 *Bourang v Banga Behari Sen* 22 C L J 311 20 C W N 408 referred to. *GOPESHWAR SANA v JADAV CHANDRA CHANDRA* (1915) 1 L R 43 Calc 632

Interest not contracted for and not recoverable under the Interest Act (XXXII of 1839) allowed as damages. *AKHETRO MOHAN PODDAR v NISHI KUMAR SAMA* (1917)

22 C W N 488

Compound interest—Court's power to give relief when money lender not shown to have taken undue advantage of his position. It is difficult for a Court of Justice to give relief on grounds of simply hardship in the absence of any evidence to show that the money lender had unduly taken advantage of his position even when the transaction appeared to be undoubtedly improvident. The opinion of the Chief Court affirming that of the Divisional Judge that the plaintiff in a redemption suit was bound by the mortgagor's contract to pay compound interest at 25 per cent per annum was upheld. *Aziz Khan v DUVI CHAND* (1918) 22 C W N 130

Bond—Consideration—Interest in advance added to principal—Total amount made payable by instalments—Scheme of the bond providing in effect for progressive increase in the rate of interest—Transaction substantially unfair within the meaning of the Usurious Loans Act (X of 1918) s 3 (1)—Jurisdiction of Court to consider the transaction in an ex parte suit. On the 7th September 1918 the defendant executed a bond for Rs 8400 in favour of the plaintiff a professional money lender. The consideration of the bond was a cash advance of Rs 5000 by the plaintiff and Rs 3400 interest thereon which was calculated in advance for thirty four months at the rate of 11 per cent per mensem. The total amount of Rs 8400 was made payable under the bond in thirty four instalments. The first three instalments had been recovered by the plaintiff by a suit instituted in the Court of Small Causes, Bombay. The defendant having made default in respect of the next six instalments from January to June 1919 the plaintiff sued to recover Rs 1500 the amount due under the same. The defendant did not appear. Held (1) that though the suit was ex parte the Court had under s 3 (1) of the Usu-

INTEREST—contd.

MONS LOANS ACT, 1914, *judicial* to consider the merits of the transaction between the parties; (") that inasmuch as the balance of the loan was that the interest on the whole sum of Rs. 1000 should be continued to be paid though the principal was being repaid by instalments, the interest charged in the loan was excessive and the transaction substantia *unfair* within the meaning of s. 3 (1) (a) and (1) of the MONS LOANS ACT, 1914; (3) that the plaintiff was not entitled to claim interest on sums which he actually received and which accordingly went towards satisfaction of the principal amount. *Somai v. Newbold [1914] 1 C 442* referred to. *HEPURN & PITCHARD & Co. v. BAYLEY* (1913)

I L R. 44 Bom 775

Unimortgageable Loan—*Contd.* *with a note* *reference* *of* *judicial* *interest*. In a suit on a mortgage executed by a Hindu wife which provided for interest at 10 per cent. with quarterly rests the trial Court allowed interest at 10 per cent. up to date of suit only. *Held*—That unless it can be shown that unless a mortgage had been taken the Court could not come to the conclusion that the transaction was fair and unconscionable. In appeal the High Court allowed interest at the contract rate up to the date fixed for payment and thereafter at 6 per cent. *BEJOY KUMAR ADDY v. SATISH CHANDRA CHOWH* 24 C W N 444

General Tenancy Act (VIII of 1885)

s. 67—*Kabulyat* rate of interest *in* *land* *in* *purchase* *at* *on* *at* *of* *to* *pay* *in* *interest*—*Interest* *at* *the* *general* *and* *unconscionable*. The purchaser of a raiyat holding at fixed rates in execution of his own mortgage decree buys it subject to the terms and conditions of the subsisting lease of which he had notice and is liable to pay interest at the rate and pay rent in accordance with the instalments provided for in the *Kabulyat*. *Lal Coyal Dutt Chowdhury v. Manmatha Lal Dutt Chowdhury* 1 L J 3 Cal 208 followed. *Alim v. Saitul Cla Ira Chaturdurin* 1 L P 24 Cal 27 distinguished. In the absence of evidence that any undue advantage was taken by the landlord of his position the rate of interest mentioned in the contract cannot be interfered with. *Upendra Lal Gupta v. Mehraj Bibi* 21 C W N 108 not followed. *Lala Balla Mal v. Akad Shah* 23 C W N 233 *Asi Khan v. Dhuni Chand* 23 C W N 130 and *Bejoy Kumar Addya v. Satish Chandra Ghosh* 24 C W N 411 referred to. *BRUT NATH CHATTERJEE & PAMA NATH NASKAR* (1920) I L R 48 Cal 92

INTEREST ACT (XXXII OF 1839)

Debt payable in kind—*Interest* *allowable*. A debt which is specially expressed as payable in certain fixed measures of grain and payable at a specified time is a debt certain within the meaning of Act XXXII of 1839 and interest is allowable on the same. *Juggo mohun Ghose v. Manickchand* 7 Moo J A 63 referred to. *Narayan v. Nagappa* 12 Bom L R 831 dissented from. *GOVINDAN NAIR v. CHERAL* (1913) I L R 38 Mad 464

Award of interest as damages apart from the Act. The Interest Act (XXXII of 1839) is not exhaustive of all cases where interest is allowable. The Act while specifically allowing interest in all cases of debts or

INTEREST ACT (XXXII OF 1839)—contd

some certain payable at a certain time or other wise saved by its proviso other cases in which it is legally allowable. Where the suit was for a sum of money which would be payable to the plaintiff (a Muhammadan lady) as for her share on taking accounts of the business which was carried on by her father while he was alive and which was continued by her brothers, the defendant, after his death wherein the amount due to the plaintiff was utilized by her brothers. *Held* (1) that the proviso in the Interest Act applied to the case and (2) that 6 per cent. interest was payable as damages on the amount due to the plaintiff. *Miller v. Lirloc* 1 L J 31 C C 33 and *Hurro Ibraud Joy v. Shama Ibraud Joy* 1 L J 3 Cal 61 followed. *Amalammal v. Jeevanrao Laxman Laxman* 1 L R 20 Mad 481 *Prasanna Ayyar v. Subramania Ayyar* and others 1 L P 31 Mad 250 and *Kalyan Das v. May* 1 Ahmad 1 L R 40 Ill 427 distinguished. *ABDUL SATTAH ROWTHEN v. HAMIDA BINT AHMED* (1919) I L R 42 Mad 661

A principal is not entitled to interest on moneys detained by an agent on his behalf in the absence of a contract to its contrary. *LALMAN & CHINTAMAN*

I L R 41 All 254

INTEREST POST DIEM

See MORTGAGE I L R 35 All 534

INTERFERENCE

by High Court—

See PRACTICE I L R 40 Bom 220

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INTERLOCUTORY INJUNCTION

breach of—

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INTERLOCUTORY ORDER

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s. 47 I L R 34 All 530
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See JURISDICTION I L R 42 Cal 926

See LAND ACQUISITION

I L R 38 Cal 230

INTER MARRIAGE

See HINDU LAW—MARRIAGE

I L R 48 Cal 926

According to law and custom prevalent in Bengal a marriage between a Kayastha

INTER MARRIAGE—*contd*

and a Tante both belonging to sub division of the Sudra caste is valid in the absence of any special custom rendering such marriage invalid
Biswanath Dass Ghosh v Sreemati Sarasbala Dasi and others
 25 C W N 639

INTERNATIONAL LAW

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 80 I L R 38 Mad 635

See JURISDICTION I L R 39 Mad 661

INTERNMENT

— object of—

See ALIEN ENEMY SUIT AGAINST
 I L R 43 Calc 1140

— order for—

See HABEAS CORPUS
 I L R 44 Calc 459

INTERPLEADER

— An interpleader suit with a prayer for declaration of the titles of the several sets of defendants in the disputed land by the tenant against the landlords in who e favour he has executed separate kabulyats is not maintainable
SHELLEY BONNERJESTI PAT CHANDRA DUTTA
 I L R 37 Calc 552
 14 C W N 784

INTERPRETATION

See INTERPRETATION OF STATUTES

— principle of—

See LIMITATION ACT IX OF 1908

See I ART 182

See PENAL I L R 39 Mad 923
 I L R 41 Cal 108

INTERPRETATION OF STATUTES

See BENGAL TENANCY ACT 1885 s 11
 25 C W N 9

See COMPANY I L R 38 Mad 550

See CONSTRUCTION OF STATUTES

See CRIMINAL PROCEDURE CODE s 14
 3 Pat L J 281

S 54 5 Pat L J 321

See LAND ACQUISITION
 I L R 44 Calc 219

See RAILWAYS ACT 1890 s 75
 I L R 42 All 76

See NOV OCCUPANCY PAYAT
 I L R 44 Calc 267

See NOV OCCUPANCY RIGHT
 3 Pat L J 1

See PRESS ACT 1910 s 4
 I L R 42 All 233

4 Pat L J 174

— Rules effect of—

See REMAND I L R 41 Calc 108

— Heading of chapter may be looked at—

See NOV OCCUPANCY RIGHT
 I L R 44 Calc 267

— Illustrations cannot control the plain

meaning—

See NOTE OF HAND 14 C W N 414

INTERPRETATION OF STATUTES—*contd*

— PROVISIO—

See PRE ACT, 1910 s 3
 I L R 39 Mad 1164

See LAND IMPOVEMENT ACT 1883
 I L R 41 Mad 691

— The word and may be read as or when necessary to carry out the obvious intention of the legislature
KUNHALOOR PUTHIA VEETEL PAYERAPPA v PASKURU PUVVI SEH KELAFA
 I L R 40 Mad 594

— When a particular section of an Act which has received judicial construction has been reenacted it must be treated as a legislation recognition of that construction
JOGEENDRA CHANDRA POI v SYAMDAS
 I L R 36 Calc 543

INTERROGATORIES

See DISCOVERY I L R 41 Calc 6

— Admissibility of interrogatories—Inadmissibility of certain questions as interrogatories though admissible in cross examination—Interrogatories obviously designed to assist in fishing up a case—Defence of wagering—Inadmissibility of interrogatories by the party raising defence of wagering as to the general business transactions of the opponent apart from the particular transactions in suit The mere fact that questions would be admissible in cross examination of a witness does not make them good as interrogatories Interrogatories must not be exhibited unreasonably or vexatiously nor be prolix oppressive unnecessary or scandalous Nor should interrogatories be allowed which are sought to be administered obviously for the purpose of fishing out a case The Court will in cases where the defence of wagering is set up refuse to allow the party setting up this defence to interrogate his opponent generally as to his business transactions apart from the particular transactions in suit on the ground that it is manifestly unfair to compel a man to disclose his general dealings on the chance that thereby his opponent may discover something that will support his case
BRAHMANNDAS PARASITHAN v BUR JOU PUTTOUJI (1912) I L R 37 Bom 347

— Method of administration—Disclosure of assets by affidavit in probate proceedings—How obtained—Civil Procedure Code (Act V of 1908) O VI r 2—Probate and Administration Act (I of 1891) s 55 O VI of the present Code of Civil Procedure applies to proceedings in probate (vide s 5 of the Probate and Administration Act) Under that Order there are only two methods of discovery one by interrogatories and the other by an order directing discovery of documents in the possession of power of the other side An affidavit of assets actually received can therefore be obtained in probate proceedings by interrogatories only Under s 2 of O VI in India as in England the Judge has not any power to settle interrogatories but he can only decide what should be administered The dicta in English cases with regard to the more extensive powers of Courts in matters of probate seem to imply that the strict relevancy may not be required in interrogatories therein.
ANILBALA DASI v RAJENDRANATH DALAL (1915)
 I L R 43 Calc 303

IRRIGATION CESS ACT (MAD VII OF 1865)*See MADRAS IRRIGATION CESS ACT*

Conditions necessary to entitle Government to levy water-cess—Extent of right to water—Engagement by land holder with Government In this case the decision in *Pra ad Row v The Secretary of State for India I L R 40 Mad 886* was followed on the admission of the respondent that the rights of the parties were governed by it **AMBALAVANA PANDARA SANKADHI v THE SECRETARY OF STATE FOR INDIA (1917)**

I L R 40 Mad 909

■ **1 (b)—Opinion of Collector that irrigation is beneficial not a judicial one reversible by Courts—Irrigation by percolation covers irrigation by sub-soil water** Con trongs s 1 (b) of the Madras Irrigation Cess Act (VII of 1865) the Full Bench held—(a) that it is not obligatory on the Collector to certify under s 1 (b) of the Act that the irrigation is beneficial and (b) that the words irrigation by percolation mean not only irrigation by means of water flowing on the surface of the land irrigated, but cover also cases where sub-soil water is taken by the roots of trees. *Held* also that the opinion of the Collector that the irrigation in any particular case is beneficial to the land is not a judicial one capable of being revised by a Civil Court. **Secretary of State for India v Swami Narayanaswami I L R 34 Mad 21** approved. **THE SECRETARY OF STATE FOR INDIA v MAHADEVA SASTRIAL (1916)**

I L R 40 Mad 58

■ **1** *provs 1 and 2—As amended by Madras Act V of 1900—Right of Government to levy cess for irrigation purposes—Zamindaris settled at Permanent Settlement—Sanads construction of—Cultivation extended and crop grown not customary at date of sanad—Engagement by zamindar with Government—Right to flowing water—Madras Land Encroachment Act III of 1905* The appellants sought to recover from the Secretary of State for India the respondent sums of money paid under protest in respect of water cesses levied by the Government of India under Madras Act VII of 1865 (as amended by Madras Act V of 1900) the portions applicable to the case being s 1 and provs. 1 and 2. The lands in suit were contiguous to the river Vamsadhara and sometime prior to the Permanent Settlement extensive works had been carried out to supply the district with water from the river and the water was distributed through out the district by means of branch channels and subsidiary channels ending in many instances in village tanks and reservoirs. The Government carved out of the land four zamindaris on each of which they assessed a permanent revenue or jamma and had them put up to public auction, and each purchaser received a sanad. These sanads did not mention any water rights. They contained (*inter alia*) agreements by the zamindars to encourage their ryots to improve and extend the cultivation of the land. Subject to his observing the conditions of the sanad each zamindar was authorized to hold the zamindari in perpetuity for himself and his heirs. One of the four zamindaris (Lilam) was purchased by the appellant's predecessors in title at a sale for arrears of revenue and the other three were brought at various times by the Government. The sluices of only one of the channels were on the appellant's lands but he used for irrigation purposes water from the river through all the four channels. *Held* that the

IRRIGATION CESS ACT (MAD VII OF 1865)*—contd*■ **1** *provs 1, and 2—contd*

Permanent Settlement was an engagement with the Government within the meaning of pro 1 of s 1 of the Act VII of 1865. That the effect of the Permanent Settlement was to vest the channel with their head sluices and branch and subsidiary channels and the tanks or reservoirs in the zamindars through or within whose zamindaris the same respectively passed or were situate and to give the zamindar the right or easement of taking water from the river for irrigation purposes. That the zamindar on whose estate the head sluices and initial portions of each of the four channels in question were situate obtained under his sanad the right to take water from the river (assuming that it belonged to Government) and such rights was to be measured by the size of the channel, or the nature and extent of the sluices and weirs governing the amount of water which entered the channel and not by the purposes for which the grantor or his tenants had been accustomed to use water from the channel prior to the date of the grant. That after the water was lawfully taken into the channel the Government had no further rights in it except as owners of the other zamindaris. That the zamindaris in whose favour the sanads were made took subject to the customary rights of the ryot cultivators and the rights of all holders of sanads under existing inam grants and in other respects the right as *inter se* of the several zamindars under the sanads were analogous to the rights of upper and lower riparian owners on a natural stream. That there being no evidence that more water was being taken from the river than would be justified by the sanads as construed the cesses were wrongly levied on the appellants. The law of the Madras Presidency as to rivers and streams certainly differs in some respects from the English law and it is quite possible that it recognizes some proprietary rights on the part of Government in the water flowing in rivers and streams. **PRASAD FOW v THE SECRETARY OF STATE FOR INDIA (1917)**

I L R 40 Mad 886**IRRIGATION CESS AMENDMENT ACT (MAD V OF 1900)***See IRRIGATION CESS ACT (MAD VII OF 1865) s 1* *PROVS 1 AND 2***I L R 40 Mad 886****IRRIGATION CHANNEL**

—right to obstruct flow of rain water into—

*See ESTATES LAND ACT (MAD ACT I OF 1908) ss. 4, 27, 73 and 143***I L R 40 Mad 840****IRRIGATION WORKS**

Government liability of for not repairing irrigation works—No duty of Government to repair irrigation works In India the Government is under no obligation with regard to each individual ryot to repair irrigation works whenever they require repair. **Madras Railway Company v Zamindar of Carvelnagaram, I L R 11 A 364** distinguished. The rule derivable from English cases is that where statutory powers have been conferred and statutory duties imposed on persons or corporations, no liability for non-feasance in regard to individuals arises in the absence of such liability under the common law.

IRRIGATION WORKS—contd

more's because such duty is imposed. The duty is to improve the land by expenditure of clear irrigation. *Sankar Das v. Secretary of State for India, I L R 29 Cal 20* referred to. The right and duty of Government in regard to irrigation work in the province have to be ascertained from unrecorded custom and practice and no custom of practice recorded or unrecorded gives the right, in case of payment of compensation, may be the value of the crops lost by defects in irrigation works concerning a land area, from such non-repair. There is no contract between a ryot and the Government, by which the latter is bound to maintain a supply of water for the irrigation of lands belonging to the ryot. The irrigation rights of ryotwari owners are not rights *per se*, but rather partake of the nature of rights in rem. *Chinnappa Madhavar v. Sikkil Naidu, I L R 26 Mad 66* doubted. **SECRETARY OF STATE FOR INDIA v. METCALFE RAMA REDDY (1910)** I L R 34 Mad 52

ISSUES

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 I L R 37 Bom 563

See LABEL I L R 37 Cal 760

See PRELIMINARY DECREE

I L R 37 Bom 60

Issues arising of—

Practice. The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is not agreement between the parties is very embarrassing. Issues should be confined to questions of law arising on the pleadings and such questions of fact as it would be necessary for the Judge to frame for decision by the jury in a jury trial at nisi prius in England. **WEST END WATCH COMPANY v. BERTA WATCH COMPANY (1910)** I L R 35 Bom 425

Several issues should not be tried together. The practice of trying all the issues in a case together defeats the object of the law in requiring the various issues to be kept separate and distinct and cannot but lead to confusion. **RAJANI HANT MUKERJEE v. RAM DULAL DAS (1912)** 17 C W N 65

Not exactly framed but no surprise. Held that High Court was right in treating question in respect of which no express issue was framed as an issue upon which the parties had in fact gone to trial and was entitled to look at the evidence recorded. Held that the appointment by the head of a Mutt of a successor to avoid criminal prosecution was not *bona fide* and was invalid. **NATARAJA TAMBARAY v. KALISAM PILLAI** 25 C W N 145

ITIMAM

See ITIMAM REGULATION

25 C W N 857

Taluk uatimam reports— *Mafabhar* receipts if conclusively show tenure to be non transferable. *Settlement Reports and District Gazetteer if admissible in evidence—* Written instrument terms of inconclusive with ordinary implication of an expression effect of—Grant for an indefinite period nature of—Condition restraining alienation with no clause of re-entry—Transfer notwithstanding such condition if opera-

ITIMAM—contd

Transfer of Act II of 1904 s. 25. The word "itima" imports a permanent heritable and transferable tenure when applied to a tenure in the permanently settled parts of Chittagong. *Mahabub Ali Choudhury v. Javed Choudhury* 33 C W N 285 referred to. The word "itima" imports a permanent tenure. *Sankar Das v. Secretary of State for India, I L R 29 Cal 20* and *Chinnappa Madhavar v. Sikkil Naidu, I L R 26 Mad 66* referred to. The fact that rent has been granted as *itima* in the name of the grantee does not prove only that it is a *itima* but that it is a *hereditary* tenure. There can be no effect with respect to settlement reports or *itima* *Chinnappa*, whether there are any other speaking evidence or not and s. 3 of the *Settlement Act* *Chinnappa* s. 3 of s. 3 of *Supplementary Act* *I L R 34 Cal 3* *I L R 34 Cal 3* 238 referred to. A grant limited to a man for an *itima* *Chinnappa* s. 3 of s. 3 of *Supplementary Act* *I L R 34 Cal 3* 238 referred to. It denotes, generally speaking, for his lifetime and passes no interest to his heirs, unless there are some words showing an intention to grant an hereditary interest. But that rule of construction does not apply if the term for which the grant is made is fixed or can be finally ascertained. *Lakshmi v. Anandji Naidu* I L R 3 Cal 210 *I L R 3 Cal 210* referred to. A condition against transfer does not without more render an assignment or transfer of the lease inoperative. Such a condition is often inserted merely as a foundation for a claim to *reversion* (or premium). *Ad Mahabub Ali v. Nazimuddin Siddiqi* I L R 27 Cal 56 and *Barakat Ali Khan v. Mansurji* I L R 4 Cal 43 referred to, *JODHIA CHAUDHARI v. MAHABUB ALI* (1910)

I L R 47 Cal 979

J**JAGIR**

See BOMBAY REVENUE JURISDICTION ACT 18 s. 121 I L R 45 Bom 464

See JUDICIAL JAGIR 2 Pat L J 725

See SANAD I L R 38 Bom 639

See SETTLEMENT CONSTRUCTION OF I L R 39 Cal 1

—whether Land is held on Political Tenure—

See BOMBAY REVENUE JURISDICTION ACT, 18 s. 2 I L R 45 Bom 464

—Sanad construction of—

—Tenure created by document—Custom—Life estate—Use of the words *putra poutadi*—Absolute and heritable estate—Regulation XXXII of 1793 s. 15

A grant of a *jaagir* is a grant for life only but in the absence of any custom to the contrary the addition of the words *putra poutadi* in the grant implies an absolute and heritable estate and passes an estate of inheritance. Under a *sanad putra* the ancestor of the plaintiff granted a *jaagir* in the district of Hazaribagh to the grantee and his *putra poutadi*. On the death of the grantee and of his sons without any male issue the plaintiff finding that the tenants of the *jaagir* stopped paying him the rents brought a suit for resumption of the *jaagir* on the ground that according to custom the grant was a service grant and resumable by the grantor and his representatives.

JAGIR—contd

on failure of male issue in the line of the grantee, and obtained a decree. On appeal to the High Court *Held* that the original grantee took an absolute heritable and alienable estate and that all his heirs were capable of inheriting it. *Pam Lal Mookerjee v The Secretary of State for India*, 1 L R 7 Calc 391 L R 8 I A 46 followed. *Gulabdas Juggundar v The Collector of Surat* 1 L R 3 Bom. 198 L R 6 I A 51 *Bhujanga Rau v Ramayamma* 1 L R 7 Mad 35 and *Lalit Mohun Singh Roy v Chalkun Lal Roy* 1 L R 21 Calc. 831 L R 21 I A 76 referred to. *Perkash Lal v Pameshwar Nath Singh* 1 L R 31 Calc. 561 and *Poornath Konur v Juggunath Sahas Deo* 6 D A 51 Ser Rep 155 distinguished. *RAM SARAY LAL v PAM NABAYAN SINGH* (1914) 1 L R 42 Calc 305

Construction of jagir
—Life estate—Custom of succession in Chota Nagpur
—Construction of words putraputrads—Grant must be not ambiguous—Bengal Regulation XXXVII of 1893 s 15—Liability to resumption on failure of lineal male heirs A predecessor in title of the appellant granted a jagir of a village in Raj Parnagar Chota Nagpur in the following terms you with your putraputrads will continue to enjoy the same. The respondents were not the direct lineal heirs of the grantee but only collateral, the lineal male heirs having failed. The evidence showed that all jagirs granted in Raj Parnagar were by custom resumable on failure of lineal heirs in the male line of the original grantee. In a suit to resume the jagir—*Held* (reversing the decision of the High Court, and restoring that of the Subordinate Judge) that a jagir must be taken to be *prima facie* an estate for life only though it might possibly be granted in such terms as to make it hereditary. But the terms making the grant of a jagir a grant of an estate of inheritance must if they are to be considered alone be terms which are not ambiguous, and must clearly shew whether it was intended by the grantor that the right of inheritance should be general or should be confined to a particular class of heirs. In this case it was held on the evidence that the jagir was resumable by the heirs of the grantor on failure of male heirs in the direct line of descent. *Pam Lal Mookerjee v Secretary of State for India* 1 L R 7 Calc. 391 L R 8 I A 46 and *Lalit Mohun Singh Roy v Chalkun Lal Roy* 1 L R 21 Calc. 831 L R 21 I A 76 distinguished. *RAM NARAYAN SINGH v RAM SARAY LAL* (1918) 1 L R 48 Calc 683

JAIL CODE

—Rules in the Jail Code are framed by the Local Government and have the force of law when sanctioned by the Governor General in Council. *PERRY MORRIS DICKINSON WESTON* 18 W N 145

JAIL REGISTER

—extract from—
SECURITY FOR GOOD BEHAVIOUR
1 L R 43 Calc 1128

JAGADGURU

See CIVIL PROCEDURE CODE 1908 s 9
1 L R 45 Bom 590

JAINS

See HINDU LAW

See HINDU LAW—ADOPTION

1 L R 32 All 247

1 L R 45 Bom. 754

25 C W N 273

See HINDU LAW—INHERITANCE

1 L R 33 Mad 439

See HINDU LAW—SUCCESSION

Jains are of Hindu Origin. They are Hindu dissenters and although generally adhering to Hindu Law (i.e.) the Law of their 3 superior castes they recognise no divine authority in the Veda, and do not practise the Shraddhs or ceremony for the dead but the Hindu rules of adoption are applied in the absence of customary usage. *SHEOCHAPBAI v JEORJI* (1920) 25 W N 273

JAJNAVALEKYA

—Ch II, Vers 117 145—

See HINDU LAW—STRIDHAN

1 L R 43 Calc 944

JALKAR

—right of—

See FISHERY 1 L R 42 Calc 489

Dispute concerning jalkar—Jurisdiction of Magistrate to institute proceedings under s 145 of the Code after an order binding down one of the parties to keep the peace—Order attaching the subject of dispute on being unable to determine the question of possession—Criminal Procedure Code (Act V of 1898) ss 107 145 146 The Magistrate has jurisdiction to take proceedings under s. 145 of the Criminal Procedure Code, after an order under s. 107 of the Code binding down one of the parties to keep the peace, when the circumstances so require. Where there was a reasonable apprehension that several persons who were interested in the subject of dispute and had abconded at the time of the s. 107 proceeding might cause a breach of the peace with the first party who were fishermen, or that the latter might seek to enforce their rights against the second party who had been bound down, in which case the order binding them down would have the effect of ousting them from any possession they might have. *Held* that the Magistrate acted properly in instituting proceedings under s. 145 of the Code in order to determine which party was in actual possession of the disputed properties, and was justified in attaching the same, under s. 146 if he found himself unable to determine the question of possession. *BAISYAR CHARAN MAJHI v GATT NATH MUKHERJI* (1912) 1 L R 99 Calc 489

—Rights in a river—Bed of a river meaning of—Hunter's Statistical Accounts if can be referred to for establishing existence of private rights *Per JENKINS, C J*—Jalkar rights of a river extend to waters in the river bed though they are not connected with the waters of the flowing stream throughout the year Where the right of fishery is in a river the Court has to be satisfied on a consideration of all the material facts and conditions whether it can fairly and reasonably be said that the waters over which the fishery is claimed are a part of the river *Per HARRINGTON J*—The tract in dispute was the bed of the river because it was habitually and regularly covered by the river for a substantial portion of the year in the ordinary course of

JALKAR—contd

nature. *Per MOOREHEAD J*—The bed of a river is the whole of what contains its waters when not swollen in whatever time of the year without leaving its channel and over which its banks. The grant of a fishery right in the river is entitled to fish in all waters comprised within the banks of the river and the circumstance that a particular sheet of water may during part of the year be disconnected from the firm stream of permanent current does not affect this title of the grantee. *ANKHORA BIRMA v TARA KANT GUPTA* (1913) 1 C. W. N. 1173

—*Shifting of bed of a river to a new course which becomes a part of the river only when it is shown that certain topographical sheets of water which hence formed the bed of the river Mahanadi are now surrounded by cultivated land is within the plaintiff's rights. The river has moved many miles away the topas are completely isolated, and are no longer part of the river bed and there is no connection of the topas with the river except when the whole country is inundated by the flood water of another river. Held that the defendant, who have gallies in the Mahanadi have no right of fishery in the topas which belong exclusively to the plaintiffs.* *SATI SANKAR ACHARYA v KUNJA MOHAN MORTHA* (1917) 22 C. W. N. 63

JATS

See CUSTOM 1 L. R. 44 Cal. 749

JEWISH LAW

*Marriage Custom—Ketuba legal effect of—Rights of wife. In a suit brought by a Jewish lady married in Calcutta, for the recovery from her deceased husband's estate of the sum mentioned in a Ketuba executed on the occasion of their marriage. Held that the Ketuba was a necessary but formal incident of the marriage contract and ceremonial and created no such right in favour of the widow. *JOSHUA v ABRAHAM* (1911) 1 L. R. 40 Cal. 266 CONFIRMING 1 L. R. 38 Cal. 708*

JIVAI GRANT

See HINDU LAW—ADOPTION 1 L. R. 43 Bom. 778

JODI

See JUDL

JOINDER OF CAUSES OF ACTION

See CIVIL PROCEDURE CODE (ACT V OF 1908) O II R. 2 1 L. R. 38 Bom. 444

JOINDER OF CHARGES

See CRIMINAL PROCEDURE CODE ss 223 to 239

1. —Offences against different persons by the same accused—*Legality of joint trial—Criminal Procedure Code (Act V of 1908) s 234—Practice S 234 of the Criminal Procedure Code is not limited to the case of offences committed against the same person but applies also where they are committed against different persons. Manu Miya v Empress 1 L. R. 9 Cal. 371 and Sri Bhagwan Singh v Emperor 13 C. W. N. 507 followed. Empress v Murari 1 L. R. 4 All. 147 Nanda Kumar Sircar v Emperor 11 C. W. N. 1128 Ali Mahomed v Emperor 13*

JOINDER OF CHARGES—contd

C. W. N. 418 disallowed from Queen Empress v Joo's Pro v 1 L. R. 411 disallowed. At the same time the powers under the section should be used with great care and caution where there are different complainants. SURESH ANNA v EMERSON (1913) 1 L. R. 43 Cal. 13

2. —*Joint commission in respect of different persons—Legality of joinder—Criminal Procedure Code ss 234 and 235—Practice. The words 'offences of the same kind' used in s 234 of the Code of Criminal Procedure and as defined by subcl. (2) of the said section do not imply that the offences should necessarily have been committed against the same person. Where there were six persons accused of having been jointly concerned in carrying on a systematic swindle and three joint charges were framed against all the accused. Held there was nothing illegal in the procedure. *SAHIB KHAN v EMERSON 1 L. R. 43 Cal. 13* followed. *Empress v Murari 1 L. R. 4 All. 14* disallowed from EMERSON v BRITISH LAYDE (1916) 1 L. R. 38 All. 457*

JOINDER OF PARTIES

See HINDU LAW—JOINT FAMILY 1 L. R. 37 Bom. 340

See JURISDICTION OF HIGH COURT 1 L. R. 34 Bom. 13

See PARTIES JOINDER OF 1 L. R. 32 Bom. 57

JOINT AND ACQUIRED PROPERTY

See JURISDICTION OF HIGH COURT 1 L. R. 34 Mad. 257

JOINT APPEAL

See COMPANIES 1 L. R. 1 Lah. 368

JOINT BOND

See CIVIL PROCEDURE CODE (ACT XIV OF 1908) s 462 1 L. R. 39 Mad. 409

JOINT BUSINESS

See JOINT FAMILY BILLS 1 L. R. 38 Mad. 1099

JOINT CONTRACT

See CIVIL PROCEDURE CODE 1882 s 462 1 L. R. 34 Mad. 314
1 L. R. 39 Mad. 409

See CONTRACT ACT s 43 to 45

JOINT CONVICTION

Joint Penalties—Calcutta Municipal Act (Beng. III of 1899) ss 441 and 442—Disobedience of order under s 441 by two persons. The owner and an occupier of a house in Calcutta were jointly convicted of disobedience of an order under s 441 of the Calcutta Municipal Act and a joint penalty of fine was imposed upon them. Held that the joint conviction and the joint penalty were illegal each of the accused being guilty of a separate offence. BHARAT CHANDRA KOLAY v CORPORATION OF CALCUTTA (1910) 1 L. R. 37 Cal. 895

JOINT CREDITORS

See CONTRACT ACT 1872 s 50
Pat. L. J. 520

JOINT DEBTS

See ACCOUNTS SUIT FOR

I L R 44 Cal 1

JOINT DEBTORS

— suit for contribution between—]

See LIMITATION I L R 39 Mad 288

JOINT DECREE

— execution of—

See LIMITATION I L R 46 Cal 25

JOINT DECREE HOLDERS

— rights of inter se—

See EXECUTION OF DECREE

I L R 33 All 563

JOINT ESTATE

— Private partition—Fraudumbrance by co sharer—Holding in severalty—Tenancy in common—Partition by Collector effect of—Estates Partition Acts (Beng Act V of 1897 s 99 and Beng Act VIII of 1876 s 123)—i ractice—Abandonment of plaintiff's case and adoption by him of defendant's S 99 of Beng Act V of 1897 applies only where the lands are held jointly by the proprietors and not in severalty in pursuance of a private arrangement between the parties *Hridoy Nath v Mohobutnessa* I L R 20 Cal 285 *Amanaddi Patra v Nabin Chandra Gope* 11 C L J 95 *Syed Abdul Latif v Amanaddi Patra* 15 C W N 426 followed. *Joy Sankar Gupta v Bharat Chandra Bardhan* I L R 26 Cal 431 distinguished. Where a section of an Act (here s 128 of Beng Act VIII of 1876) which was received a judicial construction [*Hridoy Nath v Mohobutnessa*] is re enacted in the same words such re enactment [here s 99 of Beng Act V of 1897] must be treated as a legislative recognition of that construction. *Mansell v Regina* 8 E and B 54 *Ex parte Campbell* L R 5 Ch App 703 followed. When on a partition by the Collector any land of an undivided joint estate which had been encumbered by any co sharer is allotted to another co sharer the latter takes it free from the encumbrance so created. *Byjnath v Ramooden* I R 11 A 106 followed. The decision in *Sheikh Ahmedoolah v Sheikh Ashraf Hossein* 13 W R 447 [where the lands were held in severalty] which was followed in *Hridoy Nath v Mohobutnessa* I L R 20 Cal 285 is not as assumed in *Joy Sankar Gupta v Bharat Chandra Bardhan* I L R 26 Cal 431 inconsistent with and has not consequently been overruled in effect by the decision of the Judicial Committee in *Byjnath v Ramooden* L P 11 A 106 [where the lands were held in common tenancy] *Byjnath v Ramooden* L P 11 A 106 *Venkatrama v Feunsa* I L R 33 Mad 479 *Sheikh Aura v Baikuntanath Roy* 21 C L J 526 *Brojo Nath Saha v Dinesh Chandra Neogi* 21 C L J 529 *Tarakanath v Ishur Chandra* 21 C L J 603 *Joy Sankar Gupta v Bharat Chandra Bardhan* I L R 26 Cal 431 distinguished as cases where land was held in common tenancy. A plaintiff cannot be allowed to abandon his own case adopt that of the defendant and claim relief on that footing *Shibkrishna Sircar v Abd Hakeem* I L R 8 Cal 672 *Ramdayal v Jumanjoy* I L R 14 Cal 31 *Balmukund Kesurda v Phagvandas Kesurda* 15 Bom L J 209 followed. But that does not prevent the defendant from contending that even on the facts

JOINT ESTATE—contd

found the plaintiff's claim [here for ejectment] cannot be sustained *NAGENDRA MOHAN ROY v PYARI MOHAN SAHA* (1915)

I L R 43 Cal 103

JOINT EXECUTION

See ATTESTATION BY EXECUTANTS

I L R 37 Cal 526

See PROMISSORY NOTE

I L R 58 Mad 680

JOINT FAMILY

See CIVIL PROCEDURE CODE, 1882

s 234 I L R 52 All 404

s 244 I L R 1 Lah 134

See CONTRACT ACT (IX of 1872) s 93

I L R 32 All 325

See JOINT HINDU FAMILY

See KHOSIAS I L R 38 Bom 449

See SALE IN EXECUTION OF DECREE

I L R 44 Cal 524

JOINT FAMILY BUSINESS

See HINDU LAW—JOINT FAMILY

I L R 39 Bom 715

See MURAKHADAN LAW

I L R 38 Mad 1099

—Dissolution and accounts—Private arbitration—Award operation of on moneys realised by member on behalf of family—Cash meaning of The members of a joint family business referred their disputes (in view of dissolution) to an arbitrator before whom on 31st July 1895 they stated *inter alia* that they had divided amongst themselves all the moveables consisting of cash and kind etc that a sum of Rs 5650 was payable to one of them B that they had understood the accounts among themselves and that now no co sharer has any right to demand accounts from another and the arbitrator made his award on 5th August 1895. At the date of the award there was an undischarged usufructuary mortgage executed on 16th June 1893 for 14 years by one M in favour of B as representing the family to be discharged by receipt of the usufruct. Held that the terms and intent of the award precluded the other co sharers from asking for an account of moneys realised previous to the date of the award. The word cash referred to all moneys received by the parties before the statement was made to the arbitrator. *SHYO NARAY SINGH v BISHUNATH SINGH* (1913) 18 C W N 426

JOINT FAMILY PROPERTY

See AGRA TENANCY ACT (II OF 1901) s.

2 I L R 38 All 325

See HINDU LAW—JOINT FAMILY

See HINDU LAW—JOINT FAMILY PROPERTY

See HINDU LAW—SUCCESSION

I L R 59 Mad 136

See UNITED PROVINCES LAND REVENUE

ACT (II OF 1901) ss 107 111 112

I L R 35 All 548

— it exists in Mahomedan Law—

S MAHOMEDAN LAW—JOINT BUSINESS.

I L R 38 Mad 1099

JOINT OWNERS—contd

See EVIDENCE I L R 39 All 696

See NOTICE I L R 40 Cal 503

See PENAL CODE (ACT XXV of 1900) s 291 I L R 33 All 773

—suit by to recover rent—

See PROVINCIAL SMALL CAUSE COURTS ACT (IV of 1887) SCH II ART 31 I L R 40 All 666

Partition—Abadi not formally divided but separate portions thereof taken possession of by the various owners—Agreement amongst owners—Rights of owners as to portions in possession of each. A village was divided into three mahals with the exception of the abadi as to which it was found that it had not been divided between the mahals by declaration on the village map or on the spot but the owners of the mahals had been in separate possession of portions of it. Held that the only possible inference from this finding was that the parties had agreed among themselves as to their possession of the abadi and that so long as the agreement continued each party was entitled to use the portion in his possession in any way he pleased so long as such user or possession did not interfere with the user or possession of the owners of the other mahals. *Mumundri Ma umdar v Pa il Lal Ma umdar* 11 C P D 517 followed JAGAN NATH PRASAD v BAPRI PRASAD (1911) I L R 34 All 113

Their right—Ouster what amounts to—Cause of action. Each joint owner has the right to the possession of all the property held in common equal to the right of each of his companions in interest and superior to that of all other person. He has the same right to the use and enjoyment of the common property that he had to his sole property except in so far as it is limited by the equal right of his co-owners. Accordingly each co-owner may at all times reasonably enjoy every part of the common property that in he is entitled to such enjoyment as will not interfere with the like rights of the co-owners. It necessarily follows that one co-owner has no right to the exclusive possession and use of any particular portion of the joint property and if he exercises such rights and excludes his co-owners from participation in the possession he must account to his co-sharer for his interest in the part from which he is ousted even though he takes no more than his just share. But the co-sharer out of possession cannot complain of the mere possession of the co-owner so long as he refrains from setting up any claim to share in that possession. Hence in order to give rise to a cause of action against the co-sharer it must be proved that his act amounted to ouster or disavowal. It is not easy to frame a formula to cover all cases of ouster but it may generally be stated that where there is an actual turning out or keeping excluded the party entitled to the possession there is an ouster. Any resistance preventing a co-sharer from obtaining effective possession is an actual ouster. Such resistance must be clearly and affirmatively shown and is not presumed from equivocal acts which may or may not have been designed to operate as an exclusion. *Jacob v Secord* 1 I L R 464 referred to DEBENDRA NARAYAN SINGH v NARENDRA NARAYAN SINGH (1919) I L R 47 Cal 122

JOINT PENALTY

See JOINT CONVICTION

JOINT POSSESSION

See CIVIL PROCEDURE CODE 1908 O XXI n 33 I L R 34 All 150

See COMMON LAW I L R 2 Lah 73

See HINDU LAW—HUSBAND AND WIFE I L R 38 Mad 1036

See LANDLORD AND TENANT I L R 37 Cal 687

Suit for if lies when to ouster—When ouster proved partition if only remedy—Plea that partition proper remedy when to be taken. A suit for joint possession is not maintainable unless there is actual ouster. If it is stated by the defendant in possession that the plaintiff has no right and if he is refused leave to enter the land it is a case of actual ouster and a suit for joint possession will lie. *SARAT CHANDRA MUKHO PADHIA v PANDRA LAL MITTA* (1913) 18 C W N 420

JOINT PROBATE

See HINDU LAW—WILL I L R 39 Mad 365

JOINT PROPERTY

See HINDU LAW—HUSBAND AND WIFE I L R 38 Mad 1036

See LIMITATION ACT (IV of 1877) SCH I ART 127 I L R 37 Bom 64

See PARTITION I L R 37 All 155

—Suit for damages for ouster by co-owner—

See DEBENDRA NARAYAN SINGH v NARENDRA NARAYAN SINGH (1919) 23 C W N 900

Co-owners—Purchase of an undivided moiety—Occupation of the other moiety in virtue of a lease deed—Subsequent foreclosure—Limitation Act (IX of 1908) Arts 110 115 and 120. Arts 110 and 115 of the Limitation Act pre-empt the existence of a contract express or implied where there is no such contract or any relationship of landlord and tenant subsisting between the parties or no holding over as tenant but when the relationship is referable to right as co-owners a suit for recovery of the moiety of a house and rent for a period of six years is governed by art 120 of the Limitation Act. *Peliet Hat on d Co Ltd v Rom Chand Dutt* 1 I L R 23 Cal 790 applied. *Quare* Whether the fiction of tenancy by sufferance should be kept up after the passing of the Transfer of Property Act. *Subhrata Ramiah v Gundala Romana* 1 Mad W 145 referred to MADAR v HADEP MOJDEEN (1914) I L R 39 Mad 54

JOINT PROPRIETORS**—liability of—**

See THEATRICAL PERFORMANCE I L R 44 Cal 1025

JOINT TENANCY—

1 — Presumption of joint tenancy—Gift—Don or guardian for donee—Mansu et

JUDGE—contd

prosecution by—

See CONTEMPT OF COURT

I L R 45 Calc 169

No privilege or protection attaches to the public acts of a Judge which exempts him from adverse comment CHANNING
APPOINTED EMPLOYER I L R 41 Calc 1023

JUDGMENT

See ARBITRATION

I L R 47 Calc 611

See ATTACHMENT BEFORE JUDGMENT

See CIVIL PROCEDURE CODE 1908

O V L R 2 I L R 33 All 236

I L R 35 All 368

I L R 42 All 262

O V L R 11 I L R 37 Bom 610

See CRIMINAL PROCEDURE CODE

s 110 I L R 38 All 393

s 307 AND 421

I L R 36 All 496

s 421 N Pat L J 695

See JUDGMENT OF A SINGLE JUDGE

See LETTERS PATENT 1885 Cj 15

I L R 39 Mad 235

I L R 34 Bom 1

I L R 42 Bom 260

I L R 45 Bom 377 & 428

See MISJOINDER OF PARTIES

I L R 45 Calc 111

S. P. ES JUDICATA

I L R 36 Mad 158

a nullity—

See JURISDICTION

I L R 38 Calc 639

affirmed on appeal—

See ESTOPPEL

I L R 44 I A 213

Foreign Judgment—Suit on—

See CIVIL PROCEDURE CODE 1908 s 13

I L R 40 Mad 112

necessity of writing—

See CIVIL PROCEDURE CODE 1908

O V L R 11

I L R 36 Bom 116

not on the merits of the case—

See CIVIL PROCEDURE CODE (ACT 1 OF 1908) s 13 (b)

I L R 40 Mad 112

of a single Judge—

See LETTERS PATENT APPEAL

I L R 43 Calc 90

of the previous Judge successor not bound to pronounce—

See CRIMINAL PROCEDURE CODE (ACT V OF 1908) s 30

I L R 40 Mad 108

relevancy of—

See EVIDENCE I L R 41 Bom 1

JUDGMENT—contd

remarks against a person not a party or witness—

See PRACTICE AND PROCEDURE

I L R 45 Bom 1127

setting aside a fo fraud—

See FRAUD I L R 28 Mad 203

1 Judgment binding nature of on succeeding Judge—Partition of property between co widows may be effected orally Where a Judge on appeal decides certain points and reminds the case his decision is binding on his successor before whom the case comes up again on appeal from the judgment on remand There is nothing in the Transfer of Property Act to prevent co widows effecting an absolute division of property orally LATCHUMMAL v. GANAMMAL (1910)

I L R 34 Mad 72

2 Personal knowledge of Judge

Materials not in evidence or improperly admitted as basis of judgment—Validity of such judgment A judgment which is based on materials which were not in evidence and which have been improperly admitted or on the personal knowledge of the Judge is not in accordance with law Val labha v. Madusudanani I L R 12 Mad 495 referred to DUGA PRASAD SINGH v. RAM DOYAL CHAUDHURI (1910)

I L R 38 Calc 153

Judgments and orders

not inter partes—Res judicata—Estoppel—Evidence

Relevancy Plaintiff purchased certain properties at a sale in execution of a money decree against A. A's mother B whose claim to the property under a kholas alleged to have been executed by the original owner D had been dismissed in execution proceedings and failed in a suit instituted by her against plaintiff and others under s 283 of the Civil Procedure Code of 1882 it having been found that B was really a benamidar for A. Plaintiff on proceeding to take possession was opposed by D. In a suit by the plaintiffs to recover the property from D Held that the orders and decrees in the previous litigation were relevant to the issue as to title and though not res judicata between the parties were admissible in evidence Ramamurti Dhora v. The Secretary of State for India I L R 36 Mad 141 referred to PRABH MOHAN SHARMA v. BURLABI DASSYA (1913)

28 C W N 954

Not pronounced—Record lost—Procedure

Where in a criminal case the accused was convicted and sentenced the records in the case being at the time lost Held that it was unnecessary for the High Court to order a retrial especially in the absence of an appeal by the accused person There is no provision of law which enacts that unless all the records of a case are in the court house at the time of conviction and sentence the conviction and sentence are void and should be quashed or that the Sessions Judge's trial has been held or the sentence passed without jurisdiction Where a judgment has been lost the appropriate course is for the Sessions Judge to rewrite it from memory and from the materials before him and place it on record Re KAMAK SHARMA (1913)

I L R 38 Mad 498

A judgment of one Judge of High Court read in Court by another when former on leave is valid SARAJ RANJAN CHOW DUTY v. FREEMAN CHODHURY (1917)

22 C W N 263

JUDGMENT—contd

Civil Procedure Code
(Act I of 1908) O XX r 1 3—*Judgment*
of the Judge is binding on the parties—*Civil Procedure Code* lays down that a judgment shall be declared and signed by the Judge in open Court at the time of pronouncing it and when once entered shall not afterward be altered or added to save as provided by s 12 or on review. The provisions of the law relating to the delivery of judgments may be deemed to have been framed for the benefit of the parties litigant and their convenience is an irregularity curable by consent or waiver. It is not a case of lack of inherent jurisdiction where the maxim applies that consent cannot give jurisdiction (*Chand v. Chandhury Modhulal* 21 J J 314 and *Chand v. Chandhury Modhulal* 21 J J 314 and *Chand v. Chandhury Modhulal* 21 J J 314). Nor is it a case of a man later proving a law the violation of which nullifies the entire proceeding (*Abdul Kader v. Ibrahim* 10 J L P 35 Cal 61 and *TL Liverpool F.R. v. L. J. Turner* 2 De G F and J 40). The infringement of the procedure prescribed by O XX r 123 constitutes an irregularity curable by consent or waiver. It affords no ground for reversal of the decree based on the judgment irregularly pronounced where the irregularity is waived by the parties and does not affect the merits of the case (*Band v. Hamam Ramthani* 4 City Jy Co J R 2 Q B 293 *Malomed Akil v. London* 4 I L R 18 P 1 *Lockman Prasad v. Pooni* 11 J P 3 111 20 *Holmes v. Jones* 1 J Doul 45 *Garratt v. Hooper* 1 Doul 5 *Sulh v. Tara* 10 J L 1 33 Cal 68 referred to *1087 GLOSTER JUTE MANUFACTURING CO v. CHANDRA KUMAR DAS* (1919) 1 L R 46 Cal 978

Insufficient judgment
ground for interference in second appeal. A mere general statement that on a perusal of all the evidence in the case the Court is satisfied as to a certain state of facts is not a sufficient judgment within the meaning of the law. The High Court in second appeal will interfere with a finding of fact where it is shown that a miscarriage of justice has been occasioned by the lower Court's failure to weigh all the evidence before it (*MOBARAK HUSSAI v. SYED SHAH HANID HUSSAIN* 2 Pat L J 8)

Written and signed by one Judge and pronounced by his successor validity of—*Code of Civil Procedure* (Act I of 1908) O XX r 1. Where the Judge who had heard the evidence and arguments in a case also wrote and signed the judgment and was then succeeded by another Judge who after giving notice to the parties pronounced the judgment and signed the decree *Held* that the judgment was valid. *SRI MOTYA LAKSHMAN JIN v. LOKNATH DAS* 5 Pat L J 147

of Appellate Court in Criminal case—What it must contain—Proper procedure—Where appellant is charged with an offence under section 228 of the Indian Penal Code—Criminal Procedure Code Act I of 1893 Sections 367 374 380 381. The petitioner was convicted by a Magistrate of the 3rd class of the offence of intentionally offering insult or causing interruption to a Court under section 228 of the Indian Penal Code and fined Rs 20. He appealed to the District Magistrate

JUDGMENT—contd

who dismissed the appeal recording the following order—'I have heard the evidence for the appellant. He has dealt with the points only which are already dealt with in the judgment. In my opinion the appellant has been rightly convicted.' Appeal rejected. *Held* that the judgment of the District Magistrate does not satisfy the requirements of section 367 Criminal Procedure Code the provision of which are applicable to the judgment of an Appellate Court—viz section 424 of the Code. An appellate Court is not required to write a long and elaborate judgment but it is clearly its duty not only to examine the evidence but also to write a judgment affording a clear indication that the appeal has been properly tried and that the points urged by the appellant have been duly considered and decided. An appellate Court which writes a judgment which the High Court is unable to follow without reference to the judgment of the trial Court obviously fails in the discharge of the duty imposed upon it by law. *Held* also that a Court taking action under section 480 Criminal Procedure Code is required to record particulars mentioned in section 481 and *et cetera* must record the facts constituting the offence and the record must also show the nature of the interruption or insult attributed to the accused. When the guilt or innocence of a person depends upon the exact word used by him it is obviously the duty of the Magistrate to record them with a reasonable degree of precision and his omission to record the nature of the insult constitute a grave defect of procedure. *DALIR SINGH v. THE CROWN* 1 L R 2 Lab 308

Charges of unlawful assembly and of seditious intention—Statement of points for determination and findings thereon in such case—*Criminal Procedure Code* (Act I of 1893) s 367 and 424. Under s 424 read with s 307 of the Criminal Procedure Code the judgment of a lower Appellate Court must among other matters contain the point or points for decision the decision thereon and the reasons for the decision. On a charge under s 143 of the Penal Code the judgment of such Court should contain as one of the points for determination a statement as to the existence of the elements constituting the unlawful assembly in the particular case and the decision thereon bearing in mind the provisions of s 141 of the Penal Code. The judgment on a charge under s 379 of the Penal Code should contain as one of the points the question as to the dishonest intention and a finding on it especially when the taking of property is admitted but a bona fide claim of right thereto is set up by the accused. *RAM LAL SINGH v. HARI CHANDAN AHIR* (1909) 1 L R 37 Cal 194

JUDGMENT CREDITOR

See INSOLVENCY 1 L R 42 Cal 72

JUDGMENT DEBT

—payment of a portion of—

See CIVIL PROCEDURE CODE (ACT I OF 1908) O XXI P 49 (b)
1 L R 39 Mad 429

JUDGMENT DEBTOR

See A DEGREE OF A MONEY DECREE
1 L R 38 Mad 36

JUDGMENT DEBTOR—contdS **CIVIL PROCEDURE CODE 1882** s 293

I L R 93 Mad 465

See **CIVIL PROCEDURE CODE (ACT V OF 1908)**

O XXI

R 89 I L R 40 Bom 557

R 91 I L R 25 Bom 29

See **DEPOSIT IN COURT**
I L R 43 Calc 100See **PRELIMINARY** I L R 34 Bom 567See **PROVINCIAL INSOLVENCY ACT (III OF 1907)** s 34 I L R 37 All 452

—alienation by—

See **ATTACHMENT** I L R 44 Calc 662

—death of—

See **CIVIL PROCEDURE CODE (XIV OF 1882)** ss 244 245 647
I L R 34 Bom 546See **CIVIL PROCEDURE CODE (ACT V OF 1908)** ss 47 AND 50
I L R 38 Mad 1076See **EXECUTION OF DECREE**
I L R 41 Calc 50

—disability of to mortgage—

See **CIVIL PROCEDURE CODE, 1882** s 323A I L R 46 Calc 183

—examination of—

See **PRACTICE** I L R 43 Calc 285

—interest of—

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I L R 44 Calc 524

—payment by as interest—

See **EXECUTION OF DECREE**
I L R 43 Calc 207

—representative of—

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—security for default of—

See **CIVIL PROCEDURE CODE (1908)** s 145 O XXIV n 14
I L R 38 All 327**JUDGMENT OF A SINGLE JUDGE**See **LETTERS PATENT APPEAL**
I L R 43 Calc 90**JUDI**See **ADVERSE POSSESSION**
I L R 45 Bom 638See **INAMDAR** I L R 41 Bom 159
I L R 40 Mad 93

—payment of—

See **CONTRACT ACT (IX OF 1872)** s 69
I L R 42 Bom 93**JUDICIAL ACT**See **SEARCH FOR ARMS**
I L R 40 Calc 953**JUDICIAL COMMISSIONER**See **JURISDICTION**
I L R 43 Calc 136See **SECOND APPEAL**
I L R 47 Calc 107**JUDICIAL COMMITTEE**See **PRIVATE COUNCIL**See **PRACTICE**

I L R 48 Calc 994

—functions of in criminal cases—

See **PRIVATE COUNCIL, PRACTICE OF**
I L R 41 Calc 1023

—Practice of—

See **PLAINT** I L R 48 Calc 110**JUDICIAL DECISIONS**

—application of—

See **SANCTION FOR PROSECUTION**
I L R 41 Calc 446

—suspicion not a ground for—

See **BURDEN OF PROOF**
I L R 34 All 511**JUDICIAL DISCRETION**See **CIVIL PROCEDURE CODE 1908** s 118 AND 115 4 Pat L J 428

OVI R I 25 C W N 299

See **COMMISSION AGENCY**
I L R 45 Calc 126See **LIMITATION** I L R 44 I A 216

Decision not based on adequate finding power of High Court to reverse —Limitation—Negligence of servants Where it is left to the Court's discretion to act or to refuse to act in a particular way and it is found that the conclusions of fact at which the Court arrived and which formed the basis of its decision were not such as could possibly support that decision then the Court's discretion has not been exercised in a legal and proper manner and the High Court is entitled to reverse the decision arrived at In this case a discretion had been exercised because of the negligence of a party's servant which was not right and the High Court therefore interfered Where the law has provided a time limit within which any particular step is to be taken and a party waits until the last moment before beginning to take action he is not entitled to the Court's indulgence if an accident prevents the step from being taken within the time prescribed by law SETH JAHAR MAL v G M PRITCHARD (1919) 4 Pat L J 381

JUDICIAL ENQUIRYSee **SURETY** I L R 42 Calc 706**JUDICIAL INTERPRETATION**See **BEHAL TEVARAY ACT** s 169
2 Pat L J 722**JUDICIAL NOTICE**See **MAPPILLAS OF NORTH MALABAR**
I L R 40 Mad 1052See **LILIT** I L R 37 Calc 760**JUDICIAL OFFICER**

—suit against—

See **JUDICIAL OFFICERS PROTECTION ACT (XVIII OF 1850)** s 1
I L R 39 All 516

Libel—Pleader—Judge—Defamatory statement made by a Judge in the course of a suit—Discharge of judicial duty—Judge protected from being sued in a Civil Court The plaintiff

JUDICIAL PROCEEDINGS—cont'd

if an execution proceeding is a judicial proceeding within the meaning of s 476 of the Code the definition in s 4 cl (m) being clearly not exhaustive. SHAKH BHADUR v SHAKH FRADATALLA (1010) I L R 37 Cal 642 14 C W N 789

2. Preliminary inquiry—Preliminary inquiry by an Assistant Settlement Officer to determine whether a prosecution shall be directed—Power to take evidence on oath in such inquiry—False evidence in the course of the inquiry—Criminal Procedure Code (1st of 1898) ss 4 (m) and 476—Indian Penal Code (1st XLI of 1860) s 193 and Explanation (a)—Oaths 1st (X of 1873) s 4—Government rule under the Bengal Tenancy Act (VIII of 1885) 1st 40—A Court holding a preliminary inquiry under s 476 of the Criminal Procedure Code may lawfully take evidence on oath therein and the inquiry is therefore a judicial proceeding within the terms of s 4 (m) of the Code—*Shroff v. Shroff*, *Asaf Singh I L R 17 Cal 51*; and *Emperor v. Gopal Barik I L R 31 Cal 4* referred to—Such an inquiry is also a stage of a judicial proceeding under Explanation 2 to s 193 of the Penal Code and a person giving false evidence in the course of it commits an offence under the section—Under s 4 of the Oaths Act and Rule 10 (a) of the Government Rules framed under the Bengal Tenancy Act a Settlement Officer has the power to receive evidence on oath and is competent to hold a preliminary inquiry under s 476 of the Criminal Procedure Code.

ABDULLAH KHAN v. EMPEROR (1009)

I L R 37 Calc 52

5 TREURASS I L. H. 34 Calc 853

Allegation that defendant fabricated a false case against plaintiff - Rejection of plaintiff's suit for damages was filed again. A judicial officer the material allegations in the plaint being that the defendant had on account of enmity taken the plaintiff into custody and kept, through all feeling and dishonestly brought a false charge against him under s. 384 and 110. of the Indian Penal Code. Held that the plaint as framed could not be said to disclose a cause of action so as to justify its rejection in limine for which purpose it was necessary to consider the plaint only and nothing else but it was necessary to ascertain what facts the plaintiff could prove before it was possible to decide whether the case came within the purview of Act XVIII of 1850. IZZAT ALI v. MUHAMMAD SHARAFAT ULLAH KHAN (1917)

I L T 39 AD 516

See DIVORCE ACT (IV of 1869) s. 23

ILR 53 All 500

See ACQUITTAL I L R 55 Cal 703

See ADMINISTRATION SUIT

I L R 44 Calc 890

See LOAN TENANCY ACT (II OF 1901)—

14 I L R 39 AU 805

39 4 5 AND B I L E 43 All 445

56 AND 177 (c)

I L R 39 ALL ARE

S. 79

9 10	L L R 39 All 455
9 100	L L R 49 All 454

B 108 I L R 43 AD 454

S 177 I L R 43 AM JR

S 108 I L R 43 All 325

9 9J I L R 35 All 14

I L R 43 All 168

199 I L R 37 AU 14

SIC APPEAL

DECLARATION

I L R 43 Bom 1

I	L	47	Calc	29	752
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I L H 36 All 354
I L R 46 Feb 1950

See APPENDIX, p. CXXXV.

SEE APPLICATION BY COURT
I L R NR Cals 403

See ARBITRATION Act (IX) of 1996.

See AFFIDAVIT ACT (LA. of 1899)
§ 8 (1) (a) (b) (c) (d) and (2) B

I L R 43 Bom 809

— 10 —

- difference of—

See CIVIL PROCEDURE CODE (Act V of 1908) ■ LXXIII p 5
I L R 41 Mad 620

See CHOTA NAAGPUR TEHANGU ACT 1908
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See COURT MEANING OF
I L R 37 Calc 642

See CRIMINAL PROCEDURE CODE § 476
I L R 33 AN 396

See DEFAMATION I L E 48 Calc 388

See LEGAL PRACTITIONERS ACT - 14
15 C W N 269

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— stage in a —

See SANCTION FOR PROSECUTION
I. L. R. 43 Calc 592

1 _____ Criminal Procedure Code s
47b— Judicial proc ding execution proceedings

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- See ATTACHMENT BEFORE JUDGMENT
I L R 45 Cal 780
- See BENGAL NORTH WESTERN PROVINCES
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1887)—
- s 8 & 20 I L R 34 All 383
- s 8 & 21 I L R 34 All 205
- s 21 I L R 32 All 222
- s 22(3) I L R 37 All 232
- See BENGAL REGULATION VI OF 1825
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- See BOMBAY CIVIL COURTS ACT (XIV OF
1869) s 10 I L R 39 Bom 136
- See BOMBAY DISTRICT MUNICIPAL ACT
1901 s 151 I L R 44 Bom 738
- See BOMBAY HEREDITARY OFFICES ACT
BOMBAY III OF 1874 ss 2, 3 AND 30
- See BOMBAY CITY IMPROVEMENT ACT 1898
I L R 38 Bom 203
- See BOMBAY LAND REVENUE CODE s 101
I L R 45 Bom 67
- See BOMBAY REVENUE JURISDICTION ACT
(X OF 1876) s 4 (a)
I L R 43 Bom 277
I L R 44 Bom 130 161
I L R 45 Bom 1191 1161
- See CIVIL AND REVENUE COURTS
- See CIVIL PROCEDURE CODE 1882—
- s 43 I L R 33 All 244
- s 2, 8 I L R 34 All 365
- s 539 I L R 36 Bom 29
- s 593 I L R 32 All 79
- See CIVIL PROCEDURE CODE 1908—
- s II I L R 32 All 527
I L R 37 All 313
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- s 10 I L R 44 Bom 283
- 16 (a) and (d) I L R 41 All 513
- s 20 (c) I L R 34 All 49
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I L R 39 All 607
I L R 45 Bom 1223
- s 24 I L R 34 Bom 411
I L R 39 All 214
I L R 40 All 525
I L R 1 Lah 158
- s 47 and 144 I L R 44 Bom 702
- s 54 I L R 42 Bom 689
- s 60 I L R 37 Bom 415
- 63 O XI s 100
I L R 37 Bom 488
- s 92 I L R 35 All 459
I L R 42 Bom 742
- s 110 I L R 36 Bom 105
I L R 39 All 101
I L R 42 All 18
I L R 42 Bom 119
3 Pat L J 376
- O 7 s 10 I L R 1 Lah 203
- O XI s 13 I L R 37 All 298

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- O IX s 8 AND 9 I L R 44 Bom 82
- O XI s 7 I L R 38 Bom 194
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- O XXIII s 1 I L R 44 Bom 598
- OO XXIII XLI s 11 I L R 35 Bom 261
- O XII s 22 I L R 1 Lah 396
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I L R 43 All 258
- See III ss 7 69 70 I L R 37 Bom 32
- See COLLECTOR I L R 40 Cal 465
- See COMPANIES ACT (VII OF 1913) s 207
I L R 38 All 407
- See COMPANY I L R 45 Cal 486
- See COMPLAINT I L R 40 Cal 444
- See CONTEMPT OF COURT I L R 45 Cal 168
- See CONTRACT I L R 47 Cal 583
- See CO-OPERATIVE SOCIETIES ACT 1912
s 42 I L R 44 Bom 532
- See COPYRIGHT ACT (XX OF 1847)
ss 7 AND 12 I L R 33 All 24
- See COSTS I L R 46 Cal 1070
- See COURT FEE I L R 40 Cal 245
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I L R 45 Cal 634
- See COURT FEES ACT 1870 s 17
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- See COURT OF WARDS ACT (BOM ACT
I OF 1905) s 3 (c) I L R 37 Bom 313
- See CRIMINAL BREACH OF TRUST
I L R 48 Cal 679
- See CRIMINAL JURISDICTION
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- ss 110 AND 526 I L R 37 All 20
- s 107 125 438 I L R 40 All 140
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- s 123 I L R 38 All 209
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- s 188 I L R 41 All 452
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 191 I L R 39 All 657
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 19 46 I L R 34 All 602
 203 I L R 36 All 129
 s 370 I L R 37 All 231
 s 310 AND 430 I L R 37 All 418
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 s 400 I L R 34 All 214
 s 430 I L R 36 All 53
 s 470 400 I L R 40 All 144
 s 400 I L R 39 All 91
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 I L R 43 Bom 300
 s 510 500 I L R 35 All 374
 s 500 I L R 35 Bom 233
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 s 500 107 110 110 I L R 32 All 842
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 s DECREE I L R 39 Bom 31
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 I L R 45 Bom 547
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Art 31 3 Pat L J 423
Art 31 I L R 40 All 142 666
Art 31 I L R 40 All 52
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- See PUBLIC GAMBLING ACT (III of 1867)
s 5 I L R 34 All 597
- See PUNJAB LAND REVENUE ACT 1887
s 119 I L R 1 Lah 387
- See RAILWAY ACT (IV of 1890) ss 120(a)
130 I L R 43 Bom 888
s 4 I L R 45 Bom 1324
- S RECEIVER I L R 46 Calc 70 352
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I L R 37 All 220
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- See REVENUE JURISDICTION ACT—
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I L R 43 Bom 221
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- See SMALL CAUSE COURT
- See STAMP ACT (II of 1892) ss 40 57
I L R 40 All 128
- See SEAL OF SUIT I L R 43 Calc 144
- See SUCCESSION CERTIFICATE ACT (VII of 1889) ss 19 26 I L R 34 All 148
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- in suit for maintenance—
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ss 9j AND 167 I L R 38 All 48
s 167 I L R 39 All 675
- See UNITED PROVINCES LAND REVENUE
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- of foreign Court—
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 I L R 39 Mad 24
- of Municipal Courts—
 C. C. Act 1902 (Act V of 1902)
 I L R 33 Mad 635
- of Registrar in Insolvency—
 I L R 31 Cal 631
- of subordinate Courts to take proceedings—
 I L R 31 Cal 1015
- of Civil Courts—
 I L R 39 Mad 21
- of Criminal Courts—
 I L R 33 Mad 733
- of High Court in a Revenue case—
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 I L R 42 All 11
- submission to whether voluntary—
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 I L R 39 Mad 24
- to rehear—
 I L R 37 Cal 259
- to try offence committed on high seas—
 See Criminal Procedure Code (Act V of 1903)
 I L R 41 Bom 187
- voluntary submission to—
 S. 133 Cr. P. Code
 I L R 39 Mad 733

1 — Secretary of State for India in Council—*Dwell or carry on business or professionally work for gain*—Letters Patent 1873, s. 1. This Court has no jurisdiction to entertain a suit brought against the Secretary of State for India in Council where the cause of action arose wholly outside the ordinary original civil jurisdiction of this Court on the sole ground that the Secretary of State for India in Council dwelt or carried on business or professionally worked for gain within the local limits of Calcutta the capital of India at time of the institution of this suit. *Dwaj Narayan Tewary v The Secretary of State for India* I L R 14 Cal 206 followed. *PODRICKS v SECRETARY OF STATE FOR INDIA* (1912).

I L R 40 Cal 308

2 — evidence taken by another Judge—Practice—Evidence in criminal case recorded by Assistant Session Judge—Judgment pronounced by Sessions Judge without relying on the evidence. Where a Sessions Judge decided a case upon evidence taken not before him but before an Assistant Sessions Judge it was held that the Sessions Judge's judgment was *ultra vires* and a fresh trial was ordered. *EMERSON v BADRI PRASAD* 1912.

I L R 35 All 63

3 — Sonthal Parganas—Suit to enforce Mortgage—Land partly in Sonthal Parganas—Usury—Sonthal Parganas Act (XXVII of 1855) s. 10

JURISDICTION—contd

—Sonthal Parganas Settlement Regulation (Bengal III of 1855) ss 5 and 6—Sonthal Parganas Justice Regulation (Bengal I of 1893) Part II—Civil Procedure Code (Act V of 1857) s. 19. A suit was brought in 1901 in the Court of the Subordinate Judge at Bhagalpur to enforce a mortgage of land of which a portion was situated in the Sonthal Parganas (a part only of that land having been settled) and a portion in the Bhagalpur district. The mortgage provided that it might be enforced in the Bhagalpur Court. Held (i) that all suits in regard to land in the Sonthal Parganas so long as the land has not been settled and the settlement notified in the Calcutta Calcutta must be brought before the settlement officers or the Courts of officers appointed under the Sonthal Parganas Act 18 and the Sonthal Parganas Justice Regulation 1893 and that the Bhagalpur Court had no jurisdiction in the present suit under the Civil Procedure Code s. 10 or otherwise (ii) that the Court exercising jurisdiction to enforce the mortgage was bound by the rules as to usury contained in s. 6 of the Sonthal Parganas Settlement Regulation 1852. *MAHA PRASAD v RANJAN MOHAN SINGH* (1911).

I L R 41 I A 197

4 — Concurrent Jurisdiction—Trial—High Court—In order to determine revenue when several Courts have concurrent local jurisdiction—Infringement of any of the High Court's such jurisdiction—Infringement of the ground of convenience only—Criminal Procedure Code (Act V of 1857) s. 185. s. 185 of the Criminal Procedure Code does not warrant the High Court within the local limits of which a criminal jurisdiction is conferred a suit is in interference thereunder merely on the ground of convenience but only when a doubt arises as to the Court by which an offence should be enquired into or tried. Where therefore there is no doubt that two Courts are equally competent to exercise jurisdiction the High Court has no power under the section. *PARAKI BEYODE CHAKRAVARTI v ALL INDIAN BANKING AND INSURANCE CO* (1913).

I L R 41 Cal 305

5 — Additional Sessions Judge—Competency of to try suit under s. 92 of the Civil Procedure Code 1908 if not directly empowered by Local Government—Civil Procedure Code (Act V of 1908) ss 21-92—Bengal A. W. P. and Assam Civil Courts Act (VII of 1883) s. 8. An Additional District Judge who is not vested with the power of trying suits under s. 92 of the Code of Civil Procedure by the Local Government has no jurisdiction to try such suits and a transfer of such a suit by the District Judge to the Additional District Judge is not competent. *Abdul Karim Abu Alied Khan v Mohan Sobhan Choudhury* I L R 32 Cal 117 referred to. *MAHOMED MOISA v ABUL HASAN KHAN* (1914).

I L R 41 Cal 866

5(a) — Valuation—A plaintiff land lord sued for a declaration of title and an injunction to restrain from realising rents the defendant who had been ordered in settlement proceedings as entitled to realise rent from tenants. The value of the property was found to be Rs 4000 or Rs 5000 but the plaintiff valued the relief prayed by him at only Rs 500. Held the value of the suit ought to be the value of the property. *KRIHVA DAS LALA v HARI CHURN BANERJEE*

15 C W N 823

JURISDICTION—contd

6 ——— Execution of decree—Ejectment—Indian High Courts Act 1861 (74 of 1861) s 101 s 15—Bengal Assam Civil Courts Act (VII of 1887) s 21—Sonthal Parganas Civil Courts Statutory Rules paragraph 29—Sonthal Parganas Act (XXXVIII of 1885) s 1 cl (2) s 2—Sonthal Parganas Settlement Regulation (III of 1882) s 2—Sonthal Parganas Rent Regulation (II of 1882) s 3—Sonthal Parganas Justice Regulation (I of 1893) s 7 9 12 13 15 27 Where the decree holder applied for execution of a rent decree by ejectment as previous applications for attachment and sale had failed and the Sub Deputy Collector of Deoghar ordered the ejectment of the judgment debtor from a portion of the holding but the Deputy Commissioner on the recommendation of the Sub Divisional Officer sanctioned eviction from the whole holding and as the suit for rent was valued at less than one thousand rupees though the market value of the land was more Held that the suit was rightly tried in the Court of the Sub Deputy Collector and the execution proceeding as properly commenced in the Court in which the suit had been brought and the decree made Held also that in relation to that Court the Court of the Commissioner was the High Court (112 of Regulation V of 1893) and not this High Court Though the same individual may be appointed to discharge the duties of Sub Divisional Officer and Subordinate Judge or Deputy Commissioner and District Judge and in one set of Courts be subject to the superintendence of this High Court still the two sets of Courts as institutions or tribunals were entirely distinct from each other *Mul Karim v. The Municipal Officer Aden* 1 L R 27 Bom 75 Municipal Officer Aden v. Ismail Hare Illma 1 L R 30 Bom 246 *Rhimai v. Varman* 1 L R 4 Bom 76 In the matter of John Thomson 6 B L R 120 24 B L R 5 distinguished *Golan Nayak Mah v. Panchanan Gupta* 19 C L J 297 followed Held further that s 20 of Regulation II of 1886 was framed for the protection of the raiyat If the execution Court determined that the decree was to be executed by ejectment that order was not to be carried out until it had been sanctioned by the Deputy Commissioner and even then there need be no ejectment if the decree was satisfied It could never have been intended that the scope of the order as made by the execution Court should be widened by the Deputy Commissioner as had been done in the present case and that without any notice to the raiyat *Danbari Lankar v. Bhuri Poo* (1814)

I L R 41 Cal 915

7 ——— Cantonment tax—Civil Courts—Taxes levied by cantonment authorities—Payment and receipt—Jurisdiction of Civil Courts to entertain and for recovery of payment Civil Courts have jurisdiction to entertain a suit to recover the amount of taxes levied by the cantonment authorities and paid under protest on the ground that the payment was illegal This may be the case though no application requiring return attend the Court If a return has been made on the plaintiff's application the Court has not been given to the latter to take a plea on the subject and when the return is made it shall be wholly disregarded the law is on this point as it has been seen and by analogy the rate upon the gross income of the plaintiff has been paid *1 L R 1 F 1 29*

JURISDICTION—contd

Bom 294 followed SECRETARY OF STATE FOR INDIA v. MAJOR HUGHES (1913)

I L R 38 Bom 293

8 ——— Transfer of venue from one Court to another after decree—Appellate forum The District Munsif of Madanapalle having jurisdiction over Kadiri passed a decree on 30th March 1911 in respect of a cause of action which arose in Kadiri on 1st April 1911 Kadiri was transferred to the territorial jurisdiction of the District Munsif's Court at Pennucunda from which appeals lay to the District Court at Bellary whereas appeals from the District Munsif's Court at Madanapalle lay to the District Court at Cuddajah Held on the question as to the proper appellate forum in the case that the appeal from the decree lay to the District Court at Bellary as the transfer of territorial jurisdiction ipso facto effected a transfer of venue *SUBBAYYA v. KACHAYYA* (1914)

I L R 37 Mad 477

9 ——— Change of Court of Appeal owing to under valuation—Jurisdiction of Appellate Court—Judgment of Court having no jurisdiction a nullity—Effect of a judgment—Consent decrees to the prejudice of minor or any reversionary heirs not binding on him—Stranger introduction of into appeal without leave of Court A suit was intentionally undervalued The dependants raised no objection as regards valuation and the suit was tried The appeal was filed before the District Judge instead of before the High Court in consequence of the undervaluation and the District Judge decided the appeal by a consent decree Held that if a Court has no jurisdiction over the subject matter of the litigation its judgments and orders however precisely certain and technically correct are mere nullities and not only voidable they are void and have no effect either a estoppel or otherwise and may not only be set aside at any time by the court in which they are rendered but be declared void by every Court in which they may be presented These principles apply not only to Original Courts but also to Courts of Appeal Jurisdiction cannot be conferred upon a Court of Appeal by consent of parties and any waiver on their part cannot make up for the lack or defect of jurisdiction (*Urdu Singh v. Chandrasat Singh* 1 L R 38 Cal 193 *Bair Nath Singh v. Gajraj Singh* 7 All L J R 675 *Coroor Pershad Roy v. Juggoburdo Ma under* (1867) 11 P F R 15 *Colab Sae v. Choudhury Madho Lal* 9 O B L 96 *Ledgar v. Bull* 1 L R 9 All 191 L R 13 1 A 141 *Munishi Vaidu v. Sarabamany Sa tri* 1 L R 11 Mad 26 L R 141 A 160 *Laurence v. Wilcock* 11 A F L 941 *The Queen v. The Judge of the country Court of Shropshire* 20 Q B D 258 referred to Where a suit between a Hindu widow and a claimant to the estate of her husband a stranger who was not a party to the suit in the Original Court was made a party to the appeal without leave of the Court and a consent decree made the decree was not binding upon the reversionary heirs A Hindu widow who is a limited or qualified owner cannot confess judgment and be party to a consent decree so as to bind the inheritance in the hands of the reversionary heirs *Antina Vaidya v. the Raja of Shuanganga* 9 Moo L 4 539 *Stapilton v. Stapilton* 1 White and Ind St Ed 931 1 All 2 distinguished *Imrai Koonar v. Poop Narain*

JURISDICTION—cont'd

to Rs 60,000 antecedent to suit and pendente lite whether can be anticipated by Munsif—Civil Procedure Code (Act XIV of 1887) ss 50 211 212—Civil Courts Act (XII of 1887) s 7 cl (1) 18 When a plaintiff institutes his suit for possession and mesne profits antecedent to the suit in a Court of limited pecuniary jurisdiction he may be rightly deemed to have limited his claim to the maximum amount for which that Court can entertain a suit. In fact in such a case if the plaintiff subsequently put forward a claim in excess of the jurisdiction of the Court he may be justly required to remit the excess because he had with his eyes open brought his suit deliberately in a Court of limited pecuniary jurisdiction. *Golap Singh v Indira Kumar Hara* 13 C W N 493 9 C L J 367 followed. *Sudarshan Dass v Pimpriat* 7 All I J P 263 dissented from But mesne profits antecedent to the suit and mesne profits pendente lite stand on very different grounds. A Munsif cannot entertain an application for investigation of mesne profits pendente lite when the claim was laid over Rs 60,000. The proper course to follow was to direct the return of the plaint in so far as it embodied a prayer for a statement of mesne profits from the institution of the suit to the date of delivery of possession for presentation to the Court of competent pecuniary jurisdiction i.e. the Court of the Subordinate Judge. *Pamcoor Mahton v Dihu Mahton* 1 L R 21 Cal 550 distinguished. *BRUPENDRA KUMAR CHAKRAVARTY v PUTTA CHANDRA BOSE* (1916) 1 L R 43 Cal 650

18 ——— Ruling Prince or Chief—Consent of Local Government—Submission to jurisdiction—Waiver—International Law—Civil Procedure Code (Act V of 1908) s 86 construction of Where His Highness Rajah of Cochin was impleaded as a defendant in a suit in the capacity of a trustee of a temple without the consent of the Local Government under s 86 of the Code of Civil Procedure (Act V of 1908) Held that the suit was not maintainable as against the Rajah of Cochin in the absence of consent of the Local Government under s 86 of the Code of Civil Procedure. *Per* O'DFIELD J.—The recognition of cases of waiver as excepted from the ordinary provision of International Law as understood in England cannot be imported into the clear language of the Indian Code. *Chandulal v Avad bin Umar Sultan* 1 L R 21 Bom 351 dissented from. *Per* SADA SIVA AYYAR J.—Objection to jurisdiction is enough to show that there was no voluntary submission by the defendant to the jurisdiction of the Court. *Parry & Co v Appasami Pillai* 1 L R 2 Mad 407 approved. *Veeraraghavaiyer v Muga* 54 I L R 39 Mad 93 referred to. *VARADANATH MOORTHY v THE COCHIN SIKAR* (1916) 1 L R 39 Mad 661

19 ——— Criminal misappropriation or breach of trust—Receipt of money and conversion—Head office of a company in Madras Presided by—Jury—Jurisdiction of Court at latter place to try the offence—Criminal Procedure Code (Act V of 1908) ss 12 131(a) The jurisdiction of a Court to try the offences of criminal misappropriation or breach of trust is governed by s 131(a) and not s 131(b) of the Criminal Procedure Code. Loss of a normal result is not an ingredient of the offence of criminal misappropriation or breach of trust and not therefore a consequence within

JURISDICTION—cont'd

the meaning of s 179. A complaint of offences under ss 403 and 406 of the Penal Code against an official of an Insurance Company having its head office at B in the Madras Presidency where the money was received and the conversion took place cannot be tried by a Court at K where loss ensued to the complainant. *Ganesh Lal v And Kishore* 1 L R 34 All 187 and *Pambilas v Emperor* (1914) Mad W N 894 followed. *Queen Empre v O'Brien* 1 L R 19 All 111 and *Lanaridge v Allins* 1 L R 35 All 29 dissented from. *Colville v Kristo Kishore Bose* 1 L R 26 Cal 746. *Emperor v Mahadeo* 1 L R 32 All 397 distinguished. *SIMHACHALAM v EMPEROR* (1916) 1 L R 44 Cal 912

20 ——— Leave to withdraw suit by Appellate Court—Subsequent Suit—Res Judicata—Civil Procedure Code—(Act XIV of 1887) 373 (Act V of 1908) O XXXIII r 1 The plaintiff brought a suit for the declaration of his title in respect of certain rights and for other reliefs. This suit was dismissed by the Court of first instance on the merits after the evidence had been gone into. The plaintiff thereupon preferred an appeal. At the hearing of the appeal he made an application for leave to withdraw from the suit under s 373 of the Code of Civil Procedure 1882 on the grounds of a formal defect and of his inability to produce the necessary evidence in time and obtained an order in the presence of the defendants to the effect that the appeal be dismissed with costs and the plaintiff's suit be allowed to be withdrawn with leave for fresh action for the same subject matter if not barred. Subsequently the plaintiff brought a fresh suit against the same parties on the same cause of action as in the previous suit. Held that the ground on which the order was made by the Appellate Court was not a ground which was contemplated by s 373 of the Civil Procedure Code and that therefore the order was without jurisdiction. *Kharda Coal Co Ltd v Durga Charan Chandra* 11 C L J 45 and *Mabulla Sardar v Hemangini Devi* 11 C L J 512 referred to. *HALI PRASAD SINGH v PANCHANAN NANDY* (1916) 1 L R 44 Cal 367

21 ——— Execution proceedings—Suits above Rs 5,000—Appeal from order in execution proceedings—Civil Courts Act (XII of 1887) s 21 sub s (2)—Civil Procedure Code (Act V of 1908) 99 100 108 Where in execution proceedings in a mortgage suit the value of which exceeded Rs 5,000 an order was made by the Court of first instance which on appeal was modified by the District Judge. Held that the order of the District Judge was made without jurisdiction and was contrary to law. In such a suit an appeal against an order made in a proceeding arising out of the decree lay to the High Court and not to the Court of the District Judge under the provisions of s 21 sub s (2) of the Bengal Civil Courts Act 1882. Held also that as the order was passed on appeal by the District Judge a second appeal lay to the High Court under s 100 of the Civil Procedure Code 1908. *Ranjit Mehar v Pandit Singh* 16 C L J 77 referred to. *INDRANATH MOOKERJEE v PUTTA CHANDRA ROY* (1916) 1 L R 45 Cal 926

22 ——— Deficit court fees whether recoverable by attachment of movables Where after the dismissal of a suit the Court ordered the deficit court fee to be paid by the

JURISDICTION—contd

September 1914 and the final decree was passed on 24th August 1917. On 20th June 1916 D purchased the right title and interest of A at an execution sale and in July 1918 D filed the present suit for a declaration that the decrees in the previous suit were without jurisdiction so far as they affected properties outside Calcutta and that the leave under cl 12 of the Letters Patent was improperly obtained. **GRAVES J** held that the Court had jurisdiction to pass the decrees. **Held** that the decrees were without jurisdiction in so far as the immovable properties outside Calcutta were concerned and that leave under cl 12 of the Letters Patent could not be granted. **Held** further that the question of jurisdiction could be raised in the present suit though it could have been and was not raised in the previous suit. **Per MOOKERJEE J**—It is an elementary principle that where a Court has no jurisdiction over the subject matter of the action in which an order is made such order is wholly void for jurisdiction cannot be conferred by consent of parties and no waiver or a quittance on their part can make up for the lack or defect of jurisdiction. **Rajalakshmi v Kalyan** 1 L R 33 Cal 609 (1910) **Gurd o v Chandrika** 1 L R 36 Cal 193 (1907) and **Panjit v Parvadar** 17 C W N 118 (1911) referred to. **Held** also there could not be *res judicata* inasmuch as the question of jurisdiction raised in this suit was neither raised nor decided in the previous suit. **Per MOOKERJEE J**—When a Court judicially considers and adjudicates the question of its jurisdiction and decides that the facts exist which are necessary to give it jurisdiction over the case the decision is conclusive till it is set aside in an appropriate proceeding. But when there has been no such adjudication the decree remains a decree without jurisdiction and cannot operate as *res judicata*. **KRISHNA KISHORE DE v AMAR VATH KSHETTRY** 24 C W N 633

JURISDICTION—contd

a Civil Court and that they had failed to discharge that onus. **RAMJI LAL v MANJAL SINGH** 1 L R 22 Lah 302

30 ——— Suit for money advanced and for specific performance of an agreement to mortgage land outside jurisdiction—Injunction to restrain disposal of land outside jurisdiction—Interest in land. In a suit instituted in the High Court in its original jurisdiction the plaintiff stated that the plaintiff firm advanced in Calcutta various sums of money secured by promissory notes as well as by the deposit of title deeds of property outside Calcutta to the defendant who resided outside the jurisdiction. It stated that the title deeds were with the plaintiff firm in respect of a previous regularly executed mortgage. It stated further that the defendant agreed to register and execute a regular mortgage whenever called upon to do so but that the defendant refused to return the money or execute the said mortgage and in breach of the agreement the defendant was attempting to transfer the property to others. The plaintiff firm prayed for leave under clause 12 of the Letters Patent and under Order II r 4 of the Civil Procedure Code to institute the suit in this Court. On an application for settlement of issues. **Held** that a suit for specific performance of an agreement to mortgage lands outside the jurisdiction even if the title is accepted is a suit for land within the meaning of clause 12 of the Charter and accordingly that leave cannot be given. **Sreenath Roy v Gally Dass Ghose** 1 L R 6 Cal 87 followed. **RATACHAND DRABACHAND v GOVIND ALL DUTT** (1921) 1 L R 48 Cal 882

JURISDICTION AND CLAIM

——— denial of—
See FOREIGN DECREE EXECUTION OF 1 L R 39 Mad 24

JURISDICTION OF CIVIL COURTS

See ADEQ SETTLEMENT REGULATION (VII of 1900) = 13

1 L R 40 Bom 446

See JURISDICTION

See LAND ACQUISITION

1 L R 44 Cal 219

See LAND REVENUE CODE (BOM ACT V of 1879) = 9A 1 L R 55 Cal 72

See MADRAS ESTATES LAND ACT (I of 1908) s 8 1 L R 38 Mad 608

See PENSIONS ACT (XXIII of 1871) ss 4 5 6 1 L R 37 All 338

See REGULATION II of 1827 1 L R 34 Bom 455

See RIGHT OF SUE 1 L R 40 Bom 200

See TITLE 1 L R 37 Cal 662

See UNITED PROVINCES LAND REVENUE ACT (III of 1901) s 233 (1) 1 L R 30 All 440

——— Caste question
See HINDU LAW—PILGRIM'S OFFICE 1 L R 36 Bom 94

See TRUSTS ACT (II of 188) ss 1 AND 6 1 L R 34 Bom 467

——— Civil or Revenue—suit for recovery of price of barley delivered to defendants by a Revenue Officer—whether competent—Punjab Land Revenue Act XVII of 1887 sections 141 188 (?) (XXI)—onus probandi. Defendants applied to the Revenue Officer for division and appraisement of the produce of a holding in which they were co-sharers with the plaintiffs. An appraisement was duly made but before the produce could be divided the plaintiffs removed it and stored it in a house. Thereupon the referee appointed by the Revenue Officer made over a whole *khatta* of barley to the defendants in lieu of their share of the produce. The plaintiffs after making an unsuccessful attempt to get redress through the Revenue Authority brought the present action for the price of the barley alleging that it belonged to them exclusively. **Held** that the question whether the barley is joint property or belongs exclusively to the plaintiffs is a question of title which cannot be determined by a Revenue Officer who is required only to divide the produce which is admittedly joint or to determine its value and then consequently the Civil Court has jurisdiction to entertain the present suit which does not come within the jurisdiction of sections 188 (?) (XXI) of the Punjab Land Revenue Act. **Held** also that the onus was on the defendants to satisfy the Court that the claim made by the plaintiffs is not valid in recognition of

JURISDICTION OF CIVIL COURTS—contd

provided that the Sub Committee should keep a record of the daily rates and on the last day of the *raida* should fix the *taida* rate (i.e. the market rate of the day) on the basis of which differences should be calculated which became payable in cases in which contracts were not carried out. The plaintiffs who were rice merchants in Rangoon were not members of the Association but they employed agents in Bombay who were members to purchase rice for them and on the 21st November 1906 these agents bought from the defendants 1340 bags of rice at Rs 9 per bag deliverable at the *raida* of Mangshur Sud 1903 (i.e. from the 15th November 1906 to 30th November 1906). The contract which was in the printed form framed under the rules as above mentioned contained the following clause—This contract is made subject to the rules of the Bombay United Rice Merchants Association. Each party is bound to act in accordance with the same. For delivery at this *raida* a large number of the members of the Association had made contracts of sale. The plaintiffs and a few others were purchasers and they were apprehensive that in settling the *raida* rate the interests of the buyers would be disregarded in favour of those of the sellers. They accordingly wrote to the President of the Association calling upon him to see that no interested person was allowed to act on the Sub-Committee for fixing the *raida* rate. In accordance with the practice a general meeting of the Association was held on the 30th November 1906 at which after discussion a special Sub Committee was appointed to fix the rate consisting only of three persons one of whom was not a member of the standing Sub-Committee and another of whom had large contracts of sale due at this *raida*. This Sub Committee fixed the rate at Rs. 8-11 0 per bag. The plaintiffs alleged that it should have been fixed at Rs. 9 2 0 or Rs. 9 4 0 per bag which was the real market rate of the day. That the rate fixed was dishonestly fixed in the interest of sellers. That the Sub Committee was not constituted according to the rules. Two members of it being ineligible one because he did not belong to the standing Sub-Committee and the other because he was interested in fixing a low rate and they contended that for these reasons (inter alia) they were not bound by the rate fixed. They had duly demanded delivery of the rice contracted for and the defendants failed to give delivery and the plaintiffs now sued for the difference between the contract price (Rs. 9) and the market price on the 30th November 1906. The sum claimed as damages was less than Rs. 1000. The defendants pleaded—(i) That having regard to a law of the Civil Procedure Code (Act XLV of 1882) and a rule of the Presidency Small Cause Courts Act (XV of 1882) the suit was not maintainable in the High Court. (ii) That certain alleged partners of the plaintiff not being parties to the suit it should be dismissed for non joinder. (iii) That having regard to the rules of the Association which provided a remedy in case of disputes among its members and that their going to law the plaintiffs were precluded from suing at law at all events until they had exhausted the remedies provided by the rules. (iv) That the plaintiffs were bound by the rate fixed by the Sub Committee appointed by the Association. Held (i) that the High Court had jurisdiction and that the suit should proceed subject to the provisions as to costs contained in s. 22 of the Presidency Small Cause Courts Act

JURISDICTION OF CIVIL COURTS—contd

(XV of 1882) (ii) That the alleged partnership was proved but nevertheless the suit could not be dismissed for non joinder. (iii) That the plaintiffs were entitled to sue at law notwithstanding the provisions contained in the rules of the Association requiring all disputes to be submitted for decision to the Association and restricting the right of members to sue each other. (iv) That at the meeting of the Association held on the 30th November 1906 the plaintiffs (through their agents) had consented to the appointment of a Sub Committee of three persons to fix the *raida* rate and that they were therefore bound by the rate then fixed. Any stipulation that the award of an arbitrator shall be accepted as final restricts the rights of contracting parties to invoke the aid of the ordinary Courts and to that extent is void. The effect of s. 28 of the Indian Contract Act (IX of 1872) and s. 21 of the Specific Relief Act (I of 1877) read with the related sections of the Indian Arbitration Act (IX of 1909) and the Civil Procedure Code dealing with arbitration is that a person may not contract himself out of his right to have recourse to Courts of law but that in the event of any party having made a lawful agreement to refer a matter of difference to arbitration as a condition precedent to going to law about it the Courts will recognise the agreement and give effect to it by staying proceedings in the Courts. *MULJI TRISTING & PARTNERS DEVRAS* (1909) I L R 34 Bom 13

6 ——— Suit for share in produce of immovable property—Provincial Small Cause Courts Act (IX of 1897) ss 16 27 30 Sch II Cls (2) and (3)—Suit for the recovery of certain sum representing a share in the produce of immovable property—Cognizance by the Court of Small Causes—Decree final—Appeal. A suit for the recovery of Rs. 12 11 6 representing plaintiff's share in the produce of immovable property is a suit for money had and received to the plaintiff's use and is cognizable by the Court of Small Causes and the decree in such a suit is final under s. 27 of the Provincial Small Cause Courts Act (IX of 1887). Notwithstanding its finality an appeal was preferred to the District Court of Ahmedabad which Court entertained the appeal and reversing the decree allowed the plaintiff's claim. The defendant thereupon, preferred a second appeal and at the hearing proved that the second appeal might be treated as an application for revision under s. 110 of the Civil Procedure Code (Act V of 1906) on the ground that the District Court acted without jurisdiction in entertaining the appeal. The respondent (plaintiff) urged that a second appeal lay and further that by reason of the conduct of the parties and the fact that the appellant (defendant) had not objected to the jurisdiction of the District Court it was too late in second appeal to take the point. Held that the District Court had no jurisdiction to try the case and the conduct of the parties could not give it jurisdiction. *Lekha d v Bill* L. R. 13 I 4 134 and *Meenabai Navroo v Subramanya Sastry* L. P. 11 I 1 169 referred to. Decree of the District Court reversed and that of the first Court restored. *DAYALAKSHI (MAHARAYA SHRI) v KHACHAR HASTI MOH* (1909) I L R 34 Bom 171

7 ——— Suit for declaration of title and injunction, valuation of—Jurisdiction—Court Fees Act (I II of 1870) s. 11 sub-s. (1) cl.

JURISDICTION OF CIVIL COURTS—contd

Sheo Narain Singh v Khurgo Koerry 10 C L R 337
Sant Kumar v Deo Saran 1 L P 8 All 36,
Jeram Laljee v Veerai 5 Bom. L P 385
Gobind Krishna Narain v Khunni Lal 1 L P 29 All 487
Mahad v Baldeo 1 L R 30 All 75
Poy Nadia Kissen v Nauratan Lall G C L J 490
Asharam Salhani v Chanda Churn Mukerjee 13 C W A 147 referred to A consent decree does not operate to the prejudice of persons not parties thereto
Nicholas v Asphar 1 L R 21 Calc 218 In re South American and Mexican Company [1895] 1 Ch 37 and *The Belconnin* 10 P D 161 distinguished.
Huddersfield Banking Company Limited v Lister [1895] 2 Ch 273 followed.
RAJAKSHI DASEE v KATYAKANI DASEE (1910) 1 L R 35 Calc 639

11 ——— Suit for declaration regarding various alleged customary rights of zamindars mostly of the nature of cesses. A suit was filed by certain tenants of a village against the zamindars praying for a declaration that no custom existed in their village which entitled the zamindars to take certain fruits and wood, or to the use of a plough or to a number of other dues including sugarcane juice from some of the tenants poppy seed from the hoeries and various other matters of the same description. Held that the suit was properly filed in a Civil Court and was not excluded from the jurisdiction of such Court by anything contained in either the Agra Tenancy Act 1901 or the United Provinces Land Revenue Act 1901.
SHROFADAR ANUP v THE COLLECTOR OF AZAM GARH (1912) 1 L R 34 All 358

12 ——— Burma Town and Village Lands Act.—(*Burma Act IV of 1893*) s 41(b). Act taking away power of subject to sue Government to determine any right to land.—Power of Lieutenant Governor in Council to pass Act—Legislation ultra vires—India Councils Act 1891 (24 & 25 Vict c 61) s 22.—*Constitution of India Act 1858* (21 & 22 Vict c 106) ss 65 66 67. Held (affirming the decision of the majority of a Full Bench of the Chief Court of Lower Burma) that s 41(b) of the Burma Town and Villages Lands Act (*Burma Act IV of 1893*) which enacted that no Civil Court shall have jurisdiction to do termine any claim to any right over land as against the Government was ultra vires of the Lieutenant Governor of Burma in Council and therefore invalid. S 22 of the India Councils Act 1891 (4 & 25 Vict c 61) provides that the Governor General in Council shall have no power to repeal or in any way effect (amongst other matters) any provision of the Government of India Act 1858 (21 & 22 Vict c 106). And the effect of s 65 of the latter Act which enacted that all persons shall and may have and take the same suits remedies and proceedings legal and equitable against the Secretary of State in Council of India as they could have done against the East India Company was to debar the Government of India from passing any Act which could prevent a subject from suing the Secretary of State in Council in a Civil Court in any case in which he could have similarly sued the East India Company. The Court could not be construed in any different sense without reaching into them a qualification which is not there and may well have been felt by the framers. The question was not one of procedure but of the power of the Government to take away by legislation the right to proceed in a suit in a Civil Court in a case involving

JURISDICTION OF CIVIL COURTS—contd

a right to land and the suit in this case (for damages for interference with the respondent's property) was one which would have lain against the East India Company. SECRETARY OF STATE FOR INDIA v MOWATT (1912)

1 L R 40 Calc 391

13 ——— Chota Nagpur Tenancy Act—(*Beng VI of 1908*) s 139(3) cl (a). The plaintiffs brought a suit in the Civil Court against the defendant for recovery of arrears of *bastu* rent. The defendant contended that as crops were grown on a portion of the *bastu* lands this land was agricultural and suits in respect thereof were triable exclusively by the Pevnue Court under the Chota Nagpur Tenancy Act. Held that the land in respect of which rent was claimed was *bastu* land and consequently the suit was maintainable in the Civil Court.
Ramdhun Khan v Haradhun Paramanik 12 W P 404
Kalee Kishen Biswas v Sreemulky Jankee 8 W R 250 and
Kumood Narain Bhoop v Purna Chunder Roy 1 L R 4 Calc 547 referred to.
MIDNAPORE ZAMINDARI CO LD v MOKTAKESHI DAS (1912) 1 L R 40 Calc 402

14 ——— Agra Tenancy Act Ch X, and s 198.—Suit by rent free grantee against Zamindar for declaration of status and recovery of rent allowed in a Civil Court.
SHAM DAS v BANADUR SYRON 1 L R 43 All 825

JURISDICTION OF CIVIL AND REVENUE COURTS—

See AGRA TENANCY ACT §

See CIVIL AND REVENUE COURTS

See JURISDICTION

See MIDNAPUR STATES LAND ACT (I OF 1908) s 8 1 L R 38 Mad 608 843

— Occupancy holding.—One of two co owners of an occupancy holding upon the allegation that the other co owner was in fact cultivating more than his proper share of the holding sued him in a Civil Court asking for a decree for possession of his half share of the holding and for means profits. The court however granted him a decree for a declaration of his right to a half share and also for means profits. Held that there was no objection to such a decree being granted by a Civil Court. In such circumstances a Pevnue Court could not grant a decree for means profits.
Ashiq Hussain v Agha Begam 1 L P 30 All 90 referred to.
GANGA SARATHI BANSE 1 L R 42 All 64

— Civil and Revenue Courts.—Rent free grantee against zamindar.—To recover possession after alleged unlawful ejectment.—There is no section in the Agra Tenancy Act and no article in the schedule thereto which provides for a suit by a rent free grantee to recover possession as such in the event of his wrongful ejectment even though that ejectment may be the act of his zamindar.
Narain v Sri Thakur Maharaj 1 L R 41 All 37 distinguished.
GOVIND PATI v BANWARI LAL 1 L P 42 All 412

— Partition of trees.—As distinct from *amindari propriety*. Held that a suit for partition of trees which had been purchased by the plaintiff and others jointly from one of the zamindars of two villages but apart from any interest in the zamindari itself was a suit which

JURISDICTION OF CIVIL AND REVENUE COURTS—contd

would lie in a Civil and not in a Revenue Court
SHO SAMPAT PANDY v THAKUR PRASAD

I L R 42 All 574

Civil and Revenue Court—Act (Local) No II of 1911 (Agar Tenancy Act) Chapter V and section 193 (1)—Pent free grant—suit against revenue for declaration of title and recovery of rent wrongfully levied by revenue officer from subtenant Plaintiff brought his suit in a Civil Court and asked for a declaration that he was the rent free grantee of certain land and that having occupied the land for a certain period he had thereby become the proprietor. Incidentally plaintiff also asked for the refund of a sum of money which the defendant a predecessor or in title had received as rent from a third party. *Held* that the suit as framed was within the cognizance of a Civil Court. **Gobind Lal Binwars Lal I L R 42 All 41** referred to. **SHAM DAS v BANADUR SINGH**

I L R 43 All 325

Suit by a minor for a declaration that a partition of land effected by the Revenue Officers is not binding on him where no question of title is involved—whether cognisable by Civil Court—Punjab Land Revenue Act XVII of 1887 s 103 (1) and (2) (XII) The plaintiff a minor was one of the two sons of one S K who died in 1909 leaving inter alia the landed property in dispute. The defendant A H his half brother a major applied in 1911 to the Revenue authorities for partition which was completed in 1912. In the proceedings the plaintiff was represented by his mother who had been previously appointed by the District Court as his guardian. The plaintiff sued for a declaration that the land is still the joint property of himself and his half brother and that consequently the partition is not binding on him. He alleged that the partition was detrimental to him that the Revenue Officer had not taken account of the trees that he was not properly represented and that the sanction of the District Judge was necessary etc. *Held* that as there was no dispute as to title in the land partitioned the plaintiff's grievances arising solely out of the manner in which the land was actually allotted the Civil Court was debarred from taking cognizance of the suit and the plaintiff must pursue his remedy on the revenue side. **s 158 (1) and (2) (XII) of the Punjab Land Revenue Act Gulab Singh v Musammam Sukhan (104 P R 1900)** followed. **Dasandi v Buta (74 P R 1913)** distinguished. **GHTLAM HADAR v AMIR HAIDAR**

I L R 1 Lah 298

Civil suit for recovery of price of barley delivered to defendants by a Revenue Officer—Whether competent—Punjab Land Revenue Act XVII of 1887 sections 144 158 (2) (XIX)—onus probandi Defendants applied to the Revenue Officer for division and appraisement of the produce of a holding in which they were co-sharers with the plaintiffs. An appraisement was duly made but before the produce could be divided the plaintiffs removed it and stored in a house. Thereupon the referee appointed by the Revenue Officer made over a whole *Khat* of barley to the defendants in lieu of their share of the produce. The plaintiffs after making an unsuccessful attempt to get redress through the Revenue authorities

JURISDICTION OF CIVIL AND REVENUE COURTS—contd

brought the present action for the price of the barley alleging that it belonged to them exclusively. *Held* that the question whether the barley is joint property or belongs exclusively to the plaintiffs is a question of title which cannot be determined by a Revenue Officer who is required only to divide the produce which is admittedly joint or to determine its value and that consequently the Civil Court has jurisdiction to entertain the present suit which does not come within the purview of section 158 (2) (XIX) of the Punjab Land Revenue Act. *Held also* that the onus was on the defendants to satisfy the Court that the claim made by the plaintiffs is not within cognizance of a Civil Court and that they had failed to discharge that onus. **RAMJI LAL v MANGAL SINGH**

I L R 3 Lah 392

JURISDICTION OF CRIMINAL COURTS

See COGNIZANCE OF AN OFFENCE

See CRIMINAL PROCEDURE CODE—

ss 188 227 I L R 33 All 516

s 339 I L R 1 Lah 218

s 470 I L R 33 All 396

See DISPUTE CONCERNING LAND

See EMIGRATION **I L P 37 Cal 27**

See JURISDICTION OF MAGISTRATE

See JURY RIGHT OF TRIAL BY

I L R 37 Cal 467

See OFFERINGS TO DEITY

I L R 38 Cal 367

1 ——— Practice—Order directing prosecution for instituting a false case—False information to the police—Subsequent complaint before the Magistrate—Grounds of the exercise of such jurisdiction—Criminal Procedure Code (Act V of 1898) ss 195 (b) and 476 5 476 of the Criminal Procedure Code must be read subject to the restrictions contained in s 195 (b) and does not therefore empower a Court to direct a prosecution for making a false charge before the police. **Dhar madas Kaur v King Emperor I L J 373** followed. **Lah Gope v Girdhari Chaudhury 5 C W N 106** referred to. **In re Dary I L R 18 Bom 531 Akhil Chandra Dei Queen Empress I L R 23 Cal 1094 Abdul Rahman v Emperor I L J 371 and Habib Khan v Emperor I L R 33 Cal 30** distinguished. But if the informant upon the police reporting the information to be false subsequently petitions the Magistrate for a judicial inquiry he must be taken to have preferred a complaint and s 476 would then apply. **Queen Empress v Sham Lal I L R 14 Cal 707 Queen Empress v Sheikh Bazar I L R 10 Mad 233 and Jogendra Nath Mookerjee v Emperor I L R 33 Cal 1** referred to. No sanction should be granted or prosecution directed unless there is a reasonable probability of conviction though the authority granting a sanction under s 195 or taking action under s 476 should not decide the question of guilt or innocence. Great care and caution are required before the Criminal law is set in motion and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed. **Isari Prasad v Sham Lal I L R 7 All 871 Kali Charan Lal v Basudeo Narain Singh 12 C W N**

JURISDICTION OF CRIMINAL COURTS— contd

Emperor v C L J 371 and Queen Empress v A Norton and Moore a Ali I L R 9 Bom 288 referred to Recommendation for prosecution by a Police officer under s 211 of the Penal Code comes within the meaning of the word complaint as used in s 195 of the Criminal Procedure Code as that section clearly contemplates prosecution at the instance of Police officers. *DILAN SINGH v EMPEROR (1912) I L R 40 Cal 360*

11 ——— Arrest of an Indian subject in railway land in the Gwalior State—Under a warrant issued by the District Magistrate of Montgomery for a non-extradited offence committed in British India—Government of India Notification No 5111 B dated 5th February 1907 Petitioner was arrested at the Railway Station at Calcutta by the Railway Police in pursuance of a telegram sent by the District Magistrate of Montgomery in the Punjab for an offence under s 161 Indian Penal Code alleged to have been committed in the Montgomery District. Held that the arrest was illegal as it could not be said that the Gwalior State had ceded to the British Government jurisdiction over railway lands in respect of offences not committed in those lands and having no connection with the railway administration, regard being had to the words in paragraph 3 of the Notification No 5111 B of the 5th February 1907 as having ceded to the British Government full jurisdiction or all the jurisdiction they had or the jurisdiction necessary for the administration of Railways and of Civil and Criminal justice in connection therewith. *Mulammad Yusuf ud Din v Queen Empress I L R 30 Cal 60 6 P P (Cr) 1897 (PC)* followed. *RADHA KISHORE v CROWN I L R 1 Lah 408*

JURISDICTION OF DISTRICT COURT

See GUARDIAN AND WARD ACT 1890
I L R 38 Mad 39
ss 1^o 13 17 19 21 25
I L R 40 Bom 600

JURISDICTION OF HIGH COURT

See AGRA TENANCY ACT 1901 s 167
I L R 42 All 83
See F IQUITABLE MORTGAGE
I L R 38 Cal 824
See EXTRADITION *I L R 46 Cal 31*
I L R 38 Cal 547
See HARBOR CORPUS
I L R 39 Cal 164
See HIGH COURT JURISDICTION OF
I L R 40 Bom 473
See HINDI SITION
I L R 38 Cal 405
I L R 42 All 98
See INJUNCTION
I L R 38 Cal 405
I L R 42 All 98
See SANCTION FOR PROSECUTION
I L R 44 Cal 818

over conviction and sentences by
New Agent—
SCHEDULED DISTRICTS ACT (XIV of
1874) s 7
I L R 41 Bom 657

In revision—
See CIVIL PROCEDURE CODE (1908) s 11
I L R 40 All 674
See EXISTING *I L R 47 Cal 438*

JURISDICTION OF HIGH COURT—contd

1 ——— Revision—Appal wrongly laid before Collector instead of District Judge—Procedure by Deputy Collector under s 109 of the Pent Recovery Act—Civil Procedure Code how far governs Act X of 1859—Act X of 1859 s 109—Civil Procedure Code (XIV of 1882) s 310A The High Court has jurisdiction to interfere with the orders of the Collectors and Deputy Collectors passed under Act X of 1859. *Huro Mohun Moo krjee v Kedarnath Das s 5 W P Act X 25* commented on. *Bhyrab Chunder Chunder v Shama Soonderee Deba G W R 1st X 68* *Gobind Coomar Choudhry v Kisto Coomar Chow dhry 7 W P 20* *Deanutoollah v Noubab Nazim Sudhee W v 1st Khan Bahadur 10 W P 341* *Gudadhar Chatterjee v Kund Lal Mookerjee 12 W P 406* *Greenmully Navar Jan v Akbar (Mo omdar 15 W R 118)* *Vilmoni Singh Deo v Taranath Mukerjee I L R 9 Cal 295* referred to. *Mohant Gobind Ramnappa Das v Luthun Parida 11 G W R 117* explained. The jurisdiction of the Deputy Collector under Act X of 1859 being a limited one and the procedure under s 109 of the said Act not being strictly followed, a sale under s 109 must be held to be ultra vires. *Deanutoollah v Noubab Nazim 10 W R 341* referred to. Except upon points expressly provided for by Act X of 1859 the procedure of the Perverue Courts must be governed by the Civil Procedure Code. The ratio decidendi of *Vilmoni Singh Deo v Taranath Mukerjee I L R 9 Cal 295* followed. *Harish Chandra Gho e v Ananta Charan Patra 2 O W R 127* doubted. *Adhiram Aarain Kumari v Raghu Mohapatra I L R 12 Cal 50* approved. *Padma Madhub Santra v Tulshi Varan Roy Choudhry I L R 21 Cal 478* and *Molunda Bullav Kar v Bhogaban Chunder Das I L R 21 Cal 511* disapproved. *Nogendra Nath Mullick v Mathura Mohun Parhi I L R 18 Cal 363* explained. *Hare Krishna Mahant v Bishnu Chandra Mahant I L R 35 Cal 799* *Ram Lochan Singh v Beni Prasad Kumri I L R 36 Cal 257* and *Madho Pralash Singh v Murl Manohar I L R 5 All 406* referred to. Where a sale under Act X of 1859 is impeached as ultra vires and illegal or the sale is rightly sought to be set aside under s 310A of the Code of Civil Procedure (XIV of 1882) the proceedings of the Deputy Collector are amenable to the revisional jurisdiction of the High Court in either case. The fact that the original suit was valued at above Rs 100 and an appeal lay to the District Judge and not to the Collector before whom the appeal was in reality heard does not take away the right of the High Court to interfere in revision. *CHAITANY PATWARI MAHAPATRA v KUNJA BHUPAT PATWARI (1911) I L R 38 Cal 832*

2 ——— Power to revise an order of acquittal at the instance of a private party—Decision on a point of local jurisdiction and not on the merits—Criminal Procedure Code (Act X of 1859) s 43 439 (a)—Practice S 439 (5) of the Criminal Procedure Code does not bar the jurisdiction of the High Court to interfere with an order of acquittal on an application made at the instance of a private party. Where the Appellate Court set aside a conviction and sentence on the ground that the place of occurrence was outside the local limits of the train, Magistrate's jurisdiction overtook the provisions of s 431 of the Code the High Court set aside the order of acquittal and directed a re-hearing of the appeal.

JURISDICTION OF HIGH COURT—contd

What the Appellate Court has to find is whether the decree of which an appeal is brought has been made out not with reference to any dispute, to justify it, but on the merits and in accordance with the evidence. **KANDALL SARDAR v. BABA CHAPAN BHATTACHARYA (1911)**

I L R 38 Cal 786

High Court—Letters Patent—1862—J. P. The plaintiff Company's predecessor in title who held certain coal land known as Mouza Lohva in Manturam under a permanent lease granted as underlease of a bare right to S and it was agreed that the boundary should be demarcated between the plaintiff's land and the portion retained by the grantor, and that a barrier of 30 feet of coal shall be maintained between the two portions. The Mouza and that of the party concerned within the limit of the boundary line shall make good any loss sustained by the other party. No boundary was demarcated at the time. The permanent lease of the Mouza was subject to the underlease to S subsequently assigned to T and others and then after the boundary was laid down and marked by the respective Agents of T and others and of S and a plan showing the boundary was signed by both parties. Subsequent thereto T and others assigned their permanent lease of the mouza to the plaintiff company and S granted an underlease of his share in the mouza to H J who granted an underlease of the same to the defendant who there carried on a colliery. The plaintiff alleged that the defendant had wrongfully cut into and removed portions of coal from the 30 feet of barrier and beyond it that the trespass and conversion had taken place within two years and that the coal so removed had been sold and delivered to the plaintiff company under an agreement to purchase the output of the defendant's colliery and claimed damages for the value of the coal so removed and damages caused by the breach of contract in cutting through the barrier. The defendant denied that he had carried away any coal from the 30 feet barrier and stated that he had confined his operations well within the area underleased to him and that the plaintiff company had never been in possession of the area from which he had carried away coal. Held that the suit so far as it sought to recover damages for carrying away the plaintiff company's coal was founded on a case of trespass *quare clausum fregit* which necessitated the title in respect of that coal being gone into and was therefore a suit for land within the meaning of Cl 12 of the charter. **Raj Mohan Bose v. East Indian Railway Company 10 B L R 211 distinguished. That so far as the agreement not to cut into the 30 feet of barrier was concerned there was no privity of contract or estate between the defendant and the plaintiff company and the defendant was not personally liable on any of the covenants in the underlease granted to S and that the plaintiff did not disclose any cause of action against the defendant based on the agreement. **LONDA COLLIERY CO. LD. v. BIPIN BHABH BOSH I L R 39 Cal 439****

4. ————— "Dwelling" within the jurisdiction of the Court—Executor liability of—Revocation of will—Executor and trustee a lien up a license title to property disposed of by will—Stoppage—Removal of trustee and executor from office—Joint and

JURISDICTION OF HIGH COURT—contd

seized property. This was a suit on the Original Side of the High Court by three of the executors and trustees of a will against the fourth executor and trustee (who was the son of the testator) for the removal of the defendant from his office and for administration of the estate by the Court. Irobste had been granted to the executors by the High Court at Madras and the assets realised under the grant had come into the possession of the defendant who subsequently repudiated the will and alleged that the property of the testator was joint elumed in this suit to be entitled to the estate by survivorship. The defendant was domiciled and resided in the State of Mysore, but some months previously to the institution of the suit he left his house there in charge of a servant and hired a house in Madras to which he brought his wife and family and apprenticed himself for a year to a vakil of the High Court with a view to become in due course enrolled as a vakil himself. He was in Madras on 30th April 1901 when the plaint was filed but left on 31st before the summons was served. The first Court made a decree removing the defendant from his office as executor and trustee which was affirmed by the High Court and both Courts decided that the cause of action arose partly within the jurisdiction of the Court and that the Court could therefore entertain the suit. Held (affirming the decision of the High Court) that the defendant was at the time the suit was brought dwelling within the jurisdiction within cl. 12 of the Letters Patent of the High Court. Held also that no person who has accepted the position of a trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf until he has obtained a proper discharge from the trust with which he has clothed himself. On the question whether the property dealt with by the will was joint or acquired their Lordships of the Judicial Committee also agreed with the Courts below that on the evidence it was self acquired and that the testator therefore had power to dispose of it as he had done in the will. **SRIYASA MOORTHY v. VEYKATA VARADA AYYANGAR (1911)**

I L R 34 Mad 257

5. ————— Practice—Civil Procedure Code (1st V of 1903) s 115 O XXIII r 1—Withdrawal of suit under O XXIII r 1—Notice to the other side if necessary—Judicial order—Practice. The High Court has power to set aside orders made under Order XXIII s 1 in the exercise of the powers vested in it by s 115 of the Code of Civil Procedure. **Akarda Coal Co v. Durga Chandra 11 C L J 45** **Mabulla v. Hemavarna 11 C L J 419** **Ram Krishna v. Pam Kirpanath 9 All J 358** **Umesh Chandra Palodhi v. Palhal Chandra Chatterjee 15 C W N 666** **Buratia Guntia v. Thurlipatti 15 Cal L T 201** referred to. Though r 1 of O XXIII of the Code of Civil Procedure does not specifically require that notice of an application under it must be given to the opposite party still it is an elementary rule of universal application and founded upon the plainest principles of justice that a judicial order which may possibly affect or prejudice any party cannot be made unless he has been afforded an opportunity to be heard. **Ayant Singh v. F. T. Christian 17 C W N 669** referred to. **Bansu Singh v. Kishun Lal Thakur I L R 41 Cal 632** dissented from. **RAJENDRA LAL SUR v. ATAL BEHARI SUR (1916)**

I L R 44 Cal 454

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was clearly erroneous the matter depending on a question of fact as to whether the confession was caused by any inducement threat or promise having reference to the charge against the accused *Vazir Jharudar v The Emperor* 9 C N 1473 and *The Emperor v Jasha Beva* 11 C N 904 referred to. That the *salikh* being summoned to consider the case which was being made against the accused she was before the *salikh* on that charge and the Sessions Judge was wrong in directing otherwise. That having regard to the inducement offered by the president and members of the *salikh* to the accused it is extremely doubtful whether the confession should have been allowed to be placed before the jury at all. It certainly ought not to have been placed before them without an explanation as to how they should value it having regard to the circumstances in which it was made. That the chemical analysis not disclosing how much arsenic was found in the powder there was no evidence on the record against the accused as to the amount of poison which was proposed to be administered and it was doubtful whether the case would come under s 302 or s 303 Indian Penal Code *KING EMPEROR v ASHUTOSH BISHI* (1915) 20 C W N 512

Forgery—Where in a case under s 465 Indian Penal Code the charge against the accused was that by personating A B the husband of one S he induced the Mahomedan Marriage Registrar to make an entry of the divorce of S by her husband to which entry he affixed his thumb impression and the Sessions Judge charged the jury as follows: If the person who put his thumb impression in the register as Mir Baksha was not really Mir Baksha it is clear that he made a false document within the meaning of s 364 and that his intention was that fraud should be committed also that injury should be caused to Mir Baksha. He therefore committed forgery. Held that the Sessions Judge misdirected the jury in not having left it to the jury to say whether on the evidence they found that the intention of the accused was dishonest or fraudulent. The High Court did not set aside the verdict holding that it was not erroneous in spite of the misdirection *EMPEROR v NARAYADDI* (1918) 22 C W N 572

Duty of Judge to place before jury as a prosecution and defence—Defective direction on a point of law—Propriety of delivering charge through interpreter. The appellants were charged under s 148 391/149 and 324 Indian Penal Code. In the record of the heads of the charge there was no clear statement of the cases for the prosecution and defence but the Sessions Judge stated that he placed the evidence of the witnesses before the jury reminding them of the nature of the offence and dealing with some of the principal points. As to the charge under s 324 the direction was certain persons are charged with causing certain wounds. If you find they gave those wounds they cannot plead right of private defence because they have not admitted giving those wounds. Held that it did not appear that the jury were made fully acquainted with the nature of the case for the prosecution and the nature of the case for the defence. That the mode in which the case was placed before the jury was defective and the verdict must be set aside and the case

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retried by a new Judge. *Per CHAUDHURI*. That the jury are responsible for their verdict and are the sole judges of facts but the Judge's charge is not only for the purpose of stating the law and explaining it to them but also of helping the jury to find facts. He has to advise them as to the logical bearing of the evidence admitted upon the matters to be found by them. It is a privilege granted to Judges and a duty cast upon them. In a case of this character it is absolutely essential that the principal points should be clearly placed before the jury and it should appear from the Judge's charge that he directed the heads of charge to the jury how to be recognized. The propriety of delivering the charge through interpreters considered *AFRIDI CHAUDHURI v KING EMPEROR* (1919) 23 C W N

Citation of ruling in the charge to the jury—Right of private defence when trespassers have begun cutting crop. When trespassers begin cutting and carrying away crop grown by a person in possession reasonable apprehension of the property having already commenced the right of private defence of the latter is commenced at the same time and it was misdirection on the part of the Judge to leave it to the jury to say whether the fact that the plantation was only 6 miles off from the place of occurrence did not take away that right of reference in such circumstances to his civil remedies also amounted to misdirection. No rule or authorities should be cited by the Judge in his charge to the jury nor should they be asked to differentiate or form any opinion whatever on any authorities. Such procedure confuses the minds of the jury and constitutes misdirection *EMPEROR v SARDAR* : *THE KING EMPEROR* (1911) 16 C W N

jurisdiction—Grievous heart—Accusation by conspiracy—Sent by Jury—Retrial—Jurisdiction Where there was evidence that certain persons conspired to eject the complainant from his land or in other words to commit criminal trespass and the Judge said that if the jury found that those persons conspired with the first accused to commit criminal trespass then they would if absent be guilty of abetment and being present they were guilty of the substantive offence. Held that the omission to mention that the substantive offence for which the accused were being tried was not one of criminal trespass but of voluntarily causing grievous bodily harm constituted misdirection. The jury have to return their verdict on the facts as a whole and not severally and they are not like the Judge charged of the entire case as a whole. Where an accused is to be retried he must be placed before the jury upon all the charges which were framed against him and the High Court has no jurisdiction to uphold the conviction under one section and to order him to be retried under another. *JAMIRUDDI BISWAS v KING EMPEROR* (1912) 16 C W N

Verdict by casting lots—Admissibility of the evidence of jurors and of admissions by jurors as to the mode of arriving at the verdict—Evidence of other persons in proof of the same admissibility of the sworn statement of jurors and evidence of admissions by them as to the modes in which their verdict had

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arrived at are inadmissible. But the evidence of the persons as to the same is receivable. *Over v. Harrison* 11 d P 366. *Walker v. Graham* 41 d B. *J. Purge v. Langley* 5 W d C. and *Queen v. Murphy* 11 = P c 335 referred to. The evidence of a witness that he saw one of the jurors put some piece of crumpled up paper in his sleeve to take them up and take them out is not sufficient to prove that the verdict was arrived at by casting lots. *EMPEROR v. HAKIMAR PARNAN POI* (1913)

I L R 40 Cal 893

Suggestion by the Judge of an alternative aspect of the case—not put forward by the prosecution or defence—direction to point out to the jury specifically the evidence against each accused and minute detail of the trial procedure (Code (11) (1914) s 303 (1) of 1907) *Volcker v. J. J. —* 11 d C 11 (11) of 1907

s 116 14—Admission of the force of a proceeding to keep the peace a part of the res gestae. Where it is common object all joined in the charge as framed was to take forcible possession of the complainant's land and hut and to assault him and others named and the prosecution and defence each averted exclusively to the possession and attack by the opposite party. Held that the Judge was not wrong in asking the jury to consider as a third alternative an intermediate state of facts in that the complainant a party went to turn the accused party out of possession was resisted and driven back and that the latter then followed after they assaulted the former. *Panga Hadua v. King Emperor* 11 C 1 J 20. *Queen v. Sabid Ali* 10 B R C r = and *Masdar Khan v. Queen Empress* 1 L R 21 Cal 350 distinguished. The word violence in s 146 of the Penal Code is not restricted to force used against persons only but extends also to force against inanimate objects. The omission to point out to the jury specifically the exact evidence against each accused is not a misdirection when the Judge has discussed the whole of it and has told them to be satisfied as to the guilt of and to return an independent verdict against each accused. *SAMARUDDIN EMFEROR* (1912)

I L R 40 Cal 387

Misdirection—Held that omission of Judge to give direction on point of law arising out of the plea in defence amounts to a misdirection. When a verdict is quashed it is in the discretion of the High Court to order acquittal instead of retrial. *ABDUL RAHIM MIR v. THE KING EMPEROR*

25 C W N 623

Misdirection—Civil Procedure Code s 297. When material witnesses named in the first information and the evidence were not examined at the trial and the Judge did not tell the jury they could draw an inference unfavourable to the prosecution and also did not draw their attention to discrepancies in evidence given in chief and cross examination the conviction and sentence passed on the accused were set aside. *TENASAM MONDAL v. THE KING EMPEROR*

25 C W N 142

Held that Judge was wrong in charging jury to the effect that if accused pleaded alibi he was bound to prove the plea and if he failed then that would arise a presumption against him. *KING EMPEROR v. TARIBELLAH SUEIKH*

25 C W N 682

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Irregularity in procedure—*ad hoc* of proper charge. When evidence given by three police witnesses with preliminary enquiry was read over and treated as their examination in chief and two witnesses whom Public Prosecutor declined to call were called as Court witnesses and cross examined by both sides the Court putting no question and there was no examination of accused under s 342 of the Code of Criminal Procedure and the heads of charge contained no indication as to how the evidence was summed up nor how the law of private defence which was material was explained to the Jury. Held that there were sufficient irregularities to justify the setting aside of an acquittal. *GANDAR BHAR GOHAT v. EDWARD WILLIAM SIMON REED*

25 C W N 600

Misdirection—Trial by Jury— Misdirection in charge to Jury—Questions of fact Judge's expression of opinion in dogmatic and unqualified terms—Material evidence omission to refer to—Citation precedent to using certain evidence and drawing adverse inference against accused omission to point out—Abandoning not inconsistent with innocence omission to point out—*Per trial by a new Judge.* Where the accused was convicted under ss 304 324 of the Penal Code for having administered arsenic mixed with sugar to two boys and thereby caused the death of one and hurt to the other and the Sessions Judge in his charge to the jury expressed his own opinion on the evidence in terms too dogmatic and unqualified although he informed them that on questions of fact they were not bound by any opinion of his and omitted to refer to some statements of one of the two boys before the Committing Magistrate and before the Sessions Judge and did not warn the jury that before drawing inferences against the accused they must first be satisfied that he knew of the presence of arsenic in the sugar and that the evidence negatived the possibility of accident or mistake and that before using the Chemical Examiner's report they must be satisfied on the evidence that the substances examined were in fact what they were said to be and in discussing the question of accused's absence from his village did not warn the Jury that even if they believed that he absconded absconding is not necessarily or invariably incompatible with innocence. Held that the charge to the jury was vitiated by misdirection. The High Court set aside the conviction and sentence and ordered a retrial by a new Judge on the ground that the trying Judge had formed a strong opinion on the case. *OREL VOLLAR v. THE KING EMPEROR* (1913)

18 C W N 180

Juryman communication with by stranger and by Clerk of the Crown. Police Officer's presence near jury room—Communication of deliberation by juryman before or after case is over—Habeas corpus writ of—Jurisdiction—Criminal Procedure Code (Act V of 1898) s 491—Letters Patent 1865 cl 25 and 26—Trial violation of—*Practice Per Curiam.* It is highly undesirable that a juror should have any communication with any body who is not a jurymen upon the subject matter of the trial. But the mere fact that one of them is addressed by a stranger to whom apparently the jurymen makes no reply or whose remarks the jurymen does not look upon as worthy of consideration cannot have the effect of invalidating a trial. A mere casual question (which

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evidently had nothing whatever to do with the case) by a jurymen to a Police Officer in charge of the jury it no even being alleged that the Police Officer spoke in reply to the jurymen cannot be any ground for invalidating the trial. Though it is undesirable that a police constable should be stationed in any position in which he can hear the deliberations of the jurymen still if the presence of the constable has not in any way affected the deliberations of the jurors either by interfering with or inconveniencing them the accused is not in any way prejudiced. The learned Judge was only doing his duty when he twice sent the Clerk of the Crown to the jury and asked them (in a cordance with the practice in the High Court) if he could give them further assistance on any of the many points which were for their consideration there being no less than 17 charges. The jury are all advised to talk with anybody except their fellow jurymen about the case. Whether the case is still going on or after the case is over the jury would be all advised to advise any communication with anybody except their fellow jurymen as to what happened in the jury room. *The Queen v. Murphy*, L. R. 2 P. C. 40 533 referred to *Per Gauhati J.* It is well established that a writ of *habeas corpus* is not granted to persons convicted or in execution under legal process including persons in execution of a legal sentence after conviction or indictment in the usual course. *Ex parte Vee* on 24 L. J. C. P. 148 referred to. When the law does not allow an appeal the accused cannot have one indirectly in this way. When there has been a miscarriage of justice as alleged in this case the proper course is to carry the matter to the Crown for remedy. *Queen Empress v. O. P. For* L. R. 10 B. M. 176 referred to. *BYOMALINI GUPTA* in the matter of (1916). J. J. I. L. R. 44 Cal. 723

----- Appeal from unanimous verdict of conviction.—*Power of High Court to interfere in the absence of misdirection with the civil criminal trial* vid. n. *King v. Simpson*—*Criminal Procedure Code* (1st V of 1933) s. 473 (2). The High Court cannot in law on an appeal from the verdict of the jury interfere with it in the absence of a misdirection by the Judge when there is some circumstantial evidence of guilt such as a finger print of the accused found on a cash box broken open by the robbers during the occurrence of the offence. *MOHINI MOHAN GHOSE v. EMERSON* (1918).

I. L. R. 46 Cal. 635

----- Expression of opinion by juror outside Court during trial. When after conclusion of the evidence one of the jurors expressed his opinion outside the Court as to guilt of accused and although Sessions Judge knew this proceeded but differed from verdict of the jury and referred case to High Court, the verdict was aside and case ordered to be tried by a fresh jury. *KING I. SPOKOR v. NAZAR ALI BEG* (1900). 25 C. W. N. 240

----- Right of trial by—Inference with the right of the General in Council powers of—Indian Councils Act (1st & 2nd V. c. 67) s. 23 proviso—European British subject rights of—War—Order of Local Government authorising complaint of certain offences—Commitment on charge for other offences—Jurisdiction want of—Local Government, powers of—Delegation of powers

JURY—TRIAL BY—

—Charges against members of a secret society—Mispoint—Same transaction—Confessions admissibility—Confessions made during police investigation and to Magistrate subsequently holding inquiry—Examination of a witness—Excluding statement by questions—Admissions to the police—Hearsay—Mode of proof of—Admission of Hearsay—Lying questions—Criminal Procedure Code (Act V of 1933) s. 161 19, 23, 33 34 35 41 45 63—*Enil no Act* (1 of 1872) s. 21 2, 29 47 67 73—*Wajing no*—*Conspiracy*—*Wajing no*—*Penal Code* (Act XLV of 1857) s. 121 171A. The Criminal Procedure Code in so far as it interferes with the mode of trial by jury is not ultra vires and the proviso to s. 21 of the Indian Councils Act (24 & 25 V. c. 67). *King Emperor v. Karik Chandra Dutt* (1903) unreported followed in the matter of *Amir Khatun* B. L. R. 307 and 459 approved. An European British subject cannot relinquish his right to be dealt with as such. Where the Magistrate explained to such a person the nature of the charges against him and his rights under s. 417 and 419 and then asked him whether he claimed to be dealt with as such and the latter stated that he did not claim the right—*Hall* that he had relinquished his right. *In re Queros* I. L. R. 6 Cal. 81 *Queen Empress v. Grant* I. L. R. 17 B. M. 551 *Queen Empress v. Barlett* I. L. R. 16 Cal. 373 followed. Where an order under s. 193 of the Criminal Procedure Code authorized a particular police officer to prefer a complaint of offence under s. 121A 172 123 and 124 of the Penal Code or under any other section of the said Code which may be found applicable to the case and the examination of the complainant also referred to the same as was held that no complaint under s. 121 of the Penal Code was thereby authorized by the Local Government or in fact preferred that the Magistrate had no power to commit thereunder and that the defect was not cured by a subsequent order obtained while the case was before the Sessions Court authorizing a complaint under the section which was not in fact made thereafter not did s. 193 of the Criminal Procedure Code apply in such a case. *Sham Khan's case* (1897) Panj. R. Cr. J. No. 16 approved. *Queen Empress v. Moron* I. L. R. 9 B. M. 238 distinguished and *Queen Empress v. Bal Ganyadhar Thakur* I. L. R. 22 B. M. 112 distinguished. The Local Government cannot delegate to any other body of person the controlling power and discretion of determining whether cognizance shall be taken by the Court of an offence mentioned in s. 193 of the Criminal Procedure Code and its judgment must be specially directed to the particular section and no other under which the prosecution is to be carried on, and the order or authority should be preceded by a deliberate determination in this respect. An order authorizing a complaint under certain specified sections or under any other section is not applicable, if it means found by any one other than the Government involves a delegation which cannot be sustained. Where the accused were all alleged to have been members of a secret society with its headquarters in Manipal in the suburbs and its place of meeting in Calcutta and its where and to have joined in the unlawful enterprise and with others known and unknown to have conspired to wage war or to deprive the King of the sovereignty of British India and to have collected arms and ammunition with such intent and to have a tuilly war—

JURY—TRIAL BY—contd

Held that the joint trial of the accused on charges under ss. 121 191A 122 and 123 of the Penal Code was not bad for the joinder of persons or charges. A confession under s. 161 of the Criminal Procedure Code must be made either in the course of an investigation under Chapter XII or after it has ceased and before the commencement of the inquiry or trial. The condition requiring the confession to be prior to the commencement of the inquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the police investigation. Where a number of persons were arrested on the 1st Mar and the confessions of some of them were recorded on the 4th and 5th, while others were brought in subsequently and their confessions taken while the police investigation was then actually going on and on the 1th an order under s. 191 was obtained and the police report sent in, and on the next day the examination of the prosecutrix witnesses began.—*Held* that the Magistrate did not take cognizance under s. 190 of the Code nor did the inquiry commence on the 4th, and that the confessions were taken in the course of an investigation under Chapter XII. The fact that the Magistrate who has taken the confessions, afterwards holds the inquiry does not, under s. 161 constitute the recording of the confessions an examination of the accused in the course of it and at its commencement. *Empress v Anuntram Singh*, 1 L R 5 Cal 951 and *Empress v Lakub Khan* 1 L R 5 All 253 declared obsolete. *Sai Yarrain Tewari v Emperor* 1 L R 32 Cal 1035 distinguished. S. 161 includes confessions taken by a Magistrate who afterwards holds such inquiry or trial. *Empress v Anuntram Singh* 1 L R 5 Cal 951 and *Reg v Bai Putan* 10 Bom 11 C 166 declared obsolete on the point. Ss. 161 342 and 361 of the Code are not exhaustive and do not limit the generality of s. 21 of the Evidence Act as to the relevancy of admissions. *Queen Empress v Narayn*, (1893) *Patel Lal Unrep Or C 679* referred to. The mere fact that a statement was elicited by a question does not make it irrelevant as a confession under s. 161 of the Criminal Procedure Code or s. 29 of the Evidence Act though such fact may be material on the question of its voluntariness. Methods of proving handwriting discussed. A document does not prove itself nor is an unproved signature proof of its having been written by the persons whose signature it purports to bear. § 73 of the Evidence Act does not sanction the comparison of any two documents but requires, first that the standard writing shall be admitted or proved to be that of the person to whom it is attributed, and secondly that the disputed writing must itself purport to have been written by the same person. A comparison of handwriting is at all times as a mode of proof hazardous and inconclusive and especially so when made by one not conversant with the subject and without guidance from the arguments of counsel and evidence of experts. *Phoodte Bilee v Gound Chunder Roy* 22 W R 272 referred to. The value of expert evidence of handwriting discussed. *Reg v Harle*, 11 Cox C O 546 referred to. To constitute an admission the document need not be written by the party against whom it is used, it is sufficient if it is found in his possession and his conduct thereto creates an inference that he was aware of its contents and admitted their accuracy, but unless this is done the document cannot be used against him as proof of its contents. What

JURY—TRIAL BY—contd

conduct would properly give rise to such inference depends on the facts of each case. The mere fact of possession of letters is not of much value unless it is shown that their contents were recognized and adopted by the replies elicited or the conduct imputed by them. The expression *wages war* in s. 121 of the Penal Code must be construed in its ordinary sense and a conspiracy to wage war or the collection of men arms and ammunition for that purpose is not waging war. An agreement between two or more persons to do all or any of the unlawful acts mentioned in s. 191A of the Penal Code is an offence and the fact of the purpose not being immediate is only material in connection with s. 93. No proof is necessary of direct meeting or combination nor need the persons be brought into each other's presence but the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. Nor is it necessary that all the accused should have joined in the scheme from its inception. Eliciting answers from witnesses while under examination in chief or re-examination by leading questions deprecated. *Per Curvort J*—*Regard* being had to the definition of proved in s. 3 of the Evidence Act moral conviction provided it is based exclusively on evidence that is admissible is not distinguishable from legal proof. Save when an accused person is being examined under s. 342 of the Criminal Procedure Code there is nothing to prevent a Magistrate from eliciting information from him by independent enquiry so long as the information is voluntarily given. A statement by an accused to the police which tells against him but does not amount to an admission of guilt is admissible in evidence. Each case must be decided as it arises with reference to the question whether the particular statement is or is not a confession. *Queen v Macdonald* 10 B L R App 2 *Empress v Dabee Pershad* 1 L R 6 Cal 559 *Queen v Amir Khan* 9 B L R 36 72 and *Emperor v Mahomed Ebrahim* 5 Bom L R 312 referred to. *Queen v Hurnbols Chunder Ghose* 1 L R 1 Cal 277 *Queen Empress v Mathias* 1 L R 10 Cal 1023 *Queen Empress v Melgar* 44 Mullik 1 L R 15 Cal 559 *Impranath v Pundharinath* 1 L R 6 Bom 31 and *Queen Empress v Jasecharam* 1 L R 19 Bom 363 discussed and distinguished. Handwriting may in addition to the usual methods be proved by circumstantial evidence under s. 67 of the Evidence Act which prescribes no particular kind of proof. *Yes!* *Kanoo Pandit v Juggabundho Gho* s. 12 B L R App 18 *Abdool Ali v Abdool Rahman* 21 W R 429 and *Ibdulla Para v Gannabai* 1 L R 11 Bom 699 referred to. *BARINDA KUMAR GHOSH v EMPEROR* (1909) 1 L R 37 Cal 487

—Trial by in Criminal case *Onus of proof in—Penal Col* (1st XLV of 1867) s. 417—*Possession stolen property*. In a criminal case the onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused. That onus never changes. Where recent possession of stolen property by the prisoner is established and he offers an explanation which the jury thinks may be reasonably true though they are not convinced that it is true the prisoner is entitled to an acquittal because the Crown in such a case has not discharged the onus of proof that rested upon it. In a case under s. 411 Indian Penal Code in charging a jury it should be pointed out that the possession

JURY—TRIAL BY—*cond*

of stolen goods referred to must be possession soon after the theft or that the stolen goods must have been recently stolen **HATHEN MOYDAL v KING EMPEROR** 24 C W N 619

Misdirection—Omission to explain—When the Sessions Judge in his charge to the Jury did not clearly explain that the onus of proof was on the prosecution nor set out the points for decision and omitted to give proper direction on facts *Held* that it amounted to a misdirection which vitiated the verdict **ABDUL GHAFFAR SIKAR v KING EMPEROR** 26 C W N 972

to—Verdict when should be interfered with—*Test whether misdirection occasioned failure of justice* The accused were found not guilty by the unanimous verdict of the jury and acquitted by the Sessions Judge On the appeal by the Local Government against the acquittal on the ground of misdirection in the Judge's charge to the jury *Held*—That though there was misdirection this did not justify a reversal of the verdict of the jury unless the misdirection in fact occasioned a failure of justice The High Court not being prepared to hold that the jury's verdict was due to the misdirection in the charge and that apart from this they would not have come to the same conclusion the acquittal was not disturbed **SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS v SHAYAM SUNDAR BHUYI** 25 C W N 558

JUST ANTECEDENT DEBT

See CUSTOM (ALIENATION)

I L R 1 Lab 472

JUS TERTII

See AGRA TENANCY ACT (II OF 1901)—

ss 102 AND 198 **I L R 33 All 61**

s 177 **I L R 33 All 260**

See CIVIL PROCEDURE CODE 1908 s 11

EXPL VI **I L R 33 All 493**

Suit in ejectment *Held* that a defendant in ejectment might set up and prove *jus tertii* And is entitled to rely on the *jus tertii* appearing from the facts adduced by the plaintiff to defeat his claim **SITARAM BHIMAJI v SADRU** **I L R 38 Bom 240**

JUSTICE EQUITY AND GOOD CONSCIENCE

See JOINT JUDGMENT DEBTORS

I L R 39 Mad 548

See WILL

I L R 35 All 211

JUSTICE OF THE PEACE

See EUROPEAN BRITISH SUBJECT

I L R 39 Mad 942

Trials of European British subjects The powers of Magistrates of the first class who are Justices of the Peace and European British Subjects are the powers referred to in s 36 of the Code of Criminal Procedure of 1893 as hereinafter conferred upon them and specified in the third schedule and styled ordinary powers They do not include powers with which by virtue of s 24 of the Code a Magistrate of the first class may be invested by the authorities mentioned therein **LOGAN v IOMER (1910)**

I L R 34 Mad 344

JUSTIFICATION

See TORT

I L R 39 Mad 433

JUTE TRADE

See SHARES **I L R 46 Cal 331 342**

usage of—

See VENDOR AND SUB VENDOR.

I L R 33 Cal 127

Fairbairns—Trade usage at Chanipur—Passing of property on sale—Custody with purchaser merely as security for advances—Insurance of that interest benefit of—Contract Act (IX of 1879) s 81 When nothing remains to be done to the goods by the seller for the purpose of ascertaining the price then *prima facie* the property in them passes although they have not been weighed by the buyer **Simmons v Swift** 5 B C C 35; **Turley v Bates** 2 H L C 200 **Shoshi Mohan Pal Choudhry v Nabo Krishna Poddar** **I L R 4 Cal 801** **Martineau v Kitching** **L R 7 Q B 436** referred to It would be otherwise in England if the parties intended that property in the goods should not pass until the goods had been weighed The Indian Law is the same and the provisions of s 81 of the Contract Act do not exclude the question of intention which is laid down in the English cases as the determining factor Where according to the usage of trade at Chandpur the sale of jute by *fairbairns* is not complete until the goods are examined selected and weighed by the company (purchaser) although stored in the godowns of the company by whom advances have been made to the *fairbairns* against these goods — *Held* that the contract in the present case being in the first instance a contract for the sale of unascertained goods what remained to be done by the buyer to the goods appropriated to the contract by the seller was not merely for the purpose of ascertaining the price but was also for the purpose of placing the buyers in a position to say whether and to what extent they would for their part accept the goods offered to them That the position seemed to be that the buyer had a right to the custody of the jute as security for his advances and that in addition while the seller had no right to sell to others the buyer was under a corresponding obligation to buy as much of the jute as was of the requisite standard That (though the company had insured this jute as their own) the insurance appeared to have been intended for the protection of their own interest in the jute not for the protection of the seller's interest which they were not bound to insure That the defendants therefore were entitled to apply the whole amount which they received under the policies of insurance to indemnify themselves against the loss which they themselves had actually sustained and were not bound to apply any portion of it to the benefit of the plaintiff That there was no usage that the loss is borne entirely by the company in cases where the jute is not insured to the full extent **ABDUL AZIZ BEPARI v JOGENDRA KRISHNA ROY (1916)** **I L R 44 Cal 98**

K**KABULIYAT**

See INTEREST **I L R 41 Cal 342**

I L R 43 Cal 93

See LANDLORD AND TENANT

I L R 41 Cal 493

KABULIYAT—*contd*See **RENT** I L R 47 Calc 133See **TRANSFER OF PROPERTY ACT** s 10
14 C W N 73

—containing false recitals—

See **FABRICATING FALSE EVIDENCE**.
I L R. 46 Calc 986

—construction of—

See **KEY** I L R 47 Calc 133

—stipulation in—

See **ILLEGAL CR.**
I L R. 43 Calc 259—Stipulation to pay same as mamuli
for the idol—See **ILLEGAL CR.**
I L R 45 Calc 259

—*Ha' buliyat* construction of—Partly in money and partly in kind—Fixed rent—Evidentiary value of later documents between different parties in construing an earlier one Where the terms of a document clearly point to the fact that the rent is to be partly in money and partly in kind the rent cannot be regarded fixed in amount even though the *kabuliyat* is a *molarari* one and in the original deed the two items of rent in kind and rent in cash were lumped up and expressed as a consolidated money rent. An earlier document cannot be construed by reference to a later document which is not between the same parties. **BAHSAWAR MUKHERJEE LINGEN CHANDRA CHAKRABARTI** (1910) I L R 37 Calc 628

—*Lease*—Landlord and Tenant—*Ha' buliyat* without *potliah* if constitutes a lease—*Transfer of Property Act* (1908) s 105. ss 106 and 107—*Amending Act* (1911 of 1885) s 3—*Registration Act* (1908 of 1857) s 3 and (1908 of 1908) s 2(7) A registered *kabuliyat* signed by the lessee and accepted by the lessor is sufficient to constitute a lease within the meaning of s 107 of the *Transfer of Property Act*. **Akram Ali v Durga Prasanna Roy** (Calcutta) 11 C I J 614 referred to **Hand Lal v Manuman Dass** 1 L R 26 All 368 **Kashi Qir v Jogendra Nath Chose** 1 L R 27 All 136 **Sheo Karam Singh v Maharaja Parbhu Narain Singh** 1 L R 31 All 276 **Turol Sahib v Esuf Sahib** 1 L R 30 Mad 322 **Kaki Subbanadri v Muthu Rangayya** 1 L R 32 Mad 332 discussed **Sayed Ajam Sahib v Madura Sree Menatchi Sundareswarar Detastanam** 21 Mad L J 202 approved **Nilmamad Sarkar v Boul Das** 14 C W N 73 distinguished **Rai Monti Dass v Mathura Mohan Dey** (1912)

I L R 39 Calc 1016

—Stipulating to pay rent in kind a money value being given in the document—Landlord if may recover market value or the amount stated—Proof that amount was inserted for registration on purposes or to fix stamp duty if inadmissible—*Evidence Act* (1 of 1872) s 99—Conflict of decision Where a tenant executed a *kabuliyat* promising to pay as rent Rs 4 in cash and 01 *aris* of paddy as the landlord's share of the produce and it was stipulated that on the tenant's failure to pay the said rent and share of paddy the landlord would be competent to realise the said rent and Rs 36 as price of the paddy Held that on the tenant making default in paying the landlord's share of the paddy the latter was not entitled to recover the market value of the paddy at the

KABULIYAT—*contd*

time but only the fixed amount of Rs 36 *Per CHATTERJEE J*—Contracts for payment of *bhag* paddy are very common and it was well known that middle class people specially of the *badra* *logue* class who cannot cultivate lands themselves let out their lands for getting paddy for the consumption of their family and in some cases the *bhag* paddy is the only means of subsistence of the family A certain value has to be fixed for the paddy in the *kabuliyat* not only for the ascertainment of the registration fee but also (and specially) for fixing the stamp duty payable though that is not expressly stated in the *kabuliyat* A distinction may perhaps be drawn between cases where there is no express stipulation to pay the sum mentioned in the *kabuliyat* as the value of the paddy in the event of its non delivery and where there is such a stipulation But even in the latter class of cases it has been held upon a construction of the contract in some cases that the value mentioned was the value of the paddy at the date of the contract or stated for purposes of registration while a contrary view has been taken in some other cases. The view taken in *Ajfer Alorale v Prosunna Kumar* 15 C W N 243 s.c. 12 C L J 633 (1910) and recent decisions is that it is not open to the Court to hold that the value of the paddy mentioned in the *kabuliyat* is applicable on the ground that it was so done for fixing the stamp duty or registration fee affects not only the cases where there is stipulation that the money value mentioned is to be paid on default but also where there is no such stipulation and it is desirable that the question should be settled by a full Bench **GLR DAS DEY v GORINDA CHANDRA SINHA** 24 C W N 85

—Contract of tenancy whether *kabuliyat* amounts to—Where a tenant has been put into possession of land on the strength of a *kabuliyat* and has paid rent at the *kabuliyat* rates the *kabuliyat* having been confirmed by the conduct of the parties must be deemed to have been adopted as a contract of tenancy **Sheikh Asim Ali v Sheikh Ahmad Ali** 2 Pat L J 40

KACCHI ADATSee **CONTRACT** I L R 42 Bom 224**KADIM INAMDAR**

—Grantee of soil—Introduction of summary settlement into the alienated village—Mirasdari holding lands in the village to be before the alienation—Inamdar's right to enhance the rent—*Bombay Land Revenue Code (Bombay Act I) of 1879* s 217 A hadim Inamdar who is a grantee not merely of the Government share of rent and land revenue but a grantee out and out of soil in a village where a survey settlement has been introduced is entitled to enhance the rent of the Mirasdari whose tenancy dates from a time prior to the grant **PANDU v PANCHANDRA GANESH** (1917) I L R 42 Bom 112

KAHUTSSee **CUSTOM** I L R 11 Lah 170**KAIMI LEASE**See **BENGAL TENANCY ACT 1885** s 40
5 Pat L J 437

KAIMI LEASE—*contd*

See LANDLORD AND TENANT
I L R 37 Cal 815

KALIGHAT TEMPLE

See PALAS OR TURNS OF WORSHIP
I L R 42 Cal 455

KAMATHIS

See HINDU LAW—INHERITANCE
I L R 34 Bom 553

KANGANAM

—levy of legacy of—

See ESTATES LAND ACT (Mad Act I of 1903) ss 4 27 73 AND 143
I L R 40 Mad 640

KANOM

See MALABAR LAW I L R 44 Mad 344

KANTI MARRIAGE

See MARRIAGE 24 C W N 958

KANUNGO

See CONTRACT ACT (IX OF 1872) s 23
I L R 11 All 51 58

KARNAM

*Nature of tenure—Land appurtenant to office and impartible—Enfranchisement and inam grant effect of—Law governing Palayams not applicable In Madras the Karnam of the village occupies his office not by hereditary or family right but as personal appointee though in certain cases that appointment is primarily exercised in favour of a suitable person who is member of a particular family. It follows that land appurtenant to the office so enjoyed should continue to go with that office and should accordingly be impartible. The enfranchisement of the Karnam lands in 1900 whereby the Inam was confirmed to V. his representatives and a right to hold and dispose of as he or they might think proper subject to the payment of quit rent etc and the reservation of minerals did not ensure for the benefit of the joint family of which V was a member but to him exclusively. Different considerations apply to the case of a Palayam for which a Palayam was abolished in so far as the duty of rendering military service was concerned the estate was continued with all its hereditary incidents to the Palayakar in the same manner as if possessed by a zamindar and the Full Court of Madras were in error in applying the law regarding Palayams by analogy to a Karnam case in *Gnanayyan v Kamal in Ayar* I L R 26 Mad 399. *MUSTI VENKATA JAGANNADHA SARMMA v VISAKHMA DEEBABHADRAYYA (Pl.)**

26 C W N 301

KARTA

See HINDU LAW—MANAGER

See HINDU LAW—JOINT FAMILY

See HINDU LAW—MINOR

See HINDU LAW—PARTITION

I L R 43 Cal 459

—of Hindu joint family—

See HINDU LAW JOINT FAMILY

23 C W N 500—

—suit against—

See LIMITATION ACT 1908 ss 10 AND 20
25 C W N 358

KASBATIS

*History and status of Kasbatis in Gujarat—Ahmedabad Taluqdar's Act (Bombay Act VI of 1862)—Gujarat Taluqdar's Act (Bombay Act VI of 1883)—Bombay Land Revenue Code (Bombay Act V of 1879) ss 68 73—Rights of Kasbatis after cession to and annexation by British Government—Rights of lessees from Bombay Government—Onus of proof on claimant of rights of permanent tenure—Lease implies no obligation to renew at end of term—Obligation to give up possession at end of lease. In this case their Lordships of the Judicial Committee held (reversing the judgments of the Courts below) that the respondent the descendant of a family of Kasbatis who were in possession of a village called Charodi in the district of Ahmedabad in Gujarat and the date of the cession of that district by the Peshwa to the British Government and whose predecessors in title held thereafter under leases from the Government where mere lessees of the Government of Bombay bound to give up at the end of each term of lease possession of the village and were never legally entitled as each lease terminated to have a new lease granted in the last lessee or representative and therefore never acquired permanent possession of the village. The only legal enforceable right the Kasbatis could have as against the British Government were those and those only which that Government by agreement express or implied or by legislation chose to confer upon them. The relation in which they stood to their native sovereign and the consideration of the existence nature and extent of their rights before the cession were only relevant matters for the purpose of determining whether and to what extent the British Sovereign had recognized their ante-cession rights and had elected or agreed to be bound by them. The burden of proving that they had any such rights which the Bombay Government consented to their continuing to enjoy rested upon the respondent. The principle laid down in *The Secretary of State for India in Council v Kamackee Doye Sahaba* 7 Moo I A 476 and *Cool v Spragg* [1899] A C 772 followed. The just and reasonable inferences to be drawn from the evidence were that the respondent had failed to discharge the onus on her that the Bombay Government had never by agreement express or implied conferred upon her or any of her ancestors the proprietary rights in or ownership of the village claimed by her. They never conferred upon any of the lessees of the village a legal right to insist at the termination of the lease upon a new lease being granted. They were never under a legal obligation to grant any lessee of the village and the granting or withholding of a*

KARNAVAN

See MALABAR LAW I L R 44 Mad 140

See MALABAR TARWAD

I L R 33 Mad 918

KARAMEKARI TENURE

See MALABAR LAW

I L R 36 Mad 580

KASBATI—contd

lease rested solely in their discretion. The mere repetition of acts of grace by the Government could not *per se* create a legal right to their continuance. *Prima facie* a lease for a term does not impart any right to a renewal of it on the contrary it *prima facie* implies that the lessor has a right to the premises ends with the term. There was no analogy between holdings of the Graxias and the Kasbatia they and the Mewasies were clearly distinguishable from the Kasbatia. The Ahmednagar Taluqdars Act (Bombay Act VI of 186) did not apply to Kasbatia. They never were Ahmednagar Taluqdars in the true sense they did not lose the ancient rights of ownership of land by taking leases as did the Graxias and therefore did not suffer the injustice which the statute was designed to remedy. The effect of ss 68 and 73 of the Bombay Land Revenue Code (Bombay Act V of 1879) read with the Gujarat Taluqdars Act (Bombay Act VI of 1889) is that a lessee whether a true Taluqdar or a Thakur Mewasie Kasbatia or Naik is bound by the terms of his lease one term of which is that he shall only occupy for the term of years for which a lease for years is granted and *prima facie* no longer. SECRETARY OF STATE FOR INDIA v. BAI RAJBAI (1915)

I L R 39 Bom 625

KAZI

— alienation of inam lands granted for Kazi service

See BOMBAY REVENUE JURISDICTION ACT s 4 I L R 44 Bom 120

— discretion of—

See MAHOMEDAN LAW—ENDOWMENT I L R 43 Calc 1085

— sanction by—

See WAKF I L R 47 Calc 592

KAZIS ACT (XII OF 1890)

— ss 2 and 4—Kazis not entitled to any *ex officio* right to officiate as such. The appointment of a person as Kazi under the Kazis Act (XII of 1890) does not confer on the appointee any exclusive franchise or any exclusive right to perform the functions of his office. Where therefore the plaintiff a Kazi appointed under the Act sued the defendant to restrain him from officiating at marriages and for the recovery of sums of money received by the latter as fees for nikahs performed by him. Held that the suit must fail as the plaintiff had no right to restrain any person from his exercise of the functions of a Kazi. *Mahomed Yussuf v. Sayed Ahmed* 1 Bom H C R 400 18 distinguished. *Sayed Hashim Sah v. Huseinsha* I L R 13 Bom 429. *Mira Mohidin v. Asan Mohidin* 17 Mad J J 421. *Bhikshu v. Syed Unwar Ulee* (1859) V W P S D 4 197 and *Zeenatullah Oa v. Yaqub Ali* 1935 A B 1 S D 4 31 referred to. *Sheik Umar v. Buday Khan* (1914)

I L R 37 Mad 228

"KETUBAH"

See JEWISH LAW

I L R 40 Calc 266

KHAIRAT

See BEQUEST I L R 41 Bom 181

KHADIANIS

See MAHOMMADANS 2 Pat L J 108

KHAMAR LAND

See NON OCCUPANCY RAIYAT I L R 44 Calc 267

KHANA DAIAD

See CUSTOM I L R 44 Calc 749

KHANDESH DISTRICT

See PRE EMPTION I L R 40 Bom 358

KHANGA ATTACHED TO DARGA

See MAHOMEDAN LAW—ENDOWMENT I L R 36 Bom 308

KHARACH I PANDAN

See MAHOMEDAN LAW—MARRIAGE I L R 32 AU 410

KHAS POSSESSION

See UNDER RAIYAT 23 C W N 435

— suit for—

See CHAWKIDARI CHAKRAN LANDS I L R 37 Calc 57

KHATEDAR

See LAND REVENUE CODE (BOM ACT V OF 1879) s 74

I L R 41 Bom 170

— inamdar's name entered as—

See LAND REVENUE CODE (BOM ACT V OF 1879) ss 3 (11) 217

I L R 34 Bom 686

KHATIR INAM LANDS

See BOMBAY REVENUE JURISDICTION ACT 1876 s 4 I L R 31 Bom 130

KHOD KAST JOTES

— Dowl Bandobust Kabuliyat—Transfer of Property Act (IV of 1882) s 10 111 and 117—Evidence Act (I of 1872) s 92—Proof of custom—Bengal Tenancy Act (VIII of 1885) s 106. A suit lies to correct an entry in a finally published record of rights. The fact that an application under s 106 of Bengal Tenancy Act was withdrawn does not bar the jurisdiction of the Civil Court to deal with the matter. *Troilalaya Nath Bose v. Ma leol* I L R 23 Calc 28. *Sashibhisan Ha ra v. Shikhi Eshabar* 19 C W N 636 followed. *Jogendra Nath Ray v. Krishna Pramada Das* I L R 35 Calc 1013 dissented from. *Gulab Meiser v. Kumar Kalanand Singh* 14 C W N 884. *Pandab Dwar Das v. Ananda Kisan Chakrabarty* 14 C W N 897 referred to. With regard to Dowl kabulyats from the fact that the sons have been allowed to hold the tenancy it does not follow that it is heritable. Nor from the fact that the landlord accepted the mortgage of the tenancy from the sons can it be inferred that it is heritable. It is necessary to look into the express terms regarding the tenancy as appearing in the kabulyat. The evidence of custom in respect of tenancies is inadmissible where the custom allowed is contradictory to the terms of the written agreement. Therefore in an agreement where

KHOD KAST JOTES—contd

the tenancy was non transferable in express words no evidence can be given of the customary transferability of tenures in the locality *Webb v Plummer* 11 Barr Ald 746 *Boraston v Green* 16 East 71 *Clarke v Royston* 13 M W 762 and *Brown v Byrne* 3 El Bl 703 referred to. An interest in land created before the passing of the Transfer of Property Act is not subject to that Act *Hiranani Dasya v Ananada Prosad Ghose* 7 C I J 553 and *Ananda Mohan Saha v Gobinda Chandra Poy Chaudhuri* 20 C W N 320 referred to. But where it is found that a yearly tenancy commenced after the passing of the Act Held that such tenancy is an interest in land which can be transferred and could only be determined under s 111 of the Transfer of Property Act by a notice *MAHAMMAD ALBUDDIN PROPYAT KUMAR TAGORE* (1920) 1 I L R 48 Cal 359

KHOJAS

See DOCTRINE OF SATISFACTION

I L N 37 Bom 211

Hindu law how far applicable to Khojas—Joint family—Presumption as to membership of joint family—Mahomedan law—Spec successions transfer of—Family arrangement in the nature of a partition reasonableness of—Limitation Act (X of 1908) Articles 91 and 127 In the year 1879 one D a Khoja was living at Malad in the Thana District where he carried on a small business together with inter alia his mother and unmarried daughter his sons A and I and A's wife and A's son J. In that year it was agreed that A should separate from the rest of the family and should receive what was considered to be his share in the family property. The family property was valued at Rs 4,000 and Rs 900 or the fifth part of it was made over to A or the members of his family at his bare namely Rs 400 in cash given to A ornaments of the value of Rs 200 given to A's wife and a house of the value of Rs 300 settled on J. The terms of this transaction were contained in a deed of release dated the 13th of February 1879 by which deed I released all claims of himself and his wife and son against the family and family property. Subsequently I by him self or assisted by his father D continued to carry on business and acquired a considerable amount of property. After the release A lived in the house given by the release to his son J and some 12 or 13 years after the release another son was born to A namely X. J and X at times lived with their grandfather D and their uncle I and received assistance from them in various ways in particular their marriage and other ceremonies being performed from D's house and at his expense. J and X were at times also employed by D and I in their business for wages. In the year 1902 D made a gift to I of his property at Malad reserving about Rs 7,000 to himself. J and I filed the present suit. In their plaint they stated that the release of the 13th of February 1879 was not valid or binding as having been obtained by fraud undue influence etc. and also be as it had not been acted upon. They prayed inter alia for a declaration that the above mentioned business and properties were the properties and business of an undivided family, that the rights of the plaintiffs and defendants therein might be ascertained and declared that the properties might be partitioned between the plaintiffs and defendants in accordance with their

KHOJAS—contd

interest so ascertained and declared that all necessary accounts might be taken that a receiver might be appointed that D and I might be restrained by injunction from alienating the properties that it might be declared that the release of the 13th of February 1879 was not valid and binding on the plaintiffs and A and that it might be declared that the deed of gift of the 8th of October 1902 was void and of no effect as against the interests of the plaintiffs and other members of the joint family. D and I filed written statements denying the allegations as to fraud etc. and asserting that the release of the 13th of February 1879 had been acted on. It was assumed in the pleadings that the parties were governed by the Hindu law of the joint family. Held that as to the law governing Khojas the proper way to approach the question was as follows—(1) Where Mahomedans were concerned the invariable and general presumption was that they were governed by the Mahomedan law and usage and that it lay on a party setting up a custom in derogation of that law to prove it strictly. (2) But that in matter of simple succession and inheritance it was to be taken as established that succession and inheritance among Khojas and Memons were governed by Hindu law as applied to separate and self acquired property. Held accordingly that the plaint disclosed no cause of action at all unless the plaintiffs had alleged and were prepared to prove two or three salient features of the Hindu law of the joint family as customs adopted by the Khojas of Bombay as the question involved in the suit did not really arise on a plea of simple succession and inheritance and that there had been no allegation of custom and no attempt had been made to prove a custom and in any case many of the prayers in the plaint were on the face of them bad as the plaintiffs could not have the declaration asked for as to the nature of the property and their rights therein not sue for partition. Held further that assuming this to have been a joint family under Hindu law when A passed the release of the 13th of February 1879 he went out of the family and purported to take out of it his wife and infant son that the plaintiffs could not dispose of the release as void under Mahomedan law as the mere transfer of a spec succession as under Mahomedan law the plaintiffs had no cause of action and that I having been born after his father A had gone out of the family from the point of view of members of the joint family did not exist. Held further that it could not be inferred from the facts that their grandfather and uncle had kept the plaintiffs educated them and got them married etc. that the plaintiffs thus became members of a joint family that what was to be looked at in estimating the reasonableness of such family arrangements as the release of the 13th of February 1879 (under Hindu law) was not the state of the family fortune on the day it was called in question but at the time it was made and that if there was then an adequate motive the Court would not scrutinize too closely the adequateness of the consideration *Ramdas v. Chabidas* 12 Bom L R 671 applied *Semle*. Where the existence of a document if valid and binding on a party would defeat his suit to recover possession of any property he must sue under Article 91 of the Limitation Act for the cancellation of the document and that if he does not take steps in time to remove what else will be a bar to the success of his suit he cannot surmount that

KHOJAS—contd

117 during the trial by exactly the attack he ought to have made on it directly and within the shorter period allowed by the law of limitation. *Semle* Article 12th of the Limitation Act does not apply to Mahomedans as such or to Khojas and Memons except where the property is shown to have gone through one unimpaired descent and thereafter to have been held by the survivors as joint family property. *Wantrao v. Anandrao* 6 Bom L J 725 considered *Semle* also since no Khoja son can enforce a partition it follows that he can not be a co-sharer. *Shvedbhoy Hub'hoys v. Cassimbhoy Ahmed'hoys* 11 P 13 Bom 331 and *Pani Saraj Awari v. Pani Deoraj Awari* L P 151 A 51 considered *JAY MAHOMED v. DATE JATTER* (1913) 1 L R 38 Bom 449

Settlement—Settlor him self trust—No delivery of possession—Don born after settlement—Donor of settlor to revoke settlement—Settlor's intention not carried out owing to settlor's death—Power of Court to set aside defective execution—Suit by settlor's son to set aside settlement—Limitation Act (XX of 1908) s 10—Resulting trust back to him—Idem or possession on—Difference between *Shvedbhoy* and *Jay Mahomed*—Validity of gifts contained in deed containing offer gifts—Local usage cannot override Mahomedan Law—Registration—Is Major—By an indenture of settlement dated 7th January 1886 J P a Khoja Mahomedan, purported to convey certain immovable properties to trustees for the benefit of his family. The trusts were in effect for J P for life and after his death subject to certain rights of residence and maintenance to pay the net income of the trust properties to V M for his life and in the event (which subsequently occurred) of the death of V M without leaving male issue to divide the trust funds into ten equal parts to be held in favour of certain donees four tenths being given to charity. The indenture also reserved to the settlor power to revoke or vary any of the trusts contained therein. There was no surrender of the property in fact to any one except J P himself in his character as trustee for himself. The donor however opened an account in his books of this property as trust property. On the 26th October 1886 a second son the plaintiff was born to J P whereupon J P being desirous of providing for the second son desired to vary the terms of the deed of the 7th of January 1886 and to resettle the same so that his two sons should share equally. A draft deed of declaration of new trusts was accordingly prepared by J P's attorneys and on the 24th of July 1887 was finally settled and approved by J P. An engrossment was thereupon made and duly stamped but on signing the engrossment to J P for his execution on July 29th it was found that owing to an error of the engrossing clerk several pages of it were missing. Another engrossment was prepared forthwith, but on the same day before the new engrossment was ready J P died. The plaintiff thereupon brought a suit to have it declared whether or not the deed of 1886 was a valid deed and 11 prayed that the defective execution of the second deed might be added by the Court and the provisions of the said second deed declared to be valid. *Held* (i) That the plaintiff was not time barred as against the trustees from bringing the action. (ii) That however restricted the gift was in form to J P it was in effect a gift absolute to him for life and that entirely irrespective of the power of revocation. (iii) That all the gifts in the

KHOJAS—contd

trust settlement made contingent upon N M dying without issue were bad. (iv) That the portion of the instrument which purported to create a trust in respect of four tenths of the settled property was bad and void. (v) That the gift was bad for want of contemporaneous delivery of possession. (vi) That this was a case, if ever there was a case in which the Courts might act upon those principles which have always guided the Courts in Equity in England and aid defective execution of a power defective not through any fault on the part of the person intending to execute it but through reason of an act of God and that the unsigned deed ought to be effectuated by the Court to the extent of making it binding on that conscience of the trustees. *Per CURHAM*. It is only in the events of the trusts of some of them being bad that the question of limitation can arise. For if the trust deed in its entirety is good then of course effect must be given to it irrespective of any question of lapse of time. Where what purports to be a trust deed turns out to have been entirely void and therefore not to have passed the legal estate the position of those who took possession believing themelves to be trustees but not in law real trustees necessarily assumes the character of possession by trespass and is therefore from its inception in law adverse against all the world. Where however the trust deed in itself is good and valid to the extent of passing the legal estate but the trusts declared are in themselves wholly or partially bad then there is a resultant trust to the author of the trust and the possession of the trustees whatever they might think of it and however they might intend to use it for the purpose of carrying out the bad trusts could not in law be adverse to the *cestui que trust* that is to say the grantor. Widely different is the case of trustees who obtain the legal estate from the author of the trusts to apply the beneficial uses to specified objects which may or may not be good. For then from the beginning there is always a relation between the author of the trusts and the trustees in whom confidence has been reposed and there is always the legal possibility at least of another relation coming into existence between them where owing to the failure of the declared trusts there is a resultant trust back to the grantor who from that moment becomes in law the *cestui que trust* of the trustees. Where it was the intention that there should be an ultimate trust in favour of the grantor it is usual to express that on the face of the deed. A deed so framed as upon its very face to provide for the springing back of the trust fund or a part of it in certain events to the author of the trust does create what is at once an express and resultant trust. The current of authority seems to have set steadily against the extension of s 10 of the Limitation Act to all cases of resultant implied or constructive trusts. Where the ultimate resultant trust which is to spring back to the settlor is consistent with the discharge of the declared trusts then it may by loose use of language be said to be express on the face of the deed but when the extinction or failure of all the intended trusts is a condition precedent to the resultant trusts coming into being then the latter is clearly a true resultant trust and is not express and never can be expressed on the face of the deed. The answer to the question—What is the true position when declared trusts failed and there is a resultant trust over to the settlor or his heirs—is to be found in the very elementary proposi-

KHOD-KAST JOTES—contd

the tenancy was non transferable in express words no evidence can be given of the customary transferability of tenures in the locality *Webb v Plummer 2 Barn Ald 746 Barston v Green 16 East 71 Clarke v Royston 13 M W 752 and Brown v Byrne 3 El* *El 703* referred to an interest in land created before the passing of the Transfer of Property Act is not subject to that Act *Hiramoh Dasya v Ananda Prosad Ghose 7 C L J 553 and Ananda Mohan Saha v Gobinda Chandra Roy Chaudhuri 20 C W A 320* referred to. But where it is found that a yearly tenancy commenced after the passing of the Act *Held* that such a tenancy is an interest in land which can be transferred and could only be determined under s 111 of the Transfer of Property Act by a notice *MAHAMMAD ALEJUDDI v PROBYAT KUMAR TAGORE (1920) I L R 48 Cal 359*

KHOJAS

See DOCTRINE OF SATISFACTION

I L R 37 Bom 211

Hindu law how far applicable to Khojas—Joint family—Presumption as to membership of joint family—Mahomedan law—Spec successions transfer of—Family arrangement in the nature of a partition reasonableness of—Limitation Act (IX of 1908) Articles 91 and 127
In the year 1819 one D a Khoja was living at Malad in the Thana District where he carried on a small business together with *inter alia* his mother and unmarried daughter his sons A and I and A's wife and A's son J. In that year it was agreed that A should separate from the rest of the family and should receive what was considered to be his share in the family property. The family property was valued at Rs 4500 and Rs 900 or the fifth part of it was made over to A or the members of his family at his share namely Rs 400 in cash given to A ornaments of the value of Rs 200 given to A's wife and a house of the value of Rs 300 settled on J. The terms of this transaction were contained in a deed of release dated the 13th of February 1879 by which deed A released all claims of himself and his wife and son against the family and family property. Subsequently I by himself or assisted by his father D continued to carry on business and acquired a considerable amount of property. After the release A lived in the house given by the release to his son J and some 12 or 13 years after the release another son was born to A namely X. J and X at times lived with their grandfather D and their uncle I and received assistance from them in various ways in particular their marriage and other ceremonies being performed from D's house and at his expense. J and X were at times also employed by D and I in their business for wages. In the year 1902 D made a gift to I of his property at Malad reserving about Rs 7000 to himself. J and X filed the present suit. In their plaint they stated that the release of the 13th of February 1879 was not valid or binding as having been obtained by fraud, undue influence etc. and also because it had not been acted upon. They prayed *inter alia* for a declaration that the above mentioned business and properties were the properties and business of an undivided family that the rights of the plaintiffs and defendants therein might be ascertained and declared that the properties might be partitioned between the plaintiffs and defendants in accordance with their

KHOJAS—contd

interests so ascertained and declared that all necessary accounts might be taken that a receiver might be appointed that D and I might be restrained by injunction from alienating the properties that it might be declared that the release of the 13th of February 1879 was not valid and binding on the plaintiffs and A and that it might be declared that the deed of gift of the 8th of October 1902 was void and of no effect as against the interests of the plaintiffs and other members of the joint family. D and I filed written statements denying the allegations as to fraud etc. and asserting that the release of the 13th of February 1879 had been acted on. It was assumed in the pleadings that the parties were governed by the Hindu law of the joint family. *Held* that as to the law governing Khojas the proper way to approach the question was as follows—(i) Where Mahomedans were concerned the invariable and general presumption was that they were governed by the Mahomedan law and usage and that it lay on a party setting up a custom in derogation of that law to prove it strictly. (ii) But that in matter of simple succession and inheritance it was to be taken as established that succession and inheritance among Khojas and Memons were governed by Hindu law as applied to separate and self acquired property. *Held* accordingly that the plaintiff disclosed no cause of action at all unless the plaintiffs had alleged and were prepared to prove two or three salient features of the Hindu law of the joint family as customs adopted by the Khojas of Bombay as the question involved in the suit did not really arise on a plea of simple succession and inheritance and that there had been no allegation of custom and no attempt had been made to prove a custom and in any case many of the prayers in the plaint were on the face of them bad as the plaintiffs could not have the declaration asked for as to the nature of the property and their rights therein not sue for partition. *Held* further that assuming this to have been a joint family under Hindu law when A passed the release of the 13th of February 1879 he went out of the family and purported to take out of it his wife and infant son that the plaintiffs could not dispose of the release as void under Mahomedan law as the mere transfer of a *spec succession* as under Mahomedan law the plaintiffs had no cause of action and that X having been born after his father A had gone out of the family from the point of view of members of the joint family did not exist. *Held* further that it could not be inferred from the facts that their grandfather and uncle had kept the plaintiffs educated them and got them married etc. that the plaintiffs thus became members of a joint family that what was to be looked at in estimating the reasonableness of such family arrangements as the release of the 13th of February 1879 (under Hindu law) was not the state of the family fortune on the day it was called in question but at the time it was made and that if there was then an adequate motive the Court would not scrutinize too closely the adequateness of the consideration *Ramdas v Chabildas 12 Bom L R 621 applied Sembie*. Where the existence of a document if valid and binding on a party would defeat his suit to recover possession of any property he must sue under Article 91 of the Limitation Act for the cancellation of the document and that if he does not take steps in time to remove what else will be a bar to the success of his suit he cannot surmount that.

KHOTI SETTLEMENT ACT (BOM I OF 1880)

—contd

—ss 9 and 10—contd

Adverse possession of land against the occupant—Effect of adverse possession against the Khoti—Ejectment by Khoti—Notice—Land Revenue Code (Bom Act I of 1879) section 81 An occupancy tenant of Khoti land having died in 1894 the defendant who was his remote relative took possession of the land and held it adversely. A first cousin of the deceased relinquished the holding in favour of the plaintiff Khoti in 1914. The plaintiff having sued to recover possession of the land—*Held* that the defendant's adverse possession against the heir of the occupancy tenant only extinguished the latter's right to the actual possession of the land and did not operate to annihilate the occupancy tenant's right which he would transfer to the plaintiff Khoti. *Held* further that the defendant on account of the resignation of the rightful occupancy tenant could claim to be a tenant under s 8 of the Khoti Settlement Act 1880 and in the absence of any specific agreement between himself and the Khoti he should be held to be a yearly tenant liable to pay rent to the Khoti at the rates prescribed and that he was accordingly entitled to the notice prescribed in the case of yearly tenants under section 84 of the Land Revenue Code 1879. *VISHNU BHIKSHI v BARLA LAKHA* (1920)

I L R 43 Bom 1001

—s 9—

See PEE JUDICATA

I L R 40 Bom 675

—ss 9 10—Khoti Takshim—Renunciation of occupancy rights—Transfer—Lease for a term of years—Expiration of the lease—Suit to recover possession—Impeachment of plaintiff's title—Consent of Khoti necessary for transfer—Resignation accompanied by co-consideration—*Arises in pari delicto*—Estoppel. The defendant resigned his occupancy rights in a Khoti takshim to the plaintiff who was one of the khots in the year 1905. Synchronously with this resignation a lease for a term of five years was executed and the defendant attorned to the plaintiff in respect of the lands. The defendant's resignation was accompanied by consideration. After the expiration of the term of the lease the plaintiff sued to recover possession of the lands and the defendant impugned the plaintiff's title. *Held* dismissing the suit for recovery of possession that the foundation of the plaintiff's title in 1905 was illegal; that the resignation and lease having been made at the same time and having formed part of what was virtually one transaction if the transfer which the resignation was held to amount to were tainted with any illegality as being in contravention of the statute law namely the Khoti Settlement Act (Bom Act I of 1880) the letting must go with it that under s 9 of the said Act the consent of the khots including the plaintiff was necessary to the validity of the transfer and it was not shown that such consent had been obtained that accordingly the conditions stated in s 9 being not complied with there was no transfer under that section nor could the transaction be regarded as a resignation under s 10 of the said Act because it was accompanied by consideration. *Held* further that in the case of a contract where both the parties were in pari

KHOTI SETTLEMENT ACT (BOM I OF 1880)

—contd

—ss 9 10—contd

delicto the plaintiff was not entitled to estop the defendant from showing the illegality of his title, nor was there any estoppel against any Act of Parliament or in India against an Act of the Legislature. *SURDHAR BALKRISHNA v BABAJI MULLA* (1914) I L R 38 Bom 769

Occupancy tenants—

Transfer of occupancy rights—Possession—Right of Khoti to forfeit occupancy right Defendants Nos 2 to 6 were the occupancy tenants of the plaintiff Khoti. On the 14th January 1912 the defendants sold their occupancy rights to the defendant No 1 giving him possession. The plaintiff having sued for a declaration that by transfer the defendants had forfeited their occupancy rights and that therefore he was entitled to possession of the property. *Held* dismissing the suit that although the transfer to defendant No 1 was null and void as against the Khoti the defendants Nos 2 to 6 still remained his occupancy tenants. *LESA BIN LAMA v SAKHARAM GOPAL* (1905) 30 Bom. 290 followed. *DAMODAR RAGHUNATH v VASUDEO PARASHURAM* (1919)

I L R 44 Bom 267

—s 20—Entry in settlement register—

Occupancy tenant—The fact of tenancy not conclusively settled by the entry The rule of evidence laid down in s 20 of the Khoti Act that the entry in the settlement register purporting to record the fact that the interest of any occupancy tenant is not transferable shall be conclusive evidence cannot apply where according to a judgment *inter partes* the person relying on the action is not an occupancy tenant for the fact of the tenancy of the individual is not conclusively settled by the entry. *CHINTO MANADEV v MANADEV LAMCHANDRA* (1918)

I L R 43 Bom 565

—s 21—Decision of the Recording

Officer—Finality—Mere entry in revenue records as occupant is not such decision—Scope of the section s 21 of the Khoti Settlement Act 1880 makes conclusive certain decisions of the Recording Officer. The mere entry of the name of some particular person as occupant is not such a decision. What are contemplated as conclusive are decisions as to the class of tenure and as complicated rights of the khots. *BRIVA BHAIKA to the s BARU BALSALT* (1918)

I L R 43 Bom 469

—ss 33 (c) 40 (a) Rules I III and VIII—Occupancy tenant—Lease payable to the Khoti—Appraisement under the provision of r VIII—Appraisement by the tenant. I VIII of the rules framed under s 40 (a) of the Khoti Settlement Act (Bom Act I of 1880) is *intra vires* and under the provisions of that rule the Khoti can recover from the occupancy tenant rent either on the basis of appraisement made under the provision of that rule or on the basis of appraisement made by the tenant himself. The Court is precluded from arriving at what it considers the reasonable amount of rent by the provision of the said rule. *VINAYA BALKRISHNA v SITARAM JAYAPPA* (1912)

I L R 57 Bom 284

KHOTI TAKSHIM

See KHOTI SETTLEMENT ACT (BOM I OF 1880) ss 9 10

I L R 38 Bom 709

KHOTI VILLAGE

See BOMBAY SURVEY AND SETTLEMENT ACT 1865 ss 25 28 37 38

I L R 36 Bom 290

KHUD KASHT

See BENGAL TENANCY ACT 1885 s 120(2) 5 Pat L J 87

See LANDLORD AND TENANT I L R 38 Calc 432

KHURDAH IN ORISSA

See SARBARAKARI TENURE I L R 46 Calc 378

KIDNAPPING

See CRIMINAL PROCEDURE CODE s 189 I L R 41 All 452

See PENAL CODE (ACT XLV OF 1860) s 90 I L R 38 Mad 453

s 361 I L R 42 All 148

ss 361 366 109 I L R 38 All 684

ss 361 363 AND 368 4 Pat L J 74

s 363 I L R 37 Mad 567

s 366 I L R 34 All 340

ss 366 AND 372 I L R 37 All 624

ss 366 AND 368 I L R 40 All 507

KIDNAPPING—contd

Ledlie v Ledlie I L R 18 Calc. 473 referred to BORTHWICK v BORTHWICK (1913) I L R 41 Calc 714

KIDNAPPING A GIRL OUT OF BRITISH INDIA

See PENAL CODE (ACT XLV OF 1860), ss 366 360 90

I L R 42 Bom 391

KILLADARI ESTATE (ORISSA)

See CHOWKIDARI ACT s 1 15 C W N 300

KILLAJAT ESTATES (ORISSA)

See RPT I L R 38 Calc 278

KING'S BENCH COURT OF

See CONTEMPT OF COURT I L R 41 Calc 173

KING'S PREROGATIVE OF PARDON

See PRIVY COUNCIL PRACTICE OF I L R 42 Calc 738

KITTIMA ADOPTION

See BURNHSE LAW I L R 45 Calc 1

KNOWLEDGE

See ATTESTATION OF INSTRUMENT I L R 37 All 350

See HINDU LAW—ALIENATION I L R 44 Calc 186

See PROBATE I L R 42 Calc 480

KNOWLEDGE AND INTENT

See PENAL CODE (ACT XLV OF 1860) s 86 I L R 38 Mad 479

s 302 I L R 40 All 380

KOBALA

See FARRIGATING FALSE DOCUMENT I L R 43 Calc 811

KOCHES

See HINDU LAW (INHERITANCE) 24 C W N 173

KOLI CASTE

See HINDU LAW—MARRIAGE I L R 37 Bom 295

Removal by the mother of her child from the custody of the father after decree nisi delivering custody in him—absence of prayer in divorce petition for custody and of subsequent application therefor—Ex parte decree—Submission of decree to High Court for confirmation—Order of custody part of the decree—Time of operation of order of custody—Divorce Act (IV of 1869) ss 17 43 57—Penal Code (Act XIV of 1860) s 363 Where the plaintiff in a divorce suit did not contain a prayer for custody of the child and there was no subsequent application therefor by the husband but the District Judge passed an ex parte decree nisi and included in it as one of its terms a direction without notice to the wife to deliver her child to the father and submitted the decree to the High Court for confirmation and where the father subsequently obtained custody of the child but she took it away from his house and was charged with kidnapping—Held that the Judge's direction as to the custody of the child was not intended to be an order nisi under 43 of the Divorce Act which was to take effect immediately but formed an integral part of the decree and did not operate till confirmation by the High Court and that she had therefore committed no offence punishable under the Penal Code.

KONKANI MAHOMEDANS

See CONTRACT I L R 42 Bom 499

KOWL

See LAND REVENUE CODE (BOM 1 OF 1879) s 3 CL (19)

I L R 35 Bom 462

KUDIYARAY

See LAND TENURE IN MADRAS

L R 46 I A 123

acquisition of—

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 (EXCEP)

I L R 38 Mad 843

ownership of—

See CIVIL COURTS.

I L R 39 Mad 21

right to—

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 (EXCEP)

I L R 38 Mad 608 843

sale of—

See LIMITATION ACT (I OF 1908) s 2.

I L R 38 Mad 837

KULACHAR

See BABIANA GRANT

KULKARNI VATAN

See LOMBAY REVENUE JURISDICTION ACT 1816 s 4

I L R 44 Bom 261

See LIMITATION ACT 1908 s 90

I L R 45 Bom 1207

See PENSIONS ACT (XXIII OF 1871) s 4

I L R 42 Bom 257

KUMAUN

land tenures of—

See CIVIL PROCEDURE CODE (1908) s 100

I L R 36 All 256

KUMAUN RULES (1894)

s 17—Final decree—Civil Procedure Code (1908) s 2 (?)—Promissory note liability of maker of not disclosing name of principal Held that the definition of decree as given in s 2 cl (?) of the Code of Civil Procedure (1908) cannot be applied strictly in interpreting the term final decree as it occurs in the Kumaun Rules which were framed in 1894 Held also that where a person executes a pro-

KUMAUN RULES (1894)—contd

s 17—contd

mory note without either before or at the time of execution thereof disclosing the fact that he does so merely as an agent the executant is personally liable on the note *Sadasuk Janki Das v Sir Ashraf Perahad* I L R 46 Calc 663 referred to *Nasir Ullah v KUNWAR ANAND SINGH* I L R 42 All 642

KUNJPURA STATE OF

Succession to estates of Punjab Ruling Chiefs—Custom—Impartible estate—Jirmogeniture—Mahomedan law—Sust by junior members of Kunjpura family for shares in estate—Zemindari rights—Property appertaining to Chief ship up to 1819—Property subsequently acquired The question in this case was as to the rule of succession applicable to the Kunjpura State situate in the Cis Sutlej districts of the Punjab The riasat or rai was founded by Najabat Khan who in 1748 obtained a sanad from the Afghan Conqueror Ahmed Shah Abdali granting him an hereditary jagir of the villages of which he was then in possession which were declared to be revenue free and held subject to the obligation of maintaining order in his possessions In 1849 however the British Government withdrew from the Chief of Kunjpura the civil and criminal jurisdiction under which he had been until then exercising quasi sovereign power Held that it had been established beyond doubt that the Kunjpura Estate had ever since the time of Najabat Khan descended to his son, to her who had been recognised as the Chief of an impartible riasat and that attempts by junior members of the family to obtain shares in it had invariably failed The two instances relied on as showing the allotment of shares to junior members were in their Lordships opinion opposed to that contention and no other evidence had been referred to suggesting that there had ever been a division of the estate in accordance with Mahomedan Law The opinion of the Board of Administration in 1852 that the zamindari rights in the villages comprised in the jagir were the subject of inheritance according to the Mahomedan law and should be shared by all the members of the family became inoperative and was never acted upon in the course of the constant claims put forward by the junior members of the family to a share in the estate and later decisions on those claims laid down in explicit terms that the zamindari rights belonged to the riasat With regard to the property acquired after 1819 in which the Chief Court had decided that the plaintiffs (younger brothers of the defendant who had taken possession of all the property as the eldest son) were by the Mahomedan law entitled to shares Held (reversing that decision) that there was nothing to show that the Government in withdrawing the civil and criminal powers which the Chiefs had exercised prior to 1819 intended to make any alteration in their status or to vary the rule which had governed the succession to the estate *IBRAHIM ALI KHAN v MUHAMMAD AHMEDULLAH KHAN* (1912) I L R 39 Calc 711

KUZHIKANAM

See CUSTOMARY LAW

I L R 41 Mad. 118

LAND ACQUISITION—contd

the meaning of the provisions of s 32 of the Land Acquisition Act Where a portion of the *debutter* property was acquired under the Land Acquisition Act and the compensation money was invested in approved securities the *shebait* is entitled to withdraw a portion of the invested funds and apply the same to effect necessary repairs to the remainder of the *debutter* property As under s 32 of the Act the compensation money is placed in the custody of the Court jurisdiction is by implication conferred upon it to deal with all questions that may arise as to the application of the fund in its custody **KAMINI DEBI v PRAMATHA NATH MOOKERJEE** (1911)

I L P 39 Calc 93

See Also **SHEBAIT** I L R 40 Calc 895

Appportionment of Compensation money—Method of Assessment—Government as landlord share of In assessing the amount of compensation due to the landlord regard must be had to the question of how much the landlord is actually realising from the land The Government in its capacity as landlord is entitled as usual to a capitalisation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken together with 15 per cent for compulsory acquisition and something more in respect of the possibility of the enhancement of the value of the land thereafter The Government is not entitled in law to a higher proportion on the ground that in similar cases it has frequently received a higher proportion either by consent of the parties or otherwise Where a *raiyat's* rent is fixed in perpetuity it would be enough in apportioning compensation to capitalize this rent according to the rule laid down in *Dinendra Narain Poy v Tituram Mookerjee* I L P 30 Cal 801 in order to arrive at the share due to the landlord but where that is not the case this rule will not be sufficient and some other means of calculation must be adopted **MANMOHAN DUTT v COLLECTOR OF CHITTAGONG** (1912)

I L R 40 Calc 64

17 C W N 1001

Bustee Land—Valuation—Calcutta Municipal Act (Beng Act III of 1899) s 557 sub s (c) (d)—Market value—Inadmissibility of evidence with regard to sales of other lands in the neighbourhood—Land Acquisition Act (I of 1894) ss 33 When land is compulsorily acquired any use to which the land may be put in future should not be taken into consideration in determining its value The valuation should be according to the market value at the time of the acquisition Sub s (c) of s 557 of the Municipal Act precludes evidence being given of other purposes to which *bustee* land can be put in future Evidence relating to the undertenants and rents paid by them is not relevant for the purpose of ascertaining the market value as defined by sub s (c) of s 557 of the Municipal Act **Harish Chunder Veog v Secretary of State for India** 11 C W N 87, followed **MANENDRA CHANDRA NANDI v SECRETARY OF STATE FOR INDIA** (1914)

I L P 41 Calc 967

Godowns used as servants residence whether part of house or building—*Compensation of a godown alone is not sufficient—Land Acquisition Act (I of 1894) ss 42 (1) 64—Practice—Appeal* Godowns need not be used as residence for servants are part and parcel of a building within the meaning of s 43 (f) of the Land Acquisition Act]

LAND ACQUISITION—contd

being a most important part of that building for the purpose of letting it out to gentlemen as a place of residence The acquisition of such godowns would thus be an acquisition of a part of a house contrary to the provisions of the Act It has never been doubted that an appeal would lie in the case of such an order under that section **Hasan Molla v Tasiruddin** I L R 39 Calc 393 distinguished **DALCHAND SINGH v THE SECRETARY OF STATE FOR INDIA** (1916)

I L R 43 Calc 665

Court if may determine question of title—Claims to compensation by Zemindar as against person holding under a lakhraj title—Onus of proof A purchaser of an entire estate sold for arrears of revenue suing to recover land claimed by the defendant as *lakhraj* must prove a *prima facie* case that his *mal* land has since 1790 been converted into *lakhraj* The fact that the lands are within the ambit of the estate is not sufficient to meet this burden Whether in a particular case the plaintiff has been able to prove such a *prima facie* case would depend upon its own circumstances Where the question of title to a plot of land arose between claimants to compensation money paid by Government on acquisition thereof under the Land Acquisition Act one being the purchaser of the estate at a sale for arrears of land revenue whilst the other was holding it as *lakhraj* Held that the former was in the position of the plaintiff and the burden of proof as stated above was on him **Jarihar Mookerjee v Malab Chandra Babu** 14 Moo I A 152 relied on A Land Acquisition Court has jurisdiction to determine a conflict of title between rival claimants **KRISHNA KALYANI DAS v R BRAUNFELD** (1915)

20 C W N 1028

Title by adverse possession—On the acquisition of a piece of land under the Land Acquisition Act it was found that the person in possession had taken possession of it on the death of the last male owner and held possession for more than 12 years without payment of rent He asserted that he held the land under another person and not under the rival claimant who was the reversionary heir of the last male owner Held that the person in such possession was entitled to the full compensation paid for its compulsory acquisition having acquired the right to hold the land rent free by twelve years adverse possession **RAJBANS SARKAR v RAI MAHABIR PRASAD (1916)**

20 C W N 828

Award meaning of—Appeal—Land Acquisition Act (I of 1894) ss 49 51 A decision or determination under the Land Acquisition Act which has no reference to compensation in some form or other is not an award An order under s 49 of the Land Acquisition Act is not an award and is not appealable under s 51 of that Act **Dalchand Singh v Secretary of State for India** I L R 43 Calc 665 **Mulraj Khadar v Collector of Poona** 15 Bom L R 802 **Seddon v Deputy Collector of Madras** 17 Ind C 117 **Balram Bharamatar Poy v Sham Sunder Narendra** I L P 23 Calc 966 and **Trinayan Das v Krishnadas De** 17 C W N 933 referred to **SARAT CHANDRA GHOSH v THE SECRETARY OF STATE FOR INDIA** (1919) I L R 46 Calc 881

Timber compensation for—Division between Landlord and Tenant By custom of the country bamboos are used in building and there

LAND ACQUISITION—contd

fore are Timber *Held* Landlord entitled to half compensation for the trees in this case **MAHARAJA SRI PAMESWAR SINGH BHADUR v. BHADURA SINGH** **B Pat. L J 127**

— Binding agreement can be made between parties fixing the amount of compensation—*Ex p. the Collector has made his award*—*Offer and acceptance by letter*—*Contract*—*Specific performance of contract*—*Power of Municipal Corporation*—*Powers of Directors of Joint stock Company*—*Indian Contract Act (17 of 1872) ss 2 and 10*—*Land Acquisition Act (1 of 1894) ss 11 (1) and (2) 31 38 ss 31 48 and 51 (2)*—*The City of Bombay Municipal Act (111 of 1955) s 61 (vi) 68 69 77 90 91 97 96 and 517*—*Specific relief*—*Declaration form of* In August 1916 the plaintiffs the Municipal Corporation for the City of Bombay wishing to acquire certain property belonging to the defendant Company for the purpose of widening a street entered into negotiations with the defendants in order to arrive at the price the defendants would accept for their property. No agreement having been arrived at, the plaintiffs applied to the Government to acquire the property for them by proceedings under the Land Acquisition Act. Thereafter on 19th July 1917 the defendants resumed negotiations with the plaintiffs. On 26th July 1917 the usual notification was published in the *Government Gazette*. On 12th September 1917 the Secretary of the defendant Company in pursuance of the previous correspondence between the parties and the interviews of their respective engineers wrote to the plaintiffs' engineer—The Company is willing to accept without prejudice the sum of Rs 145,000 inclusive of 10 per cent for compulsory acquisition. The amount will be subject to deductions of the capital ad dues to the Collector and of the easements of the neighbouring properties if any. The said letter was placed by the plaintiffs' engineer before the Municipal Commissioner who endorsed on it his approval of the acceptance of the offer. On the 14th September 1917 at a meeting before the Deputy Collector who held inquiry under the Land Acquisition Act the plaintiffs' solicitor produced the letter of 12th September 1917. The defendants' engineer stated at the meeting that the term without prejudice in their letter had no longer any force as the Municipality had accepted the proposal of the defendants. Thereupon the Deputy Collector recorded the agreement between the parties and adjourned the inquiry to determine the claims of owners of adjoining premises to easements of light and air. On the 22nd September 1917 the Directors of the Company passed a resolution approving of the letter of 19th September 1917 and noting that the said letter conveyed the acceptance of the plaintiffs' offer by the Secretary on behalf of the Company. On 23rd October 1917 the defendants through their solicitors intimated to the plaintiffs' engineer that they had withdrawn the offer made by them on the 19th September 1917. The plaintiffs' solicitors replied that there was a definite agreement concluded between the parties and that the defendants were not entitled to resile from the same. At an adjourned meeting before the Collector held on 29th January 1918 the defendants made a formal claim of Rs. 571,600 as compensation and the proceedings were adjourned by the Collector. The plaintiffs there

LAND ACQUISITION—contd

upon sued for a declaration (1) that there was a contract binding on the defendants in terms of the letter of the 12th September 1917 which had been accepted by the plaintiffs (2) that the defendants were not entitled to claim in the proceedings before the Collector any sum for compensation other than or beyond Rs 145,517 and (3) that if Collector awarded more the excess belonged to the plaintiffs. The plaintiffs also claimed them in question accordingly. The defendant contended that their letter was not an offer but an invitation or in the alternative that the agreement was void for want of mutuality or was made without authority or that Government could withdraw under s 48 of the Act. *Held* that the letter was an offer and not a mere invitation and that the offer and the acceptance thereof had been made by the duly authorised agents of the defendants and the plaintiff respectively. *Held* further that the offer and acceptance amounted to an agreement definitely fixing the compensation as between the parties themselves whatever sum may be ultimately awarded by the Collector and with an obligation on either party to refund any excess or make good any deficiency as the case might be and that this agreement was a contract within the meaning of ss 2 and 10 of the Indian Contract Act which was capable of being specifically enforced against the defendants. *Held* also that the agreement was not wanting in mutuality nor rendered nugatory as between the parties merely because power of withdrawal was reserved to the Government under s 48 of the Land Acquisition Act. The dicta of Bowen L. J in *The Moorcock (1859) 11 P D 64* at p 68 referred to **FORT PRESS CO LTD v. THE MUNICIPAL CORPORATION OF THE CITY OF BOMBAY (1910)**

I L R 44 Bom 797

— Application by owner for abandonment of acquisition in consideration of special payment—*Application*—*Street scheme*—*Submission of scheme to Government for sanction*—*Building sites not demarcated*—*Scheme ultra vires*—*Calcutta Improvement Act (Beng V of 1911) ss 39 41 and 3*—*There is nothing in the Calcutta Improvement Act which compels the Trust to delineate on the plan the building sites before the scheme is submitted to Government for sanction*. The owner of certain premises made an application to the Board of Trustees for the Improvement of Calcutta under s 78 of the Calcutta Improvement Act for the abandonment of acquisition in consideration of special payment. Such application was subsequently rejected by the Board inasmuch as the disputed property was too small to form an independent building site on a 100 feet main thoroughfare and would not fit in with the lay out. *Held* that the Board came to the conclusion *bona fide* and as there was no evidence to show that the land was not required for the execution of the scheme within the meaning of sub s (1) of s 78 there was no basis for the application to the Trustees nor was there any ground for complaint in the suit for the fact that they made enquiries under sub s (2) of s 78 did not entitle them ultimately to reject the application on the ground that it did not come within sub s (1) of that section. **BEPIN BEHARI SEY v. TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA (1920)** **1 L R 47 Cal 604**

— Recoupment—*Calcutta Improvement Act (Beng V of 1911) ss 42 (a) 78-49 (2)*

LAND ACQUISITION—contd

the meaning of the provisions of s 32 of the Land Acquisition Act. Where a portion of the *debtor's* property was acquired under the Land Acquisition Act and the compensation money was invested in approved securities the *debtor* is entitled to withdraw a portion of the invested funds and apply the same to effect necessary repairs to the remainder of the *debtor's* property. As under s 32 of the Act the compensation money is placed in the custody of the Court jurisdiction is by implication conferred upon it to deal with all questions that may arise as to the application of the fund in its custody. *KANWAR DEVI v. PRADYATHA NATH MOOKERJEE* (1911)

I L R 39 Calc 33

See Also *STEWART* I L R 40 Calc 895

Appportionment of Compensation-money—Method of Assessment—Government as landlord's share of. In ascertaining the amount of compensation due to the landlord regard must be had to the question of how much the landlord is actually realising from the land. The Government in its capacity as landlord is entitled as usual to a capitalisation of the much rent as may be found to be payable in respect of the proportion of the holding, that is taken together with 10 per cent for compulsory acquisition and something more in respect of the possibility of the enhancement of the value of the land thereafter. The Government is not entitled in law to a higher proportion on the ground that in similar cases it has frequently received a higher proportion either by consent of the parties or otherwise. Where a *tenant's* rent is fixed in perpetuity it would be enough in apportioning compensation to capitalize this rent according to the rule laid down in *Dinendra Varma Roy v. Tituram Mookerjee* I L R 30 Calc 801 in order to arrive at the share due to the landlord but where that is not the case this rule will not be sufficient and some other means of calculation must be adopted. *MANMATHA DEVI v. COLLECTOR OF CHITTAGOON* (1912)

I L R 40 Calc 64

17 C W N 1001

Bustee Land—Valuation—Calcutta Municipal Act (Beng. Act III of 1899) s 50—sub s (c) (d)—Market value—Inadmissibility of evidence with regard to sales of other lands in the neighbourhood.—*Land Acquisition Act (I of 1894) s 23.* When land is compulsorily acquired any use to which the land may be put in future should not be taken into consideration in determining its value. The valuation should all be according to the market value at the time of the acquisition. Sub s (c) of s 507 of the Municipal Act precludes evidence being given of other purposes to which bustee land can be put in future. Evidence relating to the under tenants and rents paid by them is not relevant for the purpose of ascertaining the market value as defined by sub s (c) of s 507 of the Municipal Act. *Hari k Chander Verma v. Secretary of State for India* II C N A 375 followed. *MANMATHA CHANDRA NATH v. SECRETARY OF STATE FOR INDIA* (1914)

I L R 41 Calc 887

Codown used as servants residence. Whether part of house or building.—*Acquisition of such codown alone is part of Land Acquisition Act (I of 1894) ss 49 (1) 64—Practice—Appeal.* Codown necessary as residence for servants are part and parcel of a building (within the meaning of s 49 (1) of the Land Acquisition Act)

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being a most important part of that building for the purpose of letting it out to gentlemen as a place of residence. The acquisition of such codowns would thus be an acquisition of a part of a house contrary to the provisions of the Act. It has never been doubted that an appeal would lie in the case of such an order under that section. *Hasan Molla v. Pasrudin* I L R 39 Cal 393 distinguished. *DALCHAND SINGH v. THE SECRETARY OF STATE FOR INDIA* (1916)

I L R 43 Calc 665

Court if may determine question of title—Claims to compensation by Zemindar as owner of person holding under a lakhraj title—Onus of proof. A purchaser of an entire estate sold for arrears of revenue suing to recover land claimed by the defendant as lakhraj must prove a *prima facie* case that his *mal* land has since 1790 been converted into lakhraj. The fact that the lands are within the ambit of the estate is not sufficient to meet this burden. Whether in a particular case the plaintiff has been able to prove such a *prima facie* case would depend upon its own circumstances. Where the question of title to a plot of land arose between claimants to compensation money paid by Government on acquisition thereof under the Land Acquisition Act one being the purchaser of the estate at a sale for arrears of land revenue whilst the other was holding it as lakhraj. Held that the former was in the position of the plaintiff and the burden of proof as stated above was on him. *Harikhar Moolerjee v. Madab Chandra Babu* 14 Moo I A 152 relied on. A Land Acquisition Court has jurisdiction to determine a conflict of title between rival claimants. *KRISHNA KALYANI DA v. R. BRAUNFELD* (1915)

20 M W N 1028

Title by adverse possession—On the acquisition of a piece of land under the Land Acquisition Act it was found that the person in possession had taken possession of it on the death of the last male owner and held possession for more than 12 years without payment of rent. He asserted that he held the land under another person and not under the rival claimant who was the reversionary heir of the last male owner. Held that the person in such possession was entitled to the full compensation paid for its compulsory acquisition having acquired the right to hold the land rent free by twelve years adverse possession. *RAJIBANS SAHAJ v. RAI MANABIS PRASAD* (1916)

20 M W N 828

Award meaning of—Appeal—Land Acquisition Act (I of 1894) ss 49 54. A decision or determination under the Land Acquisition Act which has no reference to compensation in some form or other is not an award. An order under s 49 of the Land Acquisition Act is not an award and is not appealable under s 54 of that Act. *Dalchand Singh v. Secretary of State for India* I L R 43 Cal 675. *Mulraj Khatri v. Collector of Poona* 12 Bom L R 402. *Siddons v. Deputy Collector of Madras* 17 Ind C 117. *Balram Laxmanrao Raj v. Shama Sunder Aarendra* I J R 23 Cal 576 and *Trinayan Das v. Krishna Lal De* 17 C W N 937 referred to. *SARAT CHANDRA GHOSE v. THE SECRETARY OF STATE FOR INDIA* (1919) I L R 46 Calc 861

Timber compensation for—Disposal. Between Landlord and Tenant. By custom of the country barabars are used in building and there

LAND ACQUISITION—contd

agreement was arrived at between the Municipality and plaintiff No. 2 whereby in consideration of the plaintiff No. 2 agreeing *in et alia* not to claim from the Municipal Corporation the compensation payable to himself and to pay the portion of compensation payable to two other claimants the Municipality agreed to convey to him the residue of the land acquired from him after retaining the portion necessary for the purpose of widening the street and to give in addition a certain strip of land which the Municipality were to get under an arrangement with a third party. The Collector thereupon published his award. Soon after the Collector's Surveyor wrote to the Acquisition Officer of the Municipality that plaintiff No. 2 had handed over to him charge of his properties and he further sent along with the letter a charge receipt for the properties and the same was signed by the Surveyor and the Acquisition Officer whereby it was recorded that they had respectively handed over and taken charge of the said properties. The Municipality there after served on 23rd December 1919 notices on the various defendants in the suits to vacate the premises in their occupation by the 31st December 1919 and on defendant's refusal to vacate filed suits against them in ejectment. *Held* that under s 16 of the Land Acquisition Act when the Collector made the award he could take possession of the land which thereupon vested absolutely in the Government free from all incumbrances that the acquisition and the resulting vesting were equally effective and complete in the case of acquisition undertaken by Government on the application of the Municipal Commissioner under s 91 of the City of Bombay Municipal Act which *pro tanto* modified the provisions of the Land Acquisition Act so as to vest the property in the Corporation instead of in the Government on the payment of compensation awarded and that no transfer from Government to the Corporation was needed. *Held* further that the provisions of s 31 of the Land Acquisition Act did not apply in the case of acquisitions made by virtue of the provisions of s 91 of the City of Bombay Municipal Act and payment of the compensation amount by the Commissioner was enough. *Held* also that in the case of acquisitions under s 91 of the City of Bombay Municipal Act the taking of possession by the Collector and his handing over the same to the Municipality was not necessary inasmuch as the property vested directly in the Corporation without the intervention of the Government or the Collector and the Corporation became entitled to take possession and that if actual possession was required the same was given by the Collector to the Municipality as evidenced by the signing of the charge receipt. *Held* further (1) that the general provisions of the Pent Act could not be held by implication to repeal and override particular and special enactments like the Land Acquisition Act and the Municipal Act inasmuch as the whole object of such an enactment was to get the land immediately for useful public purposes and it would be defeating that object to lay down that the public body acquiring the land was not entitled to immediate possession and (2) that assuming the Pent Act applied the premises were required by the Municipality for a satisfactory cause in order to enable them to carry out the whole scheme and to fulfil their obligation under the agreement with plaintiff No. 2. *Dodds v Shepherd* 1 (1921) 1 F. R. 75

LAND ACQUISITION—contd

at p 79 followed. *Held* further that on compulsory acquisition of the premises the lease of D terminated and that on such determination the monthly tenancies of the defendants as under lease of D also came to an end with the result that the defendants thereafter remained on the premises merely as tenants on sufferance and were not entitled to a month's notice. *PEP SETALVAD J*—S 296 of the City of Bombay Municipal Act expressly empowers the Municipality to acquire in addition to the land actually required for widening any public street all such land and buildings outside the intended regular line of such street as it shall deem expedient and to sell such additional land. *THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY v M. DAMODAR BROTHERS* (1920) 1 I. R. 45 Bom 725

LAND ACQUISITION ACT, I OF 1894)

See APPEAL TO PRIVY COUNCIL

1 I. R. 40 Cal 311

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888 AS AMENDED BY BOM ACT V OF 1905) ss 297 299 301 1 I. L. P. 42 Bom 462

See INTEREST 1 I. L. R. 35 Bom 255

See LIMITATION ACT 1908 SCH I ARTS. 170 171 141 and 144 3 Pat. L. J. 522

See MADRAS ESTATES LAND ACT (I OF 1903) s 6 SUB S (6) AND 8 1 I. L. R. 39 Mad 944

See RAILWAY COMPANY

1 I. L. R. 43 I. A. 310

See RAILWAYS ACT (I OF 1890 AS AMENDED BY ACT I OF 1896) s 7 1 I. L. R. 41 Bom 291

award whether a decision—

See LITIGATORS PATENT CHS 15 30

1 I. L. R. 41 Mad 943

proceedings under—

See APPEAL TO PRIVY COUNCIL

1 I. L. R. 40 Cal 21

1 ——— Compensation—Valuation of rent of property—Element to be considered—Evidence before Acquisition Officer—Practice The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation but it is a mistake to think that it is the only element to be taken into consideration. In the case of residential property to endeavour to arrive at the market value the basis of an hypothetical rent may work injustice to the owner. There are cases which may possess a value in the market the return they give on capital invested in advantages and enjoyment which as their possession. Residential property sense of property which a purchaser acquires for his own residence, is such. The first question to determine is who a demand, and if there is a cost it is the most important attention. It is the duty of legalising before the Acquisition Commission to arrive at a valuation by the information and materials in the matter of LAND MATTER OF GOVERNMENT AND

1 I. L.

LAND ACQUISITION—contd

122—*Street scheme—Affecting many of* On the construction of s 42 (a) of the Calcutta Improvement Act 1911 their Lordships of the Judicial Committee held that there was no limitation of severance either in that section or in s 78 and there was no ground for implying any limitation as affecting the authority of the Board of Trustees for the acquisition of land under s 42. The result in the opinion of their Lordships was that none of the suggested limitations to the usual and normal meaning of the word affected in s 42 was admissible and that there was no reason either in the general purpose of the Act or in the special context that the word should not be construed in its ordinary sense and that as so construed s 42 authorised the acquisition of the land of the respondent which was inserted in the scheme because in the opinion of the Board it would be enhanced in value by its execution. **TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA v CHANDRA HARTI GHOSH (1919)** I L R 47 Calc 500

OVER RULING I L R 44 Calc 219

Piecemeal acquisition—Land Acquisition Act (I of 1894) ss 6 to 11 Where there is one holding there cannot be piecemeal acquisition as the Land Acquisition Act refers only to one notice one proceeding and one award to be given taken and made regarding one holding and one ownership. But when the Collector in obedience to the decision of a Court to which he was subject desisted pending an appeal from that decision from proceeding with the acquisition of the portion of the premises affected by that decision he is not thereby debarred from further proceeding with the acquisition when a Court superior to that which gave the decision declared the latter to be erroneous. **R C SEN v THE TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA AND THE LAND ACQUISITION COLLECTOR OF CALCUTTA (1921)** I L R 48 Calc 892

Calcutta Improvement Act—(Beng V of 1911)—Calcutta Municipal Act (Beng III of 1873) ss 20 357 500—Land Acquisition Act (I of 1894) ss 4(3) 5—Evidence Act (I of 1872) s 4—Proceedings before Land Acquisition Collector—High Court power of restraining further proceedings—Specific Relief Act (I of 1907) s 15 (c) In an application under s 4 of the Specific Relief Act by the owner of certain premises to restrain the Corporation and the Improvement Trust from taking further steps in the proceedings then pending before the Acquisition Collector in the acquisition of the said premises by the Corporation under a Government notification in terms of s 11 of the Land Acquisition Act it was found having regard to the absence of a sanctioned project on the part of the Corporation or of a scheme on the part of the Trust and having regard to the fact that the Corporation was to acquire and the Trust was to pay that notwithstanding a Government notification under s 11 of the Land Acquisition Act the acquisition proceedings should not be continued. **Held** that though the notification under s 6 of the Land Acquisition Act is conclusive so far as s 4 of the Evidence Act concerned but the Court is entitled to enquire into the validity of the steps leading up to the recommendation and was competent to enquire into the legality or otherwise of the acts of the Corporation and the Trust. **Held** also that

LAND ACQUISITION—contd

special powers of the Corporation for purposes of acquiring land cannot be used to enable another body to acquire land through them however estimable the purpose. The power to acquire is limited to cases where the Corporation itself undertakes the work. It was observed that it is to be assumed that the Local Government and the Land Acquisition authorities will stay their hands in view of a decision of the Court and not be parties to what may be held to be illegal and ultra vires action. **MAHENDR CHAND MAHATA IN RE v THE CORPORATION OF CALCUTTA AND THE CALCUTTA IMPROVEMENT TRUST (1921)**

I L R 48 Calc 916

Assessment of compensation—Prospective user it may be taken into account—Land not capable of use as independent brickfield but wanted for inclusion in existing brick fields if may be valued as brick field land Tribunals assessing compensation must take into account not only the present purpose to which the land is applied but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied just as an owner might do if he were bargaining with a purchaser in the market. Where it appeared that the lands acquired could not profitably be used as independent brickfields but there was trustworthy evidence to show that if the acquired lands had been thrown into the market adjoining brick field owners would have come forward to purchase them or take leases of them for inclusion in their brick fields. **Held**—That the Court was justified in assessing the value of the lands as brick field land. Too much importance must not be attached to evidence of offers in a certifying the market value of land but the position is different when the question is whether there is a market at all for a tract of land for use for a specified purpose. **MOHNI MOHAN BAYAJEE THE SECRETARY OF STATE FOR INDIA** 25 C W N 1002

City of Bombay Municipal Act (III of 1883) ss 91 and 296—Land Acquisition Act (I of 1894) ss 16 and 31—Land acquired by the Government of Bombay at the instance of Municipality—Effect of acquisition—Festing of land in Municipality—Municipality empowered to acquire land in addition to that required for its scheme and to sell such additional land—Bombay Rent (War Restrictions) Act II of 1918 s 9—Bombay Rent Act does not override general provisions of the Land Acquisition Act or the Municipal Act—Sufficient Cause within the meaning of s 9 of the Rent Act—Leave for fixed period terminable on compulsory acquisition—Monthly tenancy under the original lease—Tenants on a licence not entitled to a month's notice—Ejectment in pursuance of a scheme for the widening of a street within the Fort the Municipal Corporation of the City of Bombay plaintiff No 1 moved the Government of Bombay to acquire certain buildings on behalf of the Corporation under the Land Acquisition Act. The Governor in Council thereupon issued the necessary notification for the acquisition of the said buildings. Plaintiff No 2 was the owner of the buildings in the five suits and he had leased them to D for a period of three years from 1st November 1917. D let out different portions of the buildings to the several defendants in the suits on monthly tenancy. By the time the proceedings before the Collector terminated but before the award was actually published an

LAND ACQUISITION—contd

agreement was arrived at between the Municipality and plaintiff No. 2 whereby in consideration of the plaintiff No. 2 agreeing to allow not to claim from the Municipal Corporation the compensation payable to himself and to pay the portion of compensation payable to two other claimants the Municipality agreed to convey to him the residue of the land acquired from him after retaining the portion necessary for the purpose of widening the street and to give in addition a certain strip of land which the Municipality were to go under an arrangement with a third party. The Collector thereupon published his award. Soon after the Collector's Surveyor wrote to the Acquisition Officer of the Municipality that plaintiff No. 2 had handed over to him charge of his properties and he further sent along with the latter a charge receipt for the properties and the same was signed by the Surveyor and the Acquisition Officer whereby it was recorded that they had respectively handed over and taken charge of the said properties. The Municipality thereafter served on 23rd December 1919 notices on the various defendants in the suits to vacate the premises in their occupation by the 31st December 1919 and on defendant refusal to vacate filed suits against them in ejectment *Hell* that under s. 16 of the Land Acquisition Act when the Collector made the award he could take possession of the land which thereupon vested absolutely in the Government free from all incumbrances that the acquisition and the resulting vesting were equally effective and complete in the case of acquisition undertaken by Government on the application of the Municipal Commissioner under s. 91 of the City of Bombay Municipal Act which *pro tanto* modified the provisions of the Land Acquisition Act so as to vest the property in the Corporation instead of in the Government on the payment of compensation awarded and that no transfer from Government to the Corporation was needed. *Hell* further that the provisions of s. 31 of the Land Acquisition Act did not apply in the case of acquisitions made by virtue of the provisions of s. 91 of the City of Bombay Municipal Act and payment of the compensation amount by the Commissioner was enough. *Hell* also that in the case of acquisitions under s. 91 of the City of Bombay Municipal Act the taking of possession by the Collector and his handing over the same to the Municipality was not necessary inasmuch as the property vested directly in the Corporation without the intervention of the Government or the Collector and the Corporation became entitled to take possession and that if actual possession was required the same was given by the Collector to the Municipality as evidenced by the signing of the charge receipt. *Hell* further (1) that the general provisions of the Rent Act could not be held by implication to repeal and override particular and special enactments like the Land Acquisition Act and the Municipal Act inasmuch as the whole object of such an enactment was to get the land immediately for useful public purposes and it would be defeating that object to lay down that the public body acquiring the land was not entitled to immediate possession and (2) that assuming the Rent Act applied the premises were required by the Municipality for a satisfactory cause in order to enable them to carry out the whole scheme and to fulfil their obligation under the agreement with plaintiff No. 2. *Dobbs v. Sheph* = L (1971) 1 F.R. 75

LAND ACQUISITION—contd

at p. 75 followed. *Hell* further that on the compulsory acquisition of the premises the lease of D terminated and that on such determination the monthly tenancies of the defendants as under-lessees of D also came to an end with the result that the defendants thereafter remained on the premises merely as tenants on sufferance and were not entitled to a month's notice. *1 F.R. 75* *SPTALVAD J* —S. 296 of the City of Bombay Municipal Act expressly empowers the Municipality to acquire in addition to the land actually required for widening any public street all such land and buildings outside the intended regular line of such street as it shall deem expedient and to sell such additional land. *THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY v. M. DAMODAR BROTHERS* (1901) *I L R 45 Bom 725*

LAND ACQUISITION ACT (I OF 1894)

See APPEAL TO PRIVY COUNCIL

I L R 40 Cal 21

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1889 AS AMENDED BY LOCAL ACT V OF 1901) s. 297

299 301 *I L R 42 Bom 462*

See INTEREST *I L R 35 Bom 255*

See LIMITATION ACT 1908 SEC. 1 ARTS. 120 130 141 and 144 3 Pat L J 522

See MADRAS STATUTE LANDS ACT (I OF 1903) s. 6 SUBS. (6) AND 8

I L R 39 Mad 944

See RAILWAY COMPANY

I L R 43 I A 310

See RAILWAYS ACT (I OF 1890 AS AMENDED BY ACT IX OF 1890) s. 7

I L R 41 Bom 291

award whether a decree—
See LETTERS PATENT S. 1 36

I L R 41 Mad 943

proceedings under—
See APPEAL TO PRIVY COUNCIL

I L R 40 Cal 21

1 ——— Compensation—Valuation of residential property—Elm not to be considered—Evidence before Acquisition Officer—Practice The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation but it is a mistake to think that it is the only element to be taken into consideration. In the case of residential property to endeavour to arrive at the market value solely on the basis of an hypothetical rent may work grave injustice to the owner. There are commodities which may possess a value in the market not for the return they give on capital invested but for the advantages and enjoyment which accrue from their possession. Residential property in the sense of property which a purchaser wishes to acquire for his own residence is such a commodity. The first question to determine is whether there is a demand and if there is a demand the original cost is the most important element for consideration. It is the duty of legal practitioners before the Acquisition Officer to assist him arriving at a valuation by putting before him the information and materials at their disposal. *In the matter of LAND ACQUISITION ACT* *matter of GOVERNMENT AND SRIKHAND* *I L R 34*

LAND ACQUISITION ACT (I OF 1894)—contd

2 — **Land** — Acquisition of out standing interest where Government owns fee simple *Per CHANDAVARKAR J* — To acquire a land [See under the Land Acquisition Act] is not necessarily the same thing as to purchase the right of fee simple to it but means the purchase of such interests as clog the right of Government to use it for any purpose they like. The definition given to the word land in s 3 (a) of the Act is not exhaustive. The use of the inclusive verb

includes shows that the Legislature intended to lump together in one single expression — viz, land — several things or particulars such as the soil the buildings on it any charges on it and other interests in it all of which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require. *Per BACHELOR J* — Government are not debarred from acquiring and paving for the only outstanding interests merely because the Act which primarily contemplates all interests as held outside Government directs that the entire compensation based upon the market value of the whole land must be distributed among the claimants. In such circumstances there is no insuperable objection to adopting the procedure to the case on the footing that the outstanding interests which are the only things to be acquired are the only things to be paid for. *In the matter of the LAND ACQUISITION ACT THE GOVERNMENT OF BOMBAY v ESUPALI SALEBHAI* I L R 34 Bom 618

3 — **Collector's award** — Government directing Collector to publish his award on a lower valuation. When the Collector appointed under the Land Acquisition Act of 1894 once makes the enquiry prescribed by the Act and reaches his own conclusion as to the amount of compensation to be awarded to the claimant it is not competent to the Government to set aside the conclusion and to direct the Collector to substitute a smaller amount than that which as the result of his enquiry he has determined to offer. *DONNABAI BEJANI v THE SPECIAL OFFICER SALSETTE BUILDING SITE* (1912)

I L R 36 Bom 599

4 — **Apportionment of compensation** — Between amindar and occupancy ryot principles of — Value of trees on land acquired to be given to whom. In making an apportionment of compensation for land awarded under the Land Acquisition Act between a zamindar and his occupancy tenant several factors are to be taken into consideration for determining their respective rights in the land such as expenses of cultivation the fact that the cultivator has a home and a sphere for labour for him self and his family and the nature of the tenure. The principle of *Appa samudral Mudali v Pangappa Nallan* I L R 4 Mad 567 applied. This decision which apportioned on the facts of that case three fifths to the zamindar and two fifths to the ryots was not intended to lay down a general rule applicable to all cases. On the facts of this case their Lordships affirmed the decision of the lower Court which apportioned the compensation given for land in the ratio of three fifths to the ryots and two fifths to the zamindar. *Paya Lemmadetara Venkatarasamma Raju v Lakshmi v Lakshman* (Appeal No 119 of 1893) 84 Ma 1888. *See also* *Govind v Iratoda Sundari Laxmi* I L R 28 Cal 136. *See also* *Nendra Nara Poy v Tirumali Mukerjee* I L R

LAND ACQUISITION ACT (I OF 1894)—contd

30 Cal 801 *Rhupa Roy v Secretary of State* 5 C L J 662 and *Satis Chandra Chatterjee v Raj Bahadur Nath Choudhury* 7 C I J 284 distinguished. On a consideration of the whole evidence in the case their Lordships affirmed the decision of the lower Court which gave to the ryots the whole value of the trees (fruit) trees that stood upon the land which was compulsorily acquired. *Arasanna Pygar v Orr* I L R 26 Mad 252 and *Bodda Goddeppa v The Maharaja of Vizianagram* I L R 30 Mad 155 distinguished. *Per CURIA*. Proceedings under part III of the Act are not by way of appeal and what is contemplated is a new enquiry by the District Judge. *BAMADEV VERA VENKATANARASIMHA NAIDU v SUBBARAYUDU* (1913) I L R 36 Mad 395

5 — **Special adaptability of land** for purpose required — Where a piece of land is compulsorily acquired by Government for quarrying purposes its special adaptability for quarrying is an element for consideration in fixing the amount of compensation. *DATA KRISHNAI v ASSISTANT COLLECTOR SURAT* (1913) I L R 36 Bom 37

6 — **Noabad Mehal property** — Acquisition of — Apportionment of compensation between Government and claimant — Basis of calculation of value of Government interest — Chance of enhancement of rent value of a Noabad Mehal held under Government implies a hereditary and transferable title in perpetuity subject to payment of rent for all lands under cultivation. Where certain properties included in a Noabad Mehal held under the Government were acquired under the Land Acquisition Act held that the mere fact that the rent was enhancible did not justify the Court awarding half the compensation money to Government as Government would not in ordinary course increase the assessment unless the assets of the property also increased. That the interest of the Government ought to be measured by capitalising the present rent at 60 years purchase. *JUGESH CHANDRA RAY v THE SECRETARY OF STATE FOR INDIA* (1912)

18 C W N 531

7 — **Objection to award by one of two claimants** — Other claimant entitled to any portion of the excess amount allowed by Judge on reference. When in a proceeding under the Land Acquisition Act the tenants accepted the Collector's valuation but the landlord objected to it and asked for a reference and the Judge allowed an excess amount representing all the interests in the land held that the tenants were not entitled to any portion of the excess amount allowed by the Judge. *SECRETARY OF STATE FOR INDIA v MANOHAR MUKHERJEE* (1918)

23 C W N 720

8 — **Acquisition of lands for building purposes** — Wet lands in a zamindar's occupancy rights of tenants included — Valuation of lands made of — Interests of amindar and tenant too valued — Apportionment of compensation — Land whether to be valued merely as wet lands or as house site. Where wet lands in a zamindar are acquired by the Government under the Land Acquisition Act for extension of the village site the lands have to be valued in the first instance including all interests in it and the amount ascertained has then to be apportioned among the parties interested accord-

LAND ACQUISITION ACT (I OF 1894)—contd

into the interest. The proper way of valuing lands with occupancer rights is to ascertain what would be their market value if they were put to the most lucrative use having regard to their position and when they are acquired for public purposes, if it is to be valued as building sites and not merely as wet lands, the fact that neither the landlord nor the tenant can utilize the lands for building purposes without the concurrence of the other does not make any difference. *Collector of District of Mysore v. P. S. P. & L. P. 65* and *Collector of District of Mysore v. Bank of India Ltd.* 113 of 1913 followed. *123 of 1913* *See The Mysore District of Mysore v. P. S. P. & L. P. 65* and *Collector of District of Mysore v. Bank of India Ltd.* 113 of 1913 followed. Appeals Nos. 31 and 32 of 1916 (unreported) dismissed from P.A.J. of PATTANAM & THE DISTRICT COLLECTOR OFFICE, CHENNAI (1916). I L R 42 Mad 644

Compensation—

The Government acquired certain land containing gravel and laterite for the gravel for which it had been paying the owner at the rate of six annas per hundred feet. Compensation was awarded on the basis of the average income which had actually been obtained by the owner from lands of this description. On objection that the compensation should have been based upon the value of the entire quantity of gravel and laterite contained in the land at the rate of six annas per hundred cubic feet held that the basis upon which compensation had been awarded was correct. *BHABHAR NARAYAN CHANDRA DUTT NARENDRA R. THE COLLECTOR* 2 Pat. L. J. 247

12. ————— Acquisition of

land for quarrying—Principle of compensation—Value of prospective gravel. When a piece of land is compulsorily acquired for quarrying purposes, a special adaptability for quarrying is an element for consideration in fixing the amount of compensation in spite of the fact that no one but the local authority for which the acquisition was made ever made any demand for the land as a quarry and it is not right to award compensation for it only as cultivable land. *DISTRICT COLLECTOR SIKH (1914) I L R 39 Bom 37* followed. Judgment of MORTON L. J. in *In re Lucas and Chestfield Gas and Water Board* [1909] 1 K B 30 at 31 distinguished. The amount of compensation to be awarded is the present value of all the gravel that might be expected to be realized in the future. *RAGHUVATHIA ROW & SONS, PROPRIETORS OF STATE FOR INDIA* (1921). I L R 44 Mad 681

s 3 (a)—

Per CHANDRASEKHARAN

J. To acquire land is not necessarily the same thing as to purchase the right of the land simply in it but means the purchase of such interest as a clog the right of the Government to use it for any purpose they like. *THE GOVERNMENT OF BOMBAY v. THE SURAT HAT MERCHANTS* I L R 34 Bom 618

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ing. If right is in eminent domain limits—It is a legal right of the Government for building purposes and it is not a right of the Government to use it for any other purpose. *THE GOVERNMENT OF BOMBAY v. THE SURAT HAT MERCHANTS* I L R 34 Bom 618

LAND ACQUISITION ACT (I OF 1894)

s 3 (a)—contd

claim—Ad valorem Court fee on memo of appeal—Court Fees Act (VII of 1870) s 3. The claimant owned a bungalow which stood within the limits of Ahmedabad cantonment. The Government having acquired the bungalow under the Land Acquisition Act the claimant was awarded Rs 4500 as compensation for the superstructure of the bungalow and Rs 18631 were awarded to Government as compensation for the land on the footing that the land being within cantonment limits belonged to Government. The claimant appealed to the High Court contending first that the superstructure was undervalued and secondly that he was entitled to the full compensation for land also inasmuch as under the provisions of the Land Acquisition Act the Court had no jurisdiction to try any question of title or apportionment between the claimant and Government. The memorandum of appeal bore a Court fee stamp of Rs. 2 only as the claim in appeal was treated as one of apportionment of compensation between the claimant and Government. A preliminary point having been raised whether the memorandum of appeal was properly stamped—Held by *Shah and Harward JJ* that the memorandum of appeal should bear Court fee stamp ad valorem on the value of the land claimed since what was styled as apportionment was really the determination of the amount payable by Government to claimant for the land. On the question whether proceedings under the Land Acquisition Act were proper to determine compensation when the land was claimed by Government—Held by *Shah and Crump JJ* that in a proceeding under the Land Acquisition Act it is competent to the Court to adjudicate on any question of title to the land acquired or to apportion the amount of compensation for it as between the claimant and Government. *The Government of Bombay v. Peshwa Sulebs* (1909) 31 Bom 618 approved. *PER DUTTA J.*—Under the Land Acquisition Act what is acquired is the land which includes all that is stated in clause (a) of s 3 of the Land Acquisition Act. But in the case of a land with superstructure thereon in which either the Government have an limited interest or wherein that interest is a matter of dispute between a claimant interested in the property and the Government it is open to the Government to acquire that property under the Act. When it comes to a question of determining the market value of the property acquired and the amount payable as compensation thereon the property is treated as the property having a limited interest in the property. It is not the interest of the Government which is treated as the interest of the claimant. The question of title to the land is really a matter of title to the land. The claimant is entitled to the market value of the land if the Government in the land acquired. *MANJIVAN CHANDRA & THE ASSIS TANT COLLECTOR OF PUNE AHMEDABAD* (1909). I L R 45 Bom 277

ss 3 (b) 11 and 31 (1) and (2)—

Compensation interest deposited in Court under s 31 (1)—Cl. 1 of Government to deduct postage and fees payable by Government on such deposit out of the money deposited—Per on interest in compensation money—Compensation money due to be apportioned among Government and claimant under the Land Acquisition Act (I of 1894) to acquire a piece of land vested in the City of Bombay Im-

LAND ACQUISITION ACT (I OF 1894)—*contd*

s 3 (b)—*contd*

Improvement Trust under Schedule C of Bombay Act IV of 1898 and in the occupation of one Pestonji Jehangir under an agreement with the Improvement Trust under which he had the right to obtain a lease of the land for 99 years when certain buildings had been erected in accordance with the terms of his agreement. The amount payable as compensation for the land was fixed by the Collector under s 11 of the Act and was apportioned under the same section between the Government the Improvement Trust and Pestonji Jehangir. The amount awarded to the Improvement Trust was deposited by the Collector in Court under s 31 (2) of the Act and poundage and fees thereon were paid by Government. Pestonji Jehangir raised objections to the basis on which his claim had been valued but this matter was settled by a consent decree. Government thereon claimed to deduct the amount of the poundage and fees paid by them from the amount deposited in Court. Held that the Court had only power to direct payment of the compensation money without any deduction to the person or persons interested therein and consequently had no power to direct that portion of such money should be refunded to Government as representing the poundage and fees paid by them when the money was deposited in Court. *See also* It is possible for a person to be interested in the compensation money within the meaning of cl 11 of the Act without having an interest in the land in the legal sense of the term and that the Collector and the Court should apportion the sum awarded among the persons interested as far as possible in proportion to the value of their interests the market value of which might afford some guide as to the amount to be apportioned in respect of that interest but only considered in relation to the total sum awarded as compensation. *Pestonji Jehangir Modi in the matter of* (1911)

I L R 27 Bom 76

s 3 (b), 18

Award of compensation

by Revenue Divisional Officer—Application for reference to Court—Person claiming interest—Power of Collector to refuse to refer—Order refusing reference—Judicial or administrative order—Reference petition to High Court—Power of High Court to review—Civil Procedure Code (Act V of 1908) s 115—Government of India Act (5 & 6 Geo 7 Cap 61) s 107. An order passed by a Revenue Divisional Officer dismissing an application under s 18 of the Land Acquisition Act (I of 1894) for a reference to the Court regarding his award of compensation for certain lands is a judicial order and is subject to revision by the High Court. *The Administrator General of Bengal v The Land Acquisition Collector* 12 C W N 241 followed. *East & Co v Deputy Collector of Medra* 20 M L T 335 dismissed from s 18 (a) with s 3 (b) of the Act enables any person claiming an interest in the compensation who has not accepted the award to require a reference to the Court. It is no part of the Collector's duty to decide whether the claim is well founded and he is not authorized to refuse to make the reference merely because he may think the claim is not well founded. *Parasurama Aiyar v Land Acquisition Collector* 1 Aluhat (1918)

I L R 42 Mad. 221

LAND ACQUISITION ACT (I OF 1894)—*contd*

ss 3 (f), 6—

"Public Purpose" meaning of

The provision of a suitable house for Government Officers in Bombay held to be a public purpose. *HAMABAI FRANKER v SECRETARY OF STATE*

I L R 39 Bom 279

s 6—

See s 3

I L R 39 Bom 279

See LAND ACQUISITION

I L R 48 Cal 892 916

ss 11 (3) (7), 11 18 25 31 48 and 41 (2)—

See LAND ACQUISITION

I L R 44 Bom 707

ss 9, 23 (1) (4) 24 (6) 48—

See RECOURTMENT

I L R 45 Cal 343

ss 6 23—

See LAND ACQUISITION

I L R 41 Cal 967

s 7—

See RAILWAYS ACT (IX OF 1880) s 7

I L R 38 Bom 565

I L R 41 Bom 291

s 11—

See LAND ACQUISITION

I L R 48 Cal 892

Procedure—Occupier of land ought to be compulsorily acquired—Notice under s 9 cl (3) of the Land Acquisition Act 1894 the occupier of land concerning which a public notice has been given under cl (1) of the section is entitled to such notice as will give him in the same manner as the persons mentioned in cl (2) fifteen days interval in which to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation etc. *Krishna Sar v The Collector of Bareilly* (1917)

I L R 39 All 534

s 9 to 21 50 53—

See LAND ACQUISITION

I L P 38 Cal 230

ss 9 18 25—Effect of omission of owner to state his claim under s 9—Interference under s 28—Limitation of powers of Judge. The facts that there had been previous negotiations between the Government and a person who a land the Government wished to acquire and that the Government was aware of the price which the owner had asked for the land would not afford a sufficient reason for the owner omitting to put in any claim under s 9 of the Land Acquisition Act 1894 nor relieve the owner from the consequence of such omission as set forth in s 25. *KARATI DAT v THE SUPERINTENDENT OF DEBRA DUK* (1914)

I L P 37 All 69

ss 9 23—Omission to state claim in answer to notice—Owner not entitled to claim more than what was awarded by the acquisition officer. It is intended by s 9 cl (1) of the Land Acquisition Act that the owner of property about to be acquired should appear and state his claim in the manner provided by the clause as to enable the acquire-

LAND ACQUISITION ACT (I OF 1894)—*contd*— ss 9 25—*contd*

tion officer to make a fair reasonable and proper award based upon a proper inquiry after the proper means have been placed before him for holding such inquiry S 25 cl (2) makes the refusal or omission to comply with the provisions of s 1 (2) without sufficient cause an absolute bar to the obtaining of a greater sum than that awarded by the Collector. SECRETARY OF STATE FOR INDIA = BISILAN DAT (1911)

I L R 33 All 376

beyond time but no objection raised before Judge—Objection not entertainable in appeal In a case under the Land Acquisition Act the owner's claim was not filed until after the period prescribed therefor but no objection was taken on that score before the Collector. *Held* that it was too late to raise the objection when the case had come in appeal before the District Judge. LACHMAN PRASAD = SECRETARY OF STATE FOR INDIA IN COUNCIL.

I L R 48 All 652

When a claimant appeared before the Collector on the date specified in a notice under s 9 and probably made a verbal statement but filed his petition of claim next day held that this was sufficient compliance with the notice under s 9 or alternately sufficient reason under s 25. GYANENDRA NATH PAL = SECRETARY OF STATE FOR INDIA.

25 C W N 71

ss 9 (3) and 45—*Notice of award—Want of notice of acquisition proceedings* The Collector's failure to serve notice of the intended acquisition on the occupier or owner as required by ss 9 (3) and 45 of the Land Acquisition Act does not make the subsequent proceedings such as the award void so as to entitle the owner or occupier to resist a suit in ejectment. *Ganga Ram Marwari v Secretary of State for India* (1903) I L P 30 Cal 576 followed. KASTURI PILLAI v MUNICIPAL COUNCIL, ERODE (1900).

I L R 43 Mad 280

— s 11

See s 3

I L R 37 Bom 76

See LAND ACQUISITION

I L R 44 Bom 797

I L R 48 Cal 892

15 C W N 87

Apportionment of compensation by Collector—S 18 and proviso to s 31 cl (2) maintainability of a separate suit by a person dissatisfied with the apportionment but who did not ask for reference to Court Some lands were acquired for a Railway and the Collector after serving notice under s 9 of the Land Acquisition Act on the zamindar and the putnidar apportioned the compensation half and half between them. Neither party applied for any reference to Court under s 18 of the Act and the putnidar withdrew the amount awarded to him. The zamindar thereupon brought a suit for recovery of the amount withdrawn by the putnidar on the ground that under the putnidar's *loluhiyat* the putnidar was not entitled to any portion of the compensation money. *Held*—That the zamindar having been served with notice under s 9 of the Act was bound to apply for a reference under s 18 when he was dissatisfied with the award and

LAND ACQUISITION ACT (I OF 1894)—

— s 11—*contd*

he cannot maintain a suit in the ordinary Civil Court to reopen the question. The Act creates a special jurisdiction and provides a special remedy. And ordinarily when jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy such jurisdiction is exclusive and the ordinary jurisdiction of the Civil Court is ousted. Under the third proviso to s 31 cl (2) a person who was a party to the apportionment proceedings cannot reopen the question by a regular suit. The proviso must be given a limited application and it applies only to cases where the person was under a disability or was not served with notice of the proceedings before the Collector. SAINESH CHANDRA SARKAR = SIR BEJOY CHAND MAHATAB BAHADUR.

20 W N 506

— ss 11 and 12—A person in possession without payment of rent for 12 years preferred to collateral heir of last male owner. RAJ BUNSA SAHAY = MAHABIR PRASAD.

20 W N 828

— ss 11 12 18 31—

See BOMBAY CITY IMPROVEMENT TRUST ACT (BOM ACT IV OF 1893) s 48 (11) I L R 42 Bom 54

— s 18—

See s 3

I L R 42 Mad 231

See LAND ACQUISITION ACT

I L R 34 Bom 436

S LAND ACQUISITION

I L P 38 Cal 220

I L R 44 Bom 797

1. *Hereditary Offices Act (Bom Act III of 1874) ss 10 and 13—Mahar's Vatan land—legislation by Government—Award—Compensation—Title by adverse possession against Vaandar—Collector's certificate—Jurisdiction* Certain land with buildings thereon having been acquired by Government under the Land Acquisition Act (I of 1894) the Assistant Collector passed an award whereby he awarded by way of compensation one sum to the owner of the buildings on the land and another to certain Mahar Vatanars on account of the land being Mahar's Vatan. The owner of the buildings having objected to award the Assistant Collector at the instance of the objector referred the matter to the District Court under s 18 of the Act. The District Judge found that the objector had acquired title to the land by adverse possession and thus became entitled to the compensation on account of the land as against the Mahar claimants. Subsequently the Collector forwarded to the District Court a certificate issued under s 10 of the Hereditary Offices Act (Bom Act III of 1874) that the order for the payment of the compensation to the objector should be set aside in accordance with the provisions of ss 10 and 13 of the Act. Thereupon the District Judge holding that he had no jurisdiction to decide whether the property was Vatan or not in the face of the Collector's certificate cancelled his order. The objector having appealed against the said order *Held* restoring the award of the District Court that an award under the Land Acquisition Act (I of 1894) was not a decree or order capable of execution under the Civil Procedure Code (Act V of 1908) and was therefore not within the purview of s. 10

LAND ACQUISITION ACT (I OF 1894)—contd

ss 18—contd

of the Hereditary Offices Act (Bom Act III of 1874) Held further that the award of the District Court which was the cause of the certificate made it clear that the Mahar's property had been acquired by the objector by adverse possession before the commencement of the proceedings for the acquisition of the land by Government *Per curiam* Even if it could be said that there was any danger of the passing of the ownership by virtue of an execution of a decree or order in the Land Acquisition proceedings it could not be said that that result was arrived at without the sanction of Government who set the machinery of the Act in motion for the acquisition of the land *Alilanth v The Collector of Thana I L R 22 Bom 502 Collector of Thana v Bhaskar Malade I L R 8 Bom 264 Raghava v Amalgoda I L R Bom 283 referred to LADHNA EBBANIN and Co v THE ASSISTANT COLLECTOR POONA (1910)*

I L R 35 Bom 146

Money paid out to one party before reference heard—Power of Court to entertain reference—Inherent power to recover the money The mere fact that the compensation money awarded under the Land Acquisition Act has been paid out to a party does not oust the jurisdiction of the Civil Court to entertain a reference duly made under s 18 of the Act Where the party to whom the money had been paid is found to have no title to receive it the Court to which the reference has been made has inherent power to recall it In this case the High Court directed that on failure of the party to restore the money within a time limited the other party would be entitled to recover it in execution *JOGEESH CHANDRA RAY v YAKUB ALI (1912)*

17 C W N 1057

Reference to Court for valuation—Duty of Court to see whether the evidence displaces Collector's award—Effort when evidence exaggerated and reckless Compensation payable for land acquired by Government cannot be ascertained with mathematical accuracy and the Court has to see whether the evidence adduced displaces the amount awarded by the Collector The valuation of the Collector is not displaced by evidence of value given by the claimant which is so exaggerated and reckless that no reliance can be placed thereon *HINDRANI SECRETARY OF STATE FOR INDIA (1911)*

22 C W N 659

Application by claimant for reference on the ground of inadequacy of award—Reference if bad because grounds not given in detail There is nothing in the Land Acquisition Act which requires a claimant to state the grounds in detail upon which in applying for a reference under s 19 of the Land Acquisition Act he claims a larger sum than that awarded by the Collector *MAHATANDI PAL v THE SECRETARY OF STATE FOR INDIA IN COUNCIL*

24 C W N 716

Proceedings under the Act on account to a new enquiry by the District Judge and not an appeal *BOMMADEVENDRA VEI RATA v ATTORNEY GENERAL*

I L P 36 Mad 395

ss 18 and 26—Whether the Court competent to consider the compensation as a whole or confine itself to any particular object on made Certain land belonging

LAND ACQUISITION ACT (I OF 1894)—contd

ss 18 and 26—contd

to the appellants was acquired by Government for the new capital of India at Delhi The Special Land Acquisition Officer made a separate valuation for wells buildings trees and for the land the total of the various items with 15 per cent addition amounting to Rs 11 613 The appellants raised objections and a reference was made under s 18 of the Land Acquisition Act to the District Judge of Delhi who came to the conclusion that having regard to prices paid for lands in the immediate vicinity the market value of the property acquired was approximately Rs 10 000 and as that sum with 15 per cent addition amounted to slightly less than that awarded by the Land Acquisition Officer maintained the original award Against this decision the present appeal was presented and it was contended that the District Judge had no power to examine the compensation awarded as a whole but should have confined himself to a consideration of the valuation of the various parts into which it had been split up by the Land Acquisition Officer Held that when a case is referred under the Land Acquisition Act the whole case is referred subject to the limitation in s 26 of the Land Acquisition Act and not merely any particular objection and the District Judge was therefore right and indeed bound to consider the question of the compensation awarded in its entirety *Gangadhara Sastri v Deputy Collector of Madras (16 Indian Cases 270)* followed *British India Steam Navigation Co v Secretary of State for India (I L R 38 Cal 230)* not followed *ZAT UD DIN v THE SECRETARY OF STATE*

I L R 1 Lah 352

ss 18 30—

See MORTGAGE I L R 42 Cal 1146

s 23—

See LAND ACQUISITION

I L R 41 Cal 967

Compensation—Market value of land—Valuation by belts The Government acquired land on the banks of the Hugly The owners objected to the Collector's award The Special Judge on reference determined the amount of compensation by bringing his calculations on a system of dividing the land into belts On appeal the High Court rejected the Special Judge's method of valuation and upon a careful consideration of previous awards and prices realised on sales of land in the neighbourhood and other matters increased the amount Held on the appeal of the Government to His Majesty in Council that the argument based on the great experience of the Special Judge in such cases amounted to a denial of the right of the High Court to review his findings The judgment of the High Court which gave due weight to the evidence in the case was affirmed *SECRETARY OF STATE FOR INDIA v THE INDIA GENERAL STEAM NAVIGATION AND RAILWAY CO LD (1909)*

I L R 36 Cal 967

14 C W N 134

Although in ascertaining the market value of land sought to be acquired under Act No I of 1894 the general principle to be applied is that the value of the land should be calculated with reference to the most lucrative and advantageous way in which the land might be

LAND ACQUISITION ACT (I OF 1894)—*contd*s 23—*contd*

used if it is apparent that the use of such land for some special purpose *s.g.* as building site would be permitted the land should not be valued as if it could be utilized for such purpose *Steiburg v Metropolitan Board of Works* L P C Q 1 37 referred to *USAGAR LAL v THE SECRETARY OF STATE FOR INDIA* I L R 33 All 733

Orchard land method of valuing In ascertaining the amount of compensation to be paid on the acquisition of orchard land regard should be had to the suitability of the land for orchard purposes. A calculation of the value of ordinary occupancy rights in neighbouring plots and of the value of the trees of which the orchard is composed is not a satisfactory method of arriving at the proper compensation for orchard land and should only be adopted when there is no possibility of a certain value of lands as orchard lands *FLIA M CONEY v THE SECRETARY OF STATE FOR INDIA* IN COUNCIL

s Pat L J 615

See LAND ACQUISITION

I L R 41 Cal 867

Market value of land definition of—How to determine market value whether with reference to commercial value or abstract legal rights—Tenancy at will valuation of In a Land Acquisition case there were two sets of claimants one was a tenure holder and the others were sub tenants in actual occupation of the land acquired. The Collector awarded to the tenure holder the capitalized value of the rent actually recovered by him from the sub tenants. It was contended on behalf of the tenure holder that the award was inadequate. On the other hand on behalf of the Secretary of State it was contended that at the time when the tenant in occupation transferred his interest in the land to the present occupant the rent being increased from Rs 24 to Rs 30 per bigha it was not probable that the rent could be further increased and consequently the capitalized value of this rent was more than adequate. *Held*—That when the rent was enhanced the landlord took premium and did not claim a higher rent as he might well have done if no premium had been paid. Consequently it was not sufficient to award to the tenure holder the capitalized value of the rent as then settled. *Held also*—That the market value means the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land. The Court below in concurrence with the Collector had not awarded any compensation to the sub tenants on the ground that their tenancies were of so precarious a nature that they could not be deemed to have any market value. It was found in evidence that they were tenants at will having no transferable interest in the land but that their interest in the land was frequently sold and substantial prices were paid by the purchasers who thereupon approached the landlord and got his consent to the sale. *Held*—That the sub tenants had an interest in land which had a market value inasmuch as such sales were common because purchasers were able in usual course to secure recognition from the landlord. *Held also*—That the question of market value is to be determined rather with reference to the commercial value than with reference to any

LAND ACQUISITION ACT (I OF 1894)—*contd*s 23—*contd*

abstract legal rights. *Held further*—That the view that the value of land should ordinarily be determined as a whole and the question of apportionment of the compensation awarded amongst claimants of different degrees should thereafter be taken into consideration has not always been accepted in practice. The procedure adopted in the present case namely that the market value of the interests claimed by persons who held interests of different degrees in the property acquired has been determined successively and independently of each other has been followed as a matter of convenience. *GIRISH CHANDRA ROY CHOWDHURY v SECRETARY OF STATE FOR INDIA* IN COUNCIL 24 C W N 184

Circumstances to be considered by the Court in determining compensation discussed Special use of land (in this case for a Municipal drain) is an important factor and introduces the principle of reinstatement *BARODA PRASAD DEY v SECRETARY OF STATE FOR INDIA* (1921) 25 C W N 677

ss 23 (2) and 32—*Hindu widow—Position of widow under the law prevailing in Bikanir—Mode of calculating the 15 per cent extra allowed for compulsory acquisition* A piece of land with some buildings and trees on it was taken up by Government under the provisions of the Land Acquisition Act 1894. The land belonged to a Hindu widow but evidence was given on her behalf that her husband's native country was Bikanir and that according to his personal law his widow would take an absolute interest in the property left by him and not merely an ordinary Hindu widow's estate. *Held* that the widow was entitled to be paid the whole of the price awarded for the land and not merely to have it invested for her and to receive the interest during her life time. *Held also* that the 15 per cent which is to be added for compulsory acquisition was not to be calculated on the value of the land alone but on the combined value of the land building and timber. *KRISHNA RAI v THE SECRETARY OF STATE FOR INDIA* IN COUNCIL I L R 42 All 555

ss 22 49—*Principles of assessment of compensation—Land forming part of compound of house but actually in possession of tenants with occupancy rights* The owner of a house with a compound attached to it let out a large part of the compound to agricultural tenants whom he allowed to acquire occupancy rights therein. *Held* on a question arising as to the principle of assessing compensation for this portion under the Land Acquisition Act 1894 that so far as the owner's interest was concerned compensation was properly calculated at so many years purchase of the annual profits actually received by the owner at the time of the sale. The owner could not in the circumstances be allowed to claim compensation for a building site. *Bombay Improvement Trust v Jalbhoy Ardeshr* I L R 33 Bom 483 referred to *ORDER v THE SECRETARY OF STATE FOR INDIA* IN COUNCIL (1918) I L R 40 All 367

s 25—

See 9

I L R 33 AU
25 C W N

LAND ACQUISITION ACT (I OF 1894)—*contd*

ss 18—*contd*

of the Hereditary Offices Act (Bom Act III of 1874) held further that the award of the District Court which was the cause of the certificate made it clear that the Mahar's property had been acquired by the objector by adverse possession before the commencement of the proceedings for the acquisition of the land by Government *Per curiam*. Even if it could be said that there was any danger of the passing of the ownership by *virtue* or in execution of a decree or order in the Land Acquisition proceedings it could not be said that that result was arrived at without the sanction of Government who set the machinery of the Act in motion for the acquisition of the land. *Milkani v The Collector of Thana I L R 22 Bom 802*. *Collector of Thana v Bhaskar Mahadevi I L R 8 Bom 261*. *Rachapa v Amalgoda I L R 5 Bom 253* referred to. *LADDA EBRAHIM AND CO v THE ASSISTANT COLLECTOR POONA* (1910) **1 L R 35 Bom 146**

2 Money paid out to one party before reference heard—Power of Court to entertain reference—Inherent power to recover the money. The mere fact that the compensation money awarded under the Land Acquisition Act has been paid out to a party does not oust the jurisdiction of the Civil Court to entertain a reference duly made under s 18 of the Act. Where the party to whom the money had been paid is found to have no title to receive it the Court to which the reference has been made has inherent power to recall it. In this case the High Court directed that on failure of the party to restore the money within a time limited the other party would be entitled to recover it in execution. *JOGESH CHANDRA RAY v YAKUB ALI* (1912) **17 C W N 1057**

3 Reference to Court for valuation—Duty of Court to see whether the evidence displaces Collector's award—If it does evidence exaggerated and reckless. Compensation payable for land acquired by Government cannot be ascertained with mathematical accuracy and the Court has to see whether the evidence adduced displaces the amount awarded by the Collector. The valuation of the Collector is not displaced by evidence of value given by the claimant which is so exaggerated and reckless that no reliance can be placed thereon. *MISSISSIPPI SECRETARY OF STATE FOR INDIA* (1917) **22 C W N 659**

4 Application by claimant for reference on the ground of inadequacy of award—If it is not the ground of inadequacy of award there is nothing in the Land Acquisition Act which requires a claimant to state the grounds in detail upon which in applying for a reference under s 18 of the Land Acquisition Act he claims a larger sum than that awarded by the Collector. *MAHARAJA LAL v THE SECRETARY OF STATE FOR INDIA IN COUNCIL* **23 C W N 716**

Proceedings under the Act—Right to a new enquiry by the District Judge and not an appeal. *BOMMADEPETA VEMURATHI v THE DISTRICT JUDGE* **23 C W N 716**

LAND ACQUISITION ACT (I OF 1894)—*contd*

ss 18 and 26—*contd*

to the appellants was acquired by Government for the new capital of India at Delhi. The Special Land Acquisition Officer made a separate valuation for wells buildings trees and for the land the total of the various items with 15 per cent addition amounting to Rs 11 613. The appellants raised objections and a reference was made under s 18 of the Land Acquisition Act to the District Judge of Delhi who came to the conclusion that having regard to prices paid for lands in the immediate vicinity the market value of the property acquired was approximately Rs 10 000 and as that sum with 15 per cent addition amounted to slightly less than that awarded by the Land Acquisition Officer maintained the original award. Against this decision the present appeal was presented and it was contended that the District Judge had no power to examine the compensation awarded as a whole but should have confined himself to a consideration of the valuation of the various parts into which it had been split up by the Land Acquisition Officer. Held that when a case is referred under the Land Acquisition Act the whole case is referred subject to the limitation in s 26 of the Land Acquisition Act and not merely any particular objection and the District Judge was therefore right and indeed bound to consider the question of the compensation awarded in its entirety. *Gangadhar Sastry v Deputy Collector of Madras* (14 Indian Cases 270) followed. *British India Steam Navigation Co v Secretary of State for India* (1 L R 38 Cal 230) not followed. *ZAR UD DIN v THE SECRETARY OF STATE* **1 L R 1 Lah 359**

ss 18 30—

See MORTGAGE **1 L R 42 Cal 1146**

s 23—

See LAND ACQUISITION

1 L R 41 Cal 967

Compensation—Market value of land—Valuation by belts. The Government acquired land on the banks of the Hugli. The owners objected to the Collector's award. The Special Judge on reference determined the amount of compensation by having his calculations on a system of dividing the land into belts. On appeal the High Court rejected the Special Judge's method of valuation and upon a careful consideration of previous awards and prices realised on sales of land in the neighbourhood and other matters increased the amount. Held on the appeal of the Government to His Majesty in Council that the argument based on the great experience of the Special Judge in such cases amounted to a denial of the right of the High Court to review his findings. The judgment of the High Court which gave due weight to the evidence in the case was affirmed. *SECRETARY OF STATE FOR INDIA v THE INDIA GENERAL STEAM NAVIGATION AND RAILWAY CO LD* (1903) **1 L R 36 Cal 967**

14 C W N 134

Although in ascertaining the market value of land sought to be acquired under Act No 1 of 1894 the general principle to be applied is that the value of the land should be calculated with reference to the most lucrative and advantageous way in which the land might be

ss 18 and 26—Whether the Court is bound to consider the compensation as a whole or only as to any particular objection made. Certain land belonging

LAND ACQUISITION ACT (I OF 1894)—*contd*s 32—*contd*

cases where a Hindu widow inherits moveable property and the law applicable to the latter class does not apply to the former. *Quare* Whether the Land Acquisition Court could compel refund of the money improperly withdrawn in violation of s 32. *Abin Kabi v Banakia* 1 I L R 32 Cal 971. *Cobaird Pans v Brinda Pans* 1 L R 35 Cal 1101 at 12 C W N 1039 referred to. *MAHARAJA DA I R ABINER CHANDRA DUTT* (1910) 14 C W N 1024

Investment in the purchase of other lands—If includes erection of buildings. Some lands having been acquired for the Calcutta Improvement Trust a sum of Rs 244,000 was deposited with the President of the Calcutta Improvement Tribunal. The Trustees of the estate to which the lands belonged applied for delivery of the money to them in order that they might erect buildings on the emptied portion. The President refused. *Held* that s 32 of the Land Acquisition Act as amended by the Calcutta Improvement Act provides that the Tribunal shall order the money to be invested in the purchase of other land to be held on like conditions and having regard to the definition of land s 32 includes the erection of buildings. *In re GANFNDRA MULLICK* 23 C W N 597

ss 35 36 (2)—*Compensation*—*Principle on which it should be awarded*. Where cultural land in the hands of tenants was acquired temporarily for the purpose of digging kankar. *Held* that having regard to s 36 of the Land Acquisition Act 1894 such portion of the compensation as might be awarded to the owner for the purpose of restoring the land to its original condition was not assessable until after the term of occupation had expired. In the circumstances of the case also this amount was not rightly assessed on the probable value of the kankar which might hypothetically be extracted from the land. *SECRETARY OF STATE FOR INDIA v ABDUL SALEEM KHAN* (1915) 1 L R 37 All 347

s 45—

See s 9 1 L R 43 Mad 280

s 48—

See LAND ACQUISITION

1 L R 44 Bom 497

ss 48 and 51—

See LAND ACQUISITION

1 L R 44 Bom 297

s 49—

Question whether land under acquisition part of hoise—Reference to Court—*Refusal by Collector*—High Court if may interfere in revision. Where a Land Acquisition Collector refused to make a reference to the Civil Court under s 49 of the Land Acquisition Act the High Court in revision set aside his proceedings subsequent to the refusal and directed the Collector to proceed according to law. *The Administrator General of Bengal v The Land Acquisition Deputy Collector 24 Parganahs* 12 C W N 241 followed. *British India Navigation Co v Secretary of State for India* 12 C L I 505 s c 15 C W N 87 referred to. An application for a reference under the section

LAND ACQUISITION ACT (I OF 1894)—*contd*s 49—*contd*

may be made at any time before the award is actually made. *KISHNA DAS ROY v THE LAND ACQUISITION COLLECTOR OF LARNA* (1911) 10 C W N 327

Acquisition of part of a house—reference to Civil Court duty of Deputy Collector to make—refusal to refer—High Court's power to interfere with order of refusal—*Possession*. The High Court has jurisdiction to interfere with an order refusing to refer to the civil court a question under the second proviso to sub s (1) of s 49 of the Land Acquisition Act 1894. In making or refusing to make a reference under that proviso the Deputy Collector is a court. *VARASWATTI PATTAK v THE LAND ACQUISITION DEPUTY COLLECTOR OF CHAMPARAY* 11 Pat L J 204

s 49 (1) 54—

See LAND ACQUISITION

1 L R 43 Cal 665

1 L R 46 Cal 881

s 52—

See LAND ACQUISITION

1 L R 48 Cal 916

s 53—

See RECORDS POWER TO CALL FOR.

1 L R 43 Cal 239

The Court can enforce refund of compensation money taken from Court in certain instances. *COLLECTOR OF AHMEDABAD v LARAJ MULJI* 1 L R 35 Bom 255

Review whether District Judge may order—Code of Civil Procedure (Act V of 1908) O XLVII. A District Judge is competent to review his own order apportioning the compensation money paid on compulsory acquisition of land between the parties entitled to it. *Rangoon Lalaloung Co v Collector of Rangoon* 1 L R 40 Cal 21 referred to. *SHEER SAKTI NARAYAN SINGH v BIR SINGH* 5 Pat L J 253

s 53 54—

See ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1901) ss 10 21

1 L R 42 Bom 100

Land—Compulsory acquisition—Compensation—Award by Assistant Judge—Appeal to the District Judge—*Second appeal*—Practice and procedure—*Civil Procedure Code* (Act V of 1908) ss 96 100. Where an award is made by the Assistant Judge under the provisions of the Land Acquisition Act 1894 and there has been an appeal to the District Judge no second appeal can lie from the appellate decision. *NATHU BHAI NARAYAN v MANORDEO LALDAI* (1911) 1 L R 36 Bom 360

s 54—

See APPEAL

1 L R 39 Cal 393

s LAND ACQUISITION

1 L R 43

1 L P 46

1 L R 40

See LIMITATION ACT 1908

1 L R.

(2379)

LAND ACQUISITION ACT (I OF 1894)—contd

ss 25 and 31—

See LAND ACQUISITION I L R 44 Bom 297

s 26—

Sees 18

I L R 1 Lah 352

s 30—Compensation—Mode of apportioning amount allotted as compensation between different interests Where land which is taken up under the Land Acquisition Act belongs to two or more persons the nature of whose interest therein differs the compensation allotted therefor must be apportioned according to the value of the interest of each person having rights therein so far as such value can be ascertained. *HIRDE NABAIN V POWELL* (1912) I L R 35 All 6

Reference to Civil Court

if lies after payment of compensation to one party by Collector—Order by Civil Court directing Government to pay compensation to party found entitled to it and to realise the amount wrongly paid from the other party—Facts to be proved by claimant in order to be entitled to compensation—Road cess return value of to show status as *lakhtaj dar* The appellant who was the first party claimed that he had a *lakhtaj* title to a land acquired under the Land Acquisition Act The second party claimed as *putnidare* and *darpatindur* The Collector made an award in favour of the first party and the amount of compensation was actually paid to him On a reference to the Civil Court under s 30 of the Act the Subordinate Judge found in favour of the second party and directed the Government to pay the compensation to them and to realise the amount previously paid to the first party from him Held that though the Land Acquisition Act clearly contemplates that when there is a dispute as to apportionment the reference to the Civil Court under s 31 should be made before any payment has been made still there is nothing in the Act that prohibits the Land Acquisition Collector from making the reference after payment of compensation to one of the parties When such a reference has been made it is undesirable that the party who succeeds in showing that the Collector's order was wrong should have to resort to a regular suit to compel the opposite party to refund the compensation to which he has been held not to be entitled nor can the rights of the opposite party be in any way prejudiced by the reduction of litigation That the omission of the appellant to file any road cess return with regard to the land went strongly against his claim to have ascertained a *lakhtaj* title to it The High Court varied the decree of the Subordinate Judge and ordered the first party to pay the amount of compensation received by him to the second party with interest at 6 per cent per annum from the date of withdrawal Held further that a claimant in a Land Acquisition proceeding cannot get no share of the compensation without establishing either title to or possession of the land acquired. *SATISH CHANDRA GUPTA V ANANDA GOPAL DAS* (1916) 20 C W N 816

s 31 cl (2)—

s 3

I L R 37 Bom 76

See NEWAY CITY IMPROVEMENT TRUST ACT 1894 s 49

I L R 42 Bom 51

s 4 SECRET

I L R 40 Cal 895

LAND ACQUISITION ACT (I OF 1894)—contd

s 31 32—Debtor lands—Status of *shebait*—Order for deposit of compensation money there being no person competent to alienate the lands Where certain lands dedicated to an idol were acquired under the Land Acquisition Act and the application of the *shebait* for payment of the compensation money was rejected and an order for deposit thereof in Court was made Held that a *shebait* has no power to alienate the dedicated property in the general character of his rights and the order made was a proper order. *RAM PRASAD NARAY* ■ SECRETARY OF STATE FOR INDIA (1913) 19 C W N 652

s 32—

See COURT FEE I L R 39 Cal 906

See LAND ACQUISITION

I L R 39 Cal 92

Bhagdar and Narva

dar Act (Bom Ac V of 1862) s 3—Unrecognised sub division of a *narva* holding—Compulsory acquisition The provisions of s 32 of the Land Acquisition Act (I of 1894) cannot be made applicable to a case where the land compulsorily acquired is an unrecognised sub division of a *narva* holding. *PER BACHELOR J* The only case contemplated by the draftsman (in s 32 of the Land Acquisition Act 1894) was the case where the legal estate was in a person possessing only a limited interest while outstanding rights were in a beneficiary or reversioner who upon the exhaustion of the limited estate would become in the words of the clause 'absolutely entitled to the land. *ASANTANT COLLECTOR OF KAIRA V VITHAL DAS* (1915)

I L R 40 Bom 254

Widows estate—*Purhase* of widow's estate if may withdraw compensation money—Refund of money withdrawn power of Court to order—Investment of compensation money A widow's estate in a property was sold without any legal necessity and purchased by the defendant Subsequently the land was acquired under the Land Acquisition Act and the defendant withdrew the compensation money In a suit by the reversioners for a declaration that they were not bound by the sale to the defendant and for a deposit of the money in Court for investment in Government securities Held that the defendant could be compelled to refund the money into Court for the purpose of investment and the Court has authority to give directions for proper investment of the money in the interest of the reversioners in accordance with the rules of justice equity and good conscience in the absence of any statutory power s 32 of the Land Acquisition Act applies to Hindu widows who hold possession of property as limited owners. *Sheo Palan v Mohri* I L R 21 All 354 *Sheo Prasad v Jaleha* I L R 24 All 139 followed *Mahammad Ali v Ahamed* 11 I L R 26 Mad 236 distinguished Till the money passes into the hands of a person absolutely entitled thereto there is constructive reconversion of it into land s 32 makes it reasonably clear that although an owner may be deprived of the land for the sake of public purposes the Legislature intended that the protection enjoyed by reversionary heir when land is in the hands of limited owners should not be reduced by the acquisition alone be completely withdrawn Cases of this kind where land has been compulsorily converted into money stand on a different footing from

LAND ACQUISITION ACT (I OF 1894)—contd

s 32—contd

cases where a Hindu widow inherits moveable property and the law applicable to the latter case does not apply to the former. *Quare* Whether the Land Acquisition Court could compel refund of the money improperly withdrawn in violation of s 32. *Abin Kati v Banalata* I L R 32 Cal 371. *Cobinda Pani v Branda Pani* I L R 35 Cal 1101. s 32 C II \ 1039 referred to. *MRINALINI DAI v ABYASH CHANDRA DUTT* (1910) 14 C W N 1024

Investment in the purchase of other lands—If includes erection of building. Some lands having been acquired for the Calcutta Improvement Trust a sum of Rs 244,000 was deposited with the President of the Calcutta Improvement Tribunal. The Trustees of the estate to which the lands belonged applied for delivery of the money to them in order that they might erect buildings on the exempted portion. The President refused. *Held* that s 32 of the Land Acquisition Act as amended by the Calcutta Improvement Act provides that the Tribunal shall order the money to be invested in the purchase of other land to be held on like conditions and having regard to the definition of land s 32 includes the erection of buildings. *In re GAYENDRA MULLICK* 25 C W N 597

ss 35 36 (2)—*Compensation*—Principles on which it should be awarded. Where cultural land in the hands of tenants was acquired temporarily for the purpose of digging kankar. *Held* that having regard to s 36 of the Land Acquisition Act 1894 such portion of the compensation as might be awarded to the owner for the purpose of restoring the land to its original condition was not assessable until after the term of occupation had expired. In the circumstances of the case also this amount was not rightly assessed on the probable value of the kankar which might hypothetically be extracted from the land. *SECRETARY OF STATE FOR INDIA v ABDUL SALAM KHAN* (1915) I L R 37 All 347

s 45—

Sec 9 I L R 43 Mad 280

s 48—

See LAND ACQUISITION

I L R 44 Bom 497

ss 48 and 51—

See LAND ACQUISITION

I L R 44 Bom 297

s 49—

Question whether Land under acquisition part of house—Reference to Court—Refusal by Collector—High Court if may interfere in revision. Where a Land Acquisition Collector refused to make a reference to the Civil Court under s 49 of the Land Acquisition Act the High Court in revision set aside his proceedings subsequent to the refusal and directed the Collector to proceed according to law. *The Administrator General of Bengal v The Land Acquisition Deputy Collector 21 Pargannah* 12 C W N 241 followed. *British India Navigation Co v Secretary of State for India* 12 C L I 505 s 15 C W N 87 referred to. An application for a reference under the section

LAND ACQUISITION ACT (I OF 1894)—contd

s 49—contd

may be made at any time before the award is actually made. *KRISHNA DAS POY v THE LAND ACQUISITION COLLECTOR OF LARNA* (1911)

10 C W N 327

Acquisition of part of a house—reference to Civil Court duty of Deputy Collector to make—refusal to refer—High Court's power to interfere with order of refusal—Revision. The High Court has jurisdiction to interfere with an order refusing to refer to the civil court a question under the second proviso to sub s (1) of s 49 of the Land Acquisition Act 1894 in making or refusing to make a reference under that proviso. The Deputy Collector is a court. *SARASWATI PATTAN v THE LAND ACQUISITION DEPUTY COLLECTOR OF CHAMPARAN* 11 Pat L J 204

s 49 (1) 54—

See LAND ACQUISITION

I L R 43 Cal 665

I L R 40 Cal 861

s 52—

See LAND ACQUISITION

I L R 43 Cal 616

s 53—

See PRECINCTS POWER TO CALL FOR

I L R 43 Cal 239

The Court can enforce refund of compensation money taken from Court in certain instances. *COLLECTOR OF ANNEPPOUR v LARAJI MULLAI* I L R 25 Bom 255

Person whether District Judge may order—Code of Civil Procedure (Act V of 1908) O VIII A District Judge is competent to review his own order apportioning the compensation money paid on compulsory acquisition of and between the parties entitled to it. *Pangon Bhatnagar v Collector of Jangam* I L R 40 Cal 21 referred to. *SHREE SAKTI NARAIN SINGH v BIR SINGH* 5 Pat L J 253

s 53 54—

s 54 ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904) ss 10 21

I L R 42 Bom 100

Land—Compulsory acquisition—Compensation—Award by Assistant Judge—Appeal to the District Judge—Second appeal—Practise and procedure—Civil Procedure Code (Act V of 1908) ss 97 100. When an award is made by the Assistant Judge under the provisions of the Land Acquisition Act 1894 and the award has been an appeal to the District Judge, a second appeal can lie from the appeal. *SHREE SAKTI NARAIN SINGH v MANORCA LALIT* 11 Pat L J 253

s 54—

See APPEAL

I L R 25 Cal 25

See LAND ACQUISITION

I L R 43 Cal 665

I L R 40 Cal 861

I L R 43 Cal 616

See LAND ACQUISITION

I L R 43 Cal 616

LAND ACQUISITION ACT (I OF 1894)—*contd*s 54—*contd*

High Court—Decision
by High Court on appeal—Appeal to Privy Council—
Leave to appeal—Letters Patent 11 Cl 19 An appeal
 does not lie to His Majesty's Privy Council from
 the decision of the High Court on appeal under
 s 54 of the Land Acquisition Act (I of 1894)
Rangoon Pottery Company Ltd v The Collector
Rangoon 11 P 40 Cal 27 followed **SPECIAL**
OFFICER SALTETTE BUILDING SITES : DOSSABHAI
BEZONJI (1917) 1 L R 77 Bom 506

Order directing com-
pensation to be invested in Government securi-
ties if appealable—Award 11 Cl 19 An order
 under s 31 of the Land Acquisition Act by which
 the sum awarded as compensation is directed to
 be invested in Government securities is an in-
 tegral part of the award made in the case and is
 open to appeal under s 54 of the Land Acquisi-
 tion Act **TRIVAYATI DAS v KRISHNA LAL**
DEX (1910) 17 C W N 935

Bombay Civil Courts
Act (XIV of 1869) s 16—Civil Procedure Code (Act
V of 1908) s 96 (1)—Reference to Assistant Judge—
Award not exceeding Rs 5000—Appeal to the
District Judge—Second appeal to the High Court
 not maintainable A reference having been made
 in accordance with the provisions of the Bombay
 Civil Courts Act (XIV of 1869) to the Assistant
 Judge he tried the reference and made an award
 which did not exceed Rs 5000 An appeal was presented
 against the said award to the District Judge and
 he having decided the appeal a second appeal was
 preferred to the High Court *Held* that under
 s 16 of the Bombay Civil Courts Act (XIV of
 1869) the Court authorized to hear appeals from
 the Assistant Judge's Court where the value of
 the subject matter was less than Rs 5000 was
 the District Court and not the High Court and
 no second appeal being expressly given by the
 Act the (second) appeal to the High Court was not
 maintainable **AMBEDKAR HABIBHOY v WAMAN**
DUDHOPUR (1913) 1 L R 38 Bom 337

Order allowing with-
drawal of money deposited under s 31 of appealable
 Under s 54 of the Land Acquisition Act there is
 no appeal against an order of the District Judge
 allowing a Hindu widow to withdraw the compen-
 sation money deposited by the Collector under s 31
 of the Land Acquisition Act **BISWA NATH SINGHA**
v BIDHUNCHANDI DAS (1915) 19 C W N 1290

LAND ACQUISITION JUDGE

See LAND ACQUISITION
 1 L R 118 Cal 230

See MORTGAGE—INTEREST
 1 L R 42 Cal 1146

order of—

See COURT FEE ACT 1910 s 8
 1 L R 39 Cal 806

La Acquisition Judge
powers of—Order for discovery The Court of a
 Land Acquisition Judge is a Court of special juris-
 diction the powers and duties of which are defined
 by statute and it cannot be legitimately invited
 to exercise inherent powers and assume jurisdic-
 tion over matters not intended by the Legislature

LAND ACQUISITION JUDGE—*contd*

to be comprehended within the scope of the enquiry
 before it *Shyam Chander Maridraj v Secretary of*
State for India 11 R 35 Cal 575 *Chandra Sahu*
v Secretary of State for India 8 C L J 39 distin-
 guished It was never contemplated by the statute
 to authorize the Land Acquisition Judge to review
 the award of the Collector to cancel it or to remit
 it to him to be recast modified or reduced The
 Court of the Land Acquisition Judge is restricted
 to an examination of the question which has been
 referred by the Collector for decision under s 18
 and the scope of the enquiry cannot be enlarged
 at the instance of parties who have not obtained
 or cannot obtain any order of reference *Pramotha*
Nath Mitra v Ramlal Das Addy 11 C L J 490
 followed An order for discovery can be made in
 a case under the Land Acquisition Act under O I
 R 12 Civil Procedure Code **BRITISH INDIA STEAM**
NAVIGATION CO v SECRETARY OF STATE FOR INDIA
(1910) 1 L R 58 Cal 230

LAND CESS

S e PROVINCIAL SMALL CAUSE COURTS
ACT (IX OF 1887) ART 30
 1 L R 36 Mad 18

LAND ENCROACHMENT ACT (MAD III OF 1905)

See IRRIGATION CESS ACT (MAD VII OF
1865) s 1 PROVISOS 1 AND 2
 1 L R 40 Mad 886
See MADRAS LAND ENCROACHMENT ACT
 1905

LAND FOR AGRICULTURAL PURPOSES

See BOMBAY LAND REVENUE CODE s 48
 1 L R 34 Bom 239

LAND-HOLDER

See MADRAS ESTATES LAND ACT (I OF
1908) 1 L R 38 Mad 33 1155
 1 L R 39 Mad 1018
 1 L R 44 Mad 677

engagement by with Govern-
 ment—

See MADRAS IRRIGATION CESS ACT (MAD
ACT VII OF 1865)
 1 L R 40 Mad 886

LAND IMPROVEMENT LOANS ACT (XIX OF 1883)

s 7—

See DEKKHAN AGRICULTURIST RELIEF
ACT (XVII OF 1879)
 1 L R 40 Bom 483

s 7 (1) (c)—Sale under—Loan a
 first charge on the land—Sale free of prior encum-
 brances—Improvements effected before receipt of loan
 effect of—How completion of improvements within
 time and extension of time effect of on further
 advance of loan—Proviso to a section use of to
 interpret the section A loan advanced under the
 Land Improvement Loans Act (XIX of 1883) is
 subject to proviso to s 7 (1) a first charge on the
 land for the improvement of which the loan is
 advanced hence a sale under s 7 (1) (c) of the
 Act to recover the loan is free of prior encumbrances

LAND IMPROVEMENT LOANS ACT (XIX OF 1883)—*contd***§ 7 (1) (c)—*contd***

Neither the fact that a portion of the improvement had been effected with the help of a private loan before the loan applied for was actually advanced nor the fact that the Government relaxed the rigour of its rules and allowed the borrower an extension of time to utilize the first instalment of the loan before the second was disbursed makes the loan any the less a loan under the Act. If in effect the loan was utilized for the purpose for which it was borrowed. Though a proviso to a section cannot be used to extend its operation yet in case of doubt or ambiguity as to the meaning of the substantive part of the section the proviso can be looked to to ascertain its proper interpretation. *West Derby Union v Metropolitan Life Assurance Society* [1897] 1 C 647 followed. *Sankaran Nambudripad v Ramaswami Ayyar* (1918).

I L R 41 Mad 691

LAND LAW IN BENGAL

See MINERALS I L R 44 I A 246

LANDLORD

See SPECIFIC RELIEF ACT ss 9 42

I L R 33 Mad 452

See TRANSFER OF PROPERTY ACT s 107

I L R III Bom 500

interest of—

See SALE I L R 45 Cal 294

right of—

See CHAUKIDARI CHAKRAN LAND

I L R 37 Cal 598

LANDLORD AND TENANT

Cols

ABANDONMENT 2387

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MISCELLANEOUS 2436

See ABANDONMENT 2 Pat L J 225

See ADVERSE POSSESSION

I L R 38 Bom 53

I L R 87 Mad 373

See AGRICULTURAL ACT (II OF 1901)—

s 16 I L R 41 All 223

s 16 AND 38 I L R 43 All 608

s 28 29 30 AND 34

I L R 35 All 123

s 34 I L R 40 All 300

ss 74 75 AND 76

I L P 32 All 458

ss 79 AND 95 I L R III All 299

ss 102 AND 198 I L R III All 61

See BOMBAY LAND REVENUE CODE 1890

s 83 I L R 45 Bom 303 and 350

See BOMBAY RENT (WAR RESTRICTION)

ACT 1918

See CIVIL PROCEDURE CODE (1908) O

II R 2 I L R 38 Bom 444

See CHAUKIDARI CHAKRAN LANDS

I L R 37 Cal 57

See EJECTMENT

See EVIDENCE ACT (I OF 1872) s 116

I L R 38 All 226

s 116 I L R 40 Mad 561

See FAZENDARI TENURE

I L R 39 Bom 316

See INTERPLEADER

I L R 37 Cal 552

See KABULIAT 2 Pat L J 40

See LAND ACQUISITION

I L R 45 Bom 725

See LEASE

See LESSOR AND LESSEE

See LIMITATION ACT (II OF 1908) SCH

I ARTS 120 AND 144

I L R 42 Bom 333

See MADRAS ESTATES LAND ACT (VAD

ACT I OF 1908) s 40 CL (3)

I L R 41 Mad 109

See MINERAL RIGHTS

I L R 38 Cal 845

See ORISSA TENANCY ACT 1913

2 Pat L J 46

See PENAL CODE (ACT XLV OF 1860)

s 341 109 I L R 43 Bom 531

See PROVINCIAL INSOLVENCY ACT (III

OF 1907) s 16 I L R 34 All 121

See RENT ACT (BOM ACT II OF 1918)

ss 2(c) 9 I L R 43 Bom 795

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LANDLORD AND TENANT—contd

See *SPOOND APPEAL*. I L R 39 Calc 241

See *TRANSFER OF PROPERTY ACT (IV of 1882)* — I L R 43 All 330

s. 103

I L R 42 Bom 195

s. 111

Adverse Possession—

See *LIMITATION ACT 1908*

ch I Art 120 144

I L R 42 Bom 333

Denial of Title—

See *TRANSFER OF PROPERTY ACT 1882*

s. 112

I L R 35 All 145

See *EVIDENCE ACT 1872*

s. 110

I L R 40 Mad 516

ABANDONMENT

When a tenant having a non transferable occupancy right sells such right to a 3rd person and having obtained a sub lease remains in possession the landlord (in the absence of representation by the tenant of his landlord's title) is not entitled to receive possession as there has been no abandonment. *SEPAROAN v ROJDER RAI* 24 C W N 117

ADVERSE POSSESSION

Adverse possession against landlord—Transfer of non transferable occupancy holding in possession for over 12 years—Payment of rent by him as *marfadar*—Suit for ejectment—Limitation—Limitation Act (IX of 1908) Sch I Art 142 Where a person recorded in the record of rights as a trespasser was in possession of the land in dispute for more than 12 years but had once during that period paid rent to the landlord on behalf of the old tenant and taken a rent receipt in which he was described as a *marfadar* Held that the suit by the landlord for khas possession against the trespasser after 12 years was not barred by limitation. *Ishan Chander v Ram Ranjan 2 C L J 125* and *Ratoo Singh v Sudham Ahir 8 C L J 657* referred to *JADU NATH BELZI v PAJ NARAIN MUKHERJEE* (1912) 17 C W N 459

Adverse possession by tenant—Suit for declaration of title to *jailor* and injunction against defendants—Landlord's title based on *durpumi* lease—Defendants' possession as tenants for 12 years previous to lease—Knowledge of necessary to constitute possession adverse Where the plaintiff sued for a declaration of his title to a certain *jailor* and for an injunction prohibiting the defendants from catching fish in that *jailor* and it was admitted that the plaintiff was entitled to an eight annas share of the *jailor* and the plaintiff claimed the other eight annas share under a *durp* in lease granted to them by one P the *putadar* of the said *jailor* annas share who it was found had no possession at the time of granting the lease to the plaintiff and no knowledge as to who was in actual possession and the defendants proved possession as tenants for 12 years previous to the granting of the lease by P to the plaintiff. Held that the defendants by their possession gained

LANDLORD AND TENANT—contd

ADVERSE POSSESSION—contd

title as against all the world and thus held good as against the person who was in fact their landlord though he did not know and the defendants' possession was a good answer to the plaintiff's claim which was equivalent to a claim for khas possession. *Ishan Chandra v Ram Ranjan 2 C L J 125* *Ichharam Singh v Dhimoney Bohida, I L R 35 Calc 740* s. 12 C W N 636 and *Goyal Krishna v Jalharam 16 C W N 634*, followed. *KALI CHARAN SAHA v DABLUDDIN AHMED* (1913) 18 C W N 654

Adverse possession—Title—Under tenant—Purchase of tenancy by auction purchaser—Incumbrance—Notice of annulment proceedings—Bengal Tenancy Act (VIII of 1885) ss 161 167 When a person has by adverse possession against a sub tenant acquired a statutory title to a portion of the lands comprised in the sub tenancy he has an interest in the sub tenancy so that when on a sale of the superior tenancy for arrears of rent the purchaser seeks to annul the sub tenancy as an incumbrance such person stands in the position of an incumbrancer and is entitled to notice under s 167 of the Bengal Tenancy Act. *BRUSHAN CHANDRA GHOSE v SRI KANTA BAKERJEE* (1916) I L R 45 Calc 756

Tenant setting up permanent right of tenancy by adverse possession—Specific notice of such right must be given to the landlord—Limitation If a person in occupation of land as a tenant wishes to set up a larger claim of permanent tenancy by adverse possession the landlord must have a specific notice of such a claim and until that is done time does not begin to run against the landlord. *Budesab v Hanmanla* (1896) 21 Bom 599 discussed. *BABUSTO RAM CHANDRA v PANDU* (1920) I L R 45 Bom 508

AGRICULTURAL LEASE

Agricultural lease—Days of grace for payment of rent—Forfeiture clause for non payment of rent after days of grace—Relief against forfeiture Courts in India have power to relieve against forfeiture for non payment of rent even in cases where a period of grace is allowed for payment by the lease deed and this rule applies equally to a lease (as in this case) for agricultural purposes. Whether relief against forfeiture should in any particular case be given depends on the facts of that case. *Per SESHAGIRI AYYAR J*—It is open to Courts to look at legislative provisions regarding the liability of other lessees and tenants as embodying the principles of justice equity and good conscience. *Per NARAYAN J*—When the statute specifically excludes one transaction of the same class as that which is being dealt with from its purview the — cannot be applied. The Transfer of Property Act cannot be looked to for guidance in the matter of an agricultural lease. *APPAYYA SRETTY v MANIAM MAD BEHARI* (1915) I L R 39 Mad. 834

FLOODING BY SEA WATER—Land rendered unfit for cultivation—Right of leasee to abatement of rent—Duty to avoid loss in toto—Transfer of Property Act (IX of 1882) s 103 C B (e)—Principle of the action applicable If by an inundation of sea water a portion of lands leased for agricultural purposes becomes unfit for cultivation and the landlord brings a suit to recover

LANDLORD AND TENANT—contd**AGRICULTURAL LEASE—contd**

the whole rent reserved in the let = the tenant can plead as a defence that he is entitled to a proportionate abatement and is not bound to have avoided it = lease in toto The principle of proportionate abatement was recognized in India prior to the Transfer of Property Act and is in accordance with natural justice Neither s 103 B (c) Transfer of Property Act nor its principle is applicable to cases of flooding by sea water of lands leased for agricultural purpose *Sheikh Encasutollah v Sheikh Fakhreddin* (1864) W R Gop (Act X Pulwaga) 47 followed *SUBRAMANIAM PATTAR v KATTAMBALLI P. MA* (1920)

I L R 43 Mad. 132

Annual tenancy—Tenant building on a portion of the land to the knowledge of landlord—Suit in ejectment—Tenant bound to vacate—Landlord bound to compensate in equity for tenant's building The defendant was for a number of years in occupation of plaintiff's land as an annual tenant On a portion of the land the defendant in 1892 erected a building to the knowledge of the plaintiff The plaintiff after giving notice sued to eject the defendant in 1914 and prayed that the land be restored to him by removing the defendant's building The trial Court ordered the plaintiff to get possession on paying Rs. 2,000 to the defendant The appellate Court reversed the decree on the ground that the defendant being allowed without objection to build on a portion of the land the agricultural lease for a year had become a building lease On appeal to the High Court held restoring the decree of the trial Court that the plaintiff was entitled to get vacant possession at the expiration of the defendant's term of tenancy but on the facts of the case he was in equity bound to compensate the defendant for retaining his building *PAM CHATDEA RAGUNATH v VISNU BABAJI* (1920)

I L R 44 Bom. 950

Hut built by tenant—On Lands demised for agricultural purposes—Conversion of the hut into a substantial building—Use of the building by the tenant for agricultural purposes—Conversion allowed A tenant permanent or otherwise of lands used for agricultural purposes is entitled to erect even a substantial building for himself to live in and for agricultural purposes *BHAU MAHABU v VITHAL DATTATRAYA* (1919)

I L R 44 Bom. 609

ALIENATION**See SUB HEADING LEASE**

21 C W N 117

Portion of landlord purchasing riyat's interest The position of the landlord purchasing the riyat's interest under a private alienation and of the landlord purchasing himself at a sale for arrears of rent distinguished. *JANAKIVATH HORE v PRABHAKVI DASI* (1915)

19 C W N 1077

When the landlord purchases at a sale held in execution of a decree possession is delivered to him by the Court as auction purchaser &c on the footing that there is no longer any relation of landlord and tenant between him and the tenant and the possession of the landlord as purchaser cannot be challenged

LANDLORD AND TENANT—contd**ALIENATION—contd**

so long as the sale is not set aside or declared ineffective against the tenants In the case of private purchase such as the present there is no relation of landlord and tenant between the Plaintiff and the Defendants and the mere fact that he obtained a *lobali* from one of the heirs of the original tenants cannot take the case out of the purview of Art 3 Sch III *NABIN CHANDRA SAHA v SURENDR WAJID* 24 C W N 38

BUILDING AND RESIDENTIAL LEASE

Building and Residential Lease—Heritability—Transferability—Transfer of Property Act (14 of 1882) s 108 (j) Where there is a lease for building and residential purpose and the absence of any intention to the contrary indicated either in the terms of the grant or in the nature of the tenancy the leasehold interest is heritable and the tenancy does not determine by the death of the lessee but vests in his legal personal representatives who are entitled to give or receive the usual notice to quit Such a tenancy in the absence and any custom or contract to the contrary is governed by the provisions of the Transfer of Property Act and is consequently *prima facie* transferable under s 108 (j) of that Act *MAHENDRA LAL POT CHOWDHURY v KALSHRYA KAMINI CHOWDHURY* (1910) I L R 37 Calc 37

CESSSES

1—Cesses—Inclusion of in patta—Payment of cesses for a long time—Effect on legality and enforceability of—Rules for determining whether cesses are legal and enforceable—Madras Estates Land Act (I of 1908) s 14—Usage—Contract—Cesses called kanyanam kulavettu tiruppani etc nature and legality of Cesses paid for a long time by the tenant without objection are not necessarily legal and recoverable by the landlord Such of them as have a direct or proximate bearing on the purposes for which the land was let are *prima facie* legal while those having no such bearing are only recoverable under a contract supported by consideration or under a usage proved or presumed from the nature of the case and long course of payments Held accordingly on the facts of the case and the nature of the cesses in question that the cesses called kanyanam kulavettu melaram urai kudavaram urai and swatantram which were paid for a long series of years out of the gross produce before division thereof between the landlord and the tenant were legal and recoverable by the landlord that the cesses called kanyanam and tiruppani paid out of the kudavaram for a long time were not legally recoverable and that the cess for the use of the thrashing floor was recoverable unless the tenant had a thrashing floor in which case the cess ought not to be levied Rules for determining whether cesses paid for a series of years are legal and enforceable pointed out *VADAMALAI THIRUVANATHA SEVGA PANDIAR THEVAR v SANKARANMORTHIN NAIDU* (1918)

I L R 42 Mad. 197

Legal—Charge for taking landlord's water rent within s 3 (II) Estates Land Act (I of 1908)—Res judicata—Competent to try such suit equivalent to s 11 Civil Procedure Code (Act V of 1908) meaning of The words competent to try

LANDLORD AND TENANT—contd

CFSSCS—contd

subsequent suit in s 11 Civil Procedure Code, refer to the competency of the Court which tried the previous suit to entertain the later suit *at the time of the institution of the previous suit* and the fact that it was deprived of jurisdiction to try suits of the nature of the later suit after the institution but some time before pronouncing judgment in the previous suit does not make its decision any the less *res judicata*. Hence the decision of a Munsif's Court in a prior suit for rent operates *res judicata* in respect of a later suit for rent though by reason of the Estates Land Act the Munsif's Court was deprived of jurisdiction to try such suits after the institution but some time before pronouncement of judgment in the prior suit. *Kunji Amma v Paman Menon* I L R 15 Mad 494 explained *Gopi Nath Chabey v Bhagwant Perhad* I L R 10 Cal 607 and *Paghunath Panjah v Issur Chunder Choudhry* I L R 11 Cal 153 followed. A judgment does not cease to have the force of *res judicata* simply because in other suits between the same parties the decision on the same point was different. A charge for taking water belonging to the landlord is rent within s 3 (II) Estates Land Act and it is not an enhancement of rent even if not consolidated with the rent proper. *Thayammal v Mutia* I L R 10 Mad 29 followed. Where such water is taken with the permission of the landlord only a suit for rent therefore can be brought and no suit for compensation for taking it will lie. Where for water so taken even for dry crops the landlord was for long time levying and the tenant was paying the same rent as for water taken for paddy cultivation (*arasaari*) it is reasonable to charge rent at that rate whenever water is taken for dry crops. A landlord is entitled to levy only such cesses as have a direct or proximate bearing on the purposes for which a land is let and mere length of payment will not give a cess which is purely voluntary or illegal a binding character. *eg Mahimani* a cess for payment to a village temple. *Sripapapu Ramanna v Malikarjuna Iruada Vaidu* I L R 17 Mad 43 and *Vadu v ilai Thiruvannatha Seinga Pandia Thevar v Sankarasmoothi Vaidu* I L R 42 Mad 197 followed. Cesses for purposes which are beneficial to both the landlord and tenant can be deducted out of the gross produce such as *kulavettu* (a cess for repair of irrigation sources) and *Pala santantram* (a cess for payment to village artisans and servants). No cess for superintending a harvest (*Ka ganna*) can be claimed where the landlord is entitled to get a fixed rent irrespective of the produce. *VENKATACHALAM CHETTY v ANANTPERUMAL TEVAR* (1919)

I L R 42 Mad 702

COVENANTS

S LANDLORD AND TENANT (LEIS)

S 4 LESSOR AND LESSEE

I L R 48 Cal 176

Breach of

See THE CAL TENANCY ACT 1923

s 13

19 C W N 1196

No right to renewal implied

S 4 KANDYATTA

I L R 39 Bom 625

LANDLORD AND TENANT—contd

COVENANTS—contd

A purchaser at an execution sale of a right title and interest of a tenant's holding under tenure not transferable to anyone but the landlord and containing no covenant against involuntary alienation or for reentry acquires a good title by his purchase. *PROMODO RANGAL GHOSH v ASHWATI KUMAR NAO*

18 C W N 1133

Landlord and tenant

—Renewal covenant of—*Dosara bundbust* meaning of—Where a *labuliyat* stated that after the expiry of the term of the tenancy the tenant would take a *dosara bundbust* and on his failure to take the same the landlord would be competent to grant titlement thereof to any other tenant. *Held* that the covenant was one for renewal on the same terms as the previous tenancy. *GERU PROSANTA BHATTACHARJEE v MADHUSUDAN CHAUDHURY*

26 C W N 901

Permanent lease of

Agricultural land—Covenant against alienation voluntary as well as involuntary with proviso for re entry if enforceable—Purchaser if must be notified by lessor of intention to determine lease before suit—Bengal tenancy Act (VIII of 1885) s 155 Sch III cl (1) if applies—Limitation—Mortgage by lessee sale in execution purchase by mortgagee—Mortgagee if trespasser. A permanent lease of agricultural land contained a covenant against sale gift mortgage etc by the lessees with a proviso for re entry in case the land was transferred or sold by auction. The lessees having mortgaged the land the mortgagees sued on his mortgage and in execution of the decree obtained thereon had the holding sold or purchased it himself and got possession through Court on 23rd November 1898. The original lessees continued in possession of a portion of the land under a sub lease from the purchaser. Plaintiffs who proved their right to a 12 annas share in the interest of the landlord sued the purchaser and the original lessees for ejectment on 20th March 1908. The lower courts having decreed the suit the purchaser only preferred this second appeal. *Held* that the plaintiffs were entitled to recover (joint) possession to the extent of their 12 annas interest the defendant being a trespasser and the suit which was governed by Art 14 of Sch I of the Limitation Act having been instituted within time. *DWARAKA NATH ROY v MATHURA NATH POY*

21 C W N 117

Covenant against

sub letting—Tenant sub letting at higher rent—Breach of covenant—Claim for damages—Damage must be proved. The defendants tenants of the plaintiff sub let the premises at a much higher rent in contravention of the terms of their lease. The plaintiff thereupon brought a suit claiming arrears of rent and also damages for breach of the terms of the lease. *Held* that the mere fact that sub letting resulted in a profit to the tenant would not cause damage to the landlord and the plaintiff not having proved that he had suffered any damage by reason of the breach of the covenant was entitled only to nominal damages. *CURUSHANTAPPA v MALIYIA*

I L R 45 Bom 119

LANDLORD AND TENANT—contd

CUSTOM.

Rights of tenant occupying a house in the abad—Custom—Evidence—Nature of evidence requisite to prove custom—Second appeal. The High Court in second appeal has jurisdiction to consider the evidence given in support of an alleged custom and to determine whether or not that evidence is sufficient in point of law to establish the custom set up. *Hashim Ali v Abdul Pkhan I L R 33 All 698* and *Ram Bilas v Lal Bahadur I L R 30 All 311* followed. *GERRA SINGH v HARMOYND SAKHAI* (1909) **I L R 22 All 125**

DIGWARI TENURE

See DIGWARI TENURE

Landlord and Tenant
—Digwari Tenure is Manbhumi—Grant of Coal Mines by Digwar—Grant of Mohirwar lease—Mine rights right to under the soil—Suit by zemindar claiming mineral rights—Parties to suit—Government—Digwar appoints and liable to dismissal by Government. Though the Digwari tenures in Manbhumi are similar in some respects to Ghatwari tenures in Birbhum as having been originally granted in consideration of the performance of military service to which police duties were attached, and as being hereditary and inalienable the two kinds of tenure are not analogous the Ghatwari had special rights under Regulation XIX of 1814 and as to minerals under Act V of 1869 and paid rent direct to Government and not to the zamindar. The Digwar of Tazra in Manbhumi appointed and liable to dismissal by Government was the holder of two mouzabs at a fixed rent payable to the plaintiff (appellant) in whose zamindari they were situated. He granted a perpetual lease of the coal mines underlying the two mouzabs to a coal company. He took possession and raised and sold a large quantity of coal. In a suit for a declaration of the zamindar's right to the minerals under the soil and for an account and an injunction—Held (reversing the decision of the High Court) that there having been at the time of the permanent settlement no separate settlement with the Digwar of Tazra (if the Digwari tenure then existed which was doubtful and the mineral rights not being vested in him at that time the presumption was that the mineral rights remained in the zamindar in the absence of proof that he had parted with them. *Hari Narayan Singh Deo v Brijram Chakra vti I L R 37 Calc 723 I L R 37 I 136* followed. Held also that it was not necessary to make the Government a party to the suit. They had never claimed the minerals under the mouzabs in suit nor put forward any claim inconsistent with the rights asserted by the zamindar and the rights of the Government would not be prejudiced or affected by the result of a suit to which they were not a party. *DEEPA IRASAD SINGH v BRAJA NATH BOSE* (1912) **I L R 39 Calc 698**

DISPOSSESSION BY LANDLORD

Suit by tenant against landlord for recovery of land—Rules of limitation—general and special onus of proof as to—Limitation Act (IX of 1908) Sch I Art 142—Bengal Tenancy Act (VIII of 1882) Sch III Art 3 as 184 550
—Character of tenancy presumption as to—

LANDLORD AND TENANT—contd

DISPOSSESSION BY LANDLORD—contd

Area less than 100 bighas. In a suit by a tenant for the recovery of land of which he had been dispossessed by the landlord the tenant claimed the land as tenure holder and the defendants contended that it was an occupancy holding. Neither the character of a tenure holder nor that of an occupancy raiyat was established by positive evidence. The question being what period of limitation was applicable to the case. Held that in the circumstances of the case there was no statutory presumption either way. That the general rule of limitation in suits for recovery of possession of property was twelve years and that it was upon the party claiming the benefit of a shorter period of limitation to establish that the case fell within the special rule limiting the period to a shorter time. The defendants having failed to establish the occupancy character of the holding so as to bring it within the special rule of limitation under the Bengal Tenancy Act and plaintiffs suit being within time by the general rule the suit was not barred by limitation. A suit by a tenant to recover lands from the landlord of which he alleges he has been dispossessed is not a proceeding under the Bengal Tenancy Act within the meaning of cl (7) of s 20 of the Act. There is no provision in cl (5) of s 5 of the Bengal Tenancy Act that when the area held by a tenant is less than 100 bighas the tenant is to be presumed a raiyat until the contrary is shown. *TARA NATH CHAKRAVERTY v ISWAR CHANDRA DAS BARKAR* (1911) **16 W N 399**

EJECTMENT

See EJECTMENT

See LANDLORD AND TENANT (FORFEITURE)

See WAIVER **2 Pat L J 595**

Suit for ejectment
—Denial of landlord's title—Forfeiture. Where defendant in a suit for rent by the plaintiff his landlord had denied his title and claimed to hold under a third party. Held that in a suit by the landlord for ejectment of the defendant as a trespasser the defendant was debarred from pleading his tenancy and claiming to hold possession on that ground. *Ailmadhab Bose v Ananta Pam Bagdi 20 W N 755* *Fazl Dhal v Aftabuddin Sirdar 60 W N 575* *Rangai Mohurur v Pranhati Seal 3 C L J 201* *Phaler Mistri v Sadruddi Khan I L R 34 Calc 922* followed. *Malika Dassi v Makham Lal Choudhry 9 C W N 923* distinguished. *SHEIK MAIDHAR v PAJANI KANTA PAKI* (1909) **14 C W N 339**

Co sharers—Notice to quit. A notice to quit by some only of the co sharers is not sufficient to determine a tenancy. *Gopal Ram v Dhakeswar I L R 35 Calc 807* followed. *Dad Asin v Simmcratt I B & A 135* not followed. *SURENDRA NATH ROY v KRISHNA SAKHI DAS* (1910) **15 C W N 239**

Presumption as to land holders right in the abad agricultural village—House site occupied by a person on an agricultural nor one of the customary village servant of artisans—Adverse possession. In a village which was not a purely agricultural village but in which on the contrary some two thirds of the inhabitants

(2335)

LANDLORD AND TENANT—contd
EJECTMENT—contd

were non agriculturists certain persons father and son were in possession of a house site in the *abadi*. They carried on the occupation of inn keepers and sellers of tobacco and there was no evidence of the origin of their possession or that they ever paid rent to the zamindar or acknowledged his title in any way. The site was sold by the son and some time after such sale the house or shop thereon having fallen down the zamindar sued to eject the purchasers. *Held* that in the circumstances of the case the defendants and their predecessors in interest were properly held to have acquired a title to the site by adverse possession. *Chajju Singh v Kanthia Ali Heely Notes (1981) 114 and Bhaddar v Khairuddin Husain L R 29 All 133* referred to. *INCHA PAM v BANDI ALI KHAN (1911) I L R 33 All 757*

Evidence Act (I of 1872) ss 11 13 22 cis (2) and (3)—Deeds not inter partes admissibility—Description of boundaries in sales and mortgages of adjoining plots—Statements against pecuniary interest In a suit to eject the defendants as trespassers the latter set up title as tenants in occupation of the land. *Held* that recitals of boundaries in deeds of sales and mortgages executed by owners of adjoining plots of land and describing the disputed land as the tenanted land of the defendants or their predecessors were relevant s 32 (3) of the Evidence Act though not under s 32 (2) or 11 or 13 of that Act. *Shorandan Singh v Jorandan Duxadh 13 C W N 71 Vinayana v Bharmappa I L R 20 Bom 63 Haji Bibi v Agri Khan II Bom L R 409 Abdal Ali v Ibrahim I L R 31 Cal 98* referred to. *ABDULLAH v KHAN BIKARI LAL (1911) 16 M W N 252*

Suit for Ejectment—Tenant's claim to hold more land than included in lease—Limitation—Onus—Limitation Act (VI of 1877) Sch II Art 142 In a suit by the zamindars for ejectment the defendants claimed to hold seven *paras* of land as a *mokurari chah* under a *sanad* of 1740 renewed in 1815 which purported to grant only two *paras*. The defendants also pleaded limitation. The boundaries of the *mokurari chah* on three sides were specified in the *sanad* and were identifiable but the other boundary was described as an *ail*. The plaintiffs failed to prove that they or their predecessors ever had possession of any portion of the seven *paras* since the *sanad* was originally granted and they also failed to show what was the eastern boundary. If it was not the *ail* pointed out by the defendants which if accepted would make the land seven *paras*. *Held* that the plaintiffs having failed to prove that the land in suit were not covered by the *sanad* and that they had been dispossessed or that their possession had been discontinued within 12 years before the suit it was properly dismissed. It lay upon the plaintiffs to prove not only title as against the defendants to the possession but to prove that the plaintiffs had been dispossessed or had discontinued to be in possession of the lands within 12 years of the commencement of the suit. *DHAKAN KANTA LAHURI CHOWDHURY v PARAP ALI KHAN (1912) 17 C W N 320*

Tenant's removal of property by notice to quit—Tenancy out of Transfer of Property Act (1908) s 115 *Effect of notice to quit*

LANDLORD AND TENANT—contd
EJECTMENT—contd

Service by registered post—Proof—Endorsement of tender and refusal by postal officers if sufficient—Permanency of tenure question when one of law—Second Appeal The rule which has generally been applied to cases outside the Transfer of Property Act in connection with the sufficiency of a notice to quit is that the notice must be a reasonable notice. The tender to and refusal by the defendant of a cover sent by registered post and containing the notice to quit was sufficiently proved by the endorsement on the cover or envelope stating the defendant's refusal to receive the document. *Jogendra Chander Ghose v Dwarika Nath Karmakar I L R 15 Cal 681* followed. A finding of the lower Appellate Court that a tenure is not permanent if and when open to Second Appeal discussed. *DURGA NATH PARAMANIOK v RAJENDRA NARAYAN SAHA (1913)*

17 C W N 1078

Ejectment—Purchaser of non transferable occupancy holding possession for more than 12 years—Rent payment as markfadar—Tenant recognition by landlord—Possession of adverse—Limitation if would extinguish right or create limited interest and tenancy A plaintiff suing in ejectment a purchaser of a non transferable occupancy holding cannot succeed (unless he makes out a case under s 18 of the Limitation Act) where his right to possession accrued long before 12 years of the commencement of the suit. Where the defendant had paid rent for more than 30 years and the rent had been received by the landlord from the defendant as markfadar of the original tenant who had no transferable right a Court would be slow to hold that a complete extinguishment of the plaintiff's right took place by adverse possession and prefer to hold that the statute of limitation created a limited interest and tenancy. The mere fact that in rent receipts the word markfadar is used is not conclusive to show that there was not recognition and the Courts should determine in each case whether on a consideration of all the facts not merely by giving undue weight to words used a legal inference is or is not to be drawn that there has been a recognition establishing a relationship of landlord and tenant between one who has paid and another who has received rent for a number of years. *PRABHABATI DASSI v TAIBATUNNESSA CHOWDHURANI (1913) 17 C W N 1088*

Landlord and tenant—Right of lessee after expiry of lease to eject a trespasser Where a lessee whose lease had expired prior to suit sued for possession of the land leased to him from a trespasser. *Held* that the expiration of the lease did not necessarily imply the expiration of the lessee's right of possession and the lessee was entitled to a decree for possession against trespassers *a fortiori* where the landlord acquiesced in plaintiff getting a decree. *Gibbins v Buckland I L R 22 Exch 106 and Knight v Clarke 15 Q B D 34* referred to. *VENKAYYA v SATTEYA (1914) I L R 37 Mad 281*

What was held in *Rajendra Kumar Bose v Mohim Chandra Ghose I L R 33 Cal 63* was that when a tenant has been in possession of land ostensibly as part of an admitted tenure it lies upon the landlord in a suit in ejectment to prove in the first instance that the land is his *khas* property. It

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is not the law that because a defendant is found to be a tenant of some land under the plaintiff the burden is thereby cast upon the plaintiff to establish that the land he seeks to recover is outside the tenancy of the defendant. The burden would ordinarily be on the defendant to prove the tenancy under which he claims to hold. *Uda Lal Goswami v Jayneswar Baidar* 6 C N 105 and *Sheodan Poy v Cha'erbhuy Poy* 12 C L J 376 referred to. **PROFAR CHATRA ROY v JEDHISTER DAS** (1914)

19 C W N 143

Onus of on landlord or on tenant to prove tenancy The mere fact that the defendant holds some land under the plaintiff as tenant would not be sufficient to throw upon the plaintiff the burden of showing that in respect of any other land in the zamindari which the defendant may be found to be in possession of he has no right as tenant. The burden of proof in a case like this is on the tenant. The principle laid down in *Rhidy Arala Mistr's* (see 12 C L R 407) throwing the onus on the plaintiff should be held applicable to cases where the land sought to be recovered is admitted by the plaintiff to be contiguous to the holding of the defendant or that it has come to his possessions by encroachment. **GORINI DEBI v RAM TABAZ TZWARY** (1911)

19 C W N 140

Suit for—Lease of land for residential purposes—Law before the Transfer of Property Act (11 of 1882)—Onus to prove transferability—Presumption of transferability if arises from long continued possession The effect of the recent decisions is that when a landlord sues a person on the allegation that he is a trespasser and that person sets up a transfer from a tenant it is for the latter to prove first of all the tenancy and secondly the validity of the transfer. With regard to tenancies of homestead land created before the Transfer of Property Act the tendency of these decisions has been to establish that in the absence of evidence to the contrary the burden of proof being upon the tenant these tenancies are non-transferable. *Dence Madhab v Soukissen* 12 N R 490 and *Durga Perahad Mistr v Bindaban Doolal* 10 W P 274 referred to and doubted. The only exception made to the above rule is when there has been an erection of pucca buildings or a standing by on the part of the landlord while the tenant spends a large sum upon the land. *Madhu Sudan Sen v Kamini Kant Sen* 1 L R 32 Cal 1023 = c 9 C W N 895 and *Nabu Mandal v Cholim Mulhi* 1 L R 25 Cal 896 = c 2 C W 405 relied on. Mere long continued possession cannot give rise to a presumption of transferability. **AMBICA PRASAD SINGH v BALDEOLAL** (1916)

20 C W N 1113

Suit for ejectment—Notice to quit—Tenancy reserving an annual rent—What notice a tenant holding an annual tenancy is entitled to—Transfer of Property Act (11 of 1882) ss 106 107 The defendant's brother one Chandu by a registered *kabuliyat* took a lease of 2 cottahs of land from the landlord at an annual rental of Rs 12 for residential purpose. On the death of Chandu his heirs including the defendant continued to live on the land and subsequently the defendant's name was substituted in the landlord's *shereeta* as tenant in respect of 2

LANDLORD AND TENANT—contd**EJECTMENT—contd**

cottahs of land at an annual rental of Rs 15. Thereafter the landlord executed a registered *patta* and let out one bigha or his lands including the defendant's portion for a period of 99 years to one Sheikh Fasulla who accepted the defendant as tenant of a portion of it. Fasulla then transferred his interest to one Mamsa who subsequently sold the same to the plaintiff. On the defendant's failure to pay rent for the 24 cottahs of land the plaintiff on the 10th Kartick 1318 corresponding with the 24th October 1911 served the defendant with a notice to vacate the land within the 30th Kartick 1318 corresponding with the 16th November 1911. The defendant failed to comply with this notice. The plaintiff thereupon brought a suit for ejectment and *has* possession and for arrears of rent. *Held* that the rent being an annual rent and there being nothing to rebut the presumption in such a case that the tenancy was of a character corresponding thereto the presumption ought to be drawn that the tenancy was to be an annual tenancy. *Durga Vilasini v Gobardhan Doo* 20 C L J 448 referred to. *Held* also that inasmuch as there was a contract of tenancy between the plaintiff and the defendant but there was no registered instrument as required by s 107 of the Transfer of Property Act this case came within s 106 of that Act. *Held* further that inasmuch as this was a lease of immovable property and not for agricultural or manufacturing purposes but for some other purpose it must be deemed to be a lease from month to month terminable on the part of either lessor or lessee by 15 days notice expiring with the end of a month of the tenancy. **SHEIKH AKLOO v SHEIKH IMAMAN** (1916)

L L P 44 Cal 403

Taluka patta if imports permanency—Covenant by tenant to relinquish land on grantor personally requiring it if runs with the land—Grant to be construed against grantor—Rule explained—Land encroached upon by tenant and treated by landlord as part of permanent tenancy—Tenant if may be ejected therefrom. If there be nothing either in the surrounding circumstances or in the instrument which creates the interest to show that it was intended to be otherwise the inference is that a tenancy called *taluka* constitutes a permanent tenure. Where in a contract of tenancy *prima facie* purporting to be a permanent tenancy there was a covenant that if the grantor had a personal necessity the grantee would relinquish the land. *Held* that the covenant was in favour of the grantor personally and was not enforceable after his death by his heir. Scope of the rule that a covenant is to be construed most strongly against the grantor and most beneficially in favour of the grantee explained. The tenant aforesaid having encroached upon land belonging to the landlord the landlord did not within the statutory period from the date of encroachment institute a suit to eject the tenant on the ground that he could not without his consent acquire the status of a tenant on the land encroached upon but on the other hand treated it as part of the permanent tenancy. *Held* in a suit for ejectment by the heir of the grantor that the land originally leased as well as the encroached land stood on the same footing and the tenant could not be ejected from

LANDLORD AND TENANT—contd

EJECTMENT—contd

either of them SARODA KRIPA LAHA & AKHIL
BANDHU BISWAS (1917) 21 C W N 903

Ejection of tenant effect of—Suspension of rent The eviction of the tenant whether from part of the demised premises or from the whole entails a suspension of the entire rent while the eviction lasts whether the tenant remains in possession of the residue or not the tenancy however is not thereby terminated nor is the tenant discharged from the performance of his covenants other than payment of the rent such as a covenant to repair. It is not necessary for the application of the rule to find from how much land the tenant has been dispossessed if it is found that he has been dispossessed from some land. To constitute an eviction it is not necessary that there should be an actual physical expulsion by force or violence from any part of the premises. Any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof operates as an eviction. Therefore whether the tenant is expelled by violence or is obliged from the exigencies of the situation to submit quietly to the high handed act of the powerful landlord the result in either case is suspension of rent. DWIJENDRO NATH RAY & AFTABUDDI SARDAR (1916)

21 C W N 492

Tenancy residential house with fruit bearing trees If governed by the Transfer of Property Act—*Ejectment*—Tenant at will—Question as to applicability of Bengal Tenancy Act or Transfer of Property Act—Land with house and used for residential purposes with fruit bearing trees—Nature of tenancy—Presumption of permanency when can be drawn—Dakhilas stating tenant to be tenant at will value of the fact that a portion of a holding used for residential purposes is planted with fruit bearing trees does not alter the character of the holding, and the case is governed by the Transfer of Property Act. Where in a suit for ejectment the Plaintiff produced dakhilas shewing that the predecessors in interest of the Defendant were tenants at will and it was found that the tenancy held by the Defendant existed in 1894 and there was nothing to shew that it existed before that year and the Defendant urged that under the circumstances there was a presumption that the tenancy was much older and in its origin it was intended to be permanent. Held—That the evidence afforded by the dakhilas was not to be regarded as conclusive but the lower Appellate Court was right in holding that the Defendant's tenancy was created after the passing of the Transfer of Property Act and that quite apart from the entries in the dakhilas the circumstances of the case did not warrant the presumption that the tenancy was in its origin of a permanent character. S. M. Datta Nath Poo & Dwarakanath Chakravarti 21 C W N 1 (1919) referred to Molaram Chappal & Telamuddin Khan 16 C W N 567 (1911) distinguished. SRIMATI SACHIDALA DEBI & SRIMATI AMALA DEBI 25 C W N 378

When the Kabulyat provides ejectment as a remedy for a breach of its conditions that is not the only remedy and damages can be claimed. KRISHNA DAS POY & MOHENDRA CHANDRA 25 C W N 930

LANDLORD AND TENANT—contd

ENCROACHMENT

By tenant ensure for the benefit of the tenant during his tenancy and afterwards for the benefit of the landlord—Adverse possession Possession by a person will be presumed to be held in his own right and adversely to the true owner. This presumption will not apply when a special relationship exists between the parties as tenants in common or members of an undivided family. The presumption in such cases will be that possession is held on behalf of all the co-owners or members of the family and it will lie on the possessor to prove that he held exclusive possession to the knowledge of those whose right he seeks to affect by such possession. Where a tenant taking advantage of his position as such takes possession of lands belonging to his landlord not included in his holding the presumption is that such lands are added to the tenure and form part thereof for the benefit of the tenant so long as the holding continues and afterwards for the benefit of his landlord unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. GOROO DOSS ROY & ISSUR CHUNDER BOSE 22 W R 246 approved. It is not necessary that the tenant trespasser should prove that his trespass was known to his landlord to justify such presumption. MUTHURAKROO THEVAR & ORR (1912) 1 L R 35 Mad. 618

Encroachment by tenant—Adverse possession of encroached land as tenant if creates title—Landlord's right to recover possession when barred—Limitation Act (XV of 1877) Sec. 14 Art. 144—Interest acquired by tenant While a tenant is bound to treat that which is an encroachment on his landlord's land as held by him under his landlord the landlord is not bound to treat the land on which his tenant encroaches as held under a tenancy. But the landlord's right to recover possession of the land encroached upon may be lost by the tenant having adversely to the landlord asserted his title as tenant to the land for more than twelve years. Under Art. 144 of the Limitation Act there may be adverse possession not only of immoveable property but of any interest therein and tenant may claim to have been in adverse possession for 12 years of a limited interest in encroached land; a tenancy commensurate with that in the admitted lease between the parties. COPAL KRISHNA JANA & LAKHIRAM SARDAR (1912) 16 C W N 639

Encroachment by tenant upon land not his landlord's—Tenant if may keep land in a suit by owner to recover—Bona fide possession under a de facto landlord what amounts to—Possession by de facto landlord and settlement of encroached land with tenant to be proved. The principle of the Full Bench decision in Binad Tal Palrashi & Kalu Pranam 1 L R 20 Cal 703 only applies where rayats are settled upon land by a person in de facto possession as landlord, who is afterwards found to have no title. It is not applicable in every boundary dispute or in every case where a question of parcel and no parcel arises. Where in a suit by the owner B to recover land from C who held other lands as A a tenant it was not found that the disputed land was ever in A's possession or that it was included in the area settled by A with C but C appeared to have encroached upon the land in

LANDLORD AND TENANT—contd

ENCROACHMENT—contd

such circumstances as to raise a presumption that the encroachment should enure to A's benefit and become an accretion to C's holding under A. Held that though A might perhaps be described as C's *de facto* landlord it could not be said that the land was settled with C by A and there is nothing in the Full Bench decision to prevent B from suing to recover possession from A and O. **TEPU MAHAMMAD v TEPAYET MAHAMMAD (1915)**

19 C W N 772

ENHANCEMENT OF RENT

Waiver—Enhancement of rent—

Bengal Tenancy Act (VIII of 1885) s 43 108—Chur lands—Right of Occupancy A took a lease of a certain Government *khās melā* and executed a *labuliat* in favour of the Collector by which he (1) covenanted not to raise the rents of *rayats* beyond the amounts mentioned in the settlement *yamabandi*. The tenants however subsequently agreed to pay rent at an enhanced rate on the ground that the fertility of the land had been increased. Upon a suit for arrears of rent at the enhanced rate against the tenants the defence was that A was bound by the *labuliat* executed in favour of the Collector and as such he was not entitled to a decree at the rate claimed. Held that inasmuch as the tenants voluntarily agreed to an enhancement of rent they deliberately waived the benefit of the said covenant and they could not impeach the validity of their own agreement on this particular ground. **Zamir Mandal v Gopi Sundari Das I L R 37 Cal 463 (note)** referred to Under s 180 of the Bengal Tenancy Act a *rayat* holding a *chur* land but who has not acquired a right of occupancy is liable to pay such rent for his holding as may be agreed on between him and his landlord irrespective of the provisions of s 43 of the Act. **JAHANDAR BAKSH MALLIK v PAM LAL HAZRAH (1910)**

I L R 37 Cal 449

Rent in kind—Enhancement of rent by addition of s 1 in kind—Bengal Tenancy Act (VIII of 1885) s 29 N 29 of the Bengal Tenancy Act applies even where a money rent is enhanced by the addition of a rent in kind. **KISHORI MONU BOSE v SNEHEN UJJE (1910)**

I L R 37 Cal 610

Prevailing rate of rent—Occupancy rayats—Enhancement of rent—Proof of rise in price of staple food crops how ascertained and Court's duty in the matter—Prevailing rate for similar land in same or neighbouring villages with same advantages—Bengal Tenancy Act (VIII of 1885) s 29 30 31 32 In a suit for enhancement of rent under s 30 of the Bengal Tenancy Act it is the duty of the Court to refer to the price lists prepared under s 31 whether the parties to the suit produce the same or not. It is right and proper that the Civil Court is directing a local investigation under s 31 (b) should indicate to the officer holding the investigation what it is that the Court precisely requires. Where the Court is satisfied that all the rent in the village should be excluded from consideration in finding out the prevailing rate in the village because it is fixed in a mode which contravenes the provisions of s 29 of the Bengal Tenancy Act then an enquiry should be directed which will bring to light the prevailing rate of rent paid by occupancy *rayats* for lands of a similar

LANDLORD AND TENANT—contd

ENHANCEMENT OF RENT—contd

description and with similar advantages in the neighbouring villages. **WABIN CHANDRA SHANAI v KULA CHANDRA DHAR (1910)**

I L R 37 Cal 742

Contract between landlord and tenant—Right to enhance rent—Expression putni taluk whether imports fixity of rent—Hereditary tenure whether implies fixity of rent—Evidence of conduct when admissible In a lease granted in 1873 there was a clause as follows—“I (tenant) shall pay the annual rent of Rs 173 8 as 12 gds year by year and month by month as per *dowl* in the *khās taluk*. In another clause it was stated I shall continue to be in enjoyment down to my sons grandsons etc on receipt of the *talukdars* rents according to custom on account of tanks *bheries* etc lying in the village. The landlord in a proceeding under s 106 of the Bengal Tenancy Act alleged that the rent was enhanceable while the tenants contended that the tenure was not merely hereditary but was held on a rent fixed in perpetuity. Held—That unless the landlord is precluded from the exercise of the right of enhancing rent by a contract binding on him or the lands in question can be brought within one of the exemptions recognized by Bengal Reg VIII of 1793 he may be presumed to have the right of enhancing rents. **Bama Sundari v Radhika Chowdhrai 13 M I A 248 (1869)** followed. Held—The expression *putni taluk* in the contract did not import that the tenure was not merely hereditary but was held on a rent fixed in perpetuity. The mere fact that a tenure is hereditary does not show that rent of the tenure has been fixed in perpetuity. In the present case although there were expressions which showed that the tenure was *maurast* there was nothing to show it was intended to be *makurisi*. **Tarines v Watson 12 W R 413 (1869)** and **The Port Canning and Land Improvement Co Ltd v B M Kalyayani Deb I I R 47 Cal 230 s 240 N A 369 (P C) (1919)** distinguished. Held also—If the terms of the contract are ambiguous the rights of the parties may be determined with reference to the conduct of the parties but in any case where the terms are unambiguous no evidence can be given of the conduct of the parties in contravention of the terms of the contract. **Hubbert v Purchas L R 3 P C 605 (600) (1871)** and **A E Railway v Hastings [1900] A C 260 (263)** referred to. **CHANDRA CHANDRA SINGH v HARIBAR CHAKRA VARTI 24 C W N 874**

In a suit for rent at an enhanced rate on the ground of additional lands it is sufficient if the landlord can establish that since the creation of the tenancy rent has been assessed and when last assessed it was on the basis of a certain area and that defendants are in possession of land on which no rent was assessed at the time. **DEFGA PRITA CHOUDHURY v NAZKA GAIN AND ORS 25 C W N 204**

FOPFEITUPE

See **BOMBAY PENT ACT 1918 s 3 9 AND 12** I L R 45 Bom 525

See **LANDLORD AND TENANT (TITLE)**

See **TRANSFER OF PROPERTY ACT**

Forfeiture clause contained in a decree—Execution proceeding—Power

LANDLORD AND TENANT—contd

EJECTMENT—contd

either of them SARODA KRIPA LALA & AKHIL
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Ejection of tenant effect
of—**Suspension of rent** The eviction of the tenant whether from part of the demised premises or from the whole entails a suspension of the entire rent while the eviction lasts whether the tenant remains in possession of the residue or not the tenancy however is not thereby terminated nor is the tenant discharged from the performance of his covenants other than payment of the rent such as a covenant to repair It is not necessary for the application of the rule to find from how much land the tenant has been dispossessed if it is found that he has been dispossessed from some land To constitute an eviction it is not necessary that there should be an actual physical expulsion by force or violence from any part of the premises Any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof operates as an eviction Therefore whether the tenant is expelled by violence or is obliged from the exigencies of the situation to submit quietly to the high handed act of the powerful landlord the result in either case is suspension of rent DWIJENDRO NATH LAL & AFTABUDDIN SARDAR (1916)
21 C W N 492

Tenancy residential
house with fruit bearing trees is governed by De Gai Tenancy Act or Transfer of Property Act—**Plaintiff's claim**—**Tenant at will**—**Question as to applicability of De Gai Tenancy Act or Transfer of Property Act**
—**Land with house and used for residential purposes with fruit bearing trees**—**Nature of tenancy**—**Presumption of permanency when can be drawn**—**Dakhilas state is tenant to be tenant at will** value of The fact that a portion of a holding used for residential purposes is planted with fruit bearing trees does not alter the character of the holding and the case is governed by the Transfer of Property Act Where in a suit for ejectment the Plaintiff produced dakhilas showing that the predecessors in interest of the Defendant were tenants at will and it was found that the tenancy held by the Defendant existed in 1894 and there was nothing to show that it existed before that year and the Defendant urged that under the circumstances there was a presumption that the tenancy was much older and in its origin it was intended to be permanent Held—That the evidence afforded by the dakhilas was not to be relied on as conclusive but the lower Appellate Court was right in holding that the Defendant's tenancy was created after the passing of the Transfer of Property Act and that quite apart from the entries in the dakhila the circumstances of the case did not warrant the presumption that the tenancy was in its origin of a permanent character See *Durga Nath Poy v Dwarka Nath Chakravarti*—**I L R 11 (1913)** referred to *Molaram Chappara v Telamiddin Khan* 16 C W N 567 (1911) distinguished *Srinmati Basibhala Dedi v Srinmati Anala Dedi* 25 C W N 378

When the Kabulyat provide ejectment as a remedy for a breach of its conditions that is not the only remedy and damages can be claimed KRISHNA DAS ROY & MOHENDRA CHANDRA 25 C W N 930

LANDLORD AND TENANT—contd

ENCROACHMENT

By tenant ensure for the benefit of the tenant during his tenancy and afterwards for the benefit of the landlord—Adverse possession Possession by a person will be presumed to be held in his own right and adversely to the true owner This presumption will not apply when a special relationship exists between the parties as tenants in common or members of an undivided family The presumption in such cases will be that possession is held on behalf of all the co owners or members of the family and it will lie on the possessor to prove that he held exclusive possession to the knowledge of those whose right he seeks to affect by such possession Where a tenant taking advantage of his position as such takes possession of lands belonging to his landlord not included in his holding the presumption is that such lands are added to the tenure and form part thereof for the benefit of the tenant so long as the holding continues and afterwards for the benefit of his landlord unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit *Gooroo Dass Poy v Issur Chunder Bose* 22 W R 246 approved It is not necessary that the tenant trespasser should prove that his trespass was known to his landlord to justify such presumption MUTHURAKKOO THEVAR & ORR (1912) I L R 35 Mad. 618

Encroachment by tenant
—**Adverse possession of encroached land as tenant if creates title**—**Landlord's right to recover possession when barred—Limitation Act (XV of 1877) Sch II Art 144—Interest acquired by tenant** While a tenant is bound to treat that which is an encroachment on his landlord's land as held by him under his landlord the landlord is not bound to treat the land on which his tenant encroaches as held under a tenancy But the landlord's right to recover possession of the land encroached upon may be lost by the tenant having adversely to the landlord asserted his title as tenant to the land for more than twelve years Under Act 144 of the Limitation Act there may be adverse possession not only of immovable property but of any interest therein and tenant may claim to have been in adverse possession for 12 years of a limited interest in encroached land if a tenancy commensurate with that in the admitted lease between the parties *GOPAL KRISHNA JANA & LAKHIRAM SARDAR* (1912) 10 W N 634

Encroachment by tenant upon land not his landlord's—Tenant if may keep land in a suit by owner in recovery—Bona fide possession under a de facto landlord what amounts to—Possession by de facto landlord and settlement of encroached land with tenant to be proved The principle of the Full Bench decision in *Bhind Lal Palrashi v Kalu Pramanik* I L R 20 Cal 703 only applies where rayats are settled upon land by a person in de facto possession as landlord who is afterwards found to have no title It is not applicable in every boundary dispute or in every case where a question of parcel and no parcel arises Where in a suit by the owner B to recover land from C who held other lands as A a tenant it was not found that the disputed land was ever in A's possession or that it was included in the area settled by A with C but C appeared to have encroached upon the land in

LANDLORD AND TENANT—contd**ENCROACHMENT—contd**

such circumstances as to raise a presumption that the encroachment would enure to A's benefit and become an accretion to C's holding under A. Held that though A might perhaps be described as C's *de facto* landlord it could not be said that the land was settled with C by A and there is nothing in the Full Bench decision to prevent it from suing to recover possession from A and C. **TEPU MAHAMMAD v TEPALET MAHAMMAD (1916)**

19 C W N 772

ENHANCEMENT OF RENT**Waiver—Enhancement of rent—**

Bengal Tenancy Act (VIII of 1885) ss 43 103—Chur lands—Right of Occupancy A took a lease of a certain Government *khos melah* and executed a *labuliat* in favour of the Collector by which he (A) covenanted not to raise the rents of rayats beyond the amounts mentioned in the settlement *jamabandi*. The tenant however subsequently agreed to pay rent at an enhanced rate on the ground that the fertility of the land had been increased. Upon a suit for arrears of rent at the enhanced rate against the tenants the defence was that A was bound by the *labuliat* executed in favour of the Collector and as such he was not entitled to a decree at the rate claimed. Held that inasmuch as the tenants voluntarily agreed to an enhancement of rent they deliberately waived the benefit of the said covenant and they could not impeach the validity of their own agreement on this particular ground. **Zamir Mandal v Gopi Sundari Das I L R 37 Cal 463 (note)** referred to. Under a 180 of the Bengal Tenancy Act a rayat holding a *chur* land but who has not acquired a right of occupancy is liable to pay such rent for his holding as may be agreed on between him and his landlord irrespective of the provisions of s 43 of the Act. **JAHANDAR BAKSH MALLIK v PAM LAL HAZRAH (1910)**

I L R 37 Cal 449

Rent in kind—Enhancement of rent by addition of a rent in kind—Bengal Tenancy Act (VIII of 1885) ss 29 of the Bengal Tenancy Act applies even where a money rent is enhanced by the addition of a rent in kind. **KISHORI MONIY DASE v SNEIKH UJJI (1910)**

I L R 37 Cal 610

Prevailing rate of rent—Occupancy rayats—Enhancement of rent—Proof of rise in price of staple food crops how ascertained and Court's duty in the matter—Prevailing rate for similar land in same or neighbouring villages with same advantages—Bengal Tenancy Act (VIII of 1885) ss 29 30 32 33 In a suit for enhancement of rent under s 30 of the Bengal Tenancy Act it is the duty of the Court to refer to the price lists prepared under s 33 whether the parties to the suit produce these or not. It is right and proper that the Civil Court in directing a local investigation under s 31 (b) should indicate to the officer holding the investigation what it is that the Court precisely requires. Where the Court is satisfied that all the rent in the village should be excluded from consideration in finding out the prevailing rate in the village because it is fixed in a mode which contravenes the provisions of s 29 of the Bengal Tenancy Act then an enquiry should be directed which will bring to light the prevailing rate of rent paid by occupancy rayats for lands of a similar

LANDLORD AND TENANT—contd**ENHANCEMENT OF RENT—contd**

description and with similar advantages in the neighbouring villages. **NABIN CHANDRA SHANAI v KULA CHANDRA DHAR (1910)**

I L R 37 Cal 742

Contract between landlord and tenant—Right to enhance rent—Expression *putni taluk* whether imports fixity of rent—Hereditary tenure whether implies fixity of rent—Evidence of conduct when admissible In a lease granted in 1823 there was a clause as follows—

I (tenant) shall pay the annual rent of Rs 173 8 as 12 gds year by year and month by month as per dowl in the *khos taluk*. In another clause it was stated I shall continue to be in enjoyment down to my sons grandsons etc on receipt of the *talukdars* rents according to custom on account of tanks *bheries* etc lying in the village. The landlord in a proceeding under s 106 of the Bengal Tenancy Act alleged that the rent was enhanceable while the tenants contended that the tenure was not merely hereditary but was held on a rent fixed in perpetuity. Held—That unless the landlord is precluded from the exercise of the right of enhancing rent by a contract binding on him or the lands in question can be brought within one of the exemptions recognized by Bengal Peg VIII of 1893 he may be presumed to have the right of enhancing rents. **Dama Sundari v Radhika Chowdhrahi 13 M I A 248 (1869)** followed. Held—

The expression *putni taluk* in the contract did not import that the tenure was not merely hereditary but was held on a rent fixed in perpetuity. The mere fact that a tenure is hereditary does not show that rent of the tenure has been fixed in perpetuity. In the present case although there were expressions which showed that the tenure was *maurashi* there was nothing to show it was intended to be *maurashi*. **Tarinee v Watson 12 W R 413 (1869)** and **The Port Canning and Land Improvement Co Ltd v S M Kalyani Debti I L R 47 Cal 230 s e 24 C W N 309 (P C) (1919)** distinguished. Held also—If the terms of the contract are ambiguous the rights of the parties may be determined with reference to the conduct of the parties but in any case where the terms are unambiguous no evidence can be given of the conduct of the parties in contravention of the terms of the contract. **Helbert v Purchas L R 3 P O 605 (650) (1871)** and **N E Railway v Hastings [1900] A C 260 (1903)** referred to. **BRUPENDRA CHANDRA SINGH v HAPIHAR CHAKRA VARTI 24 C W N 874**

In a suit for rent at an enhanced rate on the ground of additional lands it is sufficient if the landlord can establish that since the creation of the tenancy rent has been assessed and when last assessed it was on the basis of a certain area and that defendants are in possession of land on which no rent was assessed at the time. **DURGA PRISA CHOUDHURI v NAZRA GAIN AND ORS 25 C W N 204**

FORFEITURE

See **BOMBAY RENT ACT 1918 ss 3 9 AND 12 I L R 45 Bom 535**

See **LANDLORD AND TENANT (TITLE)**

See **TRANSFER OF PROPERTY ACT**

Forfeiture clause contained in a decree—Execution proceeding—Power

LANDLORD AND TENANT—contd

FORFEITURE—contd

of the Court to grant relief The principle that Courts of equity will not forego their power to grant relief against forfeiture in the case of non payment of rent where the relations of the parties are those of landlord and tenant merely on the ground that the agreement between them is embodied in a decree of the Court applies alike to a suit to enforce a decree and to proceedings in execution *Krishnabai v Hari I L R 31 Bom 15* explained *BALAMBHAT v VINAYAK GANPATRAY (1910)*

I L R 35 Bom 239

*Lease before Transfer of Property Act IV of 1882 forfeiture of—Suit for ejectment by landlord maintainability of—Waiver—Claim for rent in suit for ejectment does not amount to waiver Under the law applicable to leases before the Transfer of Property Act forfeiture is incurred when the denial of title occurs any subsequent act of the landlord electing to take advantage of the forfeiture is not a condition precedent to the right of action for ejectment The bringing by the landlord of a suit for ejectment is simply a mode of manifesting his election Where a tenant holding under a lease prior to the Transfer of Property Act denies the title of his landlord the landlord can maintain a suit for ejectment without having done prior to the suit any act evincing his intention to determine the lease A claim for rent in the suit for ejectment will not amount to a waiver of the forfeiture The election to forfeit is complete and irrevocable when the suit for ejectment is instituted *Venkataramana Bhatta v Govindaraja I L R 31 Mad 403* considered *PADMANABHAYA v RANGA (1910)**

I L R 34 Mad 161

*Relationship of Landlord and tenant denied in previous rent suit if can be urged in subsequent suit—Res judicata—Forfeiture of tenancy for denial of landlord's title under Bengal Tenancy Act (VIII of 1885) Where in a suit for rent the defendants denied the existence of the relationship of landlord and tenant and got an adjudication to that effect in a suit subsequently brought by the landlord for his possession of the land on a declaration of his title Held that the question as to the relationship of landlord and tenant between the parties was res judicata and the defendant could not assert his title as tenant in such suit *Deb ruddi v Abdur Rahim I L R 17 Calc 196* *Dhora Kaur v Ram Jewan I L R 20 Calc 101* *Malika Dassi v Malkham Lal Chowdhry 9 C W N 923* distinguished *Saikh Moadhar v Rojani Kanta 14 C W N 339* referred to *EKABBAR SHEIKH v HARA BEWA (1910)**

15 C W N 335

Landlord and Tenant—Ejectment—Recorded Tenant—Effect of denial of tenancy by him on his unrecorded co-sharer—Forfeiture In a suit for ejectment based on the ground of forfeiture by reason of the denial of the landlord's title it was found that the denial was by the recorded tenant and not by his unrecorded co-sharer in the tenancy Held that a person representing the tenancy in the books of the landlord was entitled to bind his co-sharers for the purposes of the tenancy but when he repudiated the tenancy he must be taken to have acted beyond the scope of his authority his disclaimer

LANDLORD AND TENANT—contd

FORFEITURE—contd

consequently could not operate as a forfeiture of the tenancy *BIRENDRA KISHORE MANIKYA v BHUBANESWARI (1912)* I L R 39 Cal 903

In order that a denial of landlord's title should work a forfeiture three things are necessary (1) the tenant must set up title either in himself or a third party inconsistent with their mutual relationship (2) the denial must be direct and unequivocal and not casual and (3) it must be made to the knowledge of the landlord *KIZHAKKEKATH KEMALOOTI v PULICKALAKATH MAHAMED* I L R 41 Mad 629

*Forfeiture of lease by non payment of rent—Relief against forfeiture only on payment of all arrears of rent though barred by limitation—Transfer of Property Act s 114 Under s 114 of the Transfer of Property Act a tenant can be relieved against forfeiture of lease incurred by non payment of rent only on payment of all arrears of rent including such as may be barred by limitation together with such interest as might be legally due thereon *Semle* The arrears of rent so payable will probably be limited to twelve years *VASUDEVA UDPA v KRISHNA UDPA (1921)**

I L R 44 Mad. 629

A permanent tenancy governed by the transfer of Property Act 1882 is determinable by denial of the landlord's title *BIDLA NATH v KRIKHINDA KOER*

I Pat L J 157

GROVE LAND

See GROVE LAND

*Rights of tenants with regard to groves—Custom—Wajib ul-ar—Construction of document—Malik The Wajib ul ar. of a village contained the following provision as to grove land — Persons who have planted a grove and who are in possession of a grove have the rights of an owner (shikhtiyar malikana) If any trees fall down they can plant fresh trees without the permission of the zamindar When the land becomes denuded of all trees the planter of the grove will have the first right to cultivate the land Held that the provisions implied a right of transfer in the possessor of grove land *MUHAMMAD YASIN v ILAKI PAKHSH (1912)**

I L R 34 All 545

HYPOTHECATION

*Tenant in possession without a patta—Suit to enforce hypothecation of property as security for rent Held that a hypothecation of other property by certain tenants as security for their rent was none the less enforceable because though the tenants had executed a qabuliat in respect of the land held by them no patta had been executed by the landlords in their favour *Sheo Karan Singh v Mahara a Parbhu Varain Singh I L R 31 All 276* referred to *SRI KISHAN DAS v YAKHT KHAN (1917)**

I L R 35 All 505

* IMPROVEMENTS

Tenancy determination—Improvement non removal of during tenancy—Right to them or their value after determination of tenancy—Transfer of Property Act (IV of

LANDLORD AND TENANT—*contd*IMPROVEMENTS—*contd*

1883) & 108 (A) The plaintiff's husband took a house site on lease from the predecessors or in title of the first defendant in 1883. After 1883 and before 1st May 1898 the plaintiff built a house thereon to the knowledge of the landlord and the lease was renewed by the first defendant on 1st May 1898 in plaintiff's favour who thereby agreed to vacate the land on a month's notice. While the plaintiff was in possession under that lease the first defendant filed a suit in ejectment in the Small Cause Court Madras and though the present plaintiff then set up the claim now advanced viz a right to the superstructure built by her or its value she was ordered without the determination of the right set up by her to deliver possession of the land on or before the 26th February 1907 and on her failure to do so the first defendant was put in possession on that date. On the 1st August following the first defendant gave the plaintiff notice to remove the superstructure within a fortnight. She did not do so but in 1908 instituted the present suit for (a) a declaration that she was the owner of the house built by her and for its possession or (b) in the alternative to be paid compensation for it or (c) if that was not granted to be allowed to remove the superstructure. *WALLIS J* holding that the plaintiff was not entitled to any of the reliefs dismissed the suit. *Held* on appeal confirming the judgment of *WALLIS J* (*SANKARAN NAIR J* dissenting) that the plaintiff was not entitled to any of the reliefs asked for. *Held* by the Court that the landlord was not estopped from disputing the plaintiff's right if any by the mere fact that the house was erected with his knowledge and without any protest by him. *Held* (*WHITE C J* dissenting) that the tenant was for the purpose of removing her superstructure entitled to a reasonable time after the determination of the tenancy whether it is by act of parties or by the order of Court. *Held* by *MILLER J* that the tenant having been given ample time to remove the building after giving up possession through the Court she was not entitled to any further time. *Per* *WHITE C J*—S 108 clause (h) of the Transfer of Property Act governed the case and the tenant was not entitled to remove the buildings after the termination of the tenancy. *Per* *SANKARAN NAIR J*—S 108 of the Transfer of Property Act is only an enabling section and it did not take away the pre-existing right of the tenant to compensation or to remove building even after the termination of the tenancy if he is not given compensation. The new lease having recognised the tenant's ownership in the house the plaintiff's ownership thereto cannot be defeated by her failure to remove the house within a reasonable time and as such failure cannot effect a transfer of ownership all that the landlord was entitled to was an option to retain the building and pay compensation for it or to restore the land to its old condition by removing the building and claim damages. *Per* *MILLER J*. The recognition by the landlord for the period of the new tenancy of the tenant's property in the building has no other necessary effect than to prevent the landlord from treating the building as having been surrendered to him at the end of the previous term and it was only a piece of evidence of a contract to allow the removable fixture to remain as such upon the land for the new term. *Jamaal Khan Roushan v. Azarali Sahib* I L R

LANDLORD AND TENANT—*contd*IMPROVEMENTS—*contd*

27 Mad 211 referred to English and Indian Case Law on the subject considered. *ANGAMMAL v. ASLAM SAHIB* (1913) I L R 38 Mad 710

INAM LANDS

Inam Register—Object of mentioning the tax payable for the land—Inam authorities duties of—Right of melvaramdar to trees in case of lands which were ryots at the Inam Settlement. In cases where the holding of a tenant was at the time of the Inam Settlement and has subsequently been a ryot consisting of trees the melvaramdar has a right to a portion of the value of the trees and the ryot is not entitled to cut them down for his sole appropriation the portion due to melvaramdar being determinable according to the evidence. The incidents of the tenure of a tenant under an inamdar are governed by the law applicable to landlord and tenant and not by the Inam patta or the Inam Register whose object in mentioning the tax payable by the tenant was only to enable the Inam authorities to fix the quit rent payable to Government by the inamdar. *Bodda Goddeppa v. The Maharaja of Vizianagaram* I L R 30 Mad 155. *Rangayya Appa Rao v. Adiyala Patnam* I L R 13 Mad 243. *Apparao v. Narayana* I L R 16 Mad 47. *Narayana Ayyangar v. Orr* I L R 26 Mad 252 and *Kalarla Abayya v. Pajala Venkata Papayya Rao* I L R 29 Mad 24 distinguished. *SRI RAJAGOPALASWAMI TEMPLE v. JAGANNADHA PANDIARAJA* (1913) I L R 33 Mad 155

INJUNCTION

Well sunk by tenant inside his house—Mandatory injunction—Discretion of Court. In this the High Court refused to grant a mandatory injunction at the suit of the zamindar for the removal of a well recently constructed inside their house by tenants of a house in a town the position of the tenants being that they and their predecessors in title had paid no rent for generations and were only liable to ejectment in the event of the site occupied by them being cleared of buildings. *BHAGWAN DAS v. MUHAMMAD YAHIA* (1913) I L R 35 All 292

INTEREST

Kabuliyat containing stipulation to pay excessive rate of interest—Assurance by landlord at the time of execution of Kabuliyat that covenant will not be enforced—Effect of on the documents—Evidence Act (I of 1872) s 92 prov 1. A *Kabuliyat* for a period of one year provided that on default of payment of rent the arrears would carry interest at 7½ per cent per annum. The tenant held over after one year. On a suit for rent on the basis of the *Kabuliyat* the tenant pleaded that before the *Kabuliyat* was executed by him the landlord assured him that the covenant for payment of interest at 7½ per cent would not be enforced. This allegation was found to be true. *Held* that under the circumstances the *Kabuliyat* was not the real agreement between the parties having been induced by fraudulent misrepresentation and the tenant was not liable to pay interest claimed on the basis of the *Kabuliyat*. S 92 Prov 1 of the Evidence Act referred to. *NADIA CHAND SANA v. BIRENDRA CHANDRA DUTT* (1915)

20 C W N 1067

LANDLORD AND TENANT—contd LEASE

1 ———— **Trees**—*Kaimi lease*—*Lease created before the Transfer of Property Act (IV of 1882)*—*Trees planted after lease*—*Right of removal of trees by tenant*—*Fixtures doctrine of*—*Bengal Tenancy Act (VIII of 1885) s 23*—*Transfer of Property Act (IV of 1882) s 2 108 (h)* In the absence of any special provision in a lease granted before the Transfer of Property Act (IV of 1882) came into force the property in the trees planted by the lessee after a *kaimi* lease had been granted does not vest in the landlord. The rule laid down in s 108 cl (h) of the Transfer of Property Act (IV of 1882) has no application to such a case. The lease in the present case not being for agricultural or horticultural purpose s 23 of the Bengal Tenancy Act has no application. The doctrine of the English Law of Fixtures cannot be appropriately extended to this country on equitable grounds. *Bain v Brand 1 App Cas 762* *Mears v Callender [1901] 2 Ch 388* *Elwes v Maw 2 Smith & Leasing Cases 189* *3 East 38* *Less v Pacard 2 Peters 137* referred to. The law of Fixtures is not recognized under the Hindu or Mahomedan laws. *Thakoor Chunder Paramanik v Ramdhona Bhattacharye 6 W R 323* *B L R F B 595* *Secretary of State v Charlesworth Pilling & Co 1 L R 26 Bom 1* *Rhodes v Serna v Trilochan 1 Mac Sel Rep 35* *Jankee Singh v Buihoore Singh (1856) Beng S D A 761* *Pogose v Anantoolah (1858) Beng S D A 1517* *Brij Bhokun v Dabee Dyal (1863) 2 Agr S D A 480* *Kalee Per had Dutt v Gourie Pershad Dutt 5 W R 108* relied upon. Before the passing of the Transfer of Property Act the doctrine of the English Law of Fixtures did not prevail in this country and the provisions of that Act substantially reproduced the law on this subject as recognised by Hindu and Mahomedan jurisprudence. *Imam Kani Poshan v Naorali Sahib 1 L R 27 Mad 211* referred to. *Moriz Speiken v Rasik Lal Ghose (1910) 1 L R 37 Cal 815*

2 ———— **Sarbarakari jamai lease**—*Construction*—*Intermediate tenure if can be created between proprietary and putni interests* Where a pottah recited that a sarbarakari jamai settlement had been taken from the zemindar at a certain annual rental and continued. I hereby confer upon you all the powers I had to realise the rents etc payable by the putnidars. By virtue of these powers you shall be competent to sue those putnidars in my behalf and using my name. I have executed am ulusey namahs in your favour lest your applications be not accepted by the Collector. Held upon a construction of the pottah that it did not create any interest in land as that of a tenure holder but only a personal obligation between the grantor and the grantee. *Semle A* zemindar cannot create a permanent tenure between his own interest and putni taluk of the first degree. *Bibi Jarao Khatun Sarada v Haniffuddin Akand (1909) 14 C W N 359*

3 ———— **Mokurari pottah, construction of**—*Conflict between area and boundaries—Landlord and tenant* It is only when the boundaries of a land can be ascertained with perfect certainty that an intention to convey all lands comprised within those boundaries can be inferred. If the boundaries are uncertain the intention should be taken to be to convey the specified quantity of

LANDLORD AND TENANT—contd LEASE—contd

land within those boundaries. Held upon a construction of the pottah in the case that the dimensions specified were an essential part of the description of the land conveyed and not a cumulative description of it which was to be governed by the boundaries. Held further that in the circumstances of the case the intention should be inferred to have been to pass the specified quantity of land only. *Daniel Herrick v Garret Sizby L R 1 P C A 436* *Mellor v Walmeley [1905] 2 Ch 164* referred to. *KUMAR RAMESHAR MAJIA v RAM TARAK HAZRAH (1909) 14 C W N 268*

4 ———— **Rent in kind and in default a fixed price**—*Payable if landlord can recover more than price specified*—*Money value put down for purposes of registration*—*Object if may be proved*—*Evidence Act (I of 1872) s 62*—*Oral agreement to vary written contract is admissible* Where a *kabuliyat* provided for the payment of rent partly in money and partly in kind and further provided that if the tenant neglected to pay the rent the landlord would be entitled to receive a certain sum as the price of paddy deliverable. Held that upon a true construction of the *kabuliyat* the landlords would be entitled to realise only the amount stated in the *kabuliyat* as the price of the paddy on the failure of the tenants to deliver it. Evidence to show that the money value was put in only for the purpose of registration and that thus the real intention of the parties was to realise the current price of paddy would be evidence of an oral agreement to contradict or substantially vary the terms of a written contract which is not admissible under s 92 of the Evidence Act. *Lakhotullu Sheikh v Bisuambhar Roy 6 Ind Cas 577* *2 Ind Cas 180* referred to. *Sohebut Ali v Abdool Ali 3 C W A 151* *Dipra Charan v Suchand Roy 14 C W N 600* *Hanessur Mukherjee v Umesh Chandra Chakravarti 14 C W N 610* not followed. *Saikh Isahaf v Gopal Chandra Das 14 C W N 620* referred to. *AFARI SURJA KUMAR GHOSE (1910) 15 C W N 249*

5 ———— **Raiyati zurpeshgi and others—Cultivation of Indigo—Acquisition for right of occupancy—Nature of holding—Zeraat khudkaht and private land of landlord—Notice to quit on expiry of lease—Suit to recover land—*Bengal Tenancy Act (VIII of 1885) s 5 cl (5) and s 116*—*Raiyat—Tenure holder* The appellants (plaintiffs) were the proprietors of the village of Ballipura Parsam and the owners of the Hathorn Indigo Concern (the predecessors in title of the respondent defendant) and the respondent himself had been their tenants under various leases (raiayati zurpeshgi and others) since 1801 for the cultivation of indigo. To a suit brought to recover two areas of land of 1.6 bighas and 25 bighas respectively on the ground that the latest leases (of 21st October 1891 and 10th February 1892) under which they were respectively held had expired the respondent pleaded as to the larger area that he had acquired occupancy right and that even assuming he had not acquired such right a notice to quit was necessary under s 4 of the Bengal Tenancy Act (VIII of 1885) before he could be ejected. The latter defence alone was set up as to the smaller area. The Subordinate Judge held on the construction of the various leases that the larger area was the appellants' private land in respect of which**

LANDLORD AND TENANT—*contd*LEASE—*contd*

therefore (within the meaning of s 116 of the Bengal Tenancy Act) the respondent could not acquire a right of occupancy and (acting on the presumption under s 11 cl (5) of the Act and on an admission that the smaller area was the private land of the appellants) he decided that the respondent was a tenure holder and not a raiyat in respect of all the land in suit and that he could be ejected without notice to quit. The High Court on appeal reversed that decision holding as to the larger area that the presumption under s 11 cl (5) of the Act had been rebutted and that respondent was a raiyat and not a tenure holder and (notwithstanding the admission) came to a similar conclusion as to the smaller area and decided that the respondent had acquired rights of occupancy in both areas of land and a notice to quit was necessary before ejectment. *Held* (by the Judicial Committee) that on the construction of the leases and under the circumstances of the case the High Court had rightly decided as to the larger area but were wrong in going behind the admission made as to the smaller area. *Bengal Indigo Company v Roghobur Das* 1 L R 24 Cal 972 23 I A 155 distinguished on the ground that in that case there was no finding of fact to rebut the presumption under s 11 cl (5) of the Bengal Tenancy Act. *DANODAR NARAYAN CHOWDHURI v DALGLISH* (1911) 1 L R 38 Cal 432

6 ——— *Sub-lease—Avoidance of lease—Vacant possession—Holding over—Transfer of Property Act (IV of 1882) s 103* The plaintiffs were lessees of a godown for one year from 1st April 1908 at a monthly rent. From 1st May 1908 they sublet it on the same terms for the remainder of their lease to the defendant who used it for storing bags of sugar. On 25th December the godown was partially destroyed by fire and a quantity of sugar therein considerably damaged. The defendant's insurers came in to take charge of the salvage but soon after sold the remains of the sugar to *G M* and the latter then took possession and continued in possession sorting the sugar until 16th February 1909. Meanwhile on 10th December the plaintiff had written to the landlord advising him of the fire and of the termination of the lease in consequence. The landlord however insisted on their liability to pay rent until such time as vacant possession should be given to him. The defendant in answer to a bill for rent wrote to the plaintiffs to the effect that he had terminated his lease on account of the fire and would not pay more than the proportionate rent for the first 5 days of December. As however vacant possession was not given until 16th February (on which day *G M* went out of possession) the plaintiffs sued the defendant for rent and for use and occupation. *Held* that the plaintiffs could not exercise their option to terminate the lease until they put the landlord into possession. If the avoidance of the lease under s 103 (e) of the Transfer of Property Act (IV of 1882) was effectual without surrender of vacant possession the plaintiffs by failing to give vacant possession were holding over after the termination of their lease and were liable for rent under an implied monthly tenancy on the same terms as before. If the avoidance was ineffectual the lease continued until put an end to by mutual consent. *Held* further that the abandonment to the insurers by the defendant was effected for his benefit and in the absence of evidence that the insurers and

LANDLORD AND TENANT—*contd*LEASE—*contd*

their vendee *G M* kept the sugar in the godown in spite of protests by the defendants the latter (as between the plaintiffs and the defendant) must be taken to have been in occupation either under his original tenancy or under a similar one resulting from his holding over. *SIDICK HASI HOOSAIN v BRUEL & Co* (1910) 1 L R 35 Bom 333

7 ——— *Amalnamah—Construction of—A present demise or an agreement to make a future demise a question of intention—Bengal Tenancy Act (VIII of 1885) ss 10 78 155 178 sub s (1) cl 8—Waste land—Notice if necessary to terminate a lease of—Lessee of waste lands if may be ejected except in execution of decree—Pegs inserted lease omission of the landlord to give if effects tenants position* The question whether an instrument made a present or merely an agreement to make a future demise must depend upon the paramount intention of the parties. *Parmanan Das v Dharsey Virji* 1 L R 10 Bom 101 *Jones v Reynolds* L R 1 Q B 606 516 *Chapman v Turner* 6 M & W 100 101 referred to. Where an amalnamah granted in 1313 recited that the defendant had applied for a *mouvasi mohurari chuldari* lease from the plaintiff and that in anticipation of the execution of a proper lease the plaintiff had agreed to place the defendant in possession of the land on certain conditions: that out of Rs 2000 payable as premium Rs 500 would be paid in Magh 1311 and the remainder by three equal annual instalments that in default of such payment the amalnamah would stand cancelled and cease to be operative and that in 1312 and 1313 the lands should be held rent free and that rent at specified rates would be payable in respect of the lands in subsequent years and the instrument further provided that in 1312 the defendant would bring under cultivation 200 bighas of land and that the whole would be brought under cultivation in 1313 and that in the event of a failure to cultivate the lands in 1312 and 1313 the grantor would be at liberty to re-enter and settle the land with other tenants. *Held* that there was a present demise by the amalnamah and not an agreement to make a future demise. *Semle* The position of the tenant under such circumstance would not in substance be affected by the failure of the landlords to execute a registered lease in favour of the tenant. *Bibi Jawahir Kumari v Chatterpuri Singh* 2 C L J 343 *Singheeram v Bhagbat Chander* 11 C L J 543 referred to. *Held* that s 178 of the Bengal Tenancy Act does not operate to make s 155 of the Act inapplicable to the case of a tenant of waste land who cannot therefore be ejected without notice under s 155 being served on him. *Held* further that under s 178 sub s (1) cl (3) read with s 89 and s 10 the landlord had no right to eject the tenant in the circumstances of the case except in execution of a decree. *CHAMPALATIKA MITRA v RAJAP CHANDRA PAL CHOWDHURY* (1910) 11 C W N 636

8 ——— *Protected interests—In cumbrance—Bengal Tenancy Act (VIII of 1885) s 160 (g)* The plaintiffs had under a sub-lease granted by *G* who held under a permanent lease granted by *B B* again holding under a permanent lease granted by *I*. The lease given by *P* to *B* authorized *B* to grant sub-leases. *Held* that the right and interest of *G* and therefore of the plaintiffs are protected interests and are not such

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as can be interfered with by a purchaser under the Bengal Tenancy Act. **AFAZUDDI KHAN v PRASANNA GAIN (1911)** I L R 39 Cal 138

9 — **Mistake in Lease—Landlord and Tenant** Where a comparatively small portion of the demised lands was found to have originally belonged to the lessee and to have been included in the lease by mutual mistake. **Held** that the whole lease should not be set aside but that there should be an apportionment of rent for the remaining land. **RAIMONI DASSI v MATHURA MOHON DEY (1912)** 16 C W N 806

10 — **Denial of Title—Evidence Act (I of 1872) s 116—Estoppel** A purporting to be *dharmakata* of a temple gave a lease of the temple properties to B. During the tenancy C and not A was declared in a separate suit to be the rightful *dharmakarta*. B had not attorned to nor been evicted by C. **Held** that the tenancy had not been determined and that in a suit by A for rent B was estopped by s 116 Indian Evidence Act from denying A's title. **DEVALAJU v MAHAMED JAFFER SAIB (1913)** I L R 36 Mad 53

11 — **Tenancy at will—Lease until lessee requires or wishes—Tenancy at will on both sides** A lease by which the lessee is to hold for such time as they require or wish is a tenancy at the will of the lessee which in law is a tenancy at the will of the lessor also. **Coke on Littleton** page 50 (a) and **Halsbury's Laws of England** Vol 18 page 434 referred to. **MANIKAV CHINNAPPA (1913)** I L R 36 Mad 557

12 — **Lease of land for mining coal—Description in *kabuliyat* given in bighas and boundaries specified in schedule—Area of land delivered found less than area stated in *kabuliyat*—Claim to abatement of rent in respect of deficiency—Onus on tenant to prove right to reduction of rent—Construction of *kabuliyat*—Negotiations leading to contract and other extraneous evidence inadmissible in evidence** This appeal arose out of a suit for Rs 23,868 as arrears of rent cesses and interest under a *molarari mauzari *kabuliyat** dated 3rd December 1894 (1301) executed by the respondent on behalf of himself and his co-sharers (the other respondents) in favour of the predecessor in title of the appellant for the right of coal mining under 400 bighas of land in mauzah Dobari in Manabhum (the boundaries of the area leased being specified in a schedule to the *kabuliyat*) at a rental of Rs 2,800 a year which the *kabuliyat* stated shall never on any account be varied. The land within the boundaries specified in the schedule was not measured at any time or if measured it was not shown what the measurement was in bighas. The defence so far as material was mainly that the respondents had been given possession of the mining rights under an area less than 400 bighas of land and were therefore entitled to an abatement of the rent in respect of the deficiency. That by an injunction made in 1902 in a suit brought by the appellant the rights of the respondents to work coal underneath the land leased to them was restricted to an area of 275 bighas and they tendered rent at a reduced rate which the appellant refused to accept. The rent had been reduced in 1893 (1303) by the original

LANDLORD AND TENANT—*contd*LEASE—*contd*

lessor on the ground that the coal taken out was of inferior quality and rent had been paid at the reduced rate for 2 years. But the document witnessing the reduction had not been registered and was therefore inadmissible in evidence. On the construction of the *kabuliyat* the appellant contended that the respondents were entitled only to the coal underneath such quantity of land as was contained within the boundaries given in the schedule and the contention of the respondents was that they were entitled to the coal underneath the full quantity of 400 bighas of land. Both Courts below found that 400 bighas of land had been demised but the Subordinate Judge while finding that the respondents were in possession of only 346 bighas held that they were not entitled to any abatement of rent in respect of the deficiency. The High Court disregarded the description of the land by boundaries but found on the evidence in the former suit that the respondents had only been in possession of 275 bighas and held that they were entitled to a proportionate abatement of the rent fixed by the *kabuliyat*. **Held** (reversing the decrees of the Courts in India) that the question as to what had been demised in 1894 turned on the true construction of the *kabuliyat* which could not be varied by extraneous evidence as to the negotiations which led up to the contract or by evidence showing that within the boundaries specified in the *kabuliyat* there was not 400 bighas of land. **Held** further that there was no reliable and admissible evidence to prove that the original lessor ever bound himself permanently to accept a reduced rent and the fact that he did so for some years was consistent with the reduction having been a mere voluntary and temporary abatement. It was for the respondents to make out a case for the abatement of the rent but they had not proved how many bighas were contained in the area of mauzah Dobari within the boundaries specified in the schedule to the *kabuliyat* nor had they proved the area in bighas within those boundaries of which they were put in possession. They had not proved otherwise than by the action of the Subordinate Judge on the former suit in granting an injunction in the form in which it was granted and by their neglect to appeal from that decree that they had been deprived of the right to work any coal which otherwise they would have been entitled to work under the demise and the injunction as granted gave them no right which they could enforce by suit or of which they could avail themselves as a defence to a suit for the fixed rent. They had in fact wholly failed to prove any facts which would entitle them to any abatement of the rent fixed by the *kabuliyat*. The tenders based on a reduced rent were therefore not good and were ineffective and the appellant was entitled to a decree for the amount sued for less the costs of the former suit. **DURGA PRASAD SINGH v RAJENDRA NARAYAN BAGCHI (1913)** I L R 41 Cal 493

13 — **Clause allowing removal of fixture—After expiry of lease if a renewal clause—Notice of a lease—Notice of terms of a lease—Estoppel—Onus** Terms in a lease giving the lessee if unwilling at the end of the term to take a fresh settlement the right to take away the fixtures put on the land cannot operate as a covenant under which the lessee could comp

LANDLORD AND TENANT—contd**LEASE—contd**

the les. or to grant a fresh term **SARAT CHANDRA MUKHOPADHYAY v RAJENDRA LAL MITRA** (1913)
18 C W N 420

14 ——— **Nim howla lease—Stipulation in against voluntary alienation by tenant to person other than landlord—Purchase of tenure by stranger at sale in execution of money decree—Purchaser if acquires good title—Landlord if can sue original tenants for rent and obtain decree binding on tenure** The plaintiff purchased at an execution sale the right title and interest of the tenants in a *nim howla* tenure Notwithstanding the purchase by the plaintiff which was duly notified to the landlord the latter brought a suit for rent against the tenants and obtained a decree The plaintiff brought a suit for declaration that this decree was not binding on him and that the tenure in his hands was not liable to be sold in execution thereof The lease which created the *nim howla* provided as follows Let it be known that if you find it necessary to transfer the *nim howla* tenure you will transfer it to me for proper price You will not be at liberty to transfer it to any person other than myself If you transfer it to any other person such transfer will be invalid Held that there being no covenant against involuntary alienations and no covenant for re entry the plaintiff acquired a good title by his purchase and consequently it was not open to the landlord to sue the original tenants with a view to obtain a decree whereby he could proceed against the tenure in the hands of the plaintiff **PROMOD K. RANJAN GHOSH v ASWINI KUMAR NAIK** (1914)

18 C W N 1138

15 ——— **Covenant against alienation—Permanent lease of agricultural land—Covenant against alienation—voluntary as well as involuntary with proviso for re entry if enforceable—Purchaser if must be notified by lessor of intention to determine lease before suit—Bengal Tenancy Act (VIII of 1886) s 155 Sch III cl (1) if applies—Limitation—Mortgage by lessee sole in execution purchase by mortgagee—Mortgagee if trespasser** A permanent lease of agricultural land contained a covenant against sale gift mortgage etc by the lessee with a proviso for re entry in case the land was transferred or sold by auction The lessee having mortgaged the land the mortgagee sued on his mortgage and in execution of the decree obtained therein had the holding sold and purchased it himself and got possession through Court on 23rd November 1898 The original lessee continued in possession of a portion of the land under a sub lease from the purchaser Plaintiffs who proved their right to a 12 annas share in the interest of the landlord sued the purchaser and the original lessee for ejectment on 20th March 1903 The lower Courts having decreed the suit the purchaser only preferred this second appeal Held that the plaintiffs were entitled to recover (joint) possession to the extent of their 12 annas interest the defendant being a trespasser and the suit which was governed by Art 142 of Sch I of the Limitation Act having been instituted within time **Per SANDERSON C J**—The assignment was not *ad initium* as the execution sale was directly due to the voluntary act of the lessee **Per MOOKERJEE J**—A covenant for re entry by the landlord upon an involuntary sale is valid in

LANDLORD AND TENANT—contd**LEASE—contd**

India as in England **Per CURRIE**—That in the absence of any act of the Plaintiffs recognising the purchaser as a tenant he was in the position of a trespasser and neither s 165 nor cl (1) to Sch III of the Bengal Tenancy Act applied to the case **Per MOOKERJEE J**—Where a covenant against alienation is coupled with a proviso for re entry the landlord is not limited to the reliefs by injunction or damages That as the tenancy was of agricultural lands s 111 Transfer of Property Act did not apply and the suit was not bad because the plaintiffs did not previously notify their election to enforce the proviso The institution of the suit itself was a sufficient manifestation of the option to treat the lease as determined **DWARKA NATH ROY CHOWDHURY v MATHURA NATH ROY CHOWDHURY** (1916)

21 C W N 117

16 ——— **Option of renewal—Written notice in exercise of option to be given within time specified in Indenture—Oral arrangement—Modification or rescission of covenant for renewal—Admissibility of evidence—Waiver—Estoppel—Evidence Act (I of 1872) ss 91 92 (proviso 4) 116** An Indenture of lease contained a covenant for renewal of the lease whereby if the lessee desired to renew the lease he should give 3 months notice in writing of his intention to do so The lessee however failed to observe this covenant and relied on an oral statement or agreement between himself and his lessors for renewal of the lease Held that there was no waiver Held also that the oral statement or agreement amounted to either a modification or a rescission within the meaning of s 92 proviso 4 of the Evidence Act and evidence of such oral statement or agreement was not admissible Held also that there was no representation of a thing within the meaning of s 115 of the Evidence Act and consequently no estoppel **MARK D'CRUZ v JITENDRA NATH CHATTERJEE** (1919)

I L R 46 Cal 1077

17 ——— **Non delivery of possession of entire land demised—Rent suspension of for non delivery** Where the landlord having let out a portion of a land to an earlier lessee lets it out again with other lands to a subsequent lessee and fails to deliver to the subsequent lessee possession of the entire land leased to him the entire rent is suspended **Adele v Macleanne** 1 M & W 747 46 R R 418 and **Smith v Raleigh** 3 Camp 513 14 R R 899 followed **Stokes v Cooper** 3 Camp 514n 14 R R 829n, and **Annada Prasad Mukhopadhyaya v Mathura Nath Roy** **Madanram** 13 C N 4 702 distinguished **MATYINDRA CHANDRA NARAYAN v NARENDRA CHANDRA LALIT** (1919)

I L R 46 Cal 956

18 ——— **Right of pre-emption—of leasehold right—Clause of forfeiture of lease and right to re enter on breach of covenant—Contract Act (IX of 1872) s 74 applicability of—Transfer of Property Act (I of 1882) ss 111 (g) and 117 applicability of—Relief against forfeiture whether grantable** Where a vulgar lease provided for previous notice to the lessor in case of any intended sale or mortgage of the leasehold interest by the lessee and for forfeiture of lease and re entry on breach of the covenant Held that s 74 of the Indian Contract Act did not apply that Courts had no power to relieve

LANDLORD AND TENANT—contd

LEASE—contd

against the forfeiture and that the les or was entitled to possession on breach of the covenant. *Held* further that by reason of the prohibition in s 117 of the Transfer of Property Act s 111 (g) of the Act did not in terms apply but that the principles of the Courts of Equity embodied in s 111 (g) applied to the case. *KRISHNA SRETTI v GILBERT PINTO* (1919)

I L R 42 Mad 654

MINERAL RIGHTS

Agricultural character—Underground rights not mentioned in lease—Minerals under surface of land—Rights of Zemindar—Onus of proof—Transfer of Property Act (IV of 1882) ss 108 117 The question for decision in this case whether certain Goswamis the servants of an idol and lessees of a village in the zamindari of the appellant the Rajah of Pachete had under their lease which had been granted by a predecessor in title of the appellant about 60 years ago acquired any rights to the minerals beneath the surface of the village which they could have transmitted to the respondents who claimed to hold under them. There was no document or evidence defining the terms of the lease to the Goswamis. Two decrees in favour of the Rajah for the payment of an annual rent of Rs 22 15 0 by the Goswamis were put in in one of which they were described as cultivators and in the other as *brutti* holders. There was no evidence whatever that the Rajah had ever granted mineral rights in the village to the Goswamis or to any other person. Both the Courts in India found that the village was a *mai* (rent paying) village of the zamindari of the Rajah and that no prescriptive right had been proved by the respondents to any underground rights in the village. The High Court held that the zemindar had created a permanent tenure of an agricultural character and that the tenure holder would possess all underground rights in the absence of express reservation by the zemindar. *Held* by the Judicial Committee (reversing that decision) that the title of the zemindar Rajah to the village being established he must be presumed to the owner of the underground rights appertaining thereto in the absence of evidence that he had parted with them and no such evidence had been produced. *Field's Bengal Regulations* Introduction page 36 referred to. In the case of leases under the existing law of 1882 (the Transfer of Property Act IV of 1882 s 108) no right arises for a lessee to work mines not open when the lease was granted. *HARI NARAYAN SINGH DEO v SRIRAM CHAKRAVARTI* (1910)

I L R 37 Cal 723

Mineral rights—Permanent tenures grant of if conveys underground rights—Mogals Brahmin grants—Proof of permanency—Original tenure split up—Character of tenancy if altered When certain tenures which were described as *Mogals Brahmin* were shown to have existed since before the permanent settlement and it appeared that the same rents had always been paid for them and that they were freely transferable. *Held* that the tenures were at least permanent tenures. That it was not correct to view such tenure holders as owners of the land subject to a rent charge. The holder of a permanent tenure in the absence of all evidence of the

LANDLORD AND TENANT—contd

MINERAL RIGHTS—contd

terms of the lease should not be presumed to own the underground rights. *Abhiram v Shyam Charan I L R 36 Cal 1003 14 C W N 1* *Shyam Chand v Ram Kana 15 C W N 417* *Shama Charan v Abhiram I L R 33 Cal 511 10 C W N 733* *Megh Lal v Raj Kumar I L R 34 Cal 358 11 C W N 527* *Brojanath Bose v Durga Prasad I L R 34 Cal 753 12 C W N 193* *Sriram v Hari Narain I L R 33 Cal 54 10 C W N 495* referred to. Where the original grant was that of a permanent tenure the fact that subsequently the tenure was merely split up into more than one would not affect the permanent character of the tenancies. *Uday Chandra Kari v Arispendra Narayan Bhup I L R 36 Cal 237 33 C W N 410* distinguished. *JYOTI PROSHAD SINGH DEV v GEORGE MATTHEW DAREY* (1911)

16 W N 241

The grant of a permanent or heritable tenure at fixed rent or rent free from a *Zamindar* is not entitled to the minerals in the absence of express provision to that effect. *RAGHUNATH POY v RAJA OF JHERIA*

23 C W N 914

Mining lease construction—Provision for payment of royalties—Power to lessee to surrender lease on six months notice without definite time fixed—Condition of surrender all royalties to be paid before lessee's right arose—Waiver of condition by lessor by his asking for surrender by deed on receiving notice from lessee of intention to surrender and delay caused thereby A lease for 999 years was granted by the appellant in favour of the respondent company of coal land and mining rights in certain *mouzas* in his zamindari. By cl 1 of the lease certain royalties were fixed for each ton of coal and cl 2 provided that such royalties should be payable quarterly. By cl 3 an annual minimum royalty was fixed until the expiration of the term with a provision that if the royalties paid were found at the end of the Bengali year to be less than the minimum royalty the lessees should be bound to make up the loss and pay the minimum royalty in full within the first two months of the following year. By cl 4 the lessees were given power to take the necessary surface land for the purpose of carrying on the colliery business at a fixed rent per bigha to become payable at the end of each Bengali year. Cl 5 gave the lessees a right to surrender any or all of the *mouzas* hereby leased to you by giving me six months written notice and paying the minimum royalty for the said six months, i.e. a half of the annual minimum royalty. But I shall not accept any surrender for a portion or any of the *mouzas* neither shall you be entitled to surrender so long as any rent or royalty remains unpaid. The respondent Company on 11th May 1912 sent to the appellant a registered letter giving him six months notice of their intention to relinquish the *mouzas* the appellant handed the notice to his manager who requested the respondent Company to execute a formal deed of surrender. Admittedly no deed was tendered for execution nor was any amount ascertained as being payable for royalties before the expiration of the six months' notice. The respondent Company on 23rd May 1913 paid the amount they calculated to be due but the appellant objected that there had been no effectual surrender,

LANDLORD AND TENANT—cont'd

MULGENI RIGHTS—concl'd

ina much as the notice did not expire at the end of the Benarasi year and no tender of the amount due had been made. In a suit brought by the appellant treating the lease as being still in force—*Held* that there was nothing in the terms of the lease to fix the notice as one that must be given at any definite period and therefore under cl 9 it had been rightly given that cl 10 did not make it necessary to tender the amount due for royalties at the time when the notice was served that at when the manager asserted that the surrender should be by deed it was not obligatory to pay the money until the deed was tendered and that the lease was no longer subsisting on the expiry of the six months and therefore the suit was not maintainable. **DEOJA PRASAD SINGH v. TATA IRON AND STEEL COMPANY (1918)** I L R 46 Calc 552 L R 45 I A 275

MULGENI TENURE

Landlord and Tenant—

Mulgeni tenure—Revenue assessment who to pay—Revenue Recovery Act II of 1861 as 1 and 35—Principles apart from Act Under s 30 Revenue Recovery Act a mulgenidar who pays revenue due on land held by him as a mulgeni tenant is entitled to recover the same from his landlord the mulgar by deducting the amounts so paid from any rent then or afterwards due from him to the mulgar. The fact that the mulgar's revenue assessment has been increased by Government does not make him the less liable to pay the whole assessment although the amount so to be paid may be in excess of or out of proportion to the rent to be received by him. To hold otherwise would be to deprive the mulgenidar of the right secured to him by s 30 of the Revenue Recovery Act. Per BRADSON J—Apart however from the Revenue Recovery Act which thus indirectly and as it were unintentionally imposes the whole burden on the pattadar it cannot be held that where an increased revenue assessment has not been contemplated in the mulgeni chit either the mulgar or the mulgenidar is bound to pay the whole of the increase in assessment imposed by Government. Assessment is a burden imposed by Government on the land and where the rent has been fixed by contract and the imposition of a higher assessment by Government is a matter outside the terms of the contract altogether and is not provided for in it either expressly or impliedly it ought in accordance with principle to be shared by the mulgar and the mulgenidar in proportion to the benefit which each derives from the land. VIDYAPURNA THIRTHASWAMI v. UDOGANU (1910) I L R 34 Mad 231

The rights of mulgenidar do not escheat to Government on the death of the last owner dying without heirs but revert to the mulgar for whom the mulgeni was acquired—a mulgeni differs from a permanent lease. **SECRETARY OF STATE FOR INDIA v. SHITARAM APPA** I L R 42 Mad. 327

NOTICE TO QUIT

—Principles to be observed in construing notices to quit—Inaccuracies in notice may be immaterial—Test of sufficiency though inaccurate—Interpretation affected by the fact

LANDLORD AND TENANT—cont'd

NOTICE TO QUIT—cont'd

that the persons on whom they are served are conversant with all the facts and circumstances of the tenancy it is desired to terminate—*Maxim Ut res magis valeat quam pereat—Mode of service—Transfer of Property Act (IV of 1882) s 106* The principles on which notices to quit containing errors honestly but mistakenly or inadvertently made are to be construed are entirely inapplicable to notices containing inaccuracies deliberately inserted for fraudulent purposes. The principles laid down by the English authorities are equally applicable to cases arising in India. They establish that notices to quit though not strictly accurate or consistent in the statements embodied in them may still be good and effective in law that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to relate but what they would mean to tenants presumably conversant with all those facts and circumstances and further that they are to be construed not with a desire to find faults in them which would render them defective but in accordance with the maxim *Ut res magis valeat quam pereat*. *Deo d. Huntingtower v. Cullford 4 Doie & Ry 248 Doe d. Williams v. Smith 5 Ad. & F. 350 Hyde v. Dyer [1900] 1 Q. B. 23 and Deo v. Archer 13 East 245* referred to. Applying these principles to the present case in their pleadings to which the defendants attributed fraudulent intentions to the plaintiffs—*Held* that the plaintiffs were not actuated by a desire to effect any fraudulent purposes in connection with the notice to quit or in bringing the suit from all their action and on the evidence a contrary view was to be inferred that the earlier portion of the notice to quit correctly and clearly described the identity of the land it was intended to cover which the defendants admittedly knew was 2 bighas 2½ cottahs and the erroneous statement in the schedule as to the area of the land being 6 cottahs did not predominate over the description of it already given in the notice but was merely an immaterial inaccuracy and that the pleadings and evidence in the case showed that the defendants were conversant with all the circumstances and facts relating to the land. The notice was sufficient to cover the entire area held by the defendants from the plaintiffs and was therefore a good notice. *Held* further that the notice to quit had been duly served on all the tenants and the conditions laid down in s 106 of the Transfer of Property Act (IV of 1882) were complied with. Service on one joint tenant is *prima facie* evidence that it has reached the other joint tenants. *Mccartney v. Crick 5 Esp 196 Doe d. Bradford v. Wakins 7 East 551 and Pollock v. Kelly 6 Ir C. L. R. 367* referred to. Service through the post was sufficient. *Gresham House Estate Co v. Rosa Grande Gold Mining Co (1870) W. L. R. 119* and the presumption that the notice so served has been received is greater when the letter is registered as in the present case and is not rebutted but strengthened by the fact that a receipt for it is produced signed on behalf of the addressee by some person other than the addressee himself. *Tanham v. Nicholson L. R. 5 H. L. 561* referred to. **HARINAR BAKERJI v. RAMSHASHI ROY (1918)** I L R 46 Calc 458

LANDLORD AND TENANT—cont'd

OCCUPANCY RIGHT

See OCCUPANCY RIGHT

Occupancy right extinguishment of—New occupancy right in the same holding—Acquisition of adverse rights in two capacities—Non occupancy raiyat if he can sub let and create incumbrance—Bengal Tenancy Act (VIII of 1885) ss 2 cl (2) 159 160 cl (9) When an occupancy right is extinguished by the operation of ss 2 cl (2) of the Bengal Tenancy Act a new occupancy right cannot be acquired in the same tenancy by the co-sharer proprietor by whose action the occupancy right has ceased to exist. The owner of a holding cannot acquire a right adversely to himself in his other character as co proprietor. A non occupancy raiyat is a raiyat and the land held by him is a holding ss 159 of the Bengal Tenancy Act applies to non occupancy holdings also. A non occupancy raiyat is not prohibited from sub letting and may have an under raiyat under him and may create a protected interest under s 100 cl (2) if his landlord allows him so to do. An incumbrance may be created by a non occupancy raiyat on his holding in limitation of his own interest however limited by way of sub lease. RAM LAL SINGH v. BUNLA GAZI (1910) I L R 37 Cal 709

Purchase of raiyats in interest by sole Landlord—Occupancy holding and occupancy right—Transferability—Merger—Under raiyat—Notice to quit—Ejectment—Bengal Tenancy Act (VIII of 1885) as amended by Bengal Act I of 1907 ss 22 cl (2) 49 85 and 167. The raiyats of certain lands in dispute executed a mortgage of their lands and put the mortgagee in possession. Subsequently the mortgagee sold the lands with under raiyats. The superior landlord then brought a suit for rent against his raiyats and purchased the holding at a sale for arrears of rent. Thereafter the landlord sold the permanent raiyats to one Meajan who after having taken a lease from the landlord and after having redeemed the mortgage sold the same to the present plaintiffs. The plaintiffs thereupon brought a suit to eject the under raiyats. Held that the occupancy still continued to exist after the purchase by the landlord. AHHI CHANDRA BISWAS v. HASAN ALI SADOGAR 19 C B N 216 followed. Held also that the landlord was able to transfer the holding to Meajan through whom it came to the plaintiffs. Held also that the under raiyats continued to be under raiyats and were duly served with notice to quit and must be ejected. YAKUB ALI v. MEJAN (1915) I L R 43 Cal 164

PERMANENT TENANCY

See BOMBAY LAND REVENUE CODE 1879 ss 63 216 I L R 44 Bom 566

Evidence of permanent tenancy—Contention that no permanent tenancy can exist in the Punjab as there is no Permanent Settlement as there is in Bengal. In this case the land in dispute was situated in a suburb of Delhi and was covered by buildings of masonry occupied by the respondents. It was admitted that their predecessors were invited to occupy the land for building purposes by the predecessors of the appellants in 1839. No document showing the terms of occupancy is extant nor is there any reliable evidence of what passed at that time. But

LANDLORD AND TENANT—cont'd

PERMANENT TENANCY—cont'd

the facts found (as to which there was no dispute) were that from 1839 onwards a uniform and fixed rent had been paid that in some of the receipts given by the landlord the term permanent as applied to the rent was used that the respondents and their predecessors in title have erected substantial buildings without the landlord's objection that they have dealt with these properties by way of sale and mortgage and that the properties has passed by succession. Held that the evidence sufficiently showed that the respondents had a permanent tenancy and the fact that there was no permanent settlement in the Punjab was not material as affecting this conclusion. AFZAL U DIN v. ABDUL KARIM (1919) I L R 47 Cal 1

Permanent heritable and transferable tenure—Liability to enhancement—Contract for rent at progressive rates—Inference when highest rate is reached and there is no further enhancement by law—Bengal Tenancy Act (VIII of 1885) ss 29 30. The defendant in this case was the tenant of the plaintiffs (appellants) and the tenure was admittedly permanent heritable and transferable. The only question was whether the rent was fixed as the defendant alleged or was liable to enhancement. Ordinarily the admitted characteristics would create a presumption in favour of the tenant and throw on the plaintiffs the onus of showing that the tenure was wanting in the characteristics of fixity of rent but held that even if the onus lay on the defendant she had fully discharged it. In the books of the plaintiff Company it was expressly stated that the tenure should not be liable to rent for the first four years. After that it carried rent on a progressive scale until in 1298 it reached one rupee one anna per bigha. The contract as to progressive rent thus came to an end in 1298 and there was no further enhancement by operation of law. The clear inference from those facts was that the maximum rent reached in 1298 was the fixed rent of the tenure as long as it lasted. GOLAM ALI v. GOPAL LALL THAKOOR & Co in Privy Council. Soorasonderly Dabee v. Golam Ali 15 B L R 1254 9 Suth W R 65 Dhunput Singh v. Gooman Singh 11 Moo I A 435 and Huro Prasad Roy Chowdhry v. Chandee Churn Roychowdhry 1 L R 9 Cal 505 referred to. PORT CANNING LAND IMPROVEMENT CORPORATION v. KATYANI DEBI (1919) I L R 47 Cal 280

Raiyats holding created in 1845 and held at fixed rent—Recognised as heritable and transferable—Inference that holding permanent—Rent receipts stating tenant to be tenant at will value of. In a suit to eject the Defendants from a raiyati holding situated within the Calcutta Municipality it was found upon the evidence that the holding was created somewhere in 1845 that it had been held over since at a fixed permanent rent and that the Plaintiff landlord had in the benams of another person taken a mortgage of the holding treating it as a permanent transferable heritable holding. Held—That the District Judge was right in holding that the holding was a permanent heritable one and in refusing to attach any importance to a statement in the rent receipts granted to the tenants that they were tenants at will when there was nothing to show that the tenants consented to the insertion of these

LANDLORD AND TENANT—contd

PERMANENT TENANCY—contd

words in the receipts or were even aware of it
**SREEDHAR NATH IOT v DWARKANATH CHAKRA
 VARTI** 24 C W N 1

RELINQUISHMENT

Joint tenants surren-
 der by one of her share if operative against the
 other—Relinquishment to take effect at a future date
 if inoperative A relinquishment made in favour
 of the landlord by one of two co tenants so as to
 effect her share is valid A relinquishment is not
 inoperative because it was to take effect at a
 subsequent date **KUSHI MOHINI v BAIKUNTA
 CHANDRA SHARMA** (1910) 15 C W N 680

Occupancy tenant—
 Usufructuary mortgage—Relinquishment of ten-
 ancy during the term of the mortgage Held that
 an occupancy tenant who has made a usufruc-
 tuary mortgage of his holding and put the mort-
 gagee in possession cannot during the subsist-
 ence of such mortgage relinquish his holding to
 the prejudice of the mortgagee's rights **Rannu
 Rai v Rafiuddin** 1 L R 27 All 82 followed
CHHOTU LAL v SREOPAL SINGH (1900.)

1 L R 33 All 335

RENT

1 ——— Presumption of permanency
 of rent—Record of Rights—Bengal Tenancy Act
 (VIII of 1885) as amended by Bengal Acts III of
 1898 and I of 1903 as 50 103 115 When an
 application is made under s 105 of the Bengal
 Tenancy Act as amended by Bengal Acts III of
 1898 and I of 1903 for settlement of rent after the
 final publication of the record of rights the tenant
 is entitled in view of the provisions of s 110 of the
 Bengal Tenancy Act to the benefit of the presump-
 tion under s 50 of the same Act **Radhakrishna
 Manikya v Umed Ali** 12 C W N 904 approved
Secretary of State for India v Koyamuddin 1 L R
 26 Calc 617 distinguished **PRITHWIRAJ LAL
 CHOWDHRY v BASARAT ALI** (1909)

1 L R 57 Calc 30

2 ——— One suit for rent of different
 tenancies if maintainable—Bengal Tenancy
 Act (VIII of 1885) as 20 29 cls (a) and (b)—
 Presumption under s 20 when arises—Effect of
 division of tenancy When there are several tenures
 held by the same tenant the landlord may institute
 one suit for the rent of all the tenures but if he does
 so he cannot put the tenancies to sale in execution
 of the decree so as to enable the purchaser to avoid
 incumbrances **Hriday Nath Das v Krishna Pra-
 sad Sircar** 1 L R 31 Calc 298 s c 6 C L J
 153 11 C W N 497 **Balkanta Nath Roy v
 Thakur Debendra Nath Saha** 11 C W N 676
Nanda Lal v Sadhu Charan 7 C L J 96 **Bipra
 Das v Rajaram** 13 C W N 650 referred to No
 inflexible rule of law can be laid down that the
 division of a tenancy creates or does not create a
 new tenancy Whether it does or does not is a
 question of the intention of the parties to be decided
 on the evidence **Uday Chandra v Nripendra
 Narayan** 13 C W N 410 **Radhu Mala v Alfa-
 zuddi** 13 C W N 96^o referred to **HULIYK
 CHAND DASS v SATISH CHANDRA JAS** (1909)

14 C W N 375

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3 ——— Denial of lessor's right to
 sue—**Esloppe** Held that a tenant who had
 taken a lease from one of several trustees was
 not competent to deny his lessor's right to sue
 alone for the rent **Musammam Purnia v Torab
 Ally** 3 Hyman 14 and **Jainarayan Bose v Hadin-
 bani Das** 7 B L R 73 referred to **KESHO DAS
 v MAHESWAR DAS** (1910) 1 L R 32 All 213

4 ——— Suspension of rent—Substan-
 tial interference by landlord with enjoyment of holding
 by tenant—Tenant when entitled to suspension of rent
 —Bona fide interference what is Where there is
 substantial interference by the landlord with the
 tenant's enjoyment of his tenure even though there
 is no complete eviction the tenant is entitled to
 suspension of rent for the period during which
 there was such interference **Adami Das v
 Kashi Nath Biswas** 13 B R 338 **Dhyanpal
 Singh v Kashi Nath Biswas** 1 L R 24 Calc 296
Haro Kumar v Purna Chandra 1 L R 28 Calc
 185 **Lalia Sundari v Surnomoyee Das** 5 C W
 N 353 discussed J auction purchased a dur-
 pui with power to annual incumbrances and
 served notice to quit on the *sepuindars* who re-
 fused to yield possession On J attempting to take
 forcible possession criminal proceedings ensued as a
 result of which the *sepuindars* were attached under s 146
 of the Criminal Procedure Code on the 3rd October
 1902 The land attached was subsequently let out
 to *gyaradar* who paid rent to the *putindar* and depo-
 sited certain sums as *gyara* rent in the Collectorate
 Some of these sums deposited were withdrawn by
 J as *dur putindar* In 1906 the *sepuindars*
 obtained a decree establishing their *sepuini* title and
 in pursuance of that decree withdrew some of the
gyara rent that was deposited in the Collectorate
 In a suit for rent by J against the *sepuindars*
 for the period during which the property was under
 attachment Held that the circumstances con-
 stituted substantial interference by the landlord
 with the tenant's enjoyment of his tenure such as
 disentitled him to recover rent for that period
 Held on the facts of the case that it was not such
 bona fide interference without prejudice to the
 tenant as would entitle the landlord to receive rent
Ranee Surnomoyee v Shookhee Mookhee 12 Moo
 1 A 244 distinguished **MAHOMED JAULLIA
 MEH v SUREKANNESHA BIDI** (1910)

14 C W N 446

5 ——— Co owners—Receipt for rent col-
 lected by one co owner—Rights of the others to sue tenant and remaining co owner
 for rent W and others were co owners of a
 shop which was let to U The other co owners
 suspecting W's good faith gave notice to U
 forbidding him to pay rent to W They then
 commenced proceedings for partition of the shop
 Subsequently W executed in favour of U a receipt
 for arrears of rent and for a further sum alleged to
 represent rent paid in advance Held that in the
 above circumstances the co owners other than W
 were entitled to sue the tenant and W for their
 proportionate share of the rent their allegation
 being that the receipt referred to above was
 fictitious and collusive **Doorga Charan Surma
 v Jampa Dasree** 12 B L R 289 referred to
ZIA UD DIN v MUHAMMAD UMAR (1910)

1 L R 33 All 303

6 ——— Joint promise—Contract Act (IX
 of 1872) s 11—Joint and several liability when

LANDLORD AND TENANT—contd

RENT—contd

*arises—Joint tenants of original tenant if jointly and severally liable—Where suit for rent dismissed against two of three joint tenants who did not admit the rate of rent if landlord can recover entire rent from one who admits rate of rent Whether a promise is joint or several or joint and several is a question of construction depending upon the intention of the parties to a contract In cases of joint and several promises in addition to several persons joining in a promise to another there is a promise by each to the others and of each of them separately to the promisee It cannot therefore be affirmed as an inflexible rule that in every case where A lets out land jointly to B and C there is a promise that each of them will be responsible for the entire rent so that the landlord may recover against any one of them At any rate where several persons jointly inherit a tenancy any one of the heirs cannot be made separately liable for the entire rent Where out of three joint tenants who were representatives of one original tenant there was an admission by one in favour of the rate of rent claimed by the landlord but the admission was held to be inadmissible against the other tenants and the suit against the other two was dismissed—Held that the landlord could not recover the entire rent from the tenant who admitted his rate of rent The suit was dismissed as against him also *Quære* Whether a landlord may make one of several joint tenants responsible for the whole rent *KASI KUNAR SEN v SATYENDRA NATH BHADRA* (1910)*

15 C W N 191

7 ———— *Transfer of tenure—Bengal Tenancy Act (VIII of 1886) ss 12 13 167—Suit for rent—Unregistered tran feree of permanent tenure who has paid landlord's fee if necessary partly—Sale in execution of rent decree obtained against recorded tenant only—Decree of money decree only—Benamidars if necessary parties—Notice to annul incumbrances signed by Deputy Collector—Validity The transfer of a permanent tenure is completed upon payment of the landlord's fee prescribed by s 12 irrespective of its acceptance by the landlord and thereupon the landlord is bound to look to the transferee for payment of rent accruing due since that date It is not necessary in such a case that the transferor himself should have had his name registered in the landlord's books Where the landlord sues for such arrears of rent without making the transferee a defendant the decree obtained in the suit only operates as a decree for money The landlord is not bound to join in his suit for rent as parties defendants persons who are merely benamidars *GIRIS CHANDRA GUHA v KHACENDRA NATH CHATTERJEE* (1911)*

16 C W N 64

8 ———— *Failure of tenant to raise crop—damages in rent—Suit by landlord for recovery of value of his share if les in Small Cause Court—Provincial Small Cause Courts Act (IX of 1887) s 11 Art 8—Rent—Damages for use and occupation Where a landlord brought a suit against his tenant claiming damages for wilfully omitting to raise crops whereby the plaintiff was deprived of his share thereof *Held* that inasmuch as the share of the produce to be received by the landlord was ascertained before the commencement of the suit and the term for which the land was let out had not terminated the claim was in*

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substance one for recovery of rent and the suit would not lie in the Small Cause Court *IAJAY LALDAY v BIPRAHMO LALDAY* (1911)

16 C W N 89

See also post

2 Pat L J 97

9 ———— *Redit decreo one decree for two different tenures—Consolidation of tenures Where there are two different dargulins tenures in respect of 13 as and 3 as respectively of a plot with different payments of rent held by the same tenant though it is competent to a landlord to bring one suit for both the tenures the mere fact that the total rent of the two tenures is claimed in the same suit cannot have the effect of consolidating the two tenures into one A decree obtained for arrears of rent in respect of two or more separate tenures cannot be executed as a rent decree under the Bengal Tenancy Act but must be executed as a money decree under the Civil Procedure Code *PASH MOHINI DAS v DEBENDRA NATH SENHA* (1911)*

16 C W N 395

10 ———— *Tenant holding on after expiry of term—Amount of rent payable When a tenant holds on after expiration of his lease he does so on the terms of the lease and at the same rate and on the same stipulations as are mentioned in the lease unless the parties come to a fresh settlement The mere fact that the rent for some years has been received at a reduced rate does not bind the lessor to accept rent at that rate *Durga Prasad Singh v Rajendra Narain Deychi* 10 C L J 570 followed *Quære* Whether variation of the labuliyat rent when the tenant is holding over can be established by oral evidence *Sheikh Enayoolah v Sheikh Llahee bulah* [1863] 11 P Act 14 and *Sayaji bin Habaji v Umaji bin Sadaji* 3 Bom II C A C J 27 followed *Mulund Chandra Sarma v Arpan Ali* 2 C N A 47 explained *BAJNATH PROSAD SAHU v RAGHUNATH RAI* (1911)*

16 C W N 496

See also post

20 C W N 347

11 ———— *Denial of relationship of landlord and tenant—Bengal Tenancy Act (VIII of 1886)—Suit for rent dismissed of—Appeal by landlord withdrawal of—Suit for ejectment if maintainable Mere denial of the relationship of landlord and tenant does not in case to which the Bengal Tenancy Act applies work any forfeiture unless the denial has been given effect to by a decree of the Court Where the landlord after the dismissal of his suit for rent upon the tenant's denial of the relationship of landlord and tenant appealed and pending the appeal withdrew the suit with liberty to bring a fresh suit and then brought an action to eject the tenant on the ground of such denial by the tenant *Held* that the only decree that could be relied on here was a decree which ceased to exist owing to the withdrawal of the suit by the landlord and so the denial of the relationship of landlord and tenant by the tenant would not work any forfeiture suit was not given effect to by a decree of the Court *PRAN LAL HALDAR v HEM CHANDRA SARKAR* (1912)*

16 C W N 730

12 ———— *Settled raiyat—Settlement proceedings tenant setting up rent free title in—Tenant entered as settled raiyat in Record of Rights as final*

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published—Suit to have rent as as ed—Limitation
Where more than 12 years before the landlord's suit for assessment of rent the tenant in the course of settlement proceedings set up a title to hold the land rent free but no actual decision of the question by the Settlement Officer was proved though the record of rights which was finally published within 12 years of the suit showed that the tenant was entered as a settled raiyat in the village *Held* that it was open to the landlord to rely upon the entry in the record of rights as a tacit recognition of his right to have rent assessed at any rate within 12 years of the date of final publication and the suit therefore was not barred by limitation *Saharaja v. Sreendra Kishore Manikya Bahadur v. Purna* 15 C L J 303 s c 16 C N 1 931 distinguished *Amal Cazi v. Birendra Kishore Manikya Bahadur* (1912)

16 C W N 929

13 ——— Assessment of rent—A suit for assessment of rent brought more than 12 years after an adverse title had been set up is barred by limitation *Birendra Kishore Manikya Bahadur v. Purna* (1912)

I L R 39 Calc 453

16 C W N 931

14 ——— Fixed rate tenants—Liability—*Contract Act (IX of 1872) s 43* *Held* that the liability of joint holders of a fixed rate tenancy of payment of rent is joint and several and not joint only. The failure therefore of the plaintiff in a suit for rent against several fixed rate tenants jointly to bring upon the record the representatives of a deceased defendant is no bar to the continuance of the suit against the remaining defendants. *Joy Gobind Laha v. Monmotha Nath Banerji* 1 I P 33 Calc 530 followed *Muhammad Askar v. Radha Ram Singh* I L R 22 All 307 referred to *Abdul Aziz v. Basdeo Singh* (1912)

I L R 34 All 604

15 ——— Denial of landlord's title—*Landlord if entitled to rent for use and occupation where no such alternative claim is made in the plaint* In a suit for rent where no alternative claim is made for compensation for use and occupation no rent can be decreed on that footing. Where in a suit for rent the defendant denied the landlord's title and the plaintiff failed to prove an alleged settlement with him and no alternative claim was made in the plaint for compensation for use and occupation *Held* that the landlord was not entitled to compensation for use and occupation *Lukhee Kant Doss v. Sumetooooda Luskar* 13 B L R 243 *Sreendra Varan v. Bhai Lal* I L R 22 Calc 752 *Rachha Singh v. Upendra Chandra* I L R 27 Calc 239 and *Gobinda Sundar v. Srikrishna* 10 C L J 538 followed *Gurnomjer v. Dino Nath* I L R 9 Calc 908 and *Am Sirdar v. Pamlol* I L R 25 Calc 374 discussed *Eshen Chandra Singh v. Shama Charn Bhatta II Moo I A 7 20* referred to *Bhukhi Hoer v. Ram Khelwaz Peshad* (1912)

17 C W N 311

III ——— *Ex parte* decrees for it operates as res judicata—*Notice under s 167 of the Bengal Tenancy Act (VIII of 1835) of bars suit for rent* An *ex parte* decree in a suit for rent operates as res judicata upon the question of relation of landlord and tenant *Bir Chander*

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v. Harish Chander I L R 3 Calc 833 referred to *Vadhu Sudan v. Brae* I L R 16 Calc 300 discussed and distinguished. Where a suit was decided in the presence of the defendant's pleader *Held* that the decree could not be called an *ex parte* one merely because the defendant did not adduce evidence or submit any argument at the trial. *Held* also that the *ex parte* decree did not lose its conclusive character because it was not executed. *The relation of landlord and tenant being once established the mere fact of non payment of rent is not sufficient to show that the relationship has ceased*. If a landlord elects to treat the defendant as a tenant the mere fact of his having served a notice on him under s 167 of the Bengal Tenancy Act does not bar a suit for rent *Raj Kumar Roy Chowdhury v. Alimuddi* (1912)

17 C W N 627

17 ——— Agreement to deliver agricultural produce—*Over and above cash rent—Gess—Agreement opposed to public policy* Certain tenants holding under a registered *gabuhai* agreed therein to deliver to their landlord over and above the sum specified as a money rent certain agricultural produce and further to supply the landlord with a cart and bullocks when necessary and in default the landlord might claim the cash value of the said dues along with rent. *Held* on suit by the landlord to recover the cash equivalent of such dues for several years that the covenant in question was for various reasons unenforceable. *Abdul Hai v. Nathua* 1 All L J 537 *Sadanand Pandey Ali Jan* I L R 32 All 193 and *Sheoambar Ahir v. The Collector of Azamgarh* I L R 34 All 353 referred to *Sis Pamt v. Asghar Ali* (1912)

I L R 35 All 19

See also U P Land Revenue Act 1901 s 56

I L R 38 All 288

18 ——— Patni lease—*Diluvion caused by tidal river—Fight to abatement of rent under patni lease—Diluviated land part of taluk reforming in situ—Claim by zamindars and patnidar*—*Bengal Act VIII of 1869 s 19—Limitation by adverse possession—Failure to show relinquishment of submerged land by patnidar* The appellants were owner of a zamindari within which was a patni taluk created in 1837 by one of the predecessors in title of the appellants. This taluk was owned by the first respondent as patnidar and a strong tidal river flowed close to the boundaries of the taluk. The patni lease covenanted that if the land be found to be more in measurement by tal prevalent according to the custom of the pargana I shall separately pay the rent thereof at this rate if it be found to be less I shall get remission therefor. In 1843 the appellants obtained a decree in the Revenue Court for increased rent on the ground that additional land was found on measurement to be in the patnidars possession. In 1859 part of the taluk having been washed away by the river the respondent obtained a proportionate abatement of the rent. Subsequently the land so diluviated reformed in situ whereupon both parties claimed it and each party attempted to exercise rights of ownership as evidence of adverse possession against the other but it was found that neither party had proved sufficient adverse possession to give him a title. In 1906 the appellants sued for a declaration of

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their title to khas possession of the land reformed on the ground that it was part of their zamindari or in the alternative were entitled to receive a proper rent for it. The respondents pleaded that the land was an accretion to their taluk and that the appellants were only entitled to rent and not to khas possession. *Held* that the High Court whilst rightly holding that the land reformed did not come within the provisions of s 4 of Regulation XI of 1825 and that it could not be claimed by either party as an accretion to his lands had laid too much stress on the terms of the lease and the evidence of intention deducible from the proceedings in respect of additional rent and abatement of rent. There was nothing to show that by claiming or accepting remission of rent in respect of land washed away from time to time by the action of the river the respondent abandoned or agreed to abandon his rights to such land on its reformation *in situ*. The alluviated land formed part of a permanent heritable and transferable tenure and until it could be established that the holder of the tenure had abandoned his right to the submerged land it remained intact. *Hennah Dutt v Ashgar Sindr I L R 4 Cal 894* discredited from *Maharaj v Rampat Singh I L R 18 All 230* followed. **ARUN CHANDRA SINGH v RAMJI KUMAR (1913)** **I L R 41 Cal 683**

19 ——— Execution of decree for rent—Bengal Tenancy Act (VIII of 1885) s 65 66 148(h)—Bengal Regulation (VIII of 1819) ss 8 11 13 23 24 25 () and (4)—Right to bring tenure to sale in execution of decree for arrears of rent—Assignees of decree. A zamindar having parted with all his interest in the zamindari brought a suit for arrears of rent against the patni dar and obtained a decree. Further arrears became due to recover which the purchaser of the zamindari took proceedings under Bengal Regulation VIII of 1819 (relating to patni tenures) and the darpatindar deposited the amount of the arrears under s 13 of the Regulation and was put into possession of the patni tenure. In a suit brought by him for a declaration that he had a first charge on the patni for the sum deposited by him and for an injunction to restrain the defendants (persons to whom the ex zamindar had assigned amongst other property the decree for arrears of rent) from executing the decree *Held* (reversing the decision of the High Court) that the decree was not one for rent within the meaning of s 65 of the Bengal Tenancy Act ss 65 and 66 taken together cover practically the remedies provided by law for the landlord to recover arrears of rent. One section is the exact corollary of the other. The right to proceed to sale in one case in the other to eject is dependent on the existence of the relationship of landlord and tenant at the time when the remedy provided by law is sought to be enforced. By s 148(h) of the Act the right to apply for the execution of a decree for arrears of rent was attached to the status of decree holder qua landlord. The prohibition contained in that section is referred to decrees obtained by the landlord under s 65 and the right to bring the tenure to sale exists only so long as the relationship of landlord and tenant exists and appertains exclusively to the landlord. A person therefore to whom rents are due and who obtains a decree for them after he has parted with the property in which the tenancy is situate has no such

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right. *Akshra Pal Singh v Kartarthamon Dassi, I L R 35 Cal 566* distinguished. *Held* also that the plaintiff by his deposit of the arrears for which the patni tenure was advertised for sale at the instance of the purchaser of the zamindari, acquired the special lien expressly created by Regulation VIII of 1819 arising not under any implication of law but under the express directions and declarations contained in ss 8 11 13 and 13 subs (2) of the Regulation, and the Bengal Tenancy Act is declared by s 19 of that Act not to affect any enactment relating to patni tenures so far as it relates to those tenures. **FORDS v MAHARAJ BAHAI L R SINGH (1914)** **I L R 41 Cal 926**

20 ——— Abatement of Rent—Onus—Tenant deprived of a portion of land by form of injunction erroneously decreed in landlord's suit to restrain encroachment by tenant on khas lands—Agreement to take reduced rent not registered if admissible—Want of consideration. The receipt by the landlord of a reduced rent for some years in the absence of reliable and admissible evidence to prove such an agreement was held to be consistent with the reduction having been a mere voluntary and temporary abatement. Where after a permanent lease had been executed the landlord sued the tenant for alleged wrongful entry upon his khas land by the tenant and prayed for an injunction to restrain the tenant from committing such trespass but the Court in stead of granting the injunction as prayed decreed that the tenant be restrained from dealing with property lying outside the demised mouzah as delineated in the map prepared by the Civil Court Amin and the tenant preferred no appeal against the decree. *Held* that it was not intended by that decree to reduce the area of the land which the tenant was entitled to deal with under his lease and in a suit for arrears of rent he could not claim an abatement of the rent if in fact the injunction which was granted in wide terms than were called for had that effect as he did not avail himself of his remedy by way of appeal and submitted to the decree. Where the tenant tendered a reduced amount of rent and interest on the plea that owing to his having not been given possession of the entire area demised he was entitled to an abatement of rent but no ground was made out by the tenant for such abatement the tender was not a good tender. It is for the tenant to make out a case if he has one for an abatement of the fixed rent. **DURG PRASAD SINGH v RAJENDRA NARAYAN BACCHI (1913)** **IN C W N 66**

21 ——— Eviction by title paramount—If good defence to rent suit—Tenant induced to attorn to superior landlord by offer of reduced rent. Eviction by title paramount would be a good defence to a suit for rent if the party evicted having a good title the tenant quitted against his will. The same result would follow where the party seeking to evict should claim the rent and the tenant on such notice attorn to him. *Hill v Saunders 4 B & C 529* followed. This doctrine of quasi eviction should apply in this country but it does not apply to a case where the tenant is induced to attorn to the superior landlord by an offer to accept reduced rent. **NOORJAN SARDAR v BIMOJA SUNBARI GUPTA (1902)**

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22. — Abatement of Rent—Consuetudine of *labuliyat* In a *pulni labuliyat* there was the following provision for abatement of rent. If you obtain remission in the *sudder jama* from the Government in respect of lands taken up for culverts embankments or roads I shall also get from you reduction of *jama* on account of all the said remissions in the *jama* of this *pulni*. *Held* on a construction of the agreement that the *pulnidar* was to get the same amount of remission which the *zamindar* would get in the Government revenue. *Held* also that the words culverts embankments or roads in the agreement were illustrative and not exhaustive. **HIRENDRA NATH DUTY v. HARI MOHAN CHOSH (1914) 18 C W N 860**

23. — Adjustment of account—Between landlord and tenant—*Hasl bali*—Portion of amount due on adjustment left in deposit with tenant for payment to superior landlord—Such amount if continues to be rent and if recoverable as such—Limitation Act (IX of 1908) Sch I Art 115 The plaintiff was the landlord and the defendant the tenant. There was an adjustment of accounts between them as regards rent in 1312 F S the adjustment being embodied in a *wasl bali*; and the defendant was found liable to pay as certain amount out of which Rs 136.2 was left with the defendant as a deposit for payment to the superior landlord on account of rent payable by the plaintiff to the latter and the balance was stated as payable to the plaintiff. The defendant did not make the payment to the superior landlord who sued the plaintiff and obtained a decree against him for the amount due from him. The plaintiff thereupon sued the defendant to recover the rent for the years 1313 to 1315 and the amount which he had to pay to the superior landlord with interest. *Held* that the *wasl bali* showing that the amount which was to be paid to the superior landlord was left in deposit with the defendant it must be held that there was a discharge for this portion of the rent. The assignee was no party to the contract but if as the contract showed the amount was left in deposit with the defendant for payment to a third party and it amounted to a discharge so far as that portion of the rent was concerned, the amount so kept in deposit ceased to be rent and recoverable as such and Art 115 of the Limitation Act was applicable to the case. **LUNGU MISSIN v. DEOKI KUAN (1913) 19 C W N 174**

24. — Tenant never put in possession of entirety of demised land—Acquiescence—Payment of full rent—Suit for rent—Plea of suspension of rent if sustainable—Abatement—Apportionment Where a tenant who had not been put in actual possession of a portion of the demised land nevertheless went on paying the full rent agreed to in the lease in a suit for recovery of arrears of rent by the landlord. *Held* that the tenant cannot in such circumstances claim suspension of rent but the rent payable to the landlord was liable to abatement. **ANNADA PRASAD v. MAHURANATH 13 C W N 707** followed **SARADA PRASAD BHATTACHARJEE v. RAI MOYMATRA NATH MITTER (1914) 19 C W N 870**

25. — Non-occupancy *rayat*—Lease for a term—Suspension of portion of rent during the term—Stipulation for payment of rent at full

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rate after expiry of term—Agreement if invalid—Acceptance of rent at reduced rate after expiry of the term if deprives landlord of his right to claim rent at the stipulated rate—Waiver—Intention of parties. Where in a *labuliyat* for a term executed by a non occupancy *rayat* a certain rent was settled out of which a portion was kept in suspension and the balance was stated to be the rent payable for the term and it was further stipulated that if after expiry of the term of *rayat* continued in occupation without taking a fresh settlement he would be liable to pay rent at the full rate and after the expiry of the term the *rayat* remained in occupation without taking a fresh settlement and rent was then realised from the tenant at the reduced rate for a few years and there upon the landlord sued for rent at the full rate. *Held* that the agreement did not contravene the provisions relating to non occupancy *rayats* and was not invalid. *Held* also that the landlord by accepting rent at the reduced rate was not deprived of his right to claim rent at the rate stipulated in the *labuliyat* and was entitled to receive rent at the full rate. **DURGAPRASAD SINGH v. RAJENDRA VARAYAN BAGCHI 1 L R 41 Calc 493 s s 18 C W N 66** and **BAJANATH PRASAD v. RAGHUNATH PAI 16 C W N 490** followed. *Held* further that evidence that a once the execution of the *labuliyat* the tenant paid rent at a lower rate than that stated in the *labuliyat* was admissible to shew the intention of the parties that the *labuliyat* was not intended to be ended upon or that there had been a waiver of the terms of the lease. **RENU MADHAB GORANI v. LALMOJI DAS 18 C W N 242** followed. **KAILASH CHANDRA SARA v. DARBARIA SHEIKH (1913) 20 C W N 347**

25. — Suit for Rent calculated on area under cultivation—On the basis of *labuliyat* by one co sharer only making the other co sharer a defendant if maintainable—Bengal Tenancy Act (VIII of 1885) ss 5^o 188 The plaintiffs as fractional owners sued to recover rent on a *labuliyat* making their co sharer who refused to join them a *pro forma* defendant. The land was at the time of letting waste and jungle and was not measured but a certain area was stated by guess and it was provided that the tenants would pay rent at a fixed rate per bigha when the lands would be reclaimed or the surrounding lands brought under cultivation. *Held* that although as a general rule all to contractees ought to be joined as plaintiffs a suit by one would not be bad if the others were joined as defendants and if there was good reason for not joining them as plaintiffs and one of several joint contractees may sue to enforce his share of the obligation if the other co contractees are joined as defendants. That the present suit was not one for additional rent for extra land within the meaning of s 12 Bengal Tenancy Act and was maintainable by the plaintiffs upon the *labuliyat* under the general law and the provisions of s 188 are not applicable to the suit. **BHOJAI v. AMIBUDDIY (1916) 21 C W N 371**

27. — Presumption of permanency of rent—Bengal Tenancy Act (VIII of 1885) as amended by Bengal Acts of 1898 and I of 1903 ss 31A 50 (2) 113 and 115—Effect of ss 31 and 113 of the Bengal Tenancy Act—Prevailing rate—Ground for enhancement of rent Where a Record,

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of Rights has been finally published in view of s 115 of the Bengal Tenancy Act the presumption under s 60 (2) of the Act does not arise where the tenants have been recorded as occupancy riyats and not riyats holding at fixed rents *Radda Kishore Maniyya v Umed Ali* 12 C B N 905 not followed *Prithickand Lall Choudhry v Nasarat Ali* 1 L R 37 Cal 30 13 C B N 1149 relied upon By enacting s 71 of the Bengal Tenancy Act the Legislature never intended to alter the pre-existing law in districts to which that section has no application Where each tenant holds at a different rate there is no prevailing rate Even on the ground of prevailing rate there can be no enhancement of rent for 10 years under s 113 of the Bengal Tenancy Act where rent has been settled under Chap V of the Act *HANNAH PERSHAD BASPATI v AJUB MIAH* (1913)

I L R 45 Cal 830

28 ——— Conditions for rendering services when called upon—Denial of title and refusal to render services—Services a subsidiary consideration and of a ceremonial nature—Forfeiture and resumption right The suit which gave rise to this appeal was brought in 1906 by the appellant the Maharaja of Jeypore against the husband of the respondent (now deceased and represented by his widow) for the possession and arrears of rent of a pargana called Baramcuttak on the allegation that it was part of the appellant's zamindari and had been held by the predecessors in title of the defendant under grants or leases on conditions of payment of khatuladi or rent and of rendering services to the Maharaja The latest was a patta dated 1st August 1877 under which the possession of the defendant's father had been renewed by the then Maharaja on payment of an annual khatuladi of Rs 15,000 and the rendering of services stated in the plaint as just as your father used to attend at Dasara for service so now you should also present your self with 500 palika for service whenever directed to do so In 1903 when directed to render such services the defendant had not so attended the Dasara darbar nor had he paid the proper amount of rent for that year or for 1901 but had asserted that the pargana was not held as a service tenure and had set up a title in himself to the pargana as a nandpendant zamindari and subject only to a payment of Rs 2,700 to the Maharaja which sum he then paid as rent but denied his liability as a tenure holder under the appellant He wrote a letter to the appellant dated 26th November 1901 which was alleged to be a contumacious refusal to render services and to amount to a denial of the appellant's title causing forfeiture of his tenants holding which the appellant claimed to be entitled to resume *Held* that denial of title in the suit would not work a forfeiture of which advantage could be taken in that suit because the forfeiture must have accrued before the suit was instituted and there was no denial by matter of record previous to the institution of the suit *Nizamuddin v Mamlookuddin* 1 L R 28 Cal 135 and *Pranmatha Shaha v Madhu Khatu* 1 L R 13 Cal 36 referred to *Held* also that here there was no such renunciation by the tenant of his character as such as to work a forfeiture *Held* further that in this case the rent received was the principal matter and the rest was subsidiary and that under the circum-

LANDLORD AND TENANT—contd**RFNT—contd**

stances the refusal to render the services contracted for did not operate to create a forfeiture or give occasion for resumption *MAHARAJA OF JEYPORE v RUMMIE PATTANABHAI* (1919)

I L R 42 Mad 589

29 ——— Letting for cultivation of dry land at fixed rate—Improved cultivation thereafter effected solely at tenant's expense—Payment of higher rate of rent for a series of years—Presumption of consideration for and contract for payment of higher rate from such payment Where a tenant to whom dry lands were let for cultivation at a fixed rate and who cultivated them for a certain time dug wells on the land at his own expense and thereafter raised garden crops for which he paid for a long number of years at rates higher than the dry rate *Held* by the full Bench (LYING and GESHAGINI AYYAN JJ dissenting) that a Court can presume a contract to pay the higher rate and a legal origin and consideration therefor from such long continued payment of higher rate if that be the only evidence in the case to prove the rate payable but that if there be other evidence a Court cannot make any such presumption from such payment alone *Per LYING and GESHAGINI AYYAN JJ*—With reference to this case the reason and origin of the payment of higher rate are known to be due to the raising of better crops by the aid of tenants' wells to which the landlord contributed nothing there is no consideration moving from the landlord and no scope for raising any presumption of a legal origin for the contract from the mere fact of a long course of payment of the higher rate *PERAKATUPPA MUR KAYDAN v PAJAJ RAJESWARI SETHUPATHI* (1918)

I L R 42 Mad 475

30 ——— Stipulation in kabulyat as to payment of rent in kind Where a tenant executed a kabulyat promising to pay as rent Rs 4 in cash and 91 aris as the landlord's share of produce and it was stipulated that on the tenants failure to pay the said rent and share of paddy the landlord would be competent to realise the said rent and Rs 36 as price of the paddy *Held* that on the tenant making default in paying the landlord's share of paddy the latter was not entitled to recover the market value paddy at the time but only the fixed amount of Rs 30 *GURUDAS SEV v GOBINDO CHANDRA SIVIA*

24 C W N 88

31 ——— Permanent Tenure rent—Reclamation lease providing for progressive increase of rent up to a limit—Further enhancement if may be made—Registration Act (XVI of 1908) s 17—Lease not registered but possession given—Entry subsequently made of terms in landlord's book if admissible When a tenure is found to be permanent heritable and transferable there is a presumption in favour of the tenant that the rent is fixed and the onus is on the landlord to show that it is otherwise Where the contract in respect of a reclamation lease of 1291 B was that the tenure should not be liable to rent for the first four years after which it was to carry rent on a progressive scale until 1298 when it reached 17 annas per bigha and there was no reference to further enhancement by operation of law *Held*—That the clear inference from these facts was that the maximum rent reached in 1298 was the fixed rent

LANDLORD AND TENANT—contd

RENT—contd

of the tenure so long as it is held. **THE PORT CANNING AND LAND IMPROVEMENT CO. v. SREWATI KATIAIAN DEVI** 24 C W N 369

35 *See also against redemption of lease and occupation where the tenant is a tenant.* Where in a suit by a landlord for damages for use and occupation of land the defendant claimed to be a tenant and the plaintiff admitted that he was a permissive occupant held that the relationship between the parties was indistinguishable from the relationship of landlord and tenant and that the suit was therefore one for rent and was not cognizable by a Small Cause Court. **MAHARAO RAO v. MAHARAJA KESHO PRASAD SINGH BAHADUR** 2 Pat L J 97

36 *Suit for rent—plaintiff in possession under revenue title—sued for a decree which the plaintiff would recover from tenants.* Where the plaintiff's purchase of an equal share of an estate was subsequently set aside on appeal held that the plaintiff was entitled to recover rent from the tenants so long as he remained in possession until the original proprietors succeeded in recovering possession of the equal share. **MUSHTI ABDER RAZZAQ RAO BAHADUR RAJWATHI COZYKA** 2 Pat L J 383

TITLE

S LANDLORD AND TENANT (LEASE) (TRANSFER)

Fidopel—Tenant admitted into possession if may deny landlord's title and set up a different title derived from stranger. A tenant who has been let into possession cannot deny his landlord's title however defective it may be so long as he has not openly restored possession by surrender to his landlord. **BILAS KUTWAR v. DESRAJ PANDIT SINGH** (1914) 1 L R 37 All 557 19 C W N 1207

Onus of proof—Zerai *See also* of proving disputed land—has land other than *zerai*—Tenure or holding—has to be proved to the satisfaction of the court. *See also* of land outside *teccu* of *adverser* to landlord. The owner of a *teccu* is entitled to recover possession of lands within it unless the defendants whom he sues can prove a subordinate interest that derogates from his title. The fact that he has failed to prove certain specific titles which he in addition asserted in the disputed lands does not deprive him of this initial presumption in his favour. The onus which is on the defendants must be discharged by them. The fact that the defendants were rayats holding other lands of the village would make them settled rayats of the disputed lands if they proved that these lands were held by them as rayats but not if they fail to prove this. **Rajendra Kuar v. Mohim Chand** 3 C B A 76 did not apply to this case in which the defendants held a number of separate holdings and did not claim to hold the land in suit as part of any specific holding. Where a ticcadar of a lease of lands for exceeding 100 bighas in area to cultivate by sowing miligo or other crops either by means of *klas* cultivation or through tenant. *Held* that it was a tenure. A tenure holder does not become a rayat with respect to all land that comes into his direct possession because the lease is authorized

LANDLORD AND TENANT—contd

TITLE—contd

him to cultivate the lands. A proprietor may hold other lands besides *erat* lands in *klas* possession and because he recovers possession of lands on the basis of the presumption arising from his proprietorship it does not follow that the land is *erat* nor does the fact that he fails to prove the land to be *erat* prevent him from claiming the land if the defendant fails to establish a subordinate interest in it. Where the proprietors having purchased certain holdings suffer them without any arrangement to be taken possession of by their ticcadars the ticcadars possession of such holdings does not become adverse to the proprietors. **WARRERS v. HARIBHAR KOER** (1914) 19 C W N 149

Denial of landlord's title when entails forfeiture—Power of Court to relieve forfeiture. In order that a denial of landlord's title should work a forfeiture of the tenancy three things are necessary: (a) the tenant must set up title either in himself or in a third party inconsistent with their mutual relationship; (b) the denial must be direct and unequivocal and not casual; and (c) it must be made to the knowledge of the landlord. A casual statement uncommunicated to the landlord made by a tenant in a sale deed executed by him in favour of a third party in respect of other properties to the effect that the executant is the owner of the properties leased does not amount to a disclaimer of the landlord's title. **PER SETHURAM IYAN J. OBIER** A disclaimer of the landlord's title effects a forfeiture even if the tenure be for a specific term and Courts have no power to relieve against it unless the disclaimer was occasioned by the fraud, mistake or accident of the landlord and the tenant was neither careless nor negligent. **KEVAICOOTI v. MUHAMMED** (1917) 1 L R 41 Mad 829

Sarkhat—executed by tenant in favour of a person with an imperfect title—Notice of ejectment—Tenant not competent to deny the title of person to whom he had given the sarkhat. In execution of a decree against one of two joint owners of a house the decree holder caused the entire house to be sold. Whilst the house was under attachment the other joint owner filed his suit for partition and obtained a preliminary decree but the sale took place before this decree was made final. One M P who was a tenant of both the original owners then executed a *sarkhat* or acknowledgment of his tenancy in favour of the auction purchaser admitting that he was a tenant of the auction purchaser and liable to ejectment by him under the conditions stated therein. *Held* that it was not open to M P to challenge the auction purchaser's right to eject him according to the terms of the *sarkhat* and to set up the *jus tertii* of the co-owners. **Lal Mohamed v. Kallaus** 1 L P 11 Cal 519 dismissed. **MATHURA PRASAD v. COOKL PHASAI** (1919) 1 L R 41 All 654

Denial of landlord's title—Forfeiture of tenancy—Does not that landlord's title was a binding—Adverser possession—Kudima ten nature of—Part of the service—Presumption of lands—Right to eject or denial of title. A denial by the tenant of his landlord's title must in order to work a forfeiture of the tenancy be brought home to the knowledge of the landlord and it must be unequivocal and clear. The

LAND REGISTRATION ACT (BENG VII OF 1876)

ss 42 53 85—

See 1 ALSE EVIDENCE

I L R 38 Calc 368

s 78—Presumed clausidari chakran land—Effect of transfer to a son—Non registration under the Land Registration Act of bar to suit for rent—Village Chaudidars Act (Beng I of 1870) s 51 Where the plaintiff remitted claimed rent for land which was originally chaudi dari chakran and was upon resumption settled with his predecessor in interest and the defendant resisted the claim on the ground that the name of the plaintiff was not registered in the book s of the Collector under s 78 of the Land Registration Act of 1876 Held that under s 51 of the Village Chaudidars Act of 1870 the effect of transfer of resumed chakran lands to the zemindar was not to impart to such land the character of an estate for all purposes and s 78 of the Land Registration Act was no bar to the plaintiff's suit **TINKARI BIKERJEE v SATYA NARANJAN CHAKRABARTY (1913)** 18 C W N 158

Suit for rent—Dismissal for non registration of plaintiffs names under the Act—Registration pending appeal effect of—Costs Where a suit failed by reason of non registration of the plaintiffs names under Act VII of 1876 s 78 but registration was obtained during the pendency of the plaintiffs appeal the High Court on second appeal directed the case to be disposed of by the Trial Court on the merits it appearing that no portion of the claim was barred on the day when the land registration was really taken The plaintiffs were directed to pay the costs of the defendants of the original trial and were not allowed costs of either Court of Appeal **CHULLAN SINGH v MADRO SINGH (1910)** 19 C W N 794

ss 78 81—

See ISARADAR

I L R 48 Calc 1078

See LAND REGISTRATION

I L R 38 Calc 512

LAND REVENUE

assignment for the office of Kul karni—

See PENSIONS ACT (VIII OF 1871)

s 4 I L E 42 Bom 257

LAND REVENUE CODE (BOM ACT V OF 1879)

See BOMBAY LAND REVENUE CODE

LAND TENURE IN BENGAL

See BENGAL TENANCY ACT

Enhancement of Rent—Extermination of Progressive Rent—Interference—Penguin Tenancy Act (VIII of 188) s 30 When the agreement creating a permanent tenure provides that for a certain number of years the land shall be held rent free and that for a certain number of years subsequently a progressively increasing rent be paid the inference is that the maximum rent so provided was to remain the fixed rent and was not to be liable to enhancement **LOUT CHUNING AND LAND IMPROVEMENT COMPANY v KATYANI DEBI (1919)** L E 46 I A 279

LAND TENURE IN BENGAL—contd

Sarlatankars

Khurda—Absence of heritable or transferable Rights—Inability to disclaim for misconduct Sarlatankars in Khurda have no heritable or transferable right in their office or in the Sarlatankari jagir lands They are liable to dismissal for misconduct and upon dismissal all their rights in the jagir lands **Saddinanda Maity v Noverattan Maity 3 I L J 260** discussed **LARINA MADDA DAS GOYAL v KRISHNENDU ROY (1918)** I L E 46 Calc 378

L R 45 I A 248

Char acquired in

1833—Purpose of letting—Tenure holder—No accrued right as Rayat—Penguin Tenancy Act (VIII of 188) s 19 The appellant's predecessors in 1833 acquired from the Government extensive Char lands in Bengal for the purpose of reclaiming them and then letting them at a profit to cultivators There was some evidence that on occasions prior to 185, the Board of Revenue and its subordinates had regarded the holding as rayati Held that the appellants were tenure holders within s 1 of the Bengal Tenancy Act 185 and that s 19 which saves occupant's rights accrued to rayats prior to the Act did not apply as neither the appellants nor their predecessors had held a rayati interest in the land **RAJANI KANYA CHOW v THE SECRETARY OF STATE FOR INDIA (1916)** L R 45 I A 190

LAND TENURE IN MADRAS

See MADRAS ESTATES LAND ACT

Inam Grant—Kudraram—Absence of Presumption—Fetals—Madras Estates Land Act (I of 1908 Mad) s 3 sub s 2 (d) In determining whether an inam village is an estate within s 3 sub s (2) (d) of the Madras Estates Land Act 1908 there is no presumption of law that an inam grant even if it was made to a Brahmin did not include the Kudraram Each case must be determined upon the terms of the grant and all the circumstances so far as they can be ascertained In 1733 in confirmation of a grant in 1748 which was not in evidence a village to ether with gardens holy shrines wells and tanks was granted as a *saria agharam* to be cultivated and enjoyed by the grantees hereditarily the grantees was referred to in a document of 1788 as being resident in the place The documents in evidence including inam registers extending to 1865 and the subsequent dealings with the property were inconsistent with any person other than the inamdars having rights of permanent occupancy In 1907 the inamdar let to tenants lands which at the time of the grant had been waste lands of the village and upon the terms expiring in 1903 sued to eject them Held that the lands in suit were not an estate within the Madras Estates Land Act 1903 and that the appellant could eject the tenants by suits in the Civil Courts **Suryanarayana v Polanna L P 45 I A 209** followed **UPADRASHTA VENKATA SA THELU v DIVI SEETHARAMUDU (1910)** L P 46 I A 123

Occupancy Right—Permanently Settled Estate—Partial substitution of other land—Estate—Madras Estates Land Act (Mad Act I of 1903) s 3 6 7 By s 3 of the Madras Estates Land Act 1903 an estate

LAND TENURE IN MADRAS—con 1

for the purpose of that Act includes any permanently settled estate or temporarily settled zamindari. Land forming part of a permanently settled estate in Madras was taken by the Government under the Land Acquisition Act 1880 and the revenue attributed to it ascertained. The Zamindar petitioned that in case of a corresponding reduction being made in the revenue for the estate he should receive as compensation other land which he already held under a Government ryoti patta. That land accordingly was transferred to him in 1893. In 1901 he let it to tenants who upon the terms expiring after the Act of 1903 came into force refused to give up possession. Held that the land so transferred was not part of an estate within the Act and that a suit to eject the tenants could be maintained in a Civil Court. **ZAMINDAR OF SANIVARA PIPET v. ZAMINDAR OF SOUTH VALLUR** (1918)

I L R 46 I A 38

LANDS CLAUSES CONSOLIDATION ACT (8 & 11 VICT C 18)

ss 63 68—

See RECOUPMENT

I L R 45 Cal 348

LAPSE TO MONASTERY

custom of—

See HINDU LAW—SUCCESSION

14 C W N 191

LARCENY

See PENAL CODE (ACT XLV OF 1860)
s 379 **I L R 34 All 89**

LATHI PLAY

See PENAL CODE s 121A

16 C W N 1105

association for seditions—

See CONSPIRACY TO WAGE WAR

I L R 38 Cal 559

16 C W N 1105

LAW

in part Repugnant—

See GOVERNOR GENERAL IN COUNCIL

I L R 1 Lah 326

question of—Decision that there is no evidence to support finding. A decision that there is no evidence to support a finding is a decision of law. **HARENDRA LAL POY CHOWDHURI v. HARI DAST DEBI** (1914)

18 C W N 817

LAWFUL APPREHENSION

resistance to—

See RESCUE FROM LAWFUL CUSTODY

I L R 33 Cal 1161

LEADING QUESTIONS

See CHARGE **I L R 42 Cal 957**

See JURY **I L R 37 Cal 467**

LEASE

See ADVERSE POSSESSION

I L R 28 Bom 53

See BENIADI PATTI **21st L J 180**

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See BOMBAY PENT ACT 1918

ss 3 9 12 **I L R 45 Bom 535**

See BISTER LAND

I L R 41 Cal 164

See CIVIL PROCEDURE CODE (ACT V OF 1908) O II R 2

I L R 38 Bom 444

See CONTRACT **I L R 46 Cal 771**

See CUSTOMARY LAW OF SOUTH KANARA

I L R 41 Mad 118

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879) s 3 CL (1) AND s 10A

I L R 40 Bom 397

See FSTOFFEL **I L R 39 Cal 513**

See HABULIAT

I L R 39 Cal 1010

See KHOTI SETTLEMENT ACT (BOM I OF 1880) ss 9 10

I L R 35 Bom 709

See LAMBARDAR AND CO SHAREP

I L F 33 All 17

See LAND ACQUISITION

I L R 45 Bom 725

See LANDLORD AND TENANT (LEASE)

See LAND REVENUE CODE (BOM V OF 1879) s 3 (19)

I L R 35 Bom 463

See LEASEHOLD PROPERTY

See LIMITATION ACT (IX OF 1908) SCH I ARTS 92 93 **I L R 40 Bom 22**

See MADRAS ESTATES LAND ACT (I OF 1908) s 42 CL (a) AND (b) AND 2

I L R 38 Mad 524

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MADRAS I OF 1900) s 19

I L R 40 Mad 603

See MINERAL RIGHTS

I L R 38 Cal 845

See MINOR

3 Pat L J 518

See MINING LEASE

See MOKARARI LEASE

See MORTGAGE **I L R 35 Bom 371**

See MUGGERY LEASE

See OCCUPANCY FAIZAT

I L R 40 All 228

See PERMANENT LEASE

See REGISTRATION LEASE

See REGISTRATION ACT (XVI OF 1908) s 17

I L R 41 Bom 458

I L R 45 Bom 8

See PENT **I L F 41 Cal 347**

See RES JUDICATA

I L R 37 Bom 224

See STAMP ACT (II OF 1879) s 30 CL (1) ART 35 CL (a) 36 CL (iii)

I L R 37 Bom

LEASE—*contd*

See STATE DUTY

I L R 37 Cal 629

I L R 46 Cal 804

See SURVEYS AND BOUNDARIES ACT s 12

I L P 34 Mad 108

See TRANSFER OF PROPERTY ACT (IV of 1899)—

s 10 I L R 38 Mad 867

s 103 14 C W N 73

s 107 I L R 28 Bom 500

s 103 10 I L R 38 All 178

s 103 (j) I L R 37 All 144

— Agreement to not admissible if unregistered—

See REGISTRATION ACT 1908 s 49
26 C W N 329

— agreement to renew—

See SPECIFIC PERFORMANCE
I L P 40 Cal 565

— by Collector—

See EMBANKMENT
I L R 46 Cal 825

— by Mahomedan co heirs—

See TENANTS IN COMMON
I L R 39 Mad 1049

— by wife, repudiation of—

See TRANSFER OF PROPERTY ACT (IV of 1892) s 10 I L R 38 Mad 867

— construction of—

See RESCRIPTION
I L R 39 Bom 279

— determination of—

See EJECTMENT I L R 45 Cal 469

— determined by one lessor—

See TENANTS IN COMMON
I L R 39 Mad 1049

— document varying terms of—

See REGISTRATION
I L R 39 Cal 284

— Ejectment of Tenant in arrear with rent—

See REGISTRATION ACT 1908 s 1
I L R 39 Lah 300

— for a term—

See LESSOR AND LESSEE
I L P 39 Mad 1042

— for a term of years construction of—

See CONSTRUCTION OF DEED
I L R 40 Bom 74

— forfeiture of—

See CIVIL PROCEDURE CODE (ACT V of 1908) O III P 10
I L R 39 Bom 568

See EJECTMENT I L R 45 Cal 469

— From future date—

See REGISTRATION
I L R 45 Bom 8LEASE—*contd*

— Intention to determine—

See TRANSFER OF PROPERTY ACT (IV of 1892) s 111 cl (i)

I L R 42 Bom 195

— of mutt properties—

See HINDU LAW—WIDOWMENT
I L R 40 Mad 709

— of palmyra juice—

See REGISTRATION ACT (III of 1877) s 17 (1) FC I L R 38 Mad 893

— registration of—

See TENANCY AT WILL
I L R 44 Cal 214

— repudiation of—

See REGISTRATION ACT (III of 1877) SCH II ART 91 I L R 38 Mad 321

— surrender of—

See LANDLORD AND TENANT
I L R 46 Cal 552

— Taraga Lease for reclamation—

See MALABAR LAW
I L R 44 Mad 509

— Unregistered lease for six months—

See TRANSFER OF PROPERTY ACT 1882 s 4 I L R 44 Mad 55

— variation in the terms of—

See REGISTRATION
I L R 39 Cal 284

1 ————— **Solehnama**—Unregistered Solehnama admissible in evidence of—Registration Act (III of 1877) s 17 cl (d) and (3) A solehnama by which no immediate interest in immovable property is created and whereby there has been no demise does not amount to a lease within the meaning of clause (d) of s 17 of the Registration Act and is merely an agreement to create a lease on a future day. Such a document falls within clause (f) of s 17 of the Indian Registration Act and is admissible in evidence without registration. *PANCHANAN HOSEI CHANDI CHAPAN MISRA* (1910) I L R 37 Cal 808

2 ————— **Multifarious document**—One lease with several parties concurring to it—Stamp Act (II of 1899) ss 5 23 (3) 35 57 (1) The concurrence of several parties to one and the same lease does not make it a multifarious document within the meaning of s 5 of the Stamp Act. The stamp duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted. *In re FARISEA COLLEGES LTD* (1910) I L R 37 Cal 629

3 ————— **Letter containing all the elements of a lease** whether admissible in evidence without registration—Payment of rent at a reduced rate on the basis of that letter effect of—Conflicting descriptions of the subject matter of a grant—Lessee not put in possession of specific area mentioned in the lease effect of—Mistake of fact—Abatement of rent In a suit for rent at a certain rate the lessee pleaded that by virtue of a letter addressed to him by the lessor the latter was entitled to get rent only at a reduced rate. The letter contained a definition of the reduced rental rented the area of the land demised under the

LEASE—cont'd

le see the nature of the interest granted by the lessor and the interest in which rents were payable. Held that the letter leasing a non-taxable interest in current which purported to limit in future a reduced interest of the value of Pipe No one hundred and upwards in immovable projects was no admissible evidence without being referred to in *Schreyer v. Dwyer & Keady*, 107 N.H.R. 1 L.P. 101 at 1910 referred to. Held also that the fact that rent for some years had been received at the reduced rate did not bind the lessee or accept rent at that rate in future in a similar case even if the letter had been treated as an agreement for reduction of rent it was not enforceable in law having been made without consideration. Where there are two conflicting descriptions of the subject matter of a grant, two conflicting parts of the deed describing it which are more certain and tall and the least likely to have been mistaken or to have been entered inadvertently must prevail if sufficiently identifies the subject matter. *Vescom v. Pryor's Lessee* 7 Wheaton U.S. 7 referred to. But where the two elements—the boundaries and the quantity—are equally certain and exactly defined or the boundaries are as precise and definite as the quantity, a specific exact and there is gross discrepancy between the quantity specified and the quantity found to be included within the defined boundaries preference should be given to that element of the description of the subject matter which is more consistent with the intention of the parties to be collected from the other parts of the deed illuminated by reference to the surrounding circumstances and the subsequent conduct of the parties. Lord's The Commr. over the City of Sydney 12 Moo P.C. 43 13 Erg. p. 991 Fiske v. Lining J.L. 115 Croghan v. Nelson 3 H. & C. 187 and Holmes v. Jesuit - Pitt 1911 referred to. Where a lease is taken of a specific quantity of land within definite boundaries both the lessor and the lessee being under a common mistake that such quantity exists within the boundaries while in fact it is much less than so valid contract and the parties are entitled to rescission thereof but the defendant has the option to affirm the contract and hold the lease for the lesser quantity with proportionate abatement of rent. *Pagitt v. Marshall* 28 Ch.D. 25; *Harris v. Peppercorn* 5 Eq. 1 and *Gerrard v. Frankel* 40 Beav. 160 referred to. DEBRA FRASER SINGH v. RAJENDRA NAIRIN BAOGHI (1909)

4 ————— Tarward—Lease by senior member alone—Validity of A lease by the senior member of a tarward alone is valid Karoth Amman Kutti v Perungottai Appu Nambiar I I P 29 Mad 22 explained and distinguished CHAKKANTY TITA CHAI KAN ABULLA v THAZHIN CHEER KOTHI (1916) I L R 34 Mad 245

5 ————— Oral agreement to lease—
Petition of compromise—Hatte's estate is the
the suit in which the petition of compromise was
filed—Succo performance—Abuch By a peti-
tion of compromise which was filed in a previous
suit between the parties concerning certain lands
the plaintiffs undertook to recognize the defend-
ant as their tenant in respect of lands not included
in that suit and they further gave up their claim
of claims for the recognition on the defendant
agreeing to pay an additional sum to what was
payable by the original tenant Upon a suit

LEASE—contd

brought in by the plaintiffs for recovery of arrears of rent on the basis of this compromise defence was that the petition of compromise was not admissible in evidence for want of registration. *Held* that although the petition of compromise in so far as it related to properties which were not the subject matter of the suit in which the decree was made was not operative to affect such properties it was admissible in evidence as indicating the existence of an oral agreement to grant a lease which was specifically enforceable and the position of the parties was the same as if a proper document had been executed and registered and that therefore the plaintiff was entitled to a decree. *Birbhadra Path v Kalspataru Ponia 1 C L J 358 and Girdes Singh v Chandrikah Singh 1 L J 30 (Cal 1905)* referred to. The principle of *Wick v Lonsdale 1 Ch D 9* applied. *Held* further that the sum agreed to be paid by the defendant being in consideration of the land occupied by him and also in view of the remission of the arrears was not an avaricious. **SARAT CHANDRA CHOSE v SHYAM CHAND SINGH POK (1912)**

6 — — — Unexpired term of lease bequeathed to widow—Widow holding over on expiry of lease—Grant by Government to widow of property the subject of the lease—Nature of estate taken by widow—A lease of a village in Kumaon was granted by the Government in 1844 for a period of twenty years. The lessee died in 1859 having left his interest in the village (without clearly specifying what it amounted to) to his widow for life and after her to her daughter for life with a reversion in favour of a certain temple. The widow however continued in possession of the village down to 1871 when the Government granted her proprietary interest in it which she subsequently sold. His son sues for possession after the death of the widow and her daughter by a person claiming as reversioner to the original lessee that the estate which the widow acquired in 1871 as the grantee of the Government was her own personal estate and not merely an enlargement of the leasehold estate of her husband and that the plaintiff had consequently no right to succeed. F A J HISHORE DAS & I L R 36 ALL 237

JAINI SINGH

7. Maximum fixed - Rent if enhanceable beyond the purpose of reclamation to be effected by the lessees at their expense though the lessees also undertook to make a contribution thereto, and was to be held for the first four years without rent which was thereafter to be progressive till a maximum was reached and there was no provision for a further rise the reasonable inference to draw from these circumstances was that the parties intended that when the specified maximum was reached there would be no further increase.

8 Istemari mazarani — Meaning of the expression in geographical and circumstantial sense and its use of proper Meaning of words as derived from self or fact or law — Rule of propriety to a commoner does not per se confer either privilege by way of custom, or right of inheritance — Istemari in various parts noted

LEASE—contd

absence of words indicative of heritability such as *ba farandan naslan bad naslan or al aulad* may indicate a perpetual grant if the other terms of the instrument the circumstances under which it was made or the subsequent conduct of the parties show such an intention with sufficient certainty. Clauses in a lease which impose a restraint on transfer or cutting down of fruit bearing or income yielding trees &c. &c. are not consistent with the theory of a perpetual lease. Clauses which throw the cost of improvement on the lessee indicate some measure of continuity but not necessarily perpetuity. A lease in favour of two persons points to the conclusion that though some measure of continuity was desired perpetuity was not intended. A substantial premium for a lease is one of the surest indications of a permanent grant. *Tulshi Pershad Singh v Immarnan Singh I L R 12 Cal 117 I R 12 I A 200* analysed and followed. *Tulmarnan Sahu v Piboo Modnarain Singh (1818) S D A 722 10 I D (O 5) 532 Amerannan Bequm v Hetnarnan Singh (1853) S D A 618 The Government of Bengal v Nabab Jafur Hossein v Moo J I 167 Warburton Singh v Raja Mohendranarain Singh (1860) S D A 577 Raja Illanand Singh Bahadur v Thakur Munoranjun Singh I B I P 124 I R 51 P 101 181 Sht Pershad Singh v Kally Dasi Singh I L R 3 Cal 513 Bhasmoni Das v Raja Sht Pershad Singh I L R 3 Cal 664 L R 9 I A 33 Brm Pershad Keor v Dudhnath Roy I L R 27 Cal 156 I R 96 I A 216 Agni Bindu Upadhyay v Mohan Bikram Sht I I P 30 Cal 90 Varsingh Dyal Sahu v Ram Varain Singh I I R 30 Cal 933 and Choudhri Gridhari Singh v Maharaj Ram Narain Singh 10 C II A 1212 followed. *Munoranjun Singh v Rajah Lelanand Singh 3 II R 81 Telait Manoraj Singh v Raj Lelanand Singh 3 B L P 1 C 121 Rajah Lelanand Singh v Thakoor Munoranjun Singh 5 II P 101 Lalit Kowar v Roy Hari Krishna Singh 3 II P 1 C 226 12 II P 1 and Karunakar Vahni v Nalidhro Choudhry 3 B L P 602 14 II R 10 overruled. *Watson v Mahesh Varain Roy 2 II R 16* referred to. The meaning of words in a document is a question of fact though the effect of words is a question of law. *Chatenay v British India Marine Telegraph Company (1891) 1 Q B 79* followed. The rights of parties to a contract are to be judged by that law by which they may justly be presumed to have bound themselves. *Lloyd v Guibert 6 B A S 100 122 E R 1131 and Abdul Azi Khan v Ippayamma Vakil I L R 27 Mad 131 L P 31 I A 1* followed. Where a lease is in favour of two persons and the lease would not terminate till the death of the survivor or of the two lessees no question of limitation can arise before the death of both the lessees. *Quare*. Whether the mode in which registration of a lease is effected is relevant to an enquiry as to the nature of the lease. *Anisulla Yulla v Yur Mista I L R 7 Cal 190 Jagadhar Narain Prasad v Brown I L R 33 Cal 1133 and Indira Bibi v Jan Sarfar Ali I I P 35 Cal 81 Sarfar Kiani v Deoraj Kiani I L R 10 All 27 L R 15 I A 51* referred to. *RAM NARAI SINGH v CHOTI NAORUR PARKING ASSOCIATION (1915) I L R 43 Cal 332***

9. Limitation—lease of Government land in writing registered—Possession of part not given from inception of lease—Suit for

LEASE—contd

damages—Time from which limitation begins to run—Limitation Act (VI of 1877) Art 116—Failure to give possession whether a continuing breach—Equivocal or ambiguous acknowledgment whether a breach one under s 19 of the Limitation Act (VI of 1877)—Transfer of Property Act (IV of 1882) applicability of to Crown grant. The plaintiff obtained in March 1896 from the defendant the Collector of Coimbatore district acting as Agent to the Government a lease in writing registered for five years of a piece of land whose probable extent was described as "77 acres. The plaintiff was given possession of only 68 acres and an acre fully demanded possession of the rest in July 1896. After some correspondence the Tahsildar in 1895 communicated to the plaintiff the Collector's order that pending the disposal of the dispute the collection of one third of the *lusi* (rent) should be stopped and the remaining sum collected. The plaintiff brought this suit in 1903 for damages for non delivery of possession of 109 acres. Held (a) that the cause of action for breach of the covenant to give possession occurred at the inception of the lease i.e. in March 1896 and that as more than six years had elapsed from that date the suit was barred under Art 116 of the Limitation Act and (b) that breach of a covenant to give possession is not a continuing breach and such a covenant is not part of a covenant for quiet enjoyment which is a continuing covenant. Held further that the Tahsildar's communication which was as consistent with a temporary suspension or an *ex gratia* remission of a claim for rent as with an acknowledgment of liability was not such an unequivocal acknowledgment as is required by s 19 of the Limitation Act. Held also that though the Transfer of Property Act is not applicable to Crown grants like the one in question the principle of its provision as to leases e.g. 108 etc. is applicable to them. *Quare*. Whether the Tahsildar or Collector had authority to acknowledge. *Per SRIYAS AYAN GAR J*—The plaintiff was barred even if limitation be reckoned from July 1896 when he demanded and failed to obtain possession from the Government. *SECRETARY OF STATE FOR INDIA v YERKATAYIA (1915) I L R 40 Mad 910*

10. Assignment of a lease—Repudiation of lessor's title—By the original lessee—Forfeiture. A mere repudiation by the original lessee of the lessor's title will not work a forfeiture against the assignee of the lease. *Per HEATON J*. The Transfer of Property Act does not recognize that his interest in the property may be transferred by a lease to an assignee and thus may be done without the consent of the lessor and if that can be done it seems to me to follow as a matter of reason that when the entire interest is transferred by the lease to the assignee then the assignee is not responsible for acts done by the lessee. *GOPAL JAYANT v SHRINIVAS VITHAL (1918) 1 L R 42 Bom 734*

11. *Mokarari Lease—Grant of Land with hak hukul (with all rights)—Mineral and other sub-surface rights—Rights not expressly included in terms of lease*. Held (reversing the decision of the High Court) that the expression *hak hukul* (with all rights) in a *mokarari* lease of land did not add to the true scope of the grant nor cause mineral rights to be included within it. The essential characteristic of a lease is that the subject of it is one which is occupied and enjoyed

LEASE—contd

and the corpus of which does not in the nature of things and by reason of the user disappear. Unless there be by the terms of the lease an express or plainly implied grant of mineral rights they remain reserved to the zemindar there being no evidence of his having parted with them. *Hari Narain Singh Doe v Sirram Chakravarti* 1 L R 37 Cal 3 L R 37 1 1st Darga Ira ad Singh v Braja Nath Bose 1 L R 39 Cal 696 L R 39 1 1 133 and *Sahib Bhan Vissra v Jyoti Prasad Singh Doe* 1 L R 44 Cal 585 L R 44 1 1 46 followed. *Megh Lal Pandey v Fazlumar Thakur* 1 L R 34 Cal 305 overruled. By the terms of the lease the trees on the land were expressly transferred to the grantee but mineral rights were not so included in its terms and the pre-emption was therefore that the zemindar had not intended to transfer them and they did not pass under the lease. *RAJ KUMAR THAKUR GIP DHARI SINGH v MEGH LAL PANDEY* (1917)

1 L R 45 Cal 87

12 ——— *Darpoons—Conditions in—Bengal Tenancy Act (1885) ss 159 cl (b) 179—Transfer of Property Act (1882) s 10—Receiver—Appointment of Receiver in administration suit—Civil Procedure Code (Act VII of 1889) ss 503 505* A a *palindar* created a *darpoons* in 1886 in favour of B which contained the following terms like yourself we shall have full rights to grant leases or make settlements of land in the *mofta sil* but if these *darpoons* mahals be sold at auction for arrears of *mahkama* (rent) due to you then all agreements entered into by us shall be extinct (and annulled). The common manager of B's estate granted to the defendants a permanent under tenure in 1901 B having defaulted to pay rent to A the latter in execution of a decree for arrears of rent purchased B's interest on the 21st September 1904 the sale was confirmed in due course on the 20th March 1905. The Receiver of the estate of A appointed by a decree in an administration suit without permission from the District Judge granted a *darpoons* to the plaintiff in 1906. *Held* that A and B were competent to enter into a contract of permanent tenancy subject to the restriction actually imposed which was one of the incidents of the under tenure and ran with the land so as to be operative not only between the grantors and grantees but also their representatives in interest and the holders of derivative titles from them. *Held* also that the condition in the lease not being an absolute restraint on alienation and being for the benefit of the lessor neither the provisions of s 159 of the Bengal Tenancy Act nor s 10 of the Transfer of Property Act had any application. *Held* further that the Receiver not being appointed under s 503 of the Civil Procedure Code of 1882 but by a decree in an administration suit the provision of s 503 requiring permission of the District Judge did not apply and the *darpoons* granted by such Receiver was valid and enforceable. *MIDHAT ZEMINDARI COY v MIDHAT ZEMINDARI COY* (1917)

1 L R 45 Cal 640

13 ——— *Lease given the option of purchasing the land leased—Within a certain time for a fixed price—Assignment of the lease—Legal assignee of the lessee entitled to the benefit of the option to purchase—Conveyance—Vendor and purchaser—Purchaser to accept such title as the vendor possessed—Pecuniary about the title—Original*

LEASE—contd

summen—Estoppel. By an Indenture dated 1st March 1913 the defendants leased to one B a plot of land for a term of ninety nine years. Under cl 7 of the Indenture the lessee obtained a right to purchase the premises demised at a price named within eighteen years from the date of the lease the purchaser accepting such title as the vendors had. By an Indenture of Assignment dated 2nd May 1916 the lessee assigned the lease for the then residue of the said term to the plaintiff. The plaintiff intimated to the defendants by a notice in writing his intention of purchasing the said plot under the provisions of cl 7. The defendants called upon the plaintiff to submit for their approval a draft conveyance of the said plot. The draft conveyance forwarded by the plaintiff to the defendant contained certain recitals tracing the title of the vendors from the last purchaser of the property. The defendants objected to the insertion of the said recitals and sought on the part to incorporate certain covenants in the draft. Correspondence between the parties showed that the dispute between them was so closely confined to the insertion of the recitals and the covenants. The plaintiff took out an originating summons for the determination of the question whether the recitals and the covenants proposed by the respective parties should be embodied in the conveyance. The summons was a jointed into Court for hearing. At the trial the defendants conceded that they could not at that stage insist on the covenants set out by them. The defendants however contended that the plaintiff was not entitled to the benefit of the option to purchase as he was not the original lessee but only an assignee of the lease and as the option to purchase was a personal covenant and not a covenant which ran with the land it did not ensure to the benefit of the assignee. *Held* (1) that the plaintiff being bound to accept such title as the vendors had the recitals set out by him in the proposed conveyance were unnecessary and should be struck out. (2) that as the plaintiff was the legal assignee of the residue of the term of lease he was entitled to the benefit of the option to purchase. (3) that as the correspondence between the parties proceeded on the assumption that the plaintiff though an assignee of the lease was entitled to exercise the option of purchase under the lease the defendants having acquiesced in the same were estopped from disputing it. *Woodill v Clifton* 92 L T 999 2d tin guished *Ernst Hildred and Healeys Breweries Limited v Snelton* [1895] 1 Ch 86 reversed. *LADHABAI LAKHMI v SIR JAYSETTI JIJIBHOY* (1917)

1 L R 42 Bom 103

14 ——— *Surrender or relinquishment of—If square a defective contract work in me—The other—In a remedy—Legal rights or partition—Equity* A surrender or relinquishment of a lease does not require to be in writing but can be inferred from the act of the parties. In the absence of proof of actual cession or destruction of property one co-sharer cannot demand accounts from another co-sharer for minerals taken by him out of joint property unless it is shown that he had worked more than his fair share. No claim for account is maintainable where the co-sharer knowing that the other co-sharer had been spending large sums of money to develop the mines acquiesced. His remedy is by a suit for partition in which the other co-sharer should be joined. *He is a tenant in possession of the portion*

LEGACY

- See LIMITATION ACT 1877 Sec II Art
123 I L R 30 Bom 111
See WILL I L R 40 Calc 192

— depending on uncertain event—

- See SUCCESSION ACT (X of 1865)
I L R 37 Bom 644

— vesting of—

- See SUCCESSION ACT (X of 1865) s 19
I L R 38 Mad 474

LEGAL INTEREST

- See DECLARATORY DECREE SUIT FOR
I L R 43 Calc 694

LEGAL JUSTICE

— as opposed to moral—

- See CONTRACT I L R 37 Mad 365

LEGAL MISCONDUCT

- See ARBITRATION I L R 41 Calc 313

LEGAL NECESSITY

- See HINDU LAW—ALIVELAND
See HINDU LAW—DEBT I L R 33 All 242 255
See HINDU LAW—JOINT FAMILY
I L R 34 All 4 126 135
See HINDU LAW—LEGAL NECESSITY
See HINDU LAW—MORTGAGE
I L R 41 All 571 609

LEGAL OWNER

- See MAROMEDAN LAW (EVDOWMENT)
I L R 47 Calc 266

LEGAL PRACTITIONER

- See BARRISTER I L R 44 Calc 741
See CIVIL PROCEDURE CODE 1908 O III
R 4 2 Pat L J 259
See HIGH COURT DISCIPLINARY JURISDICTION
I L R 44 Bom 418
See LIMITATION I L R 40 Calc 898
See LEGAL PRACTITIONERS ACTS
See LETTERS PATENT (ALL) s 8
I L R 42 All 450

See PLEADER

— duty of—

- See LAND ACQUISITION ACT (I of 1894)
I L R 34 Bom 486

— Lien of—

- See COSTS I L R 46 Calc 1070

— admission by—As against client dis-
cuss ed DIGEST OF CASES 44 I L R 156
17 C W N 156

— Compromise by—Without authority
discuss ed HANCOCK & JODHA OODA
I L R 34 Bom 408

LEGAL PRACTITIONER—contd

— Counsel to be instructed by attorney—
—Customan I acquit to be ruled In re an Advoca-
cate I L R 44 Calc 741

— Misconduct of—Cheating client out
of the subject matter of suit—Inclt—Personal
from practice—Suganann Where it was found
by the Chief Court before whom the appellant
acted as a pleader that he had taken advan-
tage of his position of trust in order to cheat his
client out of the subject matter of the suit and
obtain it for himself and on the appellant's appli-
cation for a review of the finding he instead of
proving it deliberately admitted the charge
made against him in the sense in which the
charges were understood by the Judges Held
that the Chief Court was amply justified in passing
orders removing the appellant permanently from
the list of pleaders on the ground of his conduct
and the subsequent order of the Court upon the
application for review reducing the penalty to
suspension from practice for three years went
as far in the direction of mercy as it properly
could go In the matter of CHANDRA SINGH (1910)
14 C W N 521

— Legal Practitioner dis-
missed for misconduct if unable to be admitted Where
a legal practitioner has been dismissed for miscon-
duct of any description it is open to the High
Court to re-admit him afterward if he satisfies
the Court that in the interval he has borne an un-
impeachable character and may with propriety be
allowed to return to practice The test to be
applied to such cases is whether the sentence of
exclusion has had the salutary effect of awaken-
ing in the delinquent a higher sense of honour
and duty and whether in the interval his con-
duct had been so irreproachable that he might
be safely entrusted with the affairs of his clients
and admitted to the profession without the profes-
sion suffering degradation Where therefore a
mukhtear was dismissed upon conviction for a grave
offence and it appeared that in a closely connected
transaction he had sworn a false affidavit and where
in the petition for re-admission he had not made
a full disclosure of his previous history the Court
in the exercise of its discretion refused the appli-
cation In re ABIRUDDIN AHMED (1910)
I L R 58 Calc 309
15 C W N 357

— Legal practitioner
dismissed for misconduct—Reinstatement on proof
of good conduct Case in which a legal practitioner
who when yet a comparatively young man had
been dismissed from the rolls for misconduct was
after five years reinstated on his furnishing certi-
ficates showing that during the interval his con-
duct has been so irreproachable that notwith-
standing his previous delinquency he could be en-
trusted with the affairs of clients and admitted to
an honourable profession without that profession
suffering degradation In re ABIRUDDIN 15 C W
N 357 s c 12 C L J 67 followed In re
TARA KUMAR CHATTERJEE (1911)
16 C W N 237

— Witness—Whether
can appear for accused per on The rule as to the
exclusion of witnesses from Court until they have
been examined does not extend to counsel or
accused who is cited as a prosecution witness
There may be circumstances which may make it

LEGAL PRACTITIONER—contd

de rable for counsel not to appear in a case in which he is a witness but they would not tender his appearance illegal. *In re BABU REDDI* (1921) 1 L R 44 Mad 916

Improperly if counsel who appeared for one party appearing in subsequent proceedings for the other—Disqualification It is improper on the part of a legal practitioner who has acted for one party in a dispute to act for the other party in subsequent litigation between them relating to or arising out of that dispute. It is a matter which concerns the honour of the profession. *HIRA DEVI v. DHIRAJ SINGH* (1911) 21 C W N 1137

Rules of Court of the 10th August 1901 pt II r 96—Professional misconduct—Entering into trade or business Held on a construction of r 96 pt II of the Rules of Court of the 10th August 1901 that the carrying on by a vakil of occasional speculations in grain and other commodities whilst he was practising as a vakil did not amount to entering into a trade or business within the meaning of the rule so as to render him amenable to the disciplinary jurisdiction of the High Court. *In the matter of TIKARAM VAKIL* 1 L R 42 All 125

Negligence—Refusal to argue when an application for adjournment has been rejected Refusal by a vakil to argue a case when an application has been rejected amounts to gross neglect of his client's interests. *SRI RANGA BHABH LAL v. PACHYA LAL* 1 Pat L J 55

LEGAL PRACTITIONERS' ACT (1 OF 1846)

ss 4 12—

See PLEADER 1 L R 44 Calc 290

LEGAL PRACTITIONERS ACT (XX OF 1853)

See PLEADER 1 L R 44 Calc 290

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

s 6—

See PLEADER 1 L R 44 Calc 290

s 12—Pleader guilty of keeping a common gaming house—Suspension of pleader—Procedure for cases under s 12 The conviction of a pleader under s 6 of the Madras Towns and Sanctions Act (III of 1899) for keeping a common gaming house implies a defect of character which unfits him to be a pleader within s 11 of the Legal Practitioners Act for which the pleader may be suspended by the High Court. The procedure prescribed for enquiring into charges mentioned in s 13 and 14 of the Legal Practitioners Act need not be pursued in cases coming under s 12 of the Act. *IN THE MATTER OF A SECOND GRADE PLEADER* (1915) 1 L R 42 Mad 111

s 12 14—Vakils—Conduct on application—Inability to suspend from practice—Conclusion if conclusive Two mukhtars who were parties to a proceeding under s 14 of the Criminal Procedure Code in the course of which a *chur* the subject of the proceeding was attached under s 116 and placed in charge of a receiver collected a number of armed men who formed an unlawful

LEGAL PRACTITIONERS ACT (XVII OF 1879)—contdss 1st 14—contd

assembly with a view to take forcible possession of the *chur*. Held that having regard to the character of the offence an order under s 12 of the Legal Practitioners Act could properly be passed against them. That in such a proceeding it was not open to them to go behind their conviction by the Criminal Court and invite the Court to examine the facts with a view to showing that the conviction was erroneous. *In re Rajendra Nath Mukerjee* 61 I L J 12 s C I L R 2 All 49 3 C W N 36 followed. But the Court in such a case will look into all the facts as found to determine the position of the persons concerned. *In re KALI KRASANTHOSU CHAUDHURY* (1910) 14 C W N 1073

Rule 20 of the rules of the High Court made under the Legal Practitioners Act laying down that with his application for the renewal of his certificate a pleader should file a certificate of character from the presiding officer of the court in which he practises is inconsistent with s 12 to 14 of the Legal Practitioners Act unless the expression "certificate of character" is construed as meaning nothing more than a certificate that the presiding officer of the Court is not aware of any misconduct of the pleader justifying action under those sections. *Held*—That the District Judge had no authority to refuse to renew the certificate of a pleader practising in the Munif's Court merely because he had formed an unfavourable opinion of his character in the course of the trial of a case in which the pleader was a party when the pleader produced with his application for renewal a certificate from the Munif to the effect that he knew nothing against the pleader's character. *In the matter of JADAB CHANDRA CHAKRABARTY PLEADER* 13 C W N 415

s 13—

See PLEADER

1 L R 35 Mad 543

Conduct by practitioner as for Jurisdiction of courts to deal with professional misconduct—Conduct by a legal practitioner as a suitor cannot be investigated under the Act There is ample jurisdiction in a court to investigate cases of moral turpitude unconnected with the discharge by a practitioner of his professional duties and the court has complete jurisdiction to remove and suspend pleaders and mukhtars for causes rendering them unfit for the continued exercise of their profession. In the case of a suitor stands on a different footing though the suitor be a pleader or mukhtar. *NARAYANA NATH DAS v. SIVA KUMAR JHA* 5 Pat L J 601

Whether appeal lies to His Majesty in Council—Letters Patent of the Pat a High Court cl 3 to 31 There is no provision in the Legal Practitioners Act 1879 conferring a right of appeal to His Majesty in Council from an order passed by the High Court under s 12. The right of appeal to His Majesty in Council is confined to appeals from judgments decrees and orders passed in exercise of one or other of the classes of jurisdiction conferred by cls 9 to 27 of the Letters Patent and not to the adminis-

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—contd

s 13—contd

trative or disciplinary powers conferred on the court by earlier clauses or by statute. **BHISHORI L OY & HING LARIOR**

4 Pat L J 423

Cross misconduct—

Willful neglect of pleader to appear after recd of full fees—Actionable claim—Purchase of by a pleader—Transfer of Property Act (13 of 1882) ss 3 and 136—Pleader engaging in trade without intimating to the High Court—127 of the Rules under Legal Practitioners Act Held by the full Bench the judgment and evidence given in a civil suit filed by a party against his pleader for refund of fees on account of non appearance of the pleader are admissible as evidence in an enquiry instituted for the purpose against the pleader under the Legal Practitioners Act but they are not conclusive proof in the enquiry. Willful neglect by a pleader to appear without any justification whatever and conduct a case after receipt of full fees is unprofessional conduct for which the pleader could be punished under s 13 of the Legal Practitioners Act. **MUNI KEDDI & VENKATA POW (1914)** 1 L R 37 Mad 238

Pleader refusing to

appear in Court in pursuance of a resolution of the Bar Association to boycott that Court propriety of—Duties and obligations of pleaders—Proper course for pleaders when ill treated by any Court Some pleaders refused to appear in a certain Court in pursuance of a resolution of the Bar Association to boycott that Court as a protest against its ill treatment of pleaders. Proceedings under s 14 of the Legal Practitioners Act were drawn up against several pleaders for failure to appear in Court in matters which had been entrusted to them by their clients. The pleaders concerned having intimated their unqualified protest to the High Court for the course adopted by them—Held—That having regard to their unqualified expression of regret the proceedings should be dropped. In the matter of **TARATI MOHAN BARARI**

26 O W N 580

s 13 (b)—Gross negligence—appearance

for both sides The conduct of a pleader in acting for both sides in the same case is grossly improper conduct within the meaning of s 13 (b) of the Legal Practitioners Act 1879. When a pleader negligently or intentionally disobeys the rules of his profession he is guilty of grossly improper conduct and it is no excuse that his action does not involve a moral stigma or that it has not resulted in actual injury to his client. **IN THE MATTER OF BHISHORI LAL PLEADER**

3 Pat L J 390

s 13 (t)—Mukhtar—Conduct rendering

legal practitioner amenable to disciplinary powers of the Court—Writing insulting letters to an officer A mukhtar practising in the Criminal and Revenue Courts of a sub division addressed certain grossly insulting letters to the Sub divisional Officer in his character as officer in charge of the copyin department. Held that such conduct on the part of a mukhtar fell within the purview of s 13 of the Legal Practitioners Act 1879 and rendered the writer amenable to the disciplinary jurisdiction of the High Court. **IN THE MATTER OF A MUKHTAR**

1 L R 42 All 11

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—contd

s 13 (t)—contd

Interpretation of clause

—Words of other reasonable cause explain d. *Ejusdem generis* The words for any other reasonable cause in cl (f) of s 13 of Legal Practitioners Act (XVIII of 1879) include general misconduct and are not restricted to professional misconduct. Where two legal practitioners were the President and a Director respectively of a so called Provident Society which was in no way a Provident Society but a means of furnishing profit to the Directors by enabling those who desired to gamble in the lives of parties who were willing to become applicants to the society—Held that there was reasonable cause under s 13 (f) for an order being made against the legal practitioner **PER MILLER J**—The principle of *ejusdem generis* cannot be applied to the words any other reasonable cause since the general professional misconduct is not large enough to include the case of s 12 (where pleader may be suspended or dismissed for having committed criminal offence implying a defect of character which unfits him to be a pleader. **TILMANN & CO v. KANSFORD LTD (1908)** 2 K B 373, followed. The intention of the Legislature was to give to the High Court powers of control over pleaders and mukhtars as extensive as those which are given by the Letters Patent s 10 over advocates and vailis. **PER KRISHNASWAMI ARYAN J**—Cl (f) of s 13 is not confined to professional misconduct but may be interpreted so as to include any dishonest or dishonourable conduct whether or not in discharge of professional duty. It is difficult to limit cl (f) to professional misconduct because cl (f) deals with grossly improper conduct in the discharge of professional duty and it is not possible to name any species of professional misconduct which does not fall within cl (f) itself. The fact that the Legislature has restricted the power of subordinate Courts under s 14 of the Act is no reason for fettering the power of the High Court. **IN RE GHANB LALAN MUKHTAR 7 B L R 179 approved** **IN RE SECOND GRADE LEADERS (1911)**

1 L R 34 Mad. 21

ss 10 14—

See INFRACTION 1 L R 37 Cal 178

See UNPROFESSIONAL CONDUCT

1 L R 43 Cal 688

Mukhtar acting as go-between for bringing police in punishable under cl (f)—Enquiry commenced under cl (b) but ultimately being act coming within cl (f) irregular—S 14, cl (f) enquiry under cl can be made by subordinate Court Where a mukhtar was found to have received a sum of money from a person against whom some police cases were pending for the purpose of bribing the police and acted as a go-between. Held that his action furnished reasonable cause for punishment under s 13 cl (f) of the Legal Practitioners Act. A subordinate Court can take proceedings under s 13 cl (f) of the Legal Practitioners Act and even if the High Court be the only Court which can order such an enquiry it is open to the High Court to avail itself of the inquiry already made by a subordinate Court and proceed to deal with

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—contd

s 13 14—contd

the case. *Id.* An enquiry by the lower Court is not irregular on the ground that the act disclosed as the result of the enquiry is found to come under s 13 cl. (f) and not under s 13 cl. (l). *Per HARI LAKSHMAN MURTHI* (1917) 21 C W N 516

Specific charge

under s 13 (b) *see also* *re* *Taling* instruction from unauthorised persons—Conduct improper In a reference under the Legal Practitioners' Act the High Court confines itself to the charge framed by the Primary Court. The finding that the pleader was guilty of the fraudulent or grossly improper conduct in the discharge of his professional duty within the meaning of s 13 (b) of the Legal Practitioners' Act was disregarded as the pleader was not charged with that. Where a pleader was found to have received instructions from a person about whom he made no enquiries as to his right to instruct him on behalf of certain minors or their mother and also that he filed a written statement which was not prepared by him and that he accepted the vakalatnama at the instance of another party in the suit and that he filed a receipt which on the face of it was not genuine without even examining it it was held that his conduct was most improper although no injury resulted from it. The pleader was suspended for nine months. *In the matter of Jugal Chandra Mazumdar* (1916) 40 C W N 1018

In a case which arose

out of certain Pleaders observing a bartial their status was fully discussed also the effect of filing a Vakalatnama *King Emperor v. Rajani Kant Bora* 28 C W N 589

Mukhtear abusing

Court's Officer if liable to disciplinary action—Contempt—Object of punishment—Subordinate Court if may start enquiry under s 14 in case other than under cl. (a) and (b) to s 14—High Court if may adopt a report made by subordinate Court in a proceeding wrongfully initiated but properly conducted b 14 of the Legal Practitioners Act invests a Subordinate Court with authority to inquire into any case of misconduct alleged against a pleader or Mukhtear practising before it covered by s 13 of the Act as amended by Act XI of 1896 and not merely cases covered by cl. (a) and (b) of s 13. *In the matter of Southekal Jishna Rao L P 14 I A 151 s c I L R 15 Cal 1* explained. *In re Purna Chandra Pal I I P 27 Cal 1073 s c 4 C W N 389* commented on. Whether an enquiry is made by or under the orders of the High Court under s 13 or is instituted by the Subordinate Court of its own motion the final order can be passed only by the High Court. The law does not require an inquiry ordered under s 13 to be conducted directly by the High Court. Therefore even if it were incompetent for a Subordinate Court to initiate an inquiry into certain kinds of charges of misconduct if such an inquiry has been properly held after notice then is nothing to prevent the High Court from adopting it as one which could be directed under s 13. The Court at least when in session is present in every part of the place set apart for its own use and for the use of its officers jurors and witnesses and dis-

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—contd

ss 13 14—contd

orderly conduct anywhere in such place amounts to a contempt of Court. The power of suspension or removal is distinct from the power to punish for contempt but a contempt may be of such character as to warrant the exercise of the disciplinary powers of the Court. When the Court takes notice of a misconduct which consists in the obstruction of or an interference with one of its officers the object of the discipline enforced is not so much to vindicate the dignity of the Court or the person of the officer as to prevent undue interference with the administration of justice. Where a mukhtear in the course of an altercation with the Court's accountant in the latter's office used abusive language which was heard by the Munsif from his Court. *Held* that for such conduct the Court could take disciplinary action against the mukhtear. *In re matter of PASIR TAL NAR* (1916) I L R 44 Cal 639 20 C W N 1284

It is incumbent upon a Mukhtear to take his instructions directly from his client. If he takes them from an agent he must ascertain that the agent is duly empowered. A Mukhtear is liable to be punished when he has acted in violation of his duty in circumstances which show gross negligence on his part even though he may not be guilty of fraud. *In re LEAKET HUSSAIN MUKHTAR* 2 Pat L J 36

s 14—

See CIVIL PROCEDURE CODE 1908 O 111 r 2

2 Pat L J 259

See PLEADER I L R 47 Cal 1115

Transfer of enquiry under s 14—Nature of proceedings under the Act. The procedure provided by the Legal Practitioners' Act 1879 is self contained. It is neither criminal nor civil but purely designed for the purpose of discipline in controlling the procedure and the conduct of practitioners practising in the subordinate Court. The enquiry provided for by s 14 of the Legal Practitioners' Act 1879 cannot be delegated or transferred to another officer who is not the presiding officer of the Court in which the malpractices complained of were committed. Disciplinary proceedings taken under s 14 of the Legal Practitioners' Act 1879 are not proceedings in a Court of Civil Jurisdiction. The Code of Civil Procedure 1908 is not applicable to enquiries under s 14 of the Legal Practitioners' Act 1879. s 141 of the Code of Civil Procedure 1908 is controlled in its operation and effect by the concluding words of the section which limit its application to proceedings in Courts exercising Civil Jurisdiction. s 10 of the Government of India Act 1915 does not alter the position. *In the matter of JADAV KISHORE ARINASH AND OTHERS* 1 Pat L J 576

Reference arising out of criminal charge against mukhtear—Procedure under the Act should be distinct from criminal proceedings—Procedure for enquiry to be strictly followed. Where in the course of criminal proceedings against the mukhtear a reference purporting to be made under the Legal Practitioners' Act was made against him to the High Court. *Held* that the procedure prescribed in s 14 of the Act should have been strictly followed from

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—cont'd

s 14—cont'd

first to last and that not having been done the Reference was bad. *Held* further that the proceeding under the Act must be separate and distinct and cannot be made part of the criminal proceedings. *In re LAZAR RAKAMAH* (1914) 15 C W N 761

Mukhtear—*Suspension*
by District Magistrate before report to High Court—Right to be heard before suspension—Order for prosecution—Criminal Procedure Code (1st V of 1898) s 476 A legal practitioner cannot be provisionally suspended pending investigation (under s 14 of the Legal Practitioners' Act) of a charge of misconduct brought against him with out being heard in defence under s 40 of the Act and before a report has been submitted to the High Court in terms of s 14 The investigation referred to in the section is investigation by the High Court Where upon a reference by the Sub Divisional Officer relating to the conduct of a mukhtear in a case tried before that officer the District Magistrate suspended the mukhtear and on a perusal of the records directed his prosecution under s 182 Penal Code *Held* that the order of suspension was without jurisdiction. *Per WOODROFFE J*—That the order for prosecution could not be passed by the District Magistrate under s 476 Criminal Procedure Code as the proceeding not being properly before him was not a judicial proceeding. *Per CARYLUFF J*—The District Magistrate was not acting in the course of a judicial proceeding. *In re BAJRANGI SAHAI* (1911) 15 C W N 259

Talalatnama altered after execution by inserting name of mukhtear actually engaged at the request of party's agent—conduct if grossly improper A written *talalatnama* for the purpose of engaging certain pleaders to conduct an appeal on behalf of a prisoner was taken by his maternal uncle to the prisoner in jail where it was executed by the prisoner by affixing his mark in the presence of a jail officer and was handed over to the maternal uncle who brought it to the petitioner a mukhtear and instructed him to appear in the appeal The petitioner pointed out to the uncle of the prisoner that he could not appear as his name was not mentioned in the *talalatnama* and then at the request of the latter inserted his own and other names in it and made certain other alterations *Held* that although the petitioner certainly acted improperly in altering the *talalatnama* the alterations were not made from improper motives and his conduct was not grossly improper within the meaning of s 14 of the Legal Practitioners' Act *In the matter of PURNA CHANDRA HATTERRI* (1912) 17 C W N 328

Legal practitioner—*Prohibition order*—Certificate not to be cancelled until result of prosecution is known—Practice Where a District Judge having the alternative to take action against a pleader practising in his jurisdiction under s 14 of the Legal Practitioners' Act 1879 or to initiate criminal proceedings against him takes the latter he ought to wait until the result of the criminal proceedings is known before refusing to renew the pleader's certificate *In the matter of A PFADER* (1916) 1 I L R 38 All 182

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—cont'd

s 14—cont'd

Cross contempt of a Subordinate Court by a second grade pleader by unjustly attacking its impartiality in the discharge of its duties—Jurisdiction of Subordinate Courts to take proceedings under s 14 for all cases coming under s 13 cl (f) not *ejusdem generis* In the course of an enquiry before a District Munsif a second grade pleader who appeared for one of the parties to the enquiry swore an affidavit and filed the same in Court requesting that Court should not proceed with the enquiry The affidavit contained unjust aspersions imputations and insinuations couched in insulting language charging the District Munsif with rancour and prejudice against the pleader and with a desire to injure him both as a pleader and also as a public man The Munsif thereupon took the proceedings under s 14 of the Legal Practitioners' Act (XVIII of 1879) charging the pleader under s 13 cl (f) of the Act with contempt of Court *Held* (1) that Subordinate Courts have jurisdiction to take proceedings not only under cl (a) and (c) of s 13 but also under all the other clauses of the sections (2) that cl (f) is not confined to misconduct *ejusdem generis* as the one referred to in the previous clauses and (3) that the pleader was guilty of misconduct by his outrageous attack upon the Court in the exercise of its function Their Lordships accordingly suspended the pleader from practice for a period of four months The decision of *HOOT J* in the matter of the petition of *Mahomed Abdul Hai I I J 29 All 61* and in the matter of a pleader *I I R 96 Mad 418* followed *THE DISTRICT JUDGE KISTNA, HANUMANULU* (1911) 1 I L R 39 Mad 1045

ss 27 28—Pleader and client—Fees agreement for payment of not in writing and no filed in Court if may be enforced—Pleader's lien on moneys realised on behalf of client—Quantum meruit An agreement by a client to pay certain amount to his pleader as fees for professional service cannot be enforced by the latter when it has not been embodied in writing signed by the client and filed in the proper court in the manner provided by s 28 of the Legal Practitioners' Act even when the amount agreed to be paid is not in excess of that prescribed under the rules framed under s 27 of the Act for payment by any party to his opponent in respect of the fees of the pleader employed by his adversary The language of s 28 is comprehensive enough to include every agreement between a pleader and his client for the payment of fees for professional service and cannot be restricted by reference to s 27 which does not apply to such agreement *Quære* Whether in the absence of a written agreement a pleader can claim reasonable compensation for his services *KAMINI DEBI KHETRA MOHAN GANGLY* (1911) 17 C W N 45

ss 28—Pleader and client—Lien on client's moneys for fees agreed upon if enforceable when agreement not in accordance with s 28 Legal Practitioners' Act (XVIII of 1879) An agreement between a pleader and his client in regard to fees for professional service which the pleader cannot sue on owing to its not conforming to the provisions of s 28 of the Legal Practitioners' Act cannot also be relied upon in defence to an action by the client to recover moneys deposited in Court

LEGAL PRACTITIONERS ACT (XVIII OF 1873)—contd

s 28—contd

by the client and withdrawn by the pleader. The plea of the pleader that he had a lien on the money to the extent of the fees agreed upon could not therefore be entertained. *Quære* Whether the pleader should claim reasonable remuneration for his services in view of s 29 of the Legal Practitioners Act. *HAANI DEBI v. ANJETA MOHAY GANGLI* (1910) 15 C W N 681

See ALSO *ANTE*

17 C W N 45

Order of suit for fee upon oral agreement of maintenance Where a suit by a Pleader for fees against his client is based on an agreement he cannot succeed unless the agreement is both in writing signed by the party to be charged and filed as provided in s 28 of the Legal Practitioners Act. Consequently no suit upon an oral agreement can succeed under the section. *BEACIARAM LAHARI v. SUDDEBI DAS* 26 M W N 709

s 35 36—Tout orde declaring a person—Evidence to justify Where a witness merely proved that a person declared by the District Magistrate to be a tout had been seen in Court looking after one or more witnesses only saying that he had heard that the mukhtars regarded him as a tout. *Held* that the evidence was clearly insufficient to justify the order of the District Magistrate. *SUNDAR UPADHAY v. THE PRESIDENT OF THE MUKHTARS ASSOCIATION CHAPRA* (1911) 15 C W N 1000

s 36—Tests—Procedure to be followed by a Court failing action under s 36—*Return*—*Statute* 5 & 6 Geo 4 Ch 61 s 107—*Fiducie*—*Criminal Procedure Code* s 117 (3) It is competent to the High Court to entertain an application in revision against an order passed by a District and Sessions Judge under s 36 of the Legal Practitioners Act 1873 and thus without involving the aid of the Government of India Act 1911 s 107. *In the matter of the petition of Madho Ram* I L R 91 All 181 *In the matter of the petition of Kedar Nath* I L R 31 All 59 *In the matter of the District Judge of Madura* I L R 28 Mad 99 and *Hari Charan Sarcar v. the District Judge of Dacca* 11 O I J 113 referred to. In a proceeding under s 36 of the Legal Practitioners Act 1873 the Court may properly apply as regards the nature of the evidence admissible the provisions of s 117 (3) of the Code of Criminal Procedure. Where a person's name has once been included in a list framed under s 36 the mere fact that the exhibition of such list in any particular court room is discontinued has no effect on the validity of the original order. *In the matter of the petition of HALKA AND OTHERS* (1917) I L R 40 All 153

An order under s 36 declaring a person to be a tout can be made only by one of the authorities specified in that Section and upon evidence taken by such authority himself. *In the matter of NAVAR CHANDRA MANDAL* 24 C W N 1074

s 40—

See s 14

15 C W N 269

LEGAL PROCEEDINGS

See AGREEMENT I L R 37 Mad 408

LEGAL REMEMBRANCE

See CONTENT OF COURT

I L R 41 Calc 173

See PUBLIC PROSECUTOR

I L R 41 Calc 425

I L R 40 Calc 544

LEGAL REPRESENTATIVE

See APPEAL TO PRIVY COUNCIL

I L R 11 Mad 406

See BENGAL TENANCY ACT 1885 Sch

III Art 6 14 C W N 971

See CIVIL PROCEDURE CODE (ACT XIV OF 1859) ss 244 252 647

I L R 34 Bom 546

s 373 I L R 38 Mad 643

See CIVIL PROCEDURE CODE (ACT V OF 1908) —

ss 2 (11) 53 I L R 42 Bom 504

s 2 (11) O XXI R 1

I L R 39 Mad 382

s 2 (11) O XXI R 22

I L R 45 Bom 1186

ss 47 and 50 I L R 38 Mad 1076

O XXI R 3 5

I L R 43 Bom 168

See DEFENDANT DEATH OF

I L R 38 Mad 682

See GUARDIAN AND WARDS ACT 1890

ss 34 35 AND 36

I L R 44 Bom 852

See HINDU LAW—PERVERSION

I L R 33 All 15

See MAHAMMADAN LAW

I L R 42 All 497

See SPECIFIC PERFORMANCE

I L R 41 All 515

— of the receiver—

See CIVIL PROCEDURE CODE (ACT V OF 1903) O XL R 4

I L R 39 Mad 584

LEGAL REPRESENTATIVES' SUITS ACT 1855

See CIVIL PROCEDURE CODE O XXI R 1

I L R 44 Mad 357

LEGALITY

See SEARCH WARRANT

I L R 45 Calc 905

LEGATED

See ESTOPPEL I M P 44 Calc 145

See RESIDENCY LEGATEE

I L R 41 Calc 271

— disclaimer by—

See SUCCESSION ACT (X OF 1860) s 187

I L R 38 Mad 474

— right of, to sue—

See WILL I L R 38 Calc 327

— suit for maintenance against—

See HINDU LAW—MAINTENANCE

I L R 39 Mad 396

LEGISLATION

— when retrospective—

See **ASSESSMENT I L R 43 Cal 973**

— ultra vires—

See **JURISDICTION OF CIVIL COURT I L R 40 Cal 391****LEGISLATURE**

— object of—

See **LAND ACQUISITION I L R 44 Cal 219**

— Whether can oust jurisdiction of Civil Court—

See **BOMBAY REVENUE JURISDICTION ACT 1876 & 4 I L R 45 Bom 1161****LEGITIMACY**See **ADMISSION OF LEGITIMACY**See **DIVORCE I L R 38 Mad 466**See **HINDU LAW—LEGITIMACY**See **HINDU LAW (MARRIAGE) I L R 48 Cal 926**See **MAHOMEDAN LAW—GIFT I L R 38 All 627**See **MAHOMEDAN LAW—LEGITIMACY I L R 48 Cal 259**See **MAHOMEDAN LAW—MARRIAGE I L R 48 Cal 356**See **MARRIAGE I L R 41 Bom 485**See **MARRIAGE 16 C W N 494**

— acknowledgment of—

See **MAHOMEDAN LAW—ACKNOWLEDGMENT OF SONSHIP I L R 40 Bom 28 I L N 1 Lah 229**

— presumption as to—

See **HINDU LAW—MARRIAGE I L R 38 Cal 700**

— Son by wife of another man—

See **HINDU LAW—LEGITIMACY I L R 3 Lah 207****LEGITIMATE PURPOSE**See **MORTGAGE—CONSTRUCTION OF I L R 40 Cal 342****LENDER AND BORROWER**

— *Suit on promissory note*
 — Undue influence and want of consideration pleaded in defence—Indian Contract Act not principles of English equity to be applied—Federal loan with capital and interest at intervals when unconscionable—Excessive amount becoming due from debtor's failure to pay is to be regarded as oppressive—Contract Act (18 of 1872) s. 11—Ours—Where in a suit brought on certain promissory note the defendant pleaded that he had received no consideration that the notes were procured by the exercise by the plaintiff upon him of undue influence and that the whole transaction was an unconscionable bargain made with the defendant as an expectant heir Held that the questions raised were to be decided on the provisions of the Indian Contract Act and on those alone the principles upon which English Courts of Equity deal with similar questions being entirely inappli-

LENDER AND BORROWER—contd

cable A borrower who obtains a loan secured by a promissory note on a quite reasonable basis by neglecting to pay the note at maturity further neglecting to pay the accruing interest for the several years following and then giving a renewal note for the original debt plus the capital and interest could produce a result which might at first sight appear oppressive and yet there would be nothing harsh or unconscionable in the creditor's demand since the added interest only accumulated while he forebore to enforce the payment of the sums from time to time due to him On the other hand it would be quite possible for a money lender by making loans for short period on apparently fair terms and then investing on capitalization the interest immediately on its becoming payable to pile up compound interest on the initial debt at such a rate as would make the result after a few years most oppressive and unconscionable But there is nothing inherently wrong or oppressive in a lender's securing for himself compound interest after the borrower has for a considerable time neglected to pay the debt he owes or the interest accrued due upon it which he has contracted to pay The borrower cannot acquire merit simply by breaking his contract The promissory notes in this case so far from being renewed with undue frequency were frequently allowed to remain overdue for periods of from two and a half to four and a half years before the renewal was taken and the overdue interest capitalised in some instances the renewal being given after the period of limitation had run out Held that the transactions between the parties were not on the face of them unconscionable contracts within the meaning of s. 16 of the Contract Act as amended by the Act of 1899 To prove the unconscionable character of the bargain evidence was given to show that the defendant (who undoubtedly was a spendthrift of depraved and licentious habits) was heavily indebted to several other creditors during the years covered by his transaction with the plaintiff Held that it was legitimate to prove these facts in order to establish that the defendant was a person of weak and debauched character unable to resist the pressure of creditors if applied or to resist the temptation to borrow money recklessly to gratify his lusts but it was wholly illegitimate to give any evidence as to the terms on which he succeeded in compromising with creditors other than the plaintiff's Held on the evidence agreeing with the District Judge (that assuming that the plaintiff was in a position to dominate the will of the defendant the latter had utterly failed to prove further that the plaintiff had in fact exercised undue influence upon him in any of the transaction out of which his liability for the debt sued for arose) and that if the defendant having been an expectant heir the plaintiff was in consequence in a position to dominate his will and therefore bound to prove that he had not used that position to obtain an unfair advantage over him the plaintiff had discharged that burden **PAULA MAL v. AHAD SHAH (1918)**

16 C W N 233**LEPROSY**See **HINDU LAW—LEPROSY**

— in anaesthetic form

See **HINDU LAW—INHERITANCE****I L R 38 Mad 259**

LESSEE

See LAND LORD AND TENANT

See LEASE.

See LE. OR AND LESSEE

See MADRAS LAND REVENUE ACT
(I OF 1876) s 2

I L R 38 Mad 1128

See MADRAS ESTATE LAND ACT

I L R 59 Mad 1018

See TENANTS IN COMMON

I L R 118 Mad 1049

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 10

I L R 38 Mad 867

s 108 (J)

I L R 40 Mad 1111

s 6

I L R 43 Bom 28

See USUFRUCTUARY MORTGAGE

I L R 40 All 429

dispossession of—

See LESSOR AND LESSEE

I L R 39 Mad 1042

for years or for life—

See MINERAL RIGHT

I L R 88 Cal 845

from Bombay Government—

See KANAKIS

I L R 39 Bom 625

from Government in Ferozepore—

whether land is ancestral—

S CUSTOM

I L R 2 Lah 195

in perpetuity—

See MINERAL RIGHTS

I L R 38 Cal 845

interest of—

See LIMITATION ACT (IX OF 1908) SECTION I
ARTS 91 AND 120

I L R 35 All 149

liability of—

See BOMBAY MUNICIPAL ACT (BOM.
ACT III OF 1863) s 30

I L R 34 Bom 593

right of to eject trespasser—

S EJECTMENT

I L R 37 Mad 281

right of—to give monthly tenant
notice to quit—See TRANSFER OF PROPERTY ACT 1882
s 100 & 109

I L R 1 Lah 241

right of to improvements—

See MADRAS TENANTS IMPROVEMENT
ACT (MAD I OF 1900) ss 1 AND 2

I L R 58 Mad 954

right of to relief against forfeiture—

See TENANTS IN COMMON

I L R 39 Mad 1049

See TRANSFER OF PROPERTY ACT 1882
s 1

I L R 43 Bom 28

Transfer by lessee—

Liability of lessee to pay rent after transfer—Privilege
of sale—Transfer of Property Act (IV of 1882) s
109The duration of liability of a lessee to pay
rent to the lessor lasts as long as his estate remains
in his possession and no longer and after an

LESSEE—contd

assignment of the lease the privity of estate
between him and the lessor ceases and the assignee
becomes liable for the rent METHA : GADADHAR
RAI (1910) I L R 37 Cal 683

Assignment by lessee—

I assign a right to apportionment as against
les or—Transfer of Property Act (IV of 1882) ss
36 and 103—Apportionment in English law under
Statute Law in England and under the English
Common Law—Rent—Interest accrues de die in
diem English Statute Law principle of law be
followed in India—No Statute Law in India—Apportionment as between lessor and lessee assignee
An assignee from a lessee is entitled to claim as
against the lessor apportionment of rent accruing
due after the date of assignment to him up
to the time of a transfer (if any) of his interest as
a lessee to a third person

There is privity of estate between the lessor and the assignee and the latter is bound to perform the covenants of the lease after the assignment. The assignee is not the ground of his liability but the privity of estate which is created by the assignment itself. It is settled law that the privity of estate between the lessor and the lessee assignee is terminated by an assignment by the latter of his interest to a third person. On principle there seems to be no reason why an assignee should not be entitled to apportionment as between him self and the lessor and why rent should not be deemed to accrue due from day to day as between them. In England the Law of apportionment has long been regulated by statutes and all rents etc are like interest in money lent considered as accruing from day to day and apportionable in respect of time accordingly. In India there is no reason for not applying to rent the principle adopted in England in the case of interest KUNHI SOU : MULLICK CHATRI (1910)

I L R 38 Mad 86

LESSOR AND LESSEE

See LANDLORD AND TENANT

See LESSEE

Forfeiture for non payment of rent—Joint lessors—Separation of their ownership in the lands—Receipt by one of the joint lessors of his share of rent from the lessee—Right of the other joint lessor to enforce the forfeiture—No act done by the lessor previous to the institution of the suit to determine the lease—Ejection prior to suit not necessary—Waiver—Transfer of Property Act (IV of 1882) s 111 (g)—Right of re entry under the old English common law. One of several joint lessors who have become separately entitled to his share of the lands leased is entitled to enforce the forfeiture clause in the lease deed separately as regards his share of the lands. Sr Paja Simhadri Appa Rao : Prathigali Ramayya I L R 29 Mad 9 followed Gopal Ram Mohori v Dhakeswar Perlat I L R 33 Cal 807 disentitled from mere breach by the lessee of a covenant involving forfeiture contained in a lease of lands executed for agricultural purposes gives a sufficient cause of action to the lessor to bring the suit in ejectment and it is not necessary that the lessor should do some act showing his intention to determine the lease before he brings his suit in ejectment Venkata ramaya Bhatta v Gundarayya I L R 31 Mad 403 distinguished Padmanabhayya v Panga

LESSOR AND LESSEE—contd

I I R 31 Mad 161 followed *Per* **SABASIYA AYYAR J** As the breach of the condition gives rise to a cause of action at once there is strictly no question of election between two different rights but there is only an election whether the lessor is to retain the right created by the breach or to give up the right. The retention requires no definite physical act while the waiver does.

KOPPALU v NARAYANA (1913)

I L R 38 Mad 445

Lease for a term—Dispossession of lessee within term by trespassers—Right of suit of lessor for actual possession—Lessee joined as defendant—Decree—Declaration of title—If formal possession can be given

A lessor whose lessee is dispossessed by a stranger can maintain a suit against the stranger during the term of the lease and obtain a decree not only declaring his title to the reversion but also awarding him formal possession of the land as provided by O XXI r 36 Civil Procedure Code. *Biswas v Dabee v Baroda Kanta Roy Choudry I L R 10 Cal. 1076* and *Sita Ram v Ram Lal I L R 18 All 410* followed. **THIRUVAGADA KOVAN v VETKATACHALA KONON (1915)**

I L R 39 Mad 1042

Suit for rent—Unliquidated claim for damages which has become barred—Equitable set off whether available if possession disturbed in a suit by the lessor for rent It is not open to the lessee to set up by way of equitable set off an unliquidated claim for damages which was barred at the date of the suit. English case law reviewed. **VARAVAN CHETTY v SRINATH DEIVASTIKAMANI NATARAJA DEVIKAR (1910)**

I L R 39 Mad 938

Lesser agreeing in the lease deed to pay a debt of lessor—Non payment by lessee—Suit by lessee to recover possession of lands demised—Subsequent usufructuary mortgage by lessor for discharge of debt—Right of lessee to possession under lease—Transfer and executory contract distinction between—Indian Contract Act (IX of 1872) s 39 applicability of to leases—Specific Relief Act (I of 1877) s 35 whether applicable to default after lease Where a lessee having agreed in the lease deed to discharge a debt of the lessor secured on the demised lands failed to pay the debt and the lessor being sued by the mortgagee executed a usufructuary mortgage to other persons and with the proceeds thereof paid off the debt and thereupon the lessee sued to recover possession of the demised lands from the lessor and the usufructuary mortgagees who pleaded that the former was not entitled to recover possession under his lease on account of his default in not discharging the debt as agreed to in the lease deed. *Held* that the lessee was entitled to recover possession of the lands under his lease though he had not paid the debt as agreed to in the lease deed. A lease is an executory contract. It is a transfer of property or of an interest in property and all the considerations which apply to the enforcement of mere contracts do not necessarily apply to a transfer consequently the doctrine regarding mutual promises contained in s 39 of the Indian Contract Act has no application to a lease. S 35 of the Specific Relief Act did not apply to the case as the plea did not relate to any facts which vitiated the contract.

LESSOR AND LESSEE—concld

culminating in the lease but to something which happened after the grant of the lease namely non payment of the debt mentioned in the lease deed. **CHOLU RAI v Baldeo Shu I L R 31 All 659** disented from. **Subba Rao v Devu Shetti I L R 18 Mad 126** distinguished. **KANDASAMI ILLAI v PAMASAMI MANADI (1918)**

I L R 42 Mad. 203

Suit in ejectment from part of a holding maintainable if—Right of suit of lessor or of assignee of part of the reversion—Payment of compensation for tenant's improvements—Payment for improvements whether on the whole or part of the holding necessitates—Malabar compensation for Tenants Improvements Act (I of 1900) ss 5 and 6—Holding construction of Held by the Full Bench (SESHAGIRI AYYAR J dissenting) that a lessor is not entitled to eject a tenant from a part only of the holding but the assignee of the reversion in part of the demised premises is entitled to eject a tenant for due cause from such part on payment of the value of the improvements in that part and that this rule applies to tenancies in Malabar. *Per* **SESHAGIRI AYYAR J—Neither the lessor nor the assignee of a part of the premises can evict a tenant from a part of the premises during the continuance of tenancy in the case of a terminated tenancy the Malabar Compensation for Tenants Improvements Act does not contemplate the possibility of a partial eviction on payment of the value of improvements on a part of the holding. **KANNAN BIDUVAN v ALIKUTTI (1919)****

I L R 42 Mad 603

If by an inundation of sea water part of land leased for agricultural purposes becomes unfit for cultivation and the lessor brings suit to recover the whole rent reserved the lessee can claim abatement s 108 B of Transfer of Property Act not being applicable. **SHAIKH FAYZULLAH v SHAIKH FIHREBUKH 1864, W R Oup (Act X rulings 42 followed. **SUBBANAIA PATTAR v KATTANBALLY RAMA (1920)****

I L R 43 Mad 132

Assignment of lease—Consent not to be unreasonably withheld—Assignment to a limited company—Refusal to consent—Procedure The plaintiff took out an originating summons for the determination of the following questions namely whether upon the true construction of the Indenture of lease mentioned in the plaint herein relating to premises No 4 Madge Lane in the town of Calcutta commonly known as the Grand Opera House and in the circumstances mentioned in the plaint the plaintiff is entitled to a sign the remainder of the term under the said lease to the Lyons Limited without the consent of the defendant I M D Cohen and whether the defendant should pay the costs of and incidental to these proceedings. *Held* that the procedure adopted by the plaintiff was entirely correct. **Young v Ashley Gardens Properties Ltd 1903 2 Ch 112** **Pe Sparr v Lease (1905) 1 Ch 456** **Evans v Levis (1910) 1 Ch 452** and **Wills v Cannon Brewery Co Ltd 3F L R 513** followed. *Held* further that in the circumstances of the present case the defendant's refusal to consent to the assignment was unreasonable and capricious and that the questions must be answered in the affirmative. **DUGGESS v COHEN (1920)**

I L R 48 Cal 176

LETTERS OF ADMINISTRATION

See ADMINISTRATION FUND

I L R 39 Calc 563

See ADMINISTRATOR GENERALS ACT (II OF 1874) s 20 (2 AND 3)

I L R 38 Mad. 1134

See COURT FEES ACT s 19

I L R 33 Mad 93

I L R 40 All 279

See HINDU LAW—SUCCESSION

I L R 37 Calc 214

See PROBATE

I L R 37 Calc 224

I L R 40 Bom 668

See PROBATE AND ADMINISTRATION ACT s 30

I L R 37 All 380

See SUCCESSION ACT (I OF 1865) s 190

I L R 38 Bom 618

See SUCCESSION CERTIFICATE ACT (VII OF 1859) s 4

I L R 38 All 474

— application for—

See PARTIES I L R 45 Calc 362

Probate and Administration Act (I of 1881) s 93 64—Hindu death of leaving widow who survived over 30 years—Application for letters of administration when no estate left to be administered. It is no doubt not necessary for the Probate Court to decide what assets are likely to come to the hands of a petitioner for letters of administration but it is also the duty of the Court in granting letters of administration to consider whether there is any estate whatever to be administered. In the goods of Narsing Chander Bysack 3 C W N 635 Lakshmi Narain v Danda Pami 9 C F J 116 relied on Raghu Nath v Pate Aor 6 C W N 345 disingued. Where the object of the litigation appeared to be not to administer the estate of the deceased (a Hindu who had died so long ago as 1875 and was survived by his widow in possession till 1907) but really to obtain a declaration of heirship so as to fortify the successful party in any regular suit that may be instituted. Held that no grant should be made although objection on this ground was taken for the first time upon appeal from the order of the District Court granting letters of administration. Lalit Chandra Chowdhury v Batekutha Nath Chowdhury (1910) 14 C W N 463

Prerogative Insolvency Act (III of 1909) s 108—Letters of administration application by creditor—Debtor dying in insolvent circumstances. Letters of administration may be granted to a creditor although the liabilities of the deceased debtor appear to be in excess of the assets. Application in the Insolvency Court is not the creditor's only remedy. In the goods of MAHARAJ LAL CHATTERJEE (1911) 15 C W N 350

Retraction—Probate and Administration Act (I of 1881) s 50 Expl (4)—Just cause—Useless or inoperative meaning of—Disagreement between administrators whether a just cause for annulling letters of administration. A mere disagreement between administrators is not a just cause for annulling the letters of administration under s 50 expl (4) of the Probate and Administration Act. The words "becomes useless and inoperative" in 50

LETTERS OF ADMINISTRATION—contd

expl (4) of the Probate and Administration Act imply the discovery of something which if known at the date of the grant would have been a ground for refusing it e.g. the discovery of a later will or codicil or subsequent discovery that the will was forged or that the alleged testator is still living. *Bal Gangadhar Tiwal v Sakharai 1 L R 96 Bom 792 and Annoda Prasad Chatterjee v Kalkri hna Chatterjee 1 L R 94 Calc 95* followed. *GOUR CHANDRA DAS v SARAT SUNDARI DASSI (1912) I L R 40 Calc 50*

Practice—Colonial Probate Act (55 & 56 Vict c 6)—Power of attorney contraction of The Colonial Probates Act and the procedure therein indicated as to send an exemplification of the probate granted in any part of the United Kingdom to be resealed by the Court to which it is sent has not been extended to British India where the practice is to require administration with will annexed to the estate of deceased British subject leaving property there. Authority in a power of attorney granted by the executrix of a will which has been confirmed in Scotland to produce to the Supreme Court in India in the probate jurisdiction at Calcutta or elsewhere in India the said confirmation and to procure the same to be sealed with the seal of the Supreme Court in India in accordance with the laws thereof does not authorise the donee to obtain grant of Letters of Administration in the goods of WILLIAM RENNIE (1912) I L R 40 Calc 74

*Probate and Administration Act (I of 1881) s 16—General citation issue of—Special citation to executor to accept or renounce not valid—Will validity of—Proper procedure. In a proceeding under the Probate and Administration Act general citation was issued to the executor to attend and watch the proceeding but no appearance was entered by him and letters of administration with a copy of the will annexed was granted to the applicant. Held that the validity of the will was established but letter of administration should not have been granted without calling upon the executor by a special citation under s 16 of the Act to accept or renounce his executorship. *BAROJAN DAS v PAJLAKSHMI DAS (1920) I L R 47 Calc 838**

Whether grant of in respect of part of estate is valid—Probate and Administration Act (I of 1881) s 50—Compromise of probate proceedings which is binding on minors—Equitable—toppel. Although an executor who has been appointed by the testator for the administration of a particular fund is competent to take out probate limited to that particular fund yet where there is no direction as to any particular fund and where the applicants for letters of administration apply in their capacity as heirs there is no provision of law which empowers the court to refuse administration of the whole estate and to limit it to a fractional undivided portion thereof. The only issue before a Probate Court is whether the Will has been proved to be genuine and duly executed and the court has no concern with the devolution of property. Although it can record a contract or agreement made between the applicant for administration and a caretaker in consideration of the withdrawal of the latter's objection

LETTERS OF ADMINISTRATION—*concl'd*

the court is wholly powerless to enforce such contract or agreement *SARADA PRASAD TRAI v. TRIGUNA CHAMAN ROY* 5 Pat L J 415

Justice—whether Court should go into question of—paramount title—Probate and Administration Act (v of 1881) ss 23 64 69 70 and 73 The question as to whether an estate exists for the administration of which letters of administration can be granted must be decided upon the allegations in the petition. To entitle an applicant to a grant of letters of administration it is sufficient if the petition shows that the applicant is according to the rules for the distribution of the estate of the deceased entitled to the whole or a part of the property and alleges the fact that there is no party of that nature. A Court of Probate is bound to enter into questions of title if it is necessary to decide that question in order to determine which of the two contesting parties is entitled to a grant of letters of administration but is not entitled to do so where one of the contesting parties asserts that no one is entitled to such a grant e.g. where such party objects to a grant being made to his opponents on the ground that he has himself taken the entire estate of the deceased by survivorship as his adopted son. In such a case the question of the factum of the adoption would become relevant to the inquiry only if the alleged adopted son claimed to be presently entitled to the grant of letters of administration. *DEBENDRA PRASAD SHUKLA v. SUBBENDRA PRASAD SHUKLA* 5 Pat L J 107

LETTERS PATENT (HIGH COURT 1865)

See CIVIL PROCEDURE CODE 1908 s 11, 15 O W N 848

— cl 10—

See PROFESSIONAL MISCONDUCT I L R 41 Cal 113

Appeal—from a dissentient judgment in an appeal under s 10—Pre-emption—Waajib ul arz—Custom or contract—Partition of village—No new waajib ul arz framed—Construction of document—Hissadar deh Held that an appeal will lie under s 10 of the Letters Patent from the judgment of a Judge who has differed from his colleague in an appeal under the same section. *The waajib ul arz* of an undivided village gave a right of pre-emption first to a near co-sharer (*hissadar karib*) and then to a co-sharer in the village (*hissadar deh*). Subsequently the village was divided by perfect partition into two mahals. No new *waajib ul arz* was prepared in a suit for pre-emption by the co-sharers in one of the mahals consequent upon a sale of property situated in another mahal to a stranger. Held that the right might be enforced notwithstanding the partition. The meaning of the words *deh* and *mahel* discussed by *KARAMAT HUSSAIN J Dalgam Singh v. Halka Singh* I I L 22 All 1 and *Darya Jivan Ram* I L J 3 Ill 265 referred to. *JIVAN RAM* TONK SING (1911) I L R 34 All 13

— cl 10 39—

See ATTORNEY GENERAL'S COUNCIL

I L R 41 Cal 734
I L R 39 Mad 128

LETTERS PATENT (HIGH COURT 1865)

—*concl'd*

— cl 12—

See ARBITRATION I L R 47 Cal 611

See CIVIL PROCEDURE CODE (Act V of 1908) s 11 I L R 37 Bom 563

See CONTRACT I L R 47 Cal 583

See EQUITABLE MORTGAGE I L R 38 Cal 524

See HUNDI SUIT ON I L R 40 Bom 473

See JURISDICTION OF HIGH COURT I L R 34 Mad 257

See JURISDICTION I L R 39 Cal 739
I L R 40 Cal 308
I L R 42 Cal 942
24 C W N 583

I L R 48 Cal 882

See LETTERS PATENT (BOM)

See MORTGAGE 24 C W N 633

See THIRD PARTY NOTICE I L R 45 Bom 24

See WAIVER I L R 44 Cal 10

State Railway suit for damages against by servant if may be brought against the Secretary of State for India in Council—Jurisdiction of High Court—Cl 17 Sellers Patent Calcutta High Court 1865 leave to file plaint under if defendant may question properly when once granted—Secretary of State for India in Council if a Body Corporate and if represents Government of India in all suits maintainable against Government—9 65 of 21 and 22 Vict c 106—Government carrying on business for State purposes where may be sued—Railway Company if a person carrying on business and where suit may be brought against it—Decision of a Bench of two Judges sitting on Original Side if binding on a single Judge. A servant of the Eastern Bengal State Railway was prosecuted at Rungpur on a charge of criminal breach of trust which resulted in his acquittal. He thereupon filed a plaint claiming damages for false and malicious prosecution against the Secretary of State for India in Council in the Calcutta High Court in which he craved leave under cl 12 of the Letters Patent of the High Court 1865 for the institution of the suit in the said Court and the Court granted such leave. Held that as the cause of action had arisen wholly outside the jurisdiction of the Calcutta High Court the leave was not properly granted and that the fact of the leave having been granted did not preclude the defendant from questioning the jurisdiction of the Court at the trial. Under s 6 of 21 and 22 Vict c 106 the Secretary of State in Council is a Body Corporate for purposes of a suit and as such represents the Government of India in such suits as may be maintained against the Government. By 21 and 22 Vict c 106 such right of suit as individuals had against the East India Company were continued as against the Secretary of State. A Railway Company is a person carrying on business within the meaning of s 12 of the Letters Patent and it may be sued at the place of its principal office where the directors meet and the general business of the company is transacted or the brain power of the business is a Government may be presumed to dwell in its own capital and a Govern

LETTERS PATENT (HIGH COURT 1865)

—contd

—cl 12—contd

ment engaged in trade though it may be for purpose of the State early on business there *Devi Varan Tewari v Secretary of State for India I L R 11 C 35* cited from The judgment of *Proctor J* in *Proctor v Secretary of State for India I L R 11 C 67* approved *Held* that the *Proctor* being the decision of two Judges sitting on the Original Side is unimpeachable upon a reference by one of the Judges sitting singly on the Original Side the decision is binding on a single Judge sitting *RODRICKS v THE SECRETARY OF STATE FOR INDIA (1912)*

18 C W N 747

*I accept for grant of a Regis. of Letters Patent for a Court—Leave of may be granted as if granted on the date of the trial of the plaintiff—Leave of object—Leave of defendant—Costs of unsuccess—Application—Where leave under cl 12 of the Letters Patent is granted for in the plaintiff was granted by the Judge, subject to its ratification by Court but it did not appear that the plaintiff was ever placed before a Judge *Held* on the matter being brought before the Judge on a later date after defendant had filed written statement and taken several other steps toward the trial and had entered on the cross examination of the plaintiff who was being examined on commission that the granting of leave was a judicial act performed only by the Judge and leave could not now be enforced on the plaintiff as given on the date on which the plaintiff was presented before the Registrar *J. H. S. v. I. R. 33 C 19* 67 12 C W N 649 followed *Plaintiff's* steps they had taken in the suit defendant had waived objection as to want of leave *J. H. S. v. I. R. 33 C 19* 67 12 C W N 649. The application in this case was made by the plaintiff was ordered to pay defendant's costs *VARASWATI DA v. L. R. 33 C 19* 67 12 C W N 649. The application in this case was made by the plaintiff was ordered to pay defendant's costs *VARASWATI DA v. L. R. 33 C 19* 67 12 C W N 649.*

17 C W N 512

cl 12 14—*Costs of action—Partly within jurisdiction—Filing of action—Time of application—An application under cl 14 of the Letters Patent to join a further cause of action arising wholly outside the jurisdiction can be made in a case in which leave to sue has to be obtained under cl 12 nor is there anything in cl 14 to show that this application must be made before the plaintiff is filed. There is nothing to prevent the plaintiff making the application at any time before the hearing but it would certainly be advisable for him to make it at the time the plaintiff presented *JOHN GEORGE DORR v. THE HAMBURG MILLS LTD (1910)**

I L R 34 Bom 564

—cls 12 and 18—

See PRESIDENTIAL TOWNS INSOLVENCY ACT (III) (1909) 89 7 36 AND 90

I L R 40 Mad 810

—cls 13 16 20—

See APPEAL I L R 47 Cal 1104

See MINOR I L R 41 I A 314

—cl 16 27 and 44—

See OFFICE OF INDIA ACT 1910 s 4

B Pat L J 537

LETTERS PATENT (HIGH COURT 1865)

—contd

—cl 15—

See AMENDED LETTERS PATENT

I L R 42 Bom 260

See APPEAL I L R 42 Mad 352

I L R 45 Cal 502 818

I L R 42 Cal 735

I L R 44 Cal 804

See ARBITRATION—RIGHT OF APPEAL

I L R 30 Cal 822

See CRIMINAL PROCEDURE CODE 1895—

—cl 15 AND 478

I L P 43 Mad 361

See 435 440 AND 133

I L R 39 Mad 537

See 468

I L P 30 Mad 472

See LETTERS PATENT (BOM)

I L R 44 Bom 272

See MISJOINDER I L R 45 Cal 111

See EVILW I L R 40 Mad 651

*Order of a single Judge in revision against order to give remedy to keep the peace—No appeal—Criminal trial meaning of proceedings taken for binding over persons to keep the peace under Ch VIII Criminal Procedure Code are criminal trials within the meaning of s 15 of the Letters Patent and hence there is no appeal from the judgment of a single Judge disposing of a Revision Petition presented against an order of a Magistrate under s 118 of the Code of Criminal Procedure. In the matter of Pamaamy City I L R 39 Mad 670 followed *Re DE IKACHARI (1910)**

I L R 39 Mad 539

*Order of Judge refusing to decide whether arbitrators are going beyond scope of their authority—Judgment—Appeal—Construction of submission to arbitrate—An order of a Judge dismissing a petition to revoke a submission to arbitration on the ground that the arbitrators are going beyond the scope of the reference is a judgment within the meaning of cl 15 of the Letters Patent and as such is appealable. Such an order compels a party to submit to the jurisdiction of arbitrators though he complains that no such jurisdiction exists. It decides a question of right namely whether or not he is by the terms of reference to arbitration deprived of his right at common law to have the dispute decided in the ordinary way in a Court of law. It goes to jurisdiction and is not passed as an exercise of discretion *ATLAS ASSURANCE COMPANY LIMITED v. AHMEDABAD HARBOR (1908)**

I L R 34 Bom 1

See ARBITRATION I L R 34 Bom 354

*Judgment—Order of single Judge refusing to frame an issue not appealable as a judgment—An order of a single Judge on the Original Side refusing to frame an issue asked for by one of the parties is not a judgment within cl 15 of the Letters Patent and is not appealable *Per ANAND WHITT v. J*—An adjudication is a judgment within the meaning of the clause if its effect whatever its form may be and whatever may be the nature of the application in which it is made is to put an end to the suit or proceeding so far as the*

LETTERS PATENT (HIGH COURT 1865)—*contd*cls 15 36—*contd*

maintainable—s 98 (2) Civil Procedure Code (1 of 1908) and cl (36) Letters Patent applicability of to appeals in Land Acquisition cases—R 2 of Appellate Side Rules applicability of to such appeals. The decision of the High Court in a Land Acquisition appeal is not a judgment within cl (15) of the Letters Patent so as to enable a party to file a further appeal to the High Court under that article. *Rangoon Latatoung Co Ltd v The Collector Rangoon* 1 L R 40 Calc 21, and *The Special Officer Salverty Building Sites v Desabhai Basanj Motwala* 17 C W N 121 followed. S 98 of the Civil Procedure Code applies to Land Acquisition appeals and if a bench of two Judges hearing an appeal differ as to the amount of additional compensation awardable the proper order to pass on the appeal is to confirm the award of the lower Court under that section and not to give a decree up to the lower limit of additional compensation. *Kishen Dayal v Irshad Ali* 22 C I J 50 distinguished. An award is a decree or order of a Civil Court within r 2 of the Appellate Side Rules of the High Court. *Per Seshagiri Aiyar* J S 98 Civil Procedure Code is not strictly applicable to the facts of the case. *MAHAKRAMAN TRICHALPAD v THE COLLECTOR OF THE NILGIRIS* (1918)

1 L R 41 Mad 943

cls 15 36, 39—

See LETTERS PATENT APPEAL

1 L R 43 Calc 90

cls 15 44—

See APPEAL 1 L R 43 Calc 857

See LIMITATION ACT (IX OF 1908) ARTS 11 AND 13 1 L R 39 Mad 1186

cl 24—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 17 187 526 AND 531 1 L R 42 Mad 791

cls 22 28—

See EVIDENCE 1 L R 47 Calc 671

See JURY TRIAL BY 1 L R 44 Calc 723

cl 28—

See COUNTING FIT COIN

1 L P 44 Calc 477

Review of criminal case decided by High Court in Original Criminal Jurisdiction on certificate of Advocate General. *KING EMEROR v UPENDRA NATH DASS* (1914)

19 C W N 653

Advocate General of

has power to grant fiat regarding jurisdiction on point of fact. On a conviction of kidnapping in the Criminal Sessions of the High Court the Advocate General granted a fiat under s 26 of the Letters Patent that the question whether the direction to the jury was a sufficient direction and whether certain alleged omissions to direct the jury did not amount to a misdirection should be further considered by the High Court. At the hearing objection was taken to the competency of the fact. Held (on a consideration of the facts and circumstances of the case) that there was no misdirection and in that view it was

LETTERS PATENT (HIGH COURT 1965)—*concld*cl 26—*concld*

not necessary to decide as to the competency of the fiat. Duty of prosecuting counsel in Sessions trials in the High Court to take notes of the Judge's charge to the jury pointed out. *KING EMEROR v IFARU AND LAKSHI PESHKAR* (1919)

23 C W N 426

cls 27 28—

See CONTENT OF COURT

1 L R 41 Calc 178

cl 30—

See DEFAMATION 1 L R 48 Calc 388

cl 32—

See ARREST OF SHIP

1 L R 42 Calc 85

cl 36—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 98 1 L R 43 Bom 438

See HIGH COURT JURISDICTION OF

1 L R 40 Calc 955

Procedure—Bombay

High Court—Original Civil Jurisdiction—Appeal—Disagreement of Judges—Code of Civil Procedure (V of 1908) as s 4 and 98 sub s 2 Section 36 of the Letters Patent of the Bombay High Court which provides that if the Judges composing a division bench are equally divided in opinion the opinion of the senior Judge is to prevail is not affected by s 98 sub s 2 of the Code of Civil Procedure 1908 which provides a different procedure in these circumstances. The Judicial Committee allowed an appeal where the procedure of s 98 sub s 2 had erroneously been followed without objection by the appellant but their Lordships being in a position to dispose of the appeal on its merits reserved for the ultimate decision the question whether the appellant should not be ordered to pay the whole of the costs since the date when the mistake was first made. Decree of the High Court reversed. *BRADIDAS SRINIVAS v BAI CULAB* (1921) 1 L R 45 Bom 718

See REVISION 1 L R 47 Calc 438

cl 39—

See APPEAL TO PRIVY COUNCIL

1 L R 40 Calc 685

1 L R 41 Calc 734

1 L R 39 Mad 128

See CIVIL PROCEDURE CODE 1908 s 115

15 C W N 848

cls 30 44—

See LEAVE TO APPEAL TO PRIVY COUNCIL

1 L R 42 Calc 35

cl 140—

See LAND ACQUISITION ACT (I OF 1894)

s 4 1 L R 37 Bom 506

LETTERS PATENT (ALL)

cl 8—

Legal practitioner—

Disciplinary powers of High Court—Professional misconduct—Fiat on me entered by a vakil purporting to be the petition of his clients but which was in fact entirely the invention of the vakil and contained statements made recklessly and without any reasonable grounds of belief. A vakil was

LETTERS PATENT (ALL)—contd

— cl. 8—contd

retained to defend in the Court of Session certain persons accused of murder. In the course of such engagement he prepared and put before the Sessions Judge a statement which purported to be a petition signed from his clients and drafted on their instruction whereas in truth and in fact it was a petition which originated with him and in respect of which he had received no instructions from his clients and he put therein allegations which were made recklessly and without any reasonable grounds of belief. *Held* that the vakil was guilty of professional misconduct and in exercise of the powers conferred by s. 8 of the Letters Patent the vakil was suspended from practising his profession. *In the matter of A VAKIL* I L R 42 All 450

— cl. 10—

See CIVIL PROCEDURE CODE 1908—

ss. 104 AND 41 R 1

I L R 39 All 191

See CRIMINAL PROCEDURE CODE—

s. 19.

I L R 80 All 147

LETTERS PATENT (BOM)

See LETTERS PATENT BM

— cl. 11 and 38—

See HIGH COURT ACT (24 & 25 Vict. cl. 104) I L R 80 Bom 604

— cl. 12—

See HUNDI SUIT ON

I L R 40 Bom 473

See THIRD PARTY NOTICE

I L R 45 Bom 24

Or any civil jurisdiction of the Bombay High Court—Suits for land and other immovable property—Title deeds—Suits to compel the delivery of title deeds to land—Title deeds—Ordinary civil jurisdiction of the Bombay High Court. In a suit to enforce the delivery to the plaintiff of the title deeds of certain immovable property situated outside the ordinary original civil jurisdiction of the Bombay High Court where it appeared on the pleadings that the substantial point to be decided in the suit was the title of the plaintiff to the property to which the title deeds related. *Held* that the suit, in so far as it related to such title deeds, was a suit for land or other immovable property and that the Bombay High Court had no jurisdiction to entertain the same. *7 CLEXABAI & EBRAHIM HAJI VEDINA* (1913) I L R 37 Bom 494

— cl. 15—Inherent meaning of—Order refusing injunction to restrain prosecution of suit in a foreign Court not a judgment—No appeal lies against such order—Jurisdiction—Union. An order refusing to grant injunction to restrain the defendant from prosecuting a suit filed by him in the Court of a Native State is not a judgment within the meaning of cl. 15 of the Letters Patent and no appeal lies against that order. *The Justices of the Peace for Calcutta v. The Oriental Gas Co. (1873) 11 L R 1 433* referred to *Sonabai v. Trilokchand* (1903) 31 Bom 60. distinguished *WANCHAND & LAKHMICHAND MANERCHAND* (1913) I L R 44 Bom 272

LETTERS PATENT (BOM)—contd

— cl. 35—

See DIVORCE ACT (IV of 1869) ss. 2 & 7 AND 40 I L R 38 Bom 125

LETTERS PATENT (CAL)

See LETTERS PATENT 181

LETTERS PATENT (MAD)

See LETTERS PATENT 1805

LETTERS PATENT (N-W P)

See CIVIL PROCEDURE CODE (1908)

s. 104 O VIII R 1 O VIII R 90 I L R 80 All 191

See CRIMINAL PROCEDURE CODE s. 19. I L R 39 All 147

See HIGH COURT MISCONDUCT I L R 40 Mad 69

LETTERS PATENT (PAT)

— cl. 9 to 34—

See LEGAL PRACTITIONERS ACT 1870 s. 13 4 Pat L J 423

— cl. 10—

See DEFENCE OF INDIA ACT s. 7 3 Pat L J 581

Point not argued before single Judge if may be urged in appeal. The conduct of a case before a single Judge of High Court must not be regarded as a preliminary matter in which the parties and their legal advisers are not called upon to exert themselves. Ordinarily a point which had not been taken before a single Judge would not be allowed to be taken in appeal under cl. 10 of the Letters Patent. *Saminatha Ajjar v. Venkataswamy Ayyer* I L R 27 Mad 11 and *Ishab Chaud v. Harmulji Patil* I L R 34 All 1 referred to *The Tanjore Palace Estate and Panchnalis* I L R 309 dis. sented from *Bani Madhab v. Mahanujani* I L R 13 Cal 101 and *Dechi v. Ishmailullah Ali* I L R 12 All 161 referred to *DEBI CHARAN TALUKDER v. SHEIKH MEHDI HUSSAIN* (1916) 20 C W N 1303

Rules of the Patna High Court 1910 Ch VIII rr. 3 and 4 and *16 Ch VIII rr. 3 and 4* Letters Patent of the Patna High Court cl. 10—Appeal from decision of single Judge—procedure. The procedure in appeals under cl. 10 of the Letters Patent is laid down in Ch VIII rr. 2 and 16 and Ch VIII rr. 3 and 4 which provide that the appeal must first be presented to the Registrar whose duty it is to lay it before a Divisional Bench. The Bench hears the appellants and either it dismisses the appeal or causes notice to be served upon the respondent. In dismissing an appeal under these rules without issuing notice upon the respondent the High Court does not act without jurisdiction. *JAGDIS CHANDRA DAS v. CHANDRA MOHAN DAS* 4 Pat L J 695

Single Judge when question not raised before can be raised before Division Bench. The plaintiff obtained a decree on the 27th September 1913. The decree was prepared and signed on the same day. The Court was closed from the 28th September to the 31st

LIBEL—contd

by law *Held per MOOKERJEE J*—The language of exceptions 7 and 9 to s 499 Penal Code do not import such absolute immunity as is recognised by English law but in civil suits for damages for defamation the Court is not fettered by any statutory provisions and the principle recognised in England that neither party witness counsel jury nor Judge can be put to answer civilly or criminally for words spoken in office should not be dissented from *Per BEACHROIT J*—Witnesses and parties stand on a different footing and a party making a defamatory statement in the course of a judicial proceeding does not enjoy the absolute privilege of immunity from prosecution accorded by the English law *CROWDY v L O PETTLY* (1912) 17 C W N 554

Resolution of panchayat of Hindu caste community affecting member of community adversely—Question of its validity by Hindus—Implicit exclusion from caste—Publication by Chaudhri to other caste people under rules of the community—Privilege—Absence of proof of express malice In an action for libel brought by the appellant against the respondent both of whom were members of the Agarwala Vajhya caste of Hindus the latter was sued as chaudhri and chairman of the panchayat in one section of that community. The libel was contained in the following resolution passed on the 19th of June 1910 by the panchayat of the community—It was settled by the panches that since B Gobind Das B Bhagwan Das published circulated among the *biradris* and the non *biradris* a pamphlet about the *biradris* against the practices of the *biradris* and did not attend the panchayat on being called to do so these facts show that the gentlemen circulated the pamphlet simply to disgrace the *biradris* and their not signing the *chilla* shows that their views are against the panchayat therefore it is ordered that until B Govind Das and B Bhagwan Das clear themselves the family of B Madho Das be *bartan band*. This resolution was admittedly communicated by the respondent in his capacity of chaudhri to the chaudhri of another section of the community and to others of the caste people generally by which action it was alleged that the appellant and his brother were put in the position of being virtually declared to be outcastes. The defence was that the publication was part of the duty of the respondent as chaudhri and was therefore privileged. *Held* by the Judicial Committee that the onus of establishing the fact that the respondent's conduct was the outcome of some improper motive or private spite was on the appellant and he had not discharged it. The respondent had acted in good faith in the execution of his duty and in the absence of express malice the communication of the resolution of the panchayat was privileged. The members of the appellant's family had notice of the meeting at which it was passed and some of them could have attended the panchayat but if the appellant himself could not do so they were all affected by the resolution passed. *In good v Sperry* 1 C W N 181 *London Association for the Retraction of Trade v Greenleaf* [1916] 1 C W N 40 and *Adams v Ward* [1911] 1 C W N 309 referred to as enunciating the accepted rule as to privilege. To defeat or rebut privilege the law does not recognize anything short of actual or express malice in the publication of the matter which is charged to be libellous

LIBEL—contd

There was no ground for supposing that there was any duty imposed on the respondent beyond properly and duly giving effect to the rules of the panchayat *Govind Das v Bishambhar Das* (1917) 1 L R 29 All 561

Defamation—Privilege—Civil liability of petitioner for statement made by him in a petition presented to Criminal Court A person presenting a petition to a Criminal Court is not liable in a civil suit for damage in respect of statements made therein which may be defamatory of the person complained against. In the absence of Statute law in India regarding civil liability for libel there is no reason why the English law applicable thereto should not be followed according to the ruling of the Privy Council in *Waghela Pajsanji v Shikl Masuluddin* 1 L R 141 A 39 *Abul Hakim v Tej Chandra Mukari* 1 L R 40 All 815 overruled *Awada Ram Shaha v Nema Chand Shaha* 1 L R 23 Cal 867 disapproved from *Chunni Lal v Narain Das* (1917) 1 L R 40 All 341

Letter written by one member of the Bohra caste to another member of the same caste accusing a third person of having been instrumental in breaking off a betrothal A member of the Bohra caste residing in Jodhpur wrote a letter to a caste fellow of his at Aligarh informing him that one N D another member of the caste had been instrumental in breaking off a certain betrothal and in getting the betrothed girl married to another person. It was in evidence that the breaking off of a betrothal was regarded in the caste as a very bad or improper act. The writer and the recipient of this letter were made defendants to a libel action by the person therein referred to and the writer pleaded that the person referred to in the letter was not the plaintiff but a different person bearing a similar name. No plea of privilege in a matter regarding the caste was raised or if adumbrated was not substantiated. *Held* that the plaintiff was entitled to a decree for substantial damages against the writer of the letter in question and that the recipient who had shown the letter to another member of the caste was also liable though to a lesser degree. *Narain Das v Bada Ram* (1919) 1 L R 41 All 329

Fair comment—Privilege—Malice—One of a class—Public document The plaintiff was a member of Champaran Agrarian Enquiry Committee and as such settled some questions of rent between the indigo planters and the tenants. The defendant an indigo planter in a series of three letters to the Press made certain allegations against the plaintiff suggesting that his consent to the settlement was obtained by misrepresentation. *Held* that the cumulative effect of the letters was libellous. It was not a fair comment on a matter of public interest and the defendant was not entitled to any privilege. *Mervale v Carron* 20 Q B D 245 *Jefroy v Burns* 1 L R 418 556 *Dunn v Sleystone* 11 A C 187 *Adam v Ward* [1917] 1 C W N 309 *London Association v Greenleaf* [1916] 1 C W N 40 *Poyal Aquarium Society v Parkinson* [1892] 1 Q B 431 referred to *Mangena v Wright* [1909] 2 K B 248 distinguished *Jain v Rani* (1900) 1 L R 48 Cal 304 25 W N 150

LICENSE

See ARMS ACT (VI of 1878) ss 17
19(c) I L R 37 Bom 181

See BENGAL FACTORY ACT 1898 s 10,
15 C W N 169

See BOMBAY ARRARI ACT (BOM ACT V
of 1878)

ss 16 43 I L R 37 Bom 300

ss 3, 6 I L R 37 Bom 101

See CONTRACT ACT (IX of 1872) s 23
I L R 40 Bom 64

See CONTRACT WITH FARMY
I L R 41 Bom 390

See EASEMENTS ACT (V of 1882)—

ss 59 AND 60 I L R 37 All 91

s. 60 I L R 39 All 621

See EXCHANGEABLE ARTICLES
I L R 39 Calc 1053

See FOREST ACT (VII of 1878) s 2,
CL (i) s 3 (a) I L R 42 Bom 406

See LIMITATION ACT (IX of 1909) Sec
I Apts 190 144

I L R 42 Bom 333

See RAILWAYS ACT s 7
I L R 34 Bom 252

See TRADE MARK I L R 42 Calc 262

See TRANSFER OF PROPERTY ACT (IV of
1882) s 108 (j) I L R 37 All 144⁸

ss 105 AND 107 I L R 38 All 17⁸

For erection of stables—

See NUISANCE I L R 40 Bom 401

for sale of drugs—

See UNITED PROVINCES EXCISE ACT
1910 s 40 I L R 39 All 10⁷

to carry on trade—

See UNITED PROVINCES MUNICIPALITIES
ACT 1916 s 208

I L R 42 All 994

under Motor Vehicles Act—

See MOTOR VEHICLES ACT (VIII of
1914) s 8 I L R 43 All 123

Calcutta Municipal
Act (Deng III of 1899) ss 193 198 166—Trade
Licenses—License for keeping animals and license for
the use of premises for keeping animals for hire—
Hire under s 106 (1) of the Act A company carrying
goods by means of horse and wagon
to and from stations under contracts with
Railway Companies for a fixed monthly sum
keep horses for hire within the meaning of s
466 (7) of the Calcutta Municipal Act License
should be taken out not only for the trade under
s 108 and for keeping animals under s 193 but
also for the use of premises for keeping animals
for hire under s 400 of the Act S N BASFRIER
v THE MANAGER W LEWIS & Co (1900)

I L R 47 Calc 809

Prohibition to sell
the privilege without permission—Taking partner
without permission legality of—Loan to such

LICENSEE—contd

partnership with knowledge of prohibition—Onus
on lender to prove legality of partnership—Right
of lender to recover loan from licensee Where a
licensee to sell arrack contained the condition
that the privilege of supplying and vending
shall not without the permission of the Collector
previously obtained be sold, exchanged or sub-
leased nor if the Collector has ordered can an
agent be appointed without his permission previ-
ously obtained for exercise of any such privilege
held that it was illegal for the licensee to take a
partner in the business without obtaining permission
and that the plaintiff must be taken to have had
notice of the illegality but he was allowed to re-
cover half the loan BRAHMAIA v PAMIAH

I L R 43 Mad 141

Storage of oils with-
out license It is no defence to a prosecution for
storing oils without a license to say that the Com-
missioner wrongfully refused to grant a license
EMPEROR v NARAYANA

I L R 45 Bom 1076

LICENSEE

See NEOLIGNE I L R 38 Bom 552

liability of—

See PETROLEUM I L R 40 Calc 356

suit to recover possession from—

See TITTY I L R 41 All 669

LICENSOR AND LICENSEE

See TRADE MARK I L R 40 Calc 814

LIEN

See CIVIL PROCEDURE CODE 1882 ss 282
287 I L R 35 Bom 275

See SOLICITOR'S LIEN FOR COSTS

declaration of—

See EXECUTION OF DECREE
I L R 45 Calc 530

LIEUTENANT GOVERNOR

See BAIL I L R 37 Calc 412

power of to pass Act—

See JURISDICTION OF CIVIL COURT
I L R 40 Calc 391

LIFE ASSURANCE COMPANIES ACT (VI OF
1912)

See TRADE MARK I L R 40 Calc 570

LIFE ESTATE

See JAILIN I L R 42 Calc 305
I L R 48 Calc 637

See WALK I L R 37 Bom 447

See WILL I L R 38 Bom 697

LIFE INSURANCE

See CIVIL PROCEDURE CODE (ACT V OF
1900) s 60 I L R 37 Bom 471

LIFE INSURANCE—contd

See MARRIED WOMAN'S PROPERTY ACT
1874 ss 4 AND 6

18 C W N 1335-

See TRANSFER OF PROPERTY ACT (IV
OF 1892 AS AMENDED BY ACT II OF
1900) s 130 I L R 37 Bom 198

money payable under—Policy of
Life Insurance—Money payable under—Such
money forms part of estate of assured and is recover-
able by his representatives Where the assured
does not, in his life time create any trust in respect
of the money payable under a policy of Life
Insurance for the benefit of his wife and children
such money in cases where the provisions of the
Married Woman's Property Act do not apply
forms part of his estate and is recoverable by his
legal representatives The contract between
the Company and the assured gives no right of
action to the beneficiaries named Where the
Company refuses payment on the death of the
assured the legal representatives and not the
beneficiary will be entitled to enforce the contract
The Company will be bound to pay the amount
to a person who has obtained a Succession certi-
ficate under s 16 of the succession Certificate
Act *Oliver v Mutual Reserve Fund Life Assura-*
tion [1897] 1 Q B 147 referred to ORIENTAL
GOVERNMENT SECURITY LIFE ASSURANCE LTD
v VANTEDDU AMMIRAJU (1911)

I L R 35 Mad 162

Policy holder—Alter-
ation of rules—Effect on policy effected before altera-
tion—Refund of premia paid A policy holder
in a Life Insurance Company is not bound by any
alterations in the rules made after the contract
between himself and the company had become
concluded If a policy holder who is permitted
by the rules of an Insurance Company to discon-
tinue payment of premia after stipulated period
does so after that period the policy does not
lapse and the company is liable to refund the
sums actually paid *TANJORE LIFE ASSURANCE*
Co v KUPPANA PAU (1920)

I L R 43 Mad 333

Agent—Dismissal of
agent—Commission—Renewals meaning of—Premia
paid by policy holder subsequent to dismissal of
agent—Right of agent to commission on renewals
or subsequent premia paid after dismissal—Express
contract for such commission necessary for In the
absence of a definite agreement to that effect
an agent of a Life Insurance Company who has
secured policy holders for the Company and who
duties as agent do not cease with the first intro-
duction of the customer has no right to commis-
sion on renewals that is subsequent premia paid
in by such policy holders after he ceased to be
its agent In *re The Albert Life Assurance As-
surance* (Irvine's Case) 12 S J 803 *Pond v Waters*
(1893) 11 F L P 443 *Orinval v de Appel* No
42 of 1892 and *Civil suit No 175 of 1903* followed
Empire of India Life Assurance Co Ltd v
NANU ALIYAR (1901) I L R 44 Mad 170

LIFE INTEREST

See HINDU LAW—WILL

I L R 42 Calc 561

LIGHT AND AIR

See EASEMENT

I L R 39 Calc 59

I L R 42 Calc 46

LIGHT AND AIR—contd

Damages for infringe-
ment of light and air—Injunction when to be
granted A mandatory injunction will be granted
to remove an obstruction of an easement to light
and air where the character of the obstruction
is such that its consequence is to darken the
plaintiff's house so as to make it uncomfortable
and in part useless In such a case damages
would not be an adequate remedy *MUTHU*
KRISHNA ALIYAR v SOMALINGA MUNINAGAN
DRIER (1913) I L R 88 Mad 11

LIGHTERS OR BOATS

See BILL OF LADING

I L P 58 Mad 941

LIMITATION

See ARKARI ACT (BOM ACT V OF 1878)
ss 32 67 I L R 37 Bom 101

See ACCOUNT SUIT FOR

I L R 40 Calc 108

ACCOUNTS

26 C W N 61

See ADMINISTRATION

I L R 40 I A 236

See ADVERSE POSSESSION

I L P 32 All 369

I L R 45 Bom 661

I L R 88 All 224 229 463

I L R 38 Bom 227

I L R 44 Calc 425

See ALIEN ENEMY

I L P 46 Calc 528

See AMFENDED LETTERS PATENT CL 15

I L R 42 Bom 260

See AMENDMENT

I L R 48 Calc 110

See AMENDMENT OF PLAINT

I L R 36 All 370

See APPEALS ORIGINAL

I L R 1 Lab 508

See APPEAL TO PRIVY COUNCIL

I L R 89 Calc 760

See ASSESSMENT I L R 43 Calc 973

See BENGAL TENANCY ACT 1885—

s. 69 AND 70 s Pat L J 24

s 111 A I Pat L J 73

See BENGAL REGULATION (XV OF 1793)

I L R 84 All 261

See BENGAL ALLUVION REGULATION
1823 s Pat L J 632

See BILL OF COSTS

I L R 46 Calc 249

I L R 48 Calc 817

See BOMBAY DISTRICT POLICE ACT (BOM
IV OF 1890) ss 63 (b) 80 (c)

I L R 41 Bom 737

See BOYD I L R 43 All 38

See CHEQUE PAYMENT BY

I L R 42 Calc 1043

See CHAUDHARI CHAKRAN LAWS

I L R 46 Calc 173

LIMITATION—*contd*

See CIVIL PROCEDURE CODE (ACT XIV OF 1899)—

s 43 I L R 53 All 244

s 54 14 C W N 582

s 230 I L R 37 Mad 186

I L R 52 All 136

I L R 54 All 396

ss 230 AND 230 I L R 33 All 517

s 315 I L R 35 All 419

s 325 A I L R 46 Calc 183

See CIVIL PROCEDURE CODE 1908—

s 47 O ALI R 1

I L R 40 All 12

s 48 I L R 40 All 198

I L R 37 All 633

I L R 36 Bom 368

I L R 34 All 20

s 48 SCH I O ALI

I L R 55 Bom 103

s 48 SCH III I L R 42 All 118

s 60 I L R 33 All 529

s 92 I L R 40 Mad 212

s 115 3 Pat L J 376

s 122 I L R 40 All 1

O 1 N. 9 O 31 P 11 Pat L J 408

O XXI—

s 2 I L R 38 All 204

s 50 I L R 40 All 325

I L R 41 All 623

ss 84 89 AND 92

I L R 35 All 65

ss 97 AND 103 I L R 1 Lah 57

O XXII—

s 4 I L R 39 All 551

s 7 I L R 2 Lah 164

s 8 I L R 38 All 621

O XXXIII R 5

I L R 41 Mad 620

O XXXIV—

ss 4 5 AND 10 I L R 41 All 473

s 5 I L R 38 All 21

I L R 39 All 641

I L R 40 All 203

s 6 I L R 40 All 553

I L R 41 All 581

O XXXIX R 1

I L R 43 All 383

SCH II CLS 17 AND 20

I L R 38 All 85

See COMPANIES ACT (VI OF 188)—

s 169 I L R 33 All 641

I L R 35 All 177

See COMPANY I L R 36 All 412

See CONTRACT I L R 34 All 429

I L R 80 Mad 509

See CONTRACT ACT 1880 ss 126 AND 140

I L R 42 All 70

See COURT FEES 3 Pat L J 484

LIMITATION—*contd*

See CRIMINAL PROCEDURE CODE (ACT V OF 1898)—

s 190 I L R 42 Bom 281

I L R 1 Lah 602

s 476 I L R 37 All 344

See DECREE I L R 40 Bom 504

I L R 42 Bom 728

I L R 44 Bom 227 540

See DECREE ASSIGNMENT OF

I L R 43 Calc 990

See DECREE DIST I L R 80 Bom 175

See DEKKAN AGRICULTURISTS RELIEF

ACT—

ss 39 48 I L R 36 Bom 183

s 48 I L R 42 Bom 367

See DISTRICT MUNICIPAL ACT (BOM

ACT III OF 1901)—

ss 2 46 AND 167

I L R 39 Bom 600

See EJECTMENT SUIT IN

I L R 41 Mad 641

See EXECUTION OF DECREE

I L R 35 All 178

I L R 38 All 482

I L R 37 All 827

I L R 39 All 193

I L R 40 All 211

I L R 38 All 268

I L R 43 All 520

1 Pat L J 359

3 Pat L J 571

See EXECUTION PROCEEDINGS

I L R 37 All 518

See EX PARTE DECREE

I L R 39 Calc 506

See GUJRAT TALUKDAR'S ACT s 29E

I L R 35 Bom 324

s 31

I L R 37 Bom 380

See HINDU LAW—ALIENATION

I L R 40 Calc 966

I L R 43 Calc 417

See HINDU LAW—CONVERSION

I L R 33 All 356

See HINDU LAW—ENDOWMENT

L R 46 I A 204

See HINDU LAW—INHERITANCE

I L R 42 Calc 384

See HINDU LAW—JOINT FAMILY PRO-

PERTY I L R 38 All 196

I L R 47 Calc 274

See HINDU LAW—MORTGAGE

I L R 42 Calc 1068

See HINDU LAW—PERSERVER

I L R 41 All 492

I L R 43 Bom 869

See HINDU LAW—SUCCESSION

I L R 38 All 117

I L R 1 Lah 554

See HUSBAND AND WIFE

I L R 37 Bom 393

See IDOL I L R 33 All 735

I L R 36 Bom 1 5

LIMITATION—contd

- See INJUNCTION I L R 42 Calc 550
 See INSOLVENCY I L R 47 Calc 721
 See JUDICIAL DISCRETION
 4 Pat L J 381
 See LANDLORD AND TENANT
 I L R 45 Bom 508
 See LIMITATION ACT (XV OF 1877)
 See LIMITATION ACT (IX OF 1908)—
 See MADRAS LAND ENCROACHMENT ACT
 (III OF 1905) I L R 38 Mad 674
 ss 4 5 6 7 AND 14
 I L R 39 Mad 727
 See MAHOMEDAN LAW—(ALIENATION)
 I L R 34 All 213
 See MAHOMEDAN LAW—(ENDOWMENT)
 I L R 47 Calc 866
 See MAHOMEDAN LAW—(WIDOW)
 I L R 43 All 127
 See MAINTENANCE GRANT
 I L R 37 Calc 674
 See MORTGAGE I L R 37 Calc 790
 I L R 38 Calc 342
 I L R 34 All 620
 I L R 38 All 93 540
 I L R 40 All 467
 I L R 42 All 575
 I L R 47 Calc 125
 I L R 43 All 539
 See MORTGAGE DECREE 3 Pat L J 478
 See MUTT I L R 41 Mad 121
 See NEGLIGENCE 5 Pat L J 359
 See NEW CASE
 I L R 48 Calc 832
 See NORTH WESTERN PROVINCES AND
 ODISH MUNICIPALITY ACT (XV OF
 1883) s 10 I L R 35 All 308
 See POSSESSION 2 Pat L J 280
 See PRELIMINARY DECREE
 I L R 37 Bom 60
 See PRINCIPAL AND AGENT
 I L R 41 All 635
 I L R 43 Calc 248
 See PRINCIPAL AND SURETY
 I L R 44 Calc 978
 See PRIVY COUNCIL—LEAVE TO APPEAL
 TO I L R 39 Calc 510
 See PROBATE I L R 41 Calc 819
 See PROVINCIAL INSOLVENCY ACT (III
 OF 1907)—
 ss 22 30 AND 52
 I L R 35 All 410
 s 46 (4) I L R 33 All 733
 I L R 34 All 498
 See PROVINCIAL SMALL CAUSE COURTS
 ACT (VII OF 1887)
 s 25 I L R 38 All 690
 See PUBLIC DEBTS AND RECOVERY ACT
 s 10 14 C W N 607
 See PUNJAB COURTS ACT 1914
 I L R 1 Lah 245
 See RECORD OF RIGHTS 2 Pat L J 537

LIMITATION—contd

- See REGISTRATION ACT III OF 1908—
 ss 72 (1) 76 AND 77
 I L R 40 Mad 759
 s 77 24 C W N 4 23 301
 See RESIDUARY LEGATEE
 I L R 41 Calc 271
 See REVIVOR I L R 43 Calc 903
 See SALE I L R 46 Calc 975
 See SALES OF ARREARS OF PENALTY
 I L R 43 Calc 779
 I L R 44 Calc 412
 See SANCTION FOR PROSECUTION
 I L R 40 Calc 237 534
 See SECOND APPEAL
 I L R 2 Lah 227
 See SPECIFIC RELIEF ACT (I OF 1897)
 s 30 I L R 34 All 43
 See SUCCESSION CERTIFICATE ACT 1890
 s 4 I L R 43 All 440
 See SUIT I L R 45 Calc 934
 See TRANSFER I L R 40 Calc 259
 See TRANSFER OF PROPERTY ACT (IV OF
 1882)—
 s 82 AND 100 I L R 33 All 708
 s 90 I L R 34 Bom 540
 See UNITED PROVINCES LAND REVENUE
 ACT (III OF 1901) s 121
 I L R 35 All 541
 See UNITED PROVINCES MUNICIPALITIES
 ACT II OF 1916
 s 376 I L R 42 All 207
 See VATAN I L R 37 Bom 81
 See WASTE LANDS I L R 43 I A 303
 See WITHDRAWAL OF SUIT
 I L R 44 Bom 939
 ————— by adverse possession—
 See LANDLORD AND TENANT
 I L R 41 Calc 683
 ————— for declaratory suit—
 See REGISTRATION ACT 1908
 I L R 2 Lah 5
 ————— for Second appeal—
 See SECOND APPEAL I L R 2 Lah 1
 ————— instalment decree—
 See LIMITATION ACT 1908 SCH I ART 181
 I L R 2 Lah 155
 ————— suit between co-majdars of a
 Khankah—
 See LIMITATION ACT 1908 ART 120
 134 AND 144 I L R 1 Lah 66
 ————— question of—
 See HIGH COURT JURISDICTION OF
 I L R 39 Calc 473
 ————— recording adjustment of decree—
 See CIVIL PROCEDURE CODE 1908 O
 XXI R. 2 I L R 45 Bom 91
 ————— respecting claim for rent—
 See MADRAS ESTATES LAND ACT (I OF
 1903) I L R 37 Mad 540

LIMITATION—contd

— suit to set aside compromise by guardian—

See CIVIL PROCEDURE CODE O XXI
P 7 I L R 2 Lah 164

— None for recording payment of decree—

See CIVIL PROCEDURE CODE 1908
O XXI r 2 I L R 45 Bom 91

— Suit to recover excess paid for redemption—

See LIMITATION ACT 1908 Art 83
I L R 2 Lah 316

— Suit to recover money under an award—

See LIMITATION ACT 1908 Art 10
I L R 2 Lah 320

— tenant claiming adverse possession against landlord—

See LANDLORD AND TENANT
I L R 45 Bom 508

— whether suspended by arbitration—

See GUARDIAN AND WARDS ACT 1890
6 Pat L J 273

— whether time can be extended or ground not shown in plaint—

See CIVIL PROCEDURE ACT 1908 O
VII r 6 I L R 2 Lah 13

— whether plea of—can be raised at trial for first time—

See BOMBAY LAND REVENUE CODE 1879
ss 68 AND 69 I L R 45 Bom 920

1 — Endowment—Adverse possession

—Dispute between senior and junior *chelas* as to succession in Hindu *maths*—*Ekrarnama* allotting one *math* to senior *chela* in perpetuity and the other to junior *chela* as *adhisikari*—Suit instituted within twelve years from senior *chela's* death but 27 years from date of *ekrarnama*—*Hindu Law* The Mohant of the temple of a Hindu idol who was in possession of two *maths* one at Bhadrak and the other at Bibisarai died leaving two *chelas* or disciples between whom a controversy arose as to the right of succession to the *maths* and the property annexed to them. The dispute was settled by an arrangement embodied in an *ekrarnama* dated 3rd of November 1874 executed by the senior *chela* in favour of the junior *chela* by which the *math* at Bhadrak was allotted in perpetuity to the senior *chela* and his successors while the *math* at Bibisarai and the properties annexed to it were allotted to the junior *chela* (described therein as an *adhisikari*) and his successors for the purposes connected with his *math* subject to an annual payment of Rs 15 towards the expenses of the Bhadrak *math*. Less than twelve years after the death of the senior *chela* but considerably more than that period after the date of the *ekrarnama* the appellant the successor of the senior *chela* brought a suit against the junior *chela* to recover possession of the properties annexed to the Bibisarai *math* on the allegation that they were *debutter* property dedicated to the worship and service of the plaintiff's idol and held by the respondent (representing the junior *chela*) as an *adhisikari* in charge of the Bibisarai *math* and

LIMITATION—contd

as asserting it to be a *math* subordinate to the Bhadrak *math*—*Held* (affirming the decision of the High Court) that the property dealt with by the *ekrarnama* was prior to its date to be regarded as vested not in the Mohant but in the idol the Mohant being only its representative and manager and consequently that from the date of the *ekrarnama* the possession of the junior *chela* by virtue of its terms was adverse to the right of the idol and of the senior *chela* as representing that idol and that the suit was barred by limitation *DAMO DAE DAS v LAKHAY DAS* (1910)

I L R 37 Cal 885

2 — Adverse possession against Crown—Party relying on title by adverse possession against Crown must prove sixty years adverse possession—Burden of proof shifted on Crown by proof of adverse possession for shorter period A party who rests his title on possession adverse to the Crown must prove such possession for sixty years *Secretary of State for India v Fera Rayan* I L P 9 Mad 175 explained Where lands have been notified as a reserved forest under the Madras Forest Act a claimant desirous of establishing his title against the Crown by adverse possession must prove adverse possession for sixty years before the notification Where adverse possession for a shorter period is proved it lies on Government to show that it has a subsisting title by showing that such possession commenced within sixty years before such date In this part of India it is a well established rule of common law that waste land not being the property of an individual or community belongs to Government Islands formed within 3 miles of the mainland vest in the Crown *CHELIKANI PAMA RAU v SECRETARY OF STATE FOR INDIA* (1909)

I L R 38 Mad 1

2 (a) — Acknowledgment What is sufficient—When an insolvent has written down a debt in his schedule as owing that debt to a person named and has signed the Schedule that is a sufficient acknowledgment under s 10 of the Limitation Act to extend the period of limitation *CHOEY SRI GOPAL CHIRANJIAL v DHANALAL GHASHIRAM*

I L R 35 Bom 383

2 (b) — Courts of Wards—Act 1879 does not contain any express power authorising the Court to execute Promissory Notes But there can be no doubt on the authorities that the Court has power to give an acknowledgment so as to give a new period of limitation *IASUBHARY LAL MANDAR v ANAND RAO*

I L R 43 Cal 211

3 — Adverse possession—*Pent free tank*—Setting up hostile title to the knowledge of the landlord—*Lakuraj title* In a suit for recovery of possession of a tank with its banks by establishment of plaintiff's zamindari title thereto and in the alternative an assessment of rent the defendant pleaded that the tank was rent free and that the suit was barred by limitation It appeared that the defendant more than twelve years ago in the settlement proceedings claimed the tank as rent free without any reference to any *sanad* and the plaintiff's agent denied the claim *Held* that inasmuch as a complete hostile right was claimed by the defendant to the knowledge of the plaintiff and as no suit was brought until more

LIMITATION—contd

than twelve years after the suit as framed was barred by limitation **BIPENDRA KISHORE MANIYA v ROSHAN ALI** (1912)

I L R 39 Calc 453

4 ———— **Symbolical possession—Court sale**

Symbolical possession by purchaser—Judgment debtor remaining in actual possession—Civil Procedure Code (Act XIV of 1882) ss 263 264 318 and 319—Civil Procedure Code (Act V of 1918) O XXI r 5 (2) Merely formal possession of immovable property by a purchaser at a Court sale cannot prevent limitation running in favour of the judgment debtor where the latter remains in actual possession and the property is not in the occupancy of a tenant or other person entitled to occupy the same. Symbolical possession is not real possession nor is it equivalent to real possession under Civil Procedure Code except where the Code expressly or by implication provides that it shall have that effect. **Gopal v Kri Anarao I L R 25 Bom 275** and **Mahadeo v Parashram Bhaunrhand I L R 25 Bom 358** overruled. **MAHADEV SAKHARAM v JANU NANJI HATLY** (1912) I L R 26 Bom 373

5 ———— **Conciliation—Delhan Agricultural Relief Act (XVII of 1879) ss 33 48—**

Time taken up in conciliation proceedings—Exclusion of time The plaintiff sued on a promissory note dated the 12th of June 1905. He first applied on the 23rd May 1908 for a conciliator's certificate under s 39 of the Delhan Agricultural Relief Act 1879 and obtained it on the 31st August 1908 then on the 10th September 1908 both he and the defendant made a joint application for conciliation. The conciliator held that the first certificate that he had granted had become useless and gave a fresh certificate on the 3rd December 1908. The suit was brought on the 11th December 1908. It was contended that the suit was barred by limitation. *Held* that the suit was within time inasmuch as the whole proceeding from the 23rd of May 1908 to the 3rd of December 1908 was one and continuous and that period should be excluded under s 48 of the Act. **DEVINAS v VITHALDAS** (1911) I L R 36 Bom 183

6 ———— **Suit for sale on mortgage—**

Period of limitation changed with provision for pending suits at passing of Act—Limitation Act (XV of 1908) Sec 11 Arts 132 14 Limitation Act (IX of 1908) s 31 sub s (1)—Ord v His Majesty in Council holding applicable—Shorter period of limitation than provided by Act subsequently passed The Limitation Act (IX of 1908) which came into force on 7th August of that year after providing by s 31 sub s 1 for a suit for sale by a mortgagee a period of sixty years from the date when the money secured by the mortgage became due enacts that no suit instituted within the said period of sixty years and pending at the date of the passing of the Act shall be deemed on the ground that a twelve years rule of limitation is applicable. In a suit for sale on a mortgage dated 22nd September 1887 instituted on 2nd September 1899 the defence was limitation which the plaintiff avoided by alleging payment of interest and settlement of accounts. The first Court found that part of the claim was barred by the twelve years period of limitation provided by Act 1908. Sec 11 of the Limitation Act 1862. The High

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Court in appeal held that the suit was governed by Art 147 which allowed a period of sixty years and that no part of it was barred. On appeal to His Majesty in Council the decision of the High Court was reversed and by an order in Council it was declared that Art 132 is the article which provided the period of limitation applicable and the case was remitted to the High Court to be disposed of in accordance with such declaration. So remitted the case came before the High Court on 16th August 1908 after the passing of the Limitation Act IX of 1908 and that Court holding that s 31 of that Act applied disposed of the suit as they had previously done in favour of the plaintiff. *Held* by the Judicial Committee (affirming that decision) that the suit was pending at the time of the passing of Act IX of 1908. The judgment remitting the case did not end the suit nor finally determine it. It was remitted for further procedure and enquiry on allegations of fact and at the passing of Act IX of 1908 that procedure was not concluded and the enquiry not entered upon. The suit in fact was neither adjudged upon nor ready for judgment. **VASUDEVA MUDALIAR v SADAGOPA MUDALIAR** (1912)

I L R 35 Mad 181

7 ———— **delay in filing process fee—**

The question of granting time is always one of discretion and that discretion cannot be properly exercised until the general conduct of the party applying for time has been scrutinised. When a date is fixed for a case it is the business of a litigant to see that the processes for the attendance of witnesses are placed in the hands of the Court within reasonable time for the securing of their attendance upon the date fixed. If he files process fees only two days before the date fixed for hearing an order passed by the Court for the issue of those processes must be understood to have been issued at the risk of the party in fault and the Court will not grant an adjournment when the case comes on for hearing. **JAGABANDHU CHOWDHURY v GOUREY LALL CHOWDHURY** 1 Pat L J 173

8 ———— **Hindu Deities—Suit for removal**

of Hindu Deities from one custody to another—Limitation Act (XV of 1877) Sec 11 Arts 41 120 145 A suit by *Thakurs* (deities) themselves for removing themselves from the custody of the defendants to the custody of the plaintiffs other than themselves is not a suit for a moveable property. It would be a suit for which no provision is made in the Limitation Act and would therefore naturally come under Art 120 of Sch II of the Act unless any other article also applied. Art 49 has no application to such cases. **BALI PANDA v JIDUMANI ANTRA** (1910)

I L R 38 Calc 284

9 ———— **Agreement between joint**

trustees—If one of several joint trustees barred the others also barred—Agreement between joint owners or trustees effect of Two joint trustees A and B entered into an agreement which recited that the families of A and B were entitled to the management of the trust and further provided that A's right shall after his death be exercised by his heirs and B's right shall after his death be exercised by his heirs. *Held* that the effect of the agreement was to constitute the heirs of A and B joint trustees and not to create a right in severalty between the two branches. Where an adult joint trustee takes no steps to protect

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the trust and his right to take steps becomes time barred the right of other joint trustees even though minors become time barred. **THIRU GARAJA PILLAI v. PATNASABATHI PILLAI (1910)**

I L R 34 Mad 284

10 ——— Execution of joint decree—

Decree set aside as against one of several joint judgment debtors against whom it had been ex parte—Decree passed subsequently against the exempted party—Civil Procedure Code 1852 s 108—Order on former application whether res judicata A decree for sale on a mortgage was passed against several defendants jointly on the 25th August 1900 and made absolute on the 21st December 1901. As against one defendant however the decree was *ex parte* and it was set aside as against her on appeal on the 11th March 1902. Subsequently a decree was passed on the merits against this defendant on the 10th August 1902 and her appeal was dismissed by the High Court on the 16th November 1904 and as against her that decree was made absolute on the 27th November 1905. An application for execution was made against all the defendants on the 21st December 1905 based on the decrees of the 25th August 1900 the 16th August 1902 the 16th November 1904 and the 21st December 1901 and the 27th November 1905. The defendants filed an objection to the application on the 7th February 1906 alleging that they were no parties to the decrees of the 16th August 1902 and the 27th November 1905 and that as to the decrees of the 25th August 1900 and the 21st December 1901 they were time barred. *Held* (affirming the decision of the High Court) that the decrees of the 25th August 1900 and the 16th November 1904 were steps in granting the plaintiff the relief to which he was entitled. The latter decree supplemented and completed the former and for the first time justified the plaintiff in applying for the joint execution of the decree. Time under the Limitation Act (XV of 1877) began to run from the date of the latter decree or rather from the date it was made absolute—the 27th November 1905, and consequently the application was not barred. *Held* also that the plaintiff was not estopped in the present proceedings by the order of the 27th November 1905 dismissing his former application for execution of the 16th February 1905 which was based on the decrees of the 10th August 1902 alone whereas the present application was based on the joint effect of the two orders absolute of the 21st December 1901 and the 27th November 1905 which were in effect one decree of the latter date. The applications therefore were different and the former did not operate as a *res judicata*. **ASHFAQ HUSAIN v. GUPTI SAHAI (1911)**

I L R 33 All 264

11 ——— Suit by an auction purchaser

to recover the purchase money—from a person who attached money in deposit in Court as representing the surplus sale proceeds belonging to the judgment debtor—Limitation Act (XV of 1877) Sch. II Art 170 Limitation applicable to a suit brought by an auction purchaser to recover a certain sum of money from one who had after the sale and the deposit of money in Court attested that sum in execution of his decree against the judgment debtor as representing the surplus sale proceeds belonging to the original judgment debtor after satisfaction of the decree obtained against the debtor by the decree holder

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is that provided by Art 120 Sch II of the Limitation Act (XV of 1877). **Nilkanta v. Imam Sahib I L R 16 Mad 361** relied on, **Hanuman Ramat v. Hanuman Maider I L R 19 Calc 193** and **Ram Kumar Shaha v. Pam Go v. Saha I L R 37 Calc 67** distinguished. **AMRITA LAL BAGCHI v. JOGENDRA LAL CHOWDHURY (1912)**

I L R 40 Calc 187

12 ——— Suit for Conspiracy to maliciously prosecute—Conspiracy as a cause of action—Evidence Act (I of 1872) s 3 114 ill (g) 125—Standard of proof—Claim of privilege whether adverse inference can be drawn from—Disclosure of source of information by privileged person duty of Court regarding—Presumption as to possession of article found in common room of joint family dwelling house—Arrest and Search—Professional conduct of counsel—Counsel making charges of misconduct powers of Court regarding—Counsel's instructions no privilege as against Court—Professional Etiquette affecting counsel—Bar Council resolutions of—Counsel accepting retainer when likely to be witness—Counsel engaged in case propriety of appearing as witness—Adverse inference where counsel not called as witness—Inspection by counsel of book produced by witness during cross examination—Preference to medical works by Court without knowledge of parties—Tort Per WOODROFFE AND COX JJ On the question of the standard of proof there is but one rule of evidence which in India applies to both civil and criminal trials and that is contained in the definition of proved and disproved in s 3 of the Evidence Act. The test in each is would a prudent man after considering the matters before him (which vary with each case) deem the fact in issue proved or disproved? The Court can never be bound by any rule but that which comes from itself dictates a conscientious and prudent exercise of its judgment. There is a presumption against crime and misconduct and the more heinous and improbable a crime is the greater is the force of the evidence required to overcome such presumption. The English rule in these matters does not as such apply in India. **Jarai Kumari Dassi v. Dissanayak Dutt I L R 39 Calc 445** explained. Where a document is privileged from production no adverse inference can be drawn from its non production. This rule applies as regards the party claiming privilege and *a fortiori* it applies where the privilege is claimed by a third party. Although s 125 of the Evidence Act does not in express terms prohibit a witness if he be willing from saying whence he got his information the protection afforded by that section does not depend upon a claim of privilege being made but it is the duty of the Court apart from objection taken to exclude such evidence. *A fortiori* where privilege is claimed no adverse inference can be drawn therefrom. Where articles are found in a part of a house to which several persons living in the house have access such as a *batikha* there is no presumption that they are in the possession or control of any person other than the *larta* or head of the house. **Queen Empress v. Sangam Lall I L R 15 All 179** approved. *Semble* It is immaterial in an action for malicious arrest under what section of an Act an arrest is made if in fact the circumstances are such that the Act justified arrest and a person making a search is entitled to call in aid any statute which justifies his action,

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quite irrespective of whether it was present or not to his mind when he made the search. The Court is entitled to ask counsel who during the conduct of a case makes charges of misconduct whether he makes the charges on instructions and if so on whom. It is not sufficient to plead instructions. Counsel have a responsibility in the matter and are not justified in making serious charges of fraud and crime unless they are personally satisfied that there are reasonable grounds for putting them forward. Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent. There is no privilege as against the Court. The latter cannot use them as evidence in the case and for the purpose of the trial would have to treat them as confidential but they could be called for then and there and be used after the trial for determining whether disciplinary action should be taken against counsel by the Full Court. Whenever a Court relies on a book of reference such as a work on medical jurisprudence it should be made known at the trial to the parties so that they may have an opportunity of adducing evidence or argument on the point. *Durga Prasad Singh v Ram Doyal Chaudhury* 1 L R 38 Cal 153 referred to. The following resolutions of the Bar Council approved—(a) If counsel knows or has reason to believe that he will be an important witness in a case he ought not to accept a retainer therein. (b) If he accepts a retainer not knowing or having reason to believe that he will be such a witness but at the opening or at any subsequent stage before evidence is concluded it becomes apparent that he is a witness on a material question of fact he ought not to continue to appear in the case unless he cannot retire without jeopardising the interests of his client. (c) If counsel knows or has reason to believe that his own professional conduct on matters out of which the action arises is likely to be impugned in the case he ought not to accept a retainer. (d) If he accepts a retainer not knowing or having reason to believe that this own professional conduct in such matters is likely to be impugned but finds in the course of the case that it is so impugned he ought to adopt the same course of conduct as is mentioned in clause (b) ante. (e) In either of the cases mentioned in clauses (b) and (d) there is no rule of professional ethics which debars counsel if he continues to act as counsel in the case from going into the witness box and being cross examined. Although the resolutions of the Bar Council are not binding on the Court the Bar Council is the recognised authority on matters of professional conduct and etiquette affecting counsel and its opinion is of the greatest weight and value. There is nothing necessarily unprofessional in counsel giving evidence in a case in which he appears as such. *Sethna v Mir A Mahomed Shirazi* 9 Bom L R 1011 *Cobbett v Hudson* 1 E and B 11 *Stones v Byron* 4 Dougl and L 393 *Deane v Packwood* 4 Dougl and L 394 *Corra v Lewis* [1909] A C 549 14 C W A 86 *Jundo Lal Post v Natarani Dass* 1 L R 27 Cal 428 referred to. *Curry v Walter* 1 Esp 456 distinguished. As a general practice however it is undesirable when the matter to which counsel deposes is other than formal that they should testify either for or against the party whose case they are conducting. Under s 118 of the Evidence Act counsel although they may be engaged in the case are competent to testify whether the

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facts in respect of which they give their evidence occur before or after their retainer. *Cobbett v Hudson* 1 E and B 11 referred to. The rule laid down in s 114 ill (g) of the Evidence Act that the Court may presume that evidence which could be and is not produced would if produced be unfavourable to the party who withholds it was held to apply to the case of counsel engaged in a suit who should not have been under the circumstances counsel but should have been called as a witness. It is unprofessional for counsel to cross-examine a witness as to facts within his personal knowledge. In the matter of certain Counsel 4th August 1908 (unreported) approved. Where counsel during the hearing of a case calls for the production of a book which is produced and handed to him by his opponent with certain pages marked as those only to which he may refer in respect of the subject matter of his cross-examination it is improper for counsel who calls for the book to inspect any of the other pages. If a suit on a tort is barred as against one person the period of limitation cannot be extended because it happens to be against three persons who are alleged to have committed the tort in conspiracy. The same set of facts cannot constitute separate causes of action both for a tort and for a conspiracy to cause damage. Where there is a joint tort the proper action is on the tort against the joint tortfeasors and not on a cause of action to recover special damage by reason of a conspiracy to cause damage. A suit for damages for false imprisonment or malicious prosecution against joint tortfeasors is governed by the one year rule under Arts 19 and 23 of the Limitation Act. There are instances in which two or more persons can render themselves liable to civil proceedings by combining to injure the plaintiff although if one of them did the same act by himself and without any preconcert with others he would escape liability. An action on such a conspiracy would lie in this country. In an action on conspiracy special damage must be proved. *Per CHATTERJEE J*. There is no authority for holding that a tort when committed by several persons acting in concert is different from the same tort committed by a single individual. The combination in such cases may be an element of aggravation in the assessment of damages but does not suffice to make it a different tort. *Quinn v Leatham* [1901] A C 495 referred to. Conspiracy or wrongful combination is not a material element in the constitution of a wrong. *Giblin v National Amalgamated Labourers Union* [1903] 1 A B 600 referred to. *WESTON AND OTHERS v PEARY MOHAN DASS* (1912)

1 L R 40 Cal 898

13 ——— Land to support religious service—Lease—Adverse possession. In the case of a lease for a term of years by the holder for the time being of lands assigned to support services rendered to a Mekan and religious community by successive holders time begins to run not from the commencement of the tenancy of the person claiming to hold as a tenant but from the date when the claims of the parties became openly and undoubtedly adverse. *Tekait Jam Chander Singh v Srimati Madho Kumari* 1 L R 12 I A 197 and *Tribhamb Ramchandra v Sheikh Gulam Zilani* 1 L R 37 Bom 39 referred to. *MAHA MADGACS v PAJABAKSHA* (1912)

1 L R 37 Bom 224

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14 ——— Adverse possession—Till —
*Bombay Regulation I of 1871 s 1—Rule of positive law—Limitation Act (XIV of 1871) s 2—Limitation Act (IX of 1871) s 2—Repeal of s 1 of Purnag Regulation I of 1871—Effect of repeal—On extinction of title—Pile of positive law not affected by law of limitation—Endowment of a village for the purpose of performing Karpur Mangalarat—Trustee—Denial by trustee—Adverse possession by alienee. In 1678 a village was given in *nam* to the then *Swami* of the Uttaradhi Math for the purpose of meeting the expenses of a religious service called the *Karpur Mangalarat* at the temple of the Math. A successor of the *Swami* gave away the village in gift (*i.e.* as *Kri Narpana*) to the defendants' predecessors on title who went into possession as proprietor. At first they paid judi on the land at the rate of Rs 20 per year but after 1840 this payment was stopped. The defendants continued to hold the village as before. In 1911 the present *Swami* of the math sued to obtain a declaration that the village belonged to him and to recover its possession from the defendants. The plea of the defendants was that the suit was barred by limitation. *Held* that inasmuch as the original grant vested the legal property in the *Swami* and the equitable estate in the juridical person the *idol* the original grantee took as a trustee and his successors held by the same title. *Hardoon v Behlor* [1901] 4 C 118 L.J. followed. *Held* further that since the defendants went into possession of the village in 1840 their title ripened in 1860 into ownership under the provisions of s 1 of the Bombay Regulation V of 1827. *Held* also that the operation of s 1 of the Bombay Regulation V of 1827 was not affected by the enactment of s 2 of the Limitation Act (XIV of 1871) first because the Act did not come into force till the 1st January 1862 and secondly because it being a statute of limitation did not affect s 1 of the Bombay Regulation V of 1827 which was an enactment of positive prescription. *Sitaram Vasudev v Khanderav Bulkrshna I L R 1 Bom 286* and *Rambhai Ajnoli v The Collector of Puna I L R 1 Bom 59* followed. Where a later Act of Legislature does not purport or affect to supersede an earlier Act the Court will endeavour to read the two enactments together and to avoid conflict if possible. *RANUACHARYA v DISACRAFTA* (1919) 1 L R 37 Bom 231*

15 ——— Redemption of mortgage made in 1793—Act XIV of 1859 s 1 cl 1 s 4—Act IX of 1871 s 20 and Sch II Art 143—Act IX of 1877 s 19 and Sch II Art 148—Acknowledgment of title—Receipt by mortgagees—Interest after date of suit—Damages—Discretion as to award or not of interest—A sumed exercise of discretion not interfered with. A suit was brought by the predecessors in title of the respondents for redemption of a mortgage dated 4th November 1793 in favour of the predecessors in title of the appellants. The deed mortgaged with possession a certain *desaigiri dastur* and certain *pasada* lands situate in the district of Broach and after that district finally came under British rule the *desaigiri dastur* was commuted into a fixed money allowance payable from the treasury since which settlement the appellants had received that allowance in lieu of the *desaigiri dastur*. The defence was that the suit was barred by the Indian Statutes of Limitation which provide

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a period of sixty years for redemption and that more than that time had elapsed since the date of the mortgage. The respondents however put in evidence documents signed by the mortgagees by which they contended the period of limitation had been extended. *Held* (affirming the decision of the High Court) that an entry in a receipt book relating to the payment on 8th June 1843 of the fixed allowance from the treasury in respect of the year ending 1st May 1843 was an acknowledgement under the Indian Act of Limitation (XIV of 1859 s 1 cl 15 Act IX of 1871 s 20 and Act IX of 1877 s 19) made within the period of limitation and sufficient to prevent the suit from being barred. The rights of the mortgagees were then vested in somewhat unequal shares in two persons named in the receipt whose names had in the ordinary course been entered in the Collector's books as mortgagees under the mortgage in suit as being entitled to the payment of the annual allowance into which the original rights had been commuted. The entry in the book of the Government agent entrusted with the payment stated that it was made to the two persons named. The amounts of the shares of each of them was set against their names and against those shares the mortgagees had written their respective names in acknowledgement of the receipt of their shares. This acknowledgment created a new period of limitation from 8th June 1843 and consequently the suit was not barred. The appellants claimed to be allowed interest on the redemption money for the period between the date of suit and the actual date of redemption. Admittedly the rule of *damdapat* applied and therefore the amount of arrears of interest to be allowed was limited to an amount equal to the capital sum. The District Judge gave no interest from the date of suit. There was nothing to show that he had done so by an oversight or mistake. The High Court treated the matter as if the District Judge had exercised his discretion and had declined to give interest and they thought that it had not been an unreasonable exercise of his discretion. No application was ever made to the District Judge to amend his alleged omission to give interest and their Lordships agreed with the High Court decision and the grounds on which it rested. *HIRALAL KIRHALAL v HIRALAL CHATUR BHUJAS* (1913) 1 L R 37 Bom 326

16 ——— Suit filed after limitation in wrong Court—Petition for presentation to proper Court—Bar of limitation in spite of Limitation Act (XV of 1877) s 14. If a plaintiff is returned for presentation to the proper Court on the ground of absence of jurisdiction in the Court to which it was originally presented the suit when presented to the new Court is a new suit and cannot be regarded as a continuation of the infructuous suit in the wrong Court. This is the basis of s 14 of the Limitation Act (XV of 1877). Hence if the suit when originally filed in the wrong Court would have been ordinarily barred by limitation as by being barred during the holidays of that Court after which alone it was filed the suit when filed in the new Court must be held to be barred in spite of s 14 of the Limitation Act. *Mohd v Pather v Vallaperumal Pillai 21 Mad L J 1800* followed. *Taluroodien Mahomed Esaham Chaudry v Kurimoor Chaudry 3 B L Cr 20 Akelat Chandar Gho v Nuchunn u*

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the agreement which gave him the benefit of the Provision SITARAMA & KRISHNASWAMI (1913)

I L N 38 Mad 374

25 ——— Hereditary office of shebat—Successor of shebat when bound by decree against predecessor—Decree holder and purchaser at sale in execution who by reason of low caste is not competent to hold office of shebat—Adverse misappropriation of temple income by trespasser incompetent to be shebat—Worshipful session not constituting wrongful holder shebat—*Res judicata* This was an appeal from the decision of the High Court in the case of *Jharula Das v Jalandhar Thakur* I L R 39 Cal 887 in which the widow of the shebat of a temple (the shebats of which were Brahmin Pandas) who succeeded her deceased husband in that office mortgaged land together with her interest in the income of the temple to the defendant (who was not a Brahmin). The defendant obtained a decree on his mortgage on 24th September 1880 in execution of which he put up for sale the share of the temple income purchased by himself and got delivery of possession in 1892. The widow died in May 1900. In a suit brought on 28th January 1910 for the land and mesne profits and for a declaration that the plaintiff was entitled to receive the share of the temple income as it was inalienable, the defence was that the suit so far as it related to the temple income was barred as being *res judicata* and by limitation. Held by the Judicial Committee (reversing the decision of the High Court) that Art 129 of the Limitation Act was not applicable. The suit was not one for an hereditary office which could not be held by a person who was not a Brahmin and the defendant was therefore not competent to hold the office of shebat and had not taken possession of it. By adversely taking and appropriating to his own use a share of the surplus daily income from the offerings the defendant acquired no title and no right to a share of that income. On each occasion on which he received and wrongfully appropriated to his own use a share of the income to which the shebat was entitled the defendant committed a fresh actionable wrong in respect of which a suit could be brought against him by the shebat, but it did not constitute him the shebat for the time being or affect in any way the title to the office. Held also that the defence (which had been upheld by the High Court) that the suit was barred as *res judicata* by the decision in a former suit brought by the widow to set aside the sale of the temple income was not maintainable. *JALANDHAR THAKUR v JHARULA DAS* (1914)

I L R 42 Cal 244

26 ——— Mortgage suit—Civil Procedure Code (Act I of 1908) O XXXI rr 3 and 6—Limitation Act (IX of 1908) Sch I Art 181—Transfer of Property Act (IV of 1882) s 90—Personal covenant. The plaintiff in a mortgage suit who has his personal remedy at the date of the institution of the suit would not lose his personal right by reason of his not having made the application for personal decree under O XXXI r 6 within three years of the date of the confirmation of the mortgage sale since applications under O XXXI r 6 are not governed by Art 181 of the Limitation Act any more than an application for order absolute under O XXXI r 6. *Fahmat Karim v Abdul Karim* I L R 44 Cal 62 and

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Madhabmoni Dan v Pamela Lambert 12 C L J 328 referred to *Biswanath Shah v PAM SUNDAR KAIRAPPA* (1914) I L N 42 Cal 294

27 ——— Suits under special Acts—Limitation Act (IX of 1908) s 15 (a) applicability of—Madras Revenue Recovery Act (II of 1864) s 39 suits under E 10 cl (2) of the Limitation Act (IX of 1908) which excludes from the computation of the period of limitation the time occupied by the notice legally necessary to be issued before instituting certain actions is applicable to suits brought under s 59 of the Madras Revenue Recovery Act (II of 1864). *Venkata v Chengadu* I L R 12 Mad 168 and *Isuara Patil v Karuppan* 3 Mad L J 255 followed. *Abu Baker Sahib v Secretary of State* for India I L R 34 Mad 505 distinguished. The question whether the general provisions of the Limitation Act should be applied to cases where a special period of limitation is prescribed by a special or local Act depends on whether the provisions of such Act should be regarded as enacting a complete body of provisions with regard to limitations of suits coming within the purview of the Act. In other words the question is whether the special or local Act should be construed as excluding the applicability of the general provisions of the Limitation Act. *SRINIVASA AYYANGAR v SECRETARY OF STATE* (1912)

I L R 38 Mad. 92

28 ——— Madras Estates Land Act—(I of 1908) ss 210 211 cl (2) Art 8 of Sch Part A—Suit for rent under registered agreement more than three years but less than six years of the Act coming into force—Statutes—Construct on—Retrospective operation when—Limitation Act (IX of 1877) Art 116 applicability of suits for rent in a Revenue Court. A suit to enforce an inamdar's right to rent under a registered agreement which accrued due more than three years but less than six years before the Estates Land Act came into force is not barred by the Limitation of three years enacted by its provisions but is governed by Art 116 of the Limitation Act. S 210 and art 8 of Part A to the schedule of the Madras Estates Land Act (I of 1908) have no application to cases where the period of three years thereby provided had expired before the 1st July 1908 when the Act came into force and where to apply them would be to deprive the plaintiff of a right of action which was then vested in him. The rule regarding vested rights is not confined to substantive rights but extends equally to remedial rights or rights of action including rights of appeal. Retrospective operation of statutes considered. *Colonial Sugar Refining Company v Irving* (1906) A C 369 applied. *RAMAKRISHNA CHETTY v SUBBARAYA IYER* (1912) I L R 38 Mad. 161

29 ——— Preliminary Mortgage decree—Limitation Act (IX of 1908) Sch I Art 180 183—Application for sale of mortgaged property under decree—Transfer of Property Act (IV of 1882) ss 85 to 88—Civil Procedure Code (Act I of 1908) O XXXI rr 4 & 5. In this case their Lordships of the Judicial Committee affirmed the decision of the High Court in *Amool Chund Parrack v Saral Chunder Muljey* I L R 38 Cal 913 that an application for an order absolute for sale under a mortgage decree is an application to enforce a judgment or decree within the

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meaning of Art 183 of Sch I of the Limitation Act (IX of 1908) and is therefore barred if not made within the period prescribed by that Article. *MUNNA LAL I APRACK v SARAT CHANDER MUKERJI* (1914) I L R 42 Cal 776

30 ——— Registration Act—(XXI of 1908) s 77—Thirty days after passing of decree under—Computation s for the purpose of that Act—Civil Procedure Code (Act I of 1908) O XX r 7 For the purposes of s 77 of the Registration Act (XXI of 1908) the period of thirty days within which a document has to be presented for registration after the passing of a decree of Court directing its registration is to be reckoned not from the date the decree bears but from the time it was actually drawn up and signed by the Judge. *PERCHIAM* It is desirable that in decrees of this nature the Judge should put the date on which they are signed by him under O XX r 7 Civil Procedure Code (Act I of 1908) *MUTHIA CHETTI v SUFFAN SERVAI* (1913) I L R 38 Mad. 291

31 ——— Court of Wards—Competency of acknowledging debt—Effect of acknowledgment of pre-existing debt by the Court as regards limitation—Court of Wards Act (Beng IX of 1879) s 18—Limitation Act (IX of 1908) s 19 The Court of Wards Act 1879 does not contain any express power authorizing the Court to execute promissory notes. But there can be no doubt on the authorities that the Court has power to give an acknowledgment so as to give a new period of limitation under s 19 of the Limitation Act. *Beis Maharani v Collector of Etawah* I L R 17 All 198 *Pam Charan Das v Gaya Prasad* I L R 30 All 490 and *Kondamolu Linga Reddi v Alluri Sarvarayudu* I L R 34 Mad 221 applied *RASEBHARY LAL MANDAR v ANAND PAM* (1916) I L R 43 Cal 211

32 ——— Executor—Accrual of right to sue—Testator domiciled abroad—Probate—Capability of instituting suit—Devolution of interest—Substitution of plaintiff—Straits Settlements Ordinance No II of 1896 ss 17, 22—Straits Settlements Ordinance No 31 of 1907 ss 133, 196 Straits Settlements Ordinance No II of 1896(1) which deals with the limitation of suits provides as follows—s 17 sub s (1) When a person who would, if he were living have a right to institute a suit or make an application dies before the right accrues the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application. S 22 When after the institution of a suit a new plaintiff or defendant is substituted or added the suit shall as regards him be deemed to have been instituted when he was so made a party.

Held (1) that the executor of a will capable of probate in the Straits Settlements is a legal representative capable of instituting a suit within the meaning of s 1 sub s (1) from the date of the testator's death and not only from the date when he obtains probate. *Quare* as to an executor who renounces probate (ii) that according to the English practice (which is made applicable in the Straits Settlements in the absence of any other provision) the will of a testator domiciled in British India or elsewhere outside the Straits Settlement although not proved in the place of the testator's domicile is capable

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of probate in the Straits Settlements if (a) it is valid according to the law of the testator's place of domicile and (b) if there are assets of the testator in the Straits Settlements. (iii) that a 22 contempt plates cases in which a suit is defective by reason of the right persons not having been made parties but not cases in which the suit was originally properly constituted but has become defective owing to a devolution of interest in the latter circumstances a carrying on order should be made under s 169 of the Civil Procedure Ordinance No 31 of 1907 *MEYAPPA CHETTI v SUPRAMANIAM CHETTI* I L R 43 I A 113 20 C W N 833

33 ——— Suspension of cause of action—Limitation Act (Act of 1877) s 14—In this appeal the Lordships of the Judicial Committee affirmed on the question of limitation the decision of the High Court in the case of *Lalhan Chandra Sen v Madhusudan Sen* which is reported in I L R 30 Cal 99 *KRISHANONI DASSI v LALHAN CHANDRA SEN* (1916) I L R 43 Cal 660

34 ——— Valuable Consideration and Transfer—If grant of permanent lease so—Suit to recover possession of property from lessee if maintainable without making mortgagee of same property party—Limitation Acts (Act of 1877) s 10 Sch II Art 134 and (IX of 1908) s 10 30 Sch I Art 134 In a suit by a shewait to recover possession of debutter property vested in the shewait in trust for the deity which had been transferred more than 12 years before the institution of the suit by the plaintiff's predecessor in title who had granted a putni lease of the property for consideration of a considerable fixed annual rent but without receipt of any bonus—*Held* that the suit was barred by limitation under Art 134 of Sch I of Act IX of 1908 *Abhram Goswami v Shyma Charan Kundu* I L R 36 Cal 1003 I L R 36 I A 148 *Ishtwar Shyam Chand Jiu v Pam Kanai Glose* I L R 38 Cal 56 I L R 38 I A 76 and *Damodar Das v Lalhan Das* I L R 37 Cal 835 I L R 37 I A 147 distinguished *Held* further that the grant of the permanent lease in the case was a transfer for valuable consideration. *Currie v Misoa* I L R 10 Exch 103 followed *Held* also that no period of limitation was prescribed for a suit of the present nature under the Act of 1877 and therefore s 30 of the Act of 1908 has no application in this case. Where in this case the plaintiff had granted a valid usufructuary mortgage of the property in suit to a third person for a term which did not expire before the institution of the suit it is not open to him to determine the lease to the defendant the benefit of which had been expressly assigned by the plaintiff to the mortgagee. *PANESWAR MALIA v SRI SRI JIU THAKUR* (1915) I L R 43 Cal 24

35 ——— Adverse possession—Claim by person to lands notified by Government as reserved forest lands under Madras Forest Act (Madras Act V of 185.)—Onus of proof—Islands formed in bed of sea at mouth of tidal navigable river—Right of the Crown to such Islands—Limitation Act (Act of 1877) Arts 144 and 149—Right of appeal to High Court from decision of District Court under Madras Forest Act—Provisions under general provisions as to appeals in Civil Procedure Code In this appeal the question for deter-

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mination was whether the Secretary of State in Council (appellant) was entitled to incorporate the lands in dispute into a reserved forest under the Madras Forest Act (Madras Act V of 1832) such lands being islands formed in the bed of the sea near the mouth or delta of the river Godavari a tidal navigable river and within 11 miles of the mainland *Held* that such islands were the property of the Crown which was not bounded in its dominion of the bed of the sea by the rise or fall of the tide. The Crown is the owner and the owner in property of islands arising in the sea within the territorial limits of the Indian Empire. The onus of establishing title to property by reason of possession for a certain requisite period lies on the person asserting such possession. Objectors to afforestation preferring claims under the Forest Act against the Secretary of State for India are in the same position as persons bringing a suit in an ordinary Court for a declaration of right to which Art 144 of Sch II of the Limitation Act 1877, is applicable the period of twelve years however being extended to sixty years by Art 149 and the onus of establishing possession for the required period is upon the claimants *Radha Gobind Roy v English 7 C L P 364* followed *Secretary of State for India v Vira Rayan 1 L R 9 Mad 175* distinguished. In this case *held* (reversing the decision of the High Court) that on the evidence the claimants had not proved adverse possession for a period sufficient to establish a right against the Crown. Though an appeal from the District Judge to the High Court is not provided for in the Madras Forest Act in a claim to lands which have been notified as reserved forest lands under the Act such an appeal will lie under the provisions of the Civil Procedure Code. Where in such proceedings the District Court is reached, that Court is appealed to as one of the ordinary Courts of the country with regard to whose procedure orders and decrees the rules of the Civil Procedure Code are applicable. In such a case the ordinary incidents of litigation could only be excluded by specific provisions to that effect *Kamaraju v Secretary of State for India 1 L P 11 Mad 309* approved *Pangoon Boatfaring Company v Collector of Rangoon 1 L R 40 Cal 31 L P 391 A 197* distinguished *SECRETARY OF STATE FOR INDIA v CHELIKANI RAMA RAO (1910) 1 L R 39 Mad. 617*

35 ———— Suit for contribution—Between joint debtors—Exoneration of defendant by the decree on ground of limitation—Plaintiff paying the whole decree—Cause of action for contribution only after payment. The plaintiff and the defendant having each borrowed a certain sum of money from a stranger executed a joint promissory note in 1903 for the total amount in favour of the stranger. After receiving some amounts from both the promisors the promisee sued them both in 1911 but the decree was for the balance due only against the present plaintiff the present defendant being exonerated on his plea of limitation. After paying the decree amount in March 1912 the plaintiff immediately sued the defendant for contribution *Held* (i) that the right to sue for contribution arose on plaintiff's payment (ii) that the defendant was liable to contribute in spite of the fact that he was exonerated under the previous decree on the ground of limitation and (iii) that the suit was not barred by

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limitation the cause of action having arisen only on the date of plaintiff's payment *Gardner v Brookes 2 Ir R 6* and *Woolmersharsen v Gwillik 1893] 2 Ch 514* followed. The liability to contribute is based on an equity arising out of the co-debtor's payment and it has no reference to the original liability to the common promisee. The obiter dictum in page 311 *Subramania Aiyar v Gopala Aiyar 1 L R 33 Mad 308* not followed. *ABRAHAM SERVAT v PAPATHI MUTHUPAN (1914) 1 L R 29 Mad 288*

37 ———— Appeal—admitting when time barred—Judicial Discretion—Abolition application for review—Settled Rule of Procedure—Abatement of suit—Ex parte order—Substitution of Party on Interlocutory Appeal—Limitation Act (IX of 1908) s 5—Civil Procedure Code (XII of 1882) ss 366-368 371. The judicial discretion given by s 5 of the Indian Limitation Act 1908 to admit an appeal after the prescribed period of limitation should be exercised if the appeal has been prosecuted with due diligence the time occupied by an application in good faith for review although made upon a mistaken view of the law should be deemed as added to the period allowed for presenting the appeal. The above rule being one of procedure laid down by full Bench decisions in India and acted on for many years their Lordships will not interfere with it. When in the exercise of a judicial discretion a judge fails to apply a rule laid down for its exercise the Appellate Court should either remit the case or itself exercise the discretion. The remedy by revision given by s 371 of the Code of Civil Procedure 1882 when a suit has been ordered to abate applies whether the abatement has been ordered under s 366 consequent upon the death of the plaintiff or under s 368 consequent upon the death of the defendant. An order for abatement should not be made *ex parte* and without notice to the plaintiff. The substitution of a new plaintiff or defendant for one stage of a suit for instance upon an appeal as to an interlocutory order is effective for all future stages of the suit. *BRIS INDAR SINGH v KANSHI RAM (1917) 1 L R 45 Cal 94 [L R 44 I A 218]*

38 ———— Suit for Royalties—Due under a registered lease of land with the right to dig coal—Point not allowed to be taken which was not raised in the lower Courts nor in ground of appeal to High Court or Privy Council—Form of decree where a party has refused to join as a plaintiff and has been made a defendant—Power to allow a decree without an appeal. In a suit for royalties due under a registered lease of certain land with the right to dig coal, Art 116 of Sch II of the Limitation Act 1877 for compensation for breach of a contract in writing registered and providing a six years period of limitation, and not Art 110 for a suit for arrears of rent and giving only three years, was held to be applicable. There is a long established distinction in the Limitation Acts in favour of registered instruments and a long course of decisions in the Indian Courts in support of this interpretation of the Acts. *Pam Narain v Kamta Singh 1 L R 26 All 138* dissented from. A point that as the royalty for one year was in any case barred the amount of the decree should be reduced was

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held not to be open to the appellant to take it not having been raised in either of the lower Courts nor in the grounds of either the appeal to the High Court or that to the Privy Council. One of the parties on refusing to join as a plaintiff was made the second defendant and included in his defence a claim for a decree against his co-defendant which the first Court gave him separately from the decree in favour of the plaintiffs. The High Court on appeal altered the form of the decree by giving a decree for the entire amount in favour of the plaintiffs and declaring that for a named portion it was for their share and as to the residue it was for the share of the second defendant. The second defendant did not appeal but the principal defendant by his appeal brought the entire decree before the High Court disputing it in toto. Held that in the absence of any provision in the Civil Procedure Code or in any other enactment which showed clearly that the High Court had no power to make the decree it had passed and the whole decree being before it, the High Court had jurisdiction to make the decree which should have been made by the first Court. **TRICOMDAS COOVERJI BHOJA v GOPINATH JIV THAKUR (1916)** I L R 44 Cal 759

39 ——— Suit to recover Land diluviated and reformed in situ—*Dispossession—Adverse possession—Continuation of possession of land while diluviated—Definition s 3 of Limitation Act—Continuous possession of successive owners when it cannot be combined*. The appellants sued to recover khas possession of a 10 anna share with meagre profits in portions of certain mauzas which after being diluviated had reformed in situ. The question was whether the land in suit belonged to the plaintiffs mahal or to the principal respondents (defendants) mahal. The suit was brought on 6th September 1904. The Subordinate Judge found in favour of the plaintiffs title and that the suit was not barred by limitation. It was common ground that the period of limitation applicable was twelve years the main contest being as to whether Art 142 of Sch II of the Limitation Act 1877 was applicable or Art 144. The High Court decided the case on limitation alone holding that the suit was barred by Art 142. Held by the Judicial Committee (upholding the decision of the first Court both on title and limitation) that there had not been down to September 1892 any dispossession of the plaintiffs within the meaning of Art 142. An owner of land does not discontinue his possession of it whilst it is diluviated. Constructively it continues until he is dispossessed and upon the cessation of the dispossession before the statutory period of limitation has elapsed constructively it survives. *Leigh v Jack L P 5 Excl D 61 per CORROD L J* followed. It seemed to follow that there can be no continuance of adverse possession when the land is not capable of use and enjoyment so long as such adverse possession must rest on de facto use and occupation. *Secretary of State for India v Krishnamoorti Gupta I L R 29 Cal 518 I R 99 I A 104* approved. In the present case beyond temporary uplands cultivation there was nothing down to 1892 to show an exclusion of the plaintiffs by the Revenue authorities whether the land cultivated was the same each year or not does not appear at any rate it was annually submerged and there were no circumstances to link to other various portions of ground

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so as to make the possession of a part as it emerged amount constructively to the possession of the whole. *Mohini Mohan Roy v Pro moda Nath Roy I L R 21 Cal 96* referred to. No dispossession having occurred (except possibly within twelve years of the commencement of the suit) Art 144 and not Art 142 was the article applicable. Whether or not in the circumstances of the case conduct which was insufficient to evidence dispossession can be used to evidence adverse possession available to the defendants they failed on the ground that the period of time necessary to bring them under the protection of Art 144 could not be made out unless to the period during which they were in possession there was added out of the prior period when it is contended the Revenue authorities had possession, a number of years going back to 1892 and that could not be done in this case for the reason shown in the definition s 3 that the defendants did not derive their liability to be sued from or through the Revenue authorities in any sense of the words. They had in fact advanced a claim adverse to those authorities and had succeeded in it. **BASANTA KUMAR ROY v SECRETARY OF STATE FOR INDIA (1917)** I L R 44 Cal 858

40 ——— Payments towards debt—Court if it can find out whether it is for principal or interest—*Limitation Act (IX of 1908) s 20*. Where payments are made towards a debt but there is nothing to show whether they had been made in respect of principal or interest the Court is entitled to find out on the evidence for what purpose the payments were made. **HEM CHANDRA BISWAS v PURVA CHANDRA MUKHERJI (1916)** I L R 44 Cal 567

41 ——— Attachment in execution—*Claim proceeding—Claim rejected for default and without investigation—Subsequent title suit—Limitation Act (IX of 1908) Sch I Art 11—Civil Procedure Code (Act I of 1908) s 141 rr 53 and 63*. Where a claim is preferred under O XXI r 58 of the Civil Procedure Code and an order is passed either allowing or rejecting the party against whom the order is made may irrespective of whether any investigation took place or not bring a suit in the language of O XXI r 63 to establish the right which he claims to the property in dispute or in the language of Art 11 of Sch I of the Limitation Act 1908 to establish the right which he claims to the property comprised in the order and the suit must be brought within the year allowed by Art 11. *Sardhars Tal v Ambika Pershad I L R 15 Cal 521 I P 15 I A 123 Jugul Kishore Marwari v Ambika Dbi 16 C W N 85* and *Umacharan Chatterjee v Heron Moyee Dbi 18 C W N 70*, referred to. *Narasimha Chetti v Vijayalakshmi 27 Ind Cas 944* and *Ponnusami Pillai v Somu Ammal 31 Mad L J 21* approved. **MAHENDRA LAL CHOWDHURY v PAKI BHUSAN DAS (1918)** I L R 45 Cal 25

42 ——— Bengal Tenancy Act 1885—s 194H—*Scope of s 194H—Limitation governing suit under s 194H—Pleas outside s 194H but within proviso to s 194A*. s 194H of the Bengal Tenancy Act only refers to suits by a person aggrieved by an entry of rent settled in a Settlement Panel roll prepared under s 194F to 194H or by an owner to settle such a rent

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and suits falling under that section are governed by the special limitation provided in that section. Where reliefs claimed are outside the scope of s. 104H and fall within the provision of s. 111A the limitation applicable is that provided by Art. 10 of the second schedule to the Limitation Act. *Ironkshi Nath Roy v. Anuradha Mani Lal* 15 C B N 395 followed. **RAJANI KANTA MOOKERJEE v. SECRETARY OF STATE FOR INDIA** (1917) I L R 45 Cal 645

43 ——— Admission of appeal—Period of limitation expired without notice to respondent—Power of Court to grant reconsideration of order admitting appeal in case of respondent—Practice of Courts in India—Suggestion by Privy Council that such practice should be altered by the Indian Courts with the view of a curing final determination of any question of limitation at time of admission of appeal—Limitation Act (IX of 1908) ss 4 and 5. The admission of an appeal after the period of limitation has expired deprives the respondent of a valuable right by putting in peril the finality of the order in his favour. When an order admitting an appeal has been made in the absence of the respondent and without notice to him to preclude him from questioning its propriety would amount to a denial of justice. Such an order so made should therefore be treated as open to reconsideration at the instance of the respondent. This view is sanctioned by the practice of the Courts in India. *Held* also that the Court was not exceeding its jurisdiction in permitting the question of limitation to be reopened when the appeal came before it for hearing and under the circumstances it had power to reconsider the sufficiency of the cause shown for the delay. That practice was not peculiar to Madras but prevailed in other Courts in India. Such a practice however was in their Lordships' opinion open to grave objection and it was urgently expedient that in place of such a practice a procedure should be adopted by Courts in India which would secure at the stage of the admission of an appeal the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal. **KRISHNASWAMI PAKIRONDAR v. RAMASWAMI CHETTIAR** (1917) I L R 41 Mad 412

44 ——— Execution of money decrees—Part payment—Uncertified payment or adjustment—Civil Procedure Code (Act V of 1908) O XXI r 2 sub r (3) Limitation Act (IX of 1908) s 21 Sch I Art 18. Where a decree for money was made on the 24th November 1909 and an application for execution of the same was presented on the 7th June 1916 and where two payments were alleged to have been made in 1912 and 1913 respectively neither of which was certified to the Court. *Held* that the application was *prima facie* barred by limitation under Art 182 of the Limitation Act. *Held* also that an uncertified payment or adjustment could not operate to prolong the period of limitation for an application for the execution of a decree under the Limitation Act. *Held* further that under the Hindu Law in the absence of the father the mother was entitled to be the guardian of her infant sons in preference to their brother and was the lawful guardian under s 21 of the Limitation Act. **Jogendra Nath Sarkar v. Prooth Nath Chatterjee** 19 C L J 126 Kulu bu lah Sarkar v. Durga Charan Palra 13 I C

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45 ——— Application for execution—Civil Procedure Code (Act V of 1908) O XXI r 18 and 17 cl (7)—Application in accordance with law—Properties specified in the list furnished under O XXI r 13 not competent to be proceeded with in execution—Filing of supplementary list of properties to be taken as part of the original application under the provisions of O XXI r 17 (7)—Fresh application for execution if necessary—Such application to be treated as made in continuation of the original application for execution. A decree was passed on the 25th November 1911 and on the 23rd November 1914 an application for execution was made which on the face of it was in accordance with law. Subsequently on the objection of the judgment debtor it was discovered that against the properties specified in the list furnished under O XXI r 13 proceedings could not be taken and accordingly on the 14th January 1916 the decree holder made an application to the Court for acceptance of a further list of properties with a prayer that the execution should proceed by attachment and sale of the same properties and the lower Appellate Court disallowed the prayer and held that the application for execution having been admitted and registered the proposed amendment could not be accepted and the decree holder was to make a fresh application in execution. *Held* that the supplementary list should be taken as part of the original application under the provisions of O XXI r 17 (7) or if a fresh application were at all necessary then the subsequent application furnishing a supplementary list of properties should be treated as one made in continuation of the application first presented on the 23rd November 1914 that in this view no question of limitation arose and that the decree holder would be at liberty to proceed in execution as on his application dated 23rd November 1914. **GRANENDRA KUMAR POY CHOUDHRY v. RISHENDRAKUMAR ROY CHOUDHRY** (1918) 22 C W N 540

46 ——— Acknowledgment after attachment—Effect of as against auction purchaser. An acknowledgment by the judgment debtor may save limitation against the auction purchaser but such acknowledgment if made after the attachment cannot prevail against the auction purchaser who is entitled to have the property purchased by him in the condition in which it was at the time of attachment. **RAJESWARI DAS v. BIKODA SUNDARI DAS** (1916) 22 C W N 278

47 ——— Adverse possession—Hindu Widow—Public Assertion of Ownership—Concurrent Findings—Inference from Documents—Limitation Act (IX of 1877) Sch II Art 111. Concurrent opinions of the Courts in India that the possession of properties by a Hindu widow was merely in lieu of maintenance and not adverse to the plaintiffs reversed on the grounds that the question being one of inference from documents not one of fact a wrong conclusion had been arrived at. The widow of one of two joint Hindu brothers after the death of the surviving brother

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and his widow succeeded fully applied for mutation of names in respect of property of which she was in possession alleging that she was owner of it as heir to her husband's separate property. Subsequently she put forward the same claim in written statements in suits she also made in gift of part of the property to religious uses. *Held* that the abovementioned acts were public assertions by the widow of a right to exclusive possession and ownership and made her possession adverse within Sch II Art 144 of the Indian Limitation Act 1877. **CHAUDHRI SATGUR DAS ADI KISHORE LAL (1919)**

I L R 46 I A 197

48 ——— Adverse possession—Gift—Unregistered Document—Evidence—Owner—Subsequent Joint Ownership—Transfer of Property Act (IX of 1859) s 193—Limitation Act (IX of 1908) Sch I Art 144 (i) A petition by which the petitioners recited that they had made a gift of two villages and prayed that the villages might be transferred into the name of the donee is admissible as evidence that the subsequent receipt of the rents by the donee was in the character of owner of the property so as to make her possession adverse to that of the petitioners although by reason of the Transfer of Property Act 1859 s 123 and the Indian Evidence Act 1872 s 91 the petition is not admissible to prove a gift. (ii) Where a person has had such possession of land as to amount to an ouster of the two owners each being owner of a moiety and before the expiration of the statutory period of limitation succeeds to one moiety upon the death of its owner his possession continues to be adverse to the owner of the other moiety although he has become jointly interested with that other. *Quare* whether the rule that the possession of one of several joint tenants or tenants in common is not adverse to the others applies to joint owners in a village who are not members of a joint Hindu family. **VARATHA PILLAI v JEEVARATHAMMAL (1918)**

L R 46 I A 285

49 ——— Bengal Tenancy Act—104H cl (2) suit under—Limitation Act (IX of 1908) Part II III ss 3 to 25 29 (1) (b)—Civil Procedure Code (Act V of 1908) s 80 A instituted a suit under s 104H of the Bengal Tenancy Act against the Secretary of State for India in Council. The latter pleaded limitation. The Courts below overruled this plea on the ground that A was entitled under s 10 of cl (2) of the Limitation Act to a deduction of two months in respect of notice which s 80 of the Civil Procedure Code 1908 required. *Held* that the Bengal Tenancy Act being a Local Act the saving clause in s 29 (b) of the Limitation Act applied and s 17 cl (c) thereof did not extend the limitation period of six months provided under s 104H of the Bengal Tenancy Act. *Secretary of State for India v Gangadhar Vanda I L R 45 Calc 974* followed. *Dropani v Hira Lal I L R 44 All 495* distinguished. *Held* also that the provisions of Part III of the Limitation Act did affect periods of limitation prescribed in the Act itself by s 3 which was the first and enacting section in Part III. *Held* further that the language of s 104H of the Bengal Tenancy Act was not ambiguous and in interpreting the words of a positive enactment such as this any suggestion of hardship was out of place. **SECRET**

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TARI OF STATE FOR INDIA v SHIR NARAIN HAJRA (1918) I L R 46 Calc 199

50 ——— Part payments in satisfaction of Execution of decree—Within three years of date of decree—Application for execution within three years of such part payments if within time—Limitation Act (IX of 1908) Sch I Art 182 (u) Application for execution of decree within three years of the date of part payments in satisfaction of the decree if the part payments were within three years of the date of the decree is within time within the meaning of Art 182 (5) of the first schedule of the Limitation Act. **Rakhai Das Ma umdar v Jogendra Narain Ma umdar 10 C L J 467 Lakhs Narain Ganguli v Fedamoni Das 29 C L O 131 and Khairunnas Bibi v Saichia Lal Nahata 20 O W N 270** referred to. **JATINDRA KUMAR DAS v CAJAN CHANDRA LAL (1918)** I L R 46 Calc 22

51 ——— Execution of Joint decree—Decree set aside against one of several joint debtors if it gives a fresh starting point of limitation against others—A joint ex parte decree against several judgment debtors if set aside against only one of them without notice to others will not give a fresh starting point of limitation against others. **Kharajmal v Doss I L R 32 Calc 296 L R 32 I A 23 Suresh Chunder Wam Chowdhry v Jugut Chunder Deb I L R 14 Calc 294 and Hanuman Prasad v Muhammad Isha I L R 23 All 137** followed. **Mallarjun v Harhari I L R 25 Bom 337 L R 27 I A 216 Kali Prasanno Basu Roy v Lal Mohun Guha Roy I L R 25 Calc 258 Amar Chandra Kundu v Anand Ali Khan I L R 32 Calc 993 Gopal Chunder Manna v Gossain Das Koley I L R 25 Calc 594 Abdul Khadir v Alamuddin Shaiva Ravulhar I L R 35 Mad 670 Vidyavantha Aiyar v Subramanna Patter I L R 36 Mad 104 and Ashfaq Hussain v Gauri Sahni I L R 33 All 264 L R 33 I A 37** distinguished. **UPENDRA CHANDRA ROY v AKRUR CHANDRA SYEDAR (1918)** I L R 46 Calc 25

52 ——— Account suit—Limitation Act (IX of 1908) Sch I Art 7—Civil Procedure Code (Act V of 1908) s 71—O XVIII r I less under—In a suit for the recovery of money alleged to be due on accounts between the parties Art 78 of the Limitation Act has no application. **Paman v Firozian I L R 7 Mad 390** distinguished. Where a plaintiff sought to recover a sum of money upon certain allegations which were found untrue by the Trial Court and on appeal the District Judge came to the same conclusion but held that the plaintiff might be permitted to abandon his claim with liberty to institute a fresh suit under O XVIII r I of the Civil Procedure Code 1908. *Held* that in such circumstances the order under r 1 of O XVIII should not have been made. Where in second appeal the plaintiff respondent applied for leave to amend his plaint the object being to abandon the claim deliberately put forward in the Trial Court and persistently reiterated in the Appeal Court below. *Held* that such application could not be entertained. **Kokila Devi v Mohant Padmasundar Goswami 15 C L J 527** referred to. **PARMA LOCHAN PATAR v GURISH CHANDRA MIT (1917)** I L R 46 Calc 168

53 ——— Court of Wards—Limitation Act (1908) Sch I Arts 144—Fate of dis

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qualified proprietor under management of Court of Wards—Suit by progenitor to recover possession of property sold by Collector during Court of Wards management—Court of Wards Act (Beng 11 of 1879)—Purchaser's possession became adverse when obtained. On 20th July the appellant was declared to be a disqualified proprietor and her estate was taken charge of by the Court of Wards under Bengal Act 11 of 1879. By a deed of transfer dated 11th June 1890 part of the estate was sold by the Collector as manager to the father and predecessor in title of the respondent and the purchaser obtained possession on 30th April 1891. On 1st August 1911 the Court of Wards withdrew from the management of the estate. In a suit brought by the appellant on 12th May 1912 to recover possession of the portion sold—Held that before the transfer and until the respondent acquired possession the estate was in possession of the appellant notwithstanding it was in the charge of the Court of Wards limitation therefore ran against her not from the release of the estate from management by the Court of Wards but from the date when the respondent obtained possession adversely to the appellant and the suit consequently became barred after twelve years of such adverse possession. *MAHESINGH MANDHATA v. NARAYAN BHADUR OF MUMBAIDABAD* (1918) 1 L R 48 Calc 694 L R 46 I A 60

54 ——— Mortgage—Limitation Act (11 of 1908) Sch 1, Art 145—Transfer of Property Act (11 of 1880) ss 95, 100. A and C mortgaged a taluk in 1887 to B. Thereafter in 1890 Z purchased the taluk in execution of a decree against A and B and subsequently in 1892 redeemed the mortgage of B and obtained possession of the same through Court. In 1893 Z obtained from the superior landlord a settlement of the whole taluk in his favour. In 1900 Z's sons granted a raiyati lease to G and in 1907 sold the superior right to B. In 1907 A purchased the right of C which did not pass at the sale in execution and in 1911 instituted a suit claiming the right to redeem F and recover possession of the lands. Held that as the Transfer of Property Act drew a clear distinction between a charge and a mortgage and the suit having been brought more than twelve years after both from the date when the charge came into existence and also when exclusive possession had been obtained by Z the provisions of Art 145 of the Limitation Act did not apply and the suit was barred by limitation. *Pandey Bhikay v. Balay Krishna* 1 L R 26 Bom 500 followed. *Ashfaq Ahmad v. Wazir Ali* 1 L R 14 All 1. *Khalid Pam v. Tark Ram* 1 L R 33 All 540 discussed. *PURNA CHANDRA PAL v. BARADA PROSADNA BHATTACHARYA* (1918) 1 L R 46 Calc 111

55 ——— Pala or turn of worship—Whether movable or immovable property—Limitation Act (11 of 1908) s 3 Sch 1 Arts 120, 132. A pala or turn of worship is not an interest in immovable property and consequently governed by Art 120 and not by Art 132 or the first Schedule to the Limitation Act. *Eshan Chander Roy v. Monmohini Dassi* 1 L R 4 Calc 683. *Jais Kar v. Mukunda Deb* 1 L R 39 Calc 227 referred to. *NARASINGHA BAN GOSWAMI v. PROLHADMAN TEWARI* (1918)

1 L R 46 Calc 455

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56 ——— Premature rent—Suit effect of—Limitation Act (11 of 1908) s 14—Decree for rent claimed by landlord whether a mortgage decree—Bengal Tenancy Act (VIII of 1880) s 60—Construction of amlenama decision on whether a question of law. While the Court refused to entertain a claim for rent because it was premature in a subsequent suit for the same rent the plaintiff cannot rely upon the provisions of s 14 of the Limitation Act and say that time did not run against him while the proceedings were being prosecuted. The decision in *Fabian v. Mahabir Lalaur Singh* 1 L R 41 Calc 126 did not decide anything more than that by virtue of the provisions of s 14 of the Bengal Tenancy Act a person who had ceased to be the zemindar at the time he sued for rent could not enforce his decree in accordance with the provisions of s 60 of the Bengal Tenancy Act. A decree obtained by a landlord against the tenants who had ceased to be tenants cannot be called a decree for rent. A question of the construction of a amlenama must be of the legal effect of the terms and provisions of the amlenama and is a decision on a question of law. *DWAR KANATH CHAKRAVARTI v. ATUL CHANDRA CHAKRAVARTI* (1919) 1 L R 48 Calc 870

57 ——— Money paid consideration which fails—Suit by purchaser at sale for arrears of rent of patni taluq which is subsequently set aside by darpatnadar—Sale under Bengal Patni Taluq Regulation (VIII of 1910) s 18—Right of purchaser to indemnity—Duty of Court on reversal of sale to see if purchaser has sustained loss—Limitation Act 1977 Sch II Art 67. The appellant on 14th September 1908 brought a suit against a zamindar to recover certain sums he had had to pay (inter alia the amount of arrears of rent due and paid by the Collector to the zamindar out of the purchase money) as purchaser of the patni taluq of a defaulting patnidar at a sale for arrears of rent under the Bengal Patni Taluq Regulation (VIII of 1910) the sale having been subsequently set aside in suits by the darpatnidars under s 14 of the Regulation to which the appellant was a party by decrees of the District Judge on 24th August 1905 which were affirmed by the High Court on 3rd August 1906. No indemnity under s 14 was given to the appellant in those suits. On August 5th 1906 the appellant gave up possession of the taluq to the darpatnidars. The appellant's suit was throughout treated as governed by Art 97 of Sch II of the Limitation Act 1977 is a suit for money paid on an existing consideration which afterwards fails and both Courts below had held that it was barred by that article as having been brought more than three years from 24th August 1905 the date of the decree of the District Court setting aside the sale at which time it was found the consideration failed. The appellant contended that limitation only ran from the decree of the High Court of 3rd August 1906 or from 28th August 1906 when possession was given up and the suit was therefore not barred. Held that owing to the particular course the litigation had taken and the way the suit had been treated here the case ought to be dealt with on the assumption made for the purpose of this present appeal alone but without affirming its correctness that the present suit is competent and that it comes within the terms of Art 97 and that it is barred

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by lapse of time S 14 of the Regulation authorises a suit against the zamindar for the reversal of a sale under it and provides that the purchaser shall be made a party in such suit and on decree passing for the reversal of the sale the Court shall be careful to indemnify him against all loss at the charge of the zamindar or person at whose suit the sale may have been made. *Held* the provision was unambiguous and imperative and imposes a duty on the Court without qualification. To discharge such duty a distinct issue should be framed as between the purchaser and the person chargeable under the section whether in case the sale is reversed the purchaser has suffered any and what loss against which he ought to be indemnified by that person. On that issue there ought to be a finding and a decision subject to such right of appeal as there might be. Whether and if so how far the remedy provided by s 14 in a purchaser's favour excludes all other remedies was not decided. *Radhakrishna Samanta v Sasti Ram Sen I L R 26 Calc 896* and *Brojo Kishore Rukht v Basu Mandal 21 Sult W R 252* referred to. *JUSCORA BOIR v FIRTHCHAND LAL CHOWDHURY (1918) I L R 46 Calc 670 L R 46 I A 52*

53 ——— Timber Rights—Limitation Act (IX of 1908) Sch I Art 116—Bengal Tenancy Act (V III of 1885) ss 184 193 Sch III Part I Art 3—Payment by authorised agent through messenger but entry made by agent if good under Limitation Act s 20—Punyaha payment if for arrears or for new year—Setting off of barred claims by Court if legal—Interest pendente lite Court's discretion as to—Under a registered document the plaintiff Bhawal Raj granted to the defendant the right to fell remove and sell all trees of specified kinds growing within certain local limits in so far as he might be able to do so within a period of five year and the grantee was further given the right to sublet and in certain eventualities to re enter and make other arrangements for the remainder of the term setting off the sums thereby realised against the sums due from the lessee but if the trees were not cut down or being cut down were not removed before the expiration of the term the grantee was to have no rights or interests or were to be divested of any such rights. *Held* that the grant in this case was of forest rights within the meaning of the Bengal Tenancy Act and the rule of limitation applicable to a suit to recover the Raj's dues under it is governed under ss 184 and 193 of the Bengal Tenancy Act by the special rule of three years limitation provided by Art II Part I to Sch III of the Bengal Tenancy Act. The General Manager of the defendants having general authority to make payments made a payment of Rs 15 through a Mohurrir and followed it up by an entry of such payment with his own hand in his account book. *Held* that the Mohurrir merely acted as a messenger and the payment being by the Manager out of monies in his hand the Manager should be regarded as the person who made the payment for the purposes of s 20 of the Limitation Act. A payment made on the *punyaha* was made not on account of a general arrear balance but on account of a special *kist* or instalment that: the *kist* of the newly opened year. The Raj and the defendant having both sued upon the terms of the grant the former for

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rent and the latter for damages it was found that the Raj's demand for arrears was to a large extent barred by limitation and that the dues of the Defendant for damages fell far short of the arrears barred. *Held* that the defendant having thus recouped himself the lower Court was right in refusing to make a decree for damages in his favour. Though interest pending suit is in the discretion of the Court such discretion should be exercised on sound judicial principles. *SARAJUTALA DYBI CHOWDHURANI v SARADA NATH BHATTACHARJEE (1918) 23 C W N 336*

59 ——— Appeal—Time to file an appeal from an order—Time requisite for obtaining a copy of the order—Indian Limitation Act (IX of 1908) ss 5 12 Art 151—Application to obtain copy after the expiry of the period effect of—Duty of drawing up the order—Calcutta High Court Original Side Rules Ch XI I r 27 Ch XXXII r 22 (1)—Memorandum of Appeal filed without a copy of the order effect of—Laches on the part of the appellant—Sufficient cause. An *ex parte* decree was made on the 14th of February 1918 as the defendant (appellant) failed to comply with an order of the Court. On the 23rd of March an order was made on the application of the defendant that on the defendant's giving security for the amount of the claim within a certain date the *ex parte* decree would be set aside. The defendant failed to give security though the time to supply the same was extended from time to time. On the 26th of July the defendant again applied for further extension of time and to have the *ex parte* decree set aside which was refused on that day. On the 5th of August the plaintiff (respondent) applied to have the order drawn up. On the 7th of August the defendant was served with the order which was returned approved by his solicitor on the 16th of August. On the 30th of August (which was the last day of the term) the Memorandum of Appeal was filed without a copy of the order of the 26th of July. On the 3rd of September the order was filed by the plaintiff. On the 9th of September the defendant applied for a copy of the order and the copy was supplied to him on the 12th of September. *Held* that the time to file the Memorandum of Appeal expired on the 15th of August and as the defendant had failed to satisfy the Court that the period from the 15th of August to the 30th of August was requisite for obtaining a copy of the order appealed from the appeal was barred by the law of limitation. *Held* also that the appeal could not be admitted under s 5 of the Limitation Act as there was no sufficient cause for not preferring the appeal within the prescribed period. *PER CHURCH J—* On principle an appellant who has not within the period of limitation applied for a copy of the order appealed from and who has within that period taken no steps whatever towards procuring such copy cannot be allowed after the period of limitation has run out to claim exclusion of time requisite for procuring such copy. *PRAMATHA NATH POY v W A. LEE (1919) 23 C W N 553*

60 ——— Uncertified payments—If can save limitation—Civil Procedure Code (Art I of 1908) O XXI r 2 (3) O XXI r 2 (3) of the Code of Civil Procedure expressly provides that the executive Court shall not recognise any payment that has not been certified. The decree-holder can certify the payments made at any

LIMITATION—cont'd

time but the certification must take place within such time as is required to serve the application for execution from being barred by limitation. **BAHJI BALAJIJI ROY v JOGENDRA CHANDRA BANERJEE** (1918) 23 C W N 320

61 — Execution of decrees—Application for execution of original decree—Commencement of period of limitation whether date of original decree or of appellate decree—Execution against judgment left not joined in the appeal Where an appeal has been preferred against a decree the period of limitation for an application to execute the original decree runs from the date of the appellate decree though the appeal was against one defendant and the application for execution was against the other. **Haridam Chauri v Manqammal** 1 L P 96 Vol 91 and **T S Ari Chetty v Theerthamalai Chetty** 34 Ind Cas 791 followed **Lav v Benarashi Prosad Choudhury** 19 C N 28; **Lokenath Singh v Gugu Singh** 20 C N 18; **Umesh Chandra Roy v Akur Chandra Sutar** 1 L R 46 Cal 25 and **Hur Prosad Roy v Foyet Hossein** 2 C L P 471 distinguished. **Gopal Chunder Janna v Gosain Das Kalay** 1 J 1 95 Cal 94 and **Abdul Rahaman v Madun Sarda** 1 L R 22 Bom 500 referred to **SATISH CHANDRA CHOWDHURI v GURISH CHANDRA CHAKRAVARTY** (1909) 1 L R 47 Cal 813

62 — Mortgage—Order absolute for sale—Application to enforce the order more than twelve years after the date of the order—Limitation Act (IX of 1908) Sch I Art 153 A suit was brought in 1901 for the enforcement of a mortgage security. The usual preliminary decree under s 89 of the Transfer of Property Act, 1882 was made on the 30th June 1904 and on the 22nd March 1901 the decree holder applied for and obtained an order absolute for sale under the provisions of s 89 of the same Act. The order was drawn up and signed on the 25th May 1907 but was not otherwise completed and no steps whatever had been taken under it. The present application was made on the 19th May 1919 by the representative of the decree holder (who had died in the meantime) asking that the representatives of the parties deceased be substituted on the record, and that thereupon the order absolute for sale may be completed and the sale proceeded with. Held that a present right to enforce the judgment or order having accrued to the decree holder on the 22nd March 1907 when the order absolute for sale was pronounced the present application to enforce the said order is barred by Article 183 Sch I of the Limitation Act 1908. **ARURIA KRISHNA SETH v RASHI BHARAI DUTT** (1920) 1 L R 47 Cal 746

63 — Suit instituted in wrong Court—in time but in proper Court beyond time—Registration Act (XVI of 1908) s 77—Limitation Act (IX of 1908) s 14 29 (b) The provisions of s 14 of the Limitation Act 1908 cannot be applied in computing the period prescribed under s 77 of the Registration Act 1908. **Abdul Hakim v Latifunnessa Khatun** 1 L R 40 Cal 53 approved **Nagendra Nath Mullick v Mathura Mohun Parhi** 1 L R 18 Cal 368 referred to **Khetur Mohun Chakraborty v Dinabashy Shaha** 1 L R 19 Cal 965 overruled **KALIMUDDIN MOLLAH v SAREBUDDIN MOLLAH** (1919) 1 L R 47 Cal 300

LIMITATION—cont'd

64 — Accord and satisfaction—Annulment of satisfaction on the ground of coercion effect of—Fresh cause of action for original claim on annulment A debtor who satisfied by payment his creditor a claim for balance of money due sued to annul the satisfaction on the ground of coercion and obtained a decree for refund. Held that the annulment gave the creditor a fresh cause of action upon the original claim and time began to run from the date of annulment. **Mussumt Rance Sarno Mayer v Sarsker Mookhee Jarmunia** (1868) 12 M L A 211 and **Huro Perhal Loj v Gopal Das Dui** (1893) 1 L P 9 Cal 255 at 257 (1 C) followed. **VEERAPPA CHETTY v ADARAKIA CHETTY** (1900) 1 L R 43 M.L. 845

65 — Attorney's claim and set off—69 Cl 56 of the High Court Rules (Calcutta) is technically free from limitation—Defendant can prosecute a set off if the claim is not barred at time of issue of plaint. **PAJAN NARENDRA LAL KHAN v TARBALA DAS** 25 C W N 800

66 — Suit started on insufficient court fee—Balance paid after expiration of period of limitation Where a suit was instituted on the last day of limitation on an insufficiently stamped plaint and the balance of court fee was subsequently paid after the period of limitation had expired and the court accepted such payment held that the suit was not barred by limitation. **GAYA LOAN OFFICE LTD v LADWAN BHARAI LALL** 1 Pat L J 420

67 — Adverse possession—Gift invalidity of as not following the requirements of s 123 of the Transfer of Property Act (IV of 1882)—Evidence as to possession only under it not of the gift—Joint ownership following intended gift—Limitation Act (IX of 1908) Sch I Art 141—Outset The suit from which this appeal arose was brought to establish the title of the appellants to a moiety of a mita or estate consisting of two villages which belonged at one time to the ancestor of the parties and eventually became vested in G and P his two younger sons. On the death of G in 1879 his share vested in his widow R and he left also a daughter D. P died in 1897 leaving a will which the High Court held gave an absolute interest in the moiety to his widow A and their Lordships of the Judicial Committee upheld that construction. On 10th October 1893 R and A who were then the registered owners of the two moieties of the mita presented to the Collector a petition which after reciting that they had on 8th October given the two villages of which the mita consisted to D prayed that an order be made transferring the villages into her name. On the same date (10th October) D presented a similar petition to the Collector reciting the gift of the villages to her and asked for the transfer of them to her on the register and the Collector thereupon on 8th May 1896 registered the two villages (being the whole mita) in the name of D to hold and enjoy them with power to alienate them by way of gift mortgage sale etc and from that date D retained possession until her death in 1911 after which the mita descended to the respondent as her successor. Held that the gift was invalid as not being made by a registered deed as required by s 123 of the Transfer of Property Act (IV of 1882) that the recitals in the petitions could not be used as

LIMITATION—contd

evidence of a gift but might be referred to as explaining the nature and character of the possession thenceforth held by D and that the evidence proved that she in fact took possession of the mitta in her own right when it was transferred into her name and retained such possession with receipt of the rents until her death when the plaintiff's claim was barred by more than twelve years adverse possession. Even if the rule of English law that the possession of one of several co-parceners joint tenant or tenants in common is the possession of the others so as to prevent limitation affecting them was applicable to havers in an unpartitioned agricultural village in India not holding as members of a joint family which is doubtful it had on the facts of the case no application. *Held* therefore that during the life of R the possession of D was adverse to both the co-owners R and A and this being so when on P's death she became legally entitled to a moiety of the mitta the character of her possession of the other moiety as against A was not changed. There having been an ouster of A before R's death this ouster continued after her death and the possession of D was adverse to A throughout. **VARADA PILLAI v JEEVARATNAMMAL** (1920) **I L R 43 Mad 844**

68 ———— **End of adverse possession by the passing of decree** Possession prior to decree cannot be tacked to possession after decree—*Partly wishing to acquire good title by adverse possession must start afresh after the decree*—**Execution time barred**—*Right to recover possession not barred* The defendants had brought Suit No 96 of 1893 against the plaintiff for a declaration that they were entitled to a half share in the right to manage a Devasthan property. The plaintiffs then pleaded that they were solely entitled to the management as they were in adverse possession for over twelve years prior to the suit. It was however held that the plaintiffs' adverse possession commenced only from 1885 and a decree declaring the joint management of the plaintiffs and the defendants was passed on the 7th July 1896. After the decree the plaintiffs remained in possession and the defendants took no active step to execute the decree in their favour until they were let into possession by the Collector's order dated the 1st August 1903. The plaintiffs thereupon brought a suit in 1912 to establish their sole right to manage the Devasthan property all along hereditary right and ancient and immemorial custom and contended that by non-execution of the decree in Suit No 96 of 1893 they became entitled to tack on the period of adverse possession before the date of that decree to the period after the decree thereby acquiring an absolute title by adverse possession. *Held* (1) that the decree in Suit No 96 of 1893 put an end to adverse possession on 7th July 1896. (2) that although the execution of that decree was barred the right remained and therefore the plaintiff could not get absolute title by a *liver o* possession. **ETLA v ABRAHAM** (1920) **11 Bom L R 1093** relied on. The period of adverse possession is calculated for the benefit of the party setting up adverse possession and if he loses then there is an end of that period and he must if he wishes to acquire a good title by adverse possession start afresh after the decree. **MIR IKRARALI v ABDUL AZIZ** (1920) **I L R 44 Bom 934**

LIMITATION—contd

69 ———— **Rent suit—Suspension of the period of limitation—Pendency of a suit for ejectment** It is established as a general principle that the right to demand the rent which falls due during the pendency of a suit for ejectment is not in suspense during the pendency of a litigation. **SURNAMOYEE'S CASE** **11 W R 6 (P C)** was one of exception to this general rule. **NAGEYDRA NATH SEN v SADHU RAM MANDAL** (1920) **I L R 48 Cal 65**

70 ———— **Contribution by co-mortgagors—One paying off mortgage decree in excess of his share** *Held* that the position of such co-mortgagor was that of an assignee of the original security and therefore the period of limitation is that within which the original mortgagee could have brought his suit on the mortgage had he not been redeemed and that the suit having been brought more than twelve years after the due date of the original mortgage under Art 132 of the Limitation Act and having been brought more than six years after the dates of payments was barred whether Art 80 or 99 or 120 applied. **SREENATHI RAJ KUMAR DEBI v MUKUNDALAL BANDOPADHYAYA** (1920) **25 C W N 283**

71 ———— **Letters Patent Appeal—Whether any extension of time can be granted under Indian Limitation Act (IX of 1908) s 4 et seq** An appeal was filed on the 27th August 1920 from the judgment of a Single Judge dated 5th July 1920. The vacation of the Court began on 17th July 1920 and ended on the 27th September. Under the rules framed by this Court an appeal under s 10 of the Letters Patent cannot be entertained if presented after the expiration of thirty days from the date of the judgment appealed from unless the Division Bench in their discretion for good cause shown extend the said period. *Held* that the Letters Patent together with the rules framed thereunder as to limitation for filing appeals are a complete Code in themselves and therefore the general provisions of the Limitation Act including s 4 do not apply to appeals filed under s 10 of the Letters Patent. Letters Patent Appeal No 107 of 1920 (unpublished) followed. S 29 of the Limitation Act referred to. *Held* also that the fact that appellant was under the impression that the limitation was ninety days and the holidays could be deducted was no reason for extending the period and that the appeal was consequently barred by limitation. **DYAL SINGH v BUDHA SINGH** **I L P 2 Lah 127**

72 ———— **Execution application for—Objection on the ground that decree had been satisfied out of Court—Objection and application both dismissed for default—Subsequent application for execution of an continuator of previous application** A decree holder after applying for execution filed process and process fees as directed by the Court. Thereafter the judgment debtor objected to the issue of execution on the allegation that the decree had been satisfied out of Court. On a subsequent date on which both the application for execution and the objection had been fixed for hearing the latter case was dismissed for default and the Court recorded the further order the decree holder has no objection to his case being dismissed provided he gets his costs. The execution case is dismissed for default. The decree holder will get his costs. *Held* that the order dismissing the

LIMITATION—concl'd

execution case must be treated as equivalent to an order for striking off the ss or removing it from the file for the convenience of the Court and a subsequent application for execution made more than three years after the date of the first application was therefore to be regarded as one in continuation or revival of the previous application. **CHOWDHURY AJODHYA NATH FARMAN v CHOWDHURY S C PAMAR** 110 U W N 328

73 ——— Adverse possession—In plaintiff proving title—Both parties having uncertain possession—Indian Limitation Act (IX of 1908) Sec I article 141 Adverser possession in order to bar by limitation a suit for the possession of land must be adequate in continuity in publicity and extent so as to show that it is possession adverse to the competitor. When a person establishes his title to land and proves that he has been exercising during the currency of his title various acts of possession then the quality of the exercise even though they might have failed to constitute a continuous possession against another may be abundantly sufficient to destroy that adequacy and interrupt that exclusiveness and continuity which is required from any person challenging by possession the rightful title. **Radhamoni Debi v The Collector of Khulna (1900)** 1 L R 97 Cal 943 (P C). **L P 271 A 140** and **Secretary of State for India v Chellikani Rama Rao (1916)** 11 P 9 Mad 61 (P C). **L P 431 A 190** applied [Judgment of the High Court reversed]. **KUTNALI MOOTHIAIAR v KUTTHARAN KUTTI (1912)** 1 L R 44 Mad (P C) 883

74 ——— Suit to recover value of paddy charged upon immovable property nature of—Limitation Act (IX of 1908) Sch I Art 130 A suit to recover value of paddy charged upon immovable property is a suit to enforce payment of money charged upon immovable property within the meaning of Art 132 of the Limitation Act. **RAMCHAND SUR v ISWAR CHANDRA GIRI (1920)** 1 L R 48 Cal 625

LIMITATION ACTS

See CIVIL PROCEDURE CODE (ACT XIV OF 1852) s 230 1 L R 37 Mad 188

See HINDU LAW—ADOPTION 1 L R 40 Mad 846

LIMITATION ACT (XIV OF 1859)

— s 1 (12)—

See BENGAL REGULATION XV OF 1793 1 L R 34 All 261

— s 1 (15)—

See LIMITATION ACT (XV OF 1877) s 19 SCH II ARTS 120 AND 148 1 L R 32 All 33

— ss 1 (15) and 4—

See LIMITATION (14) 1 L R 37 Bom 231

LIMITATION ACT (IX OF 1871)

— s 20 and Sch II Art 148—

See LIMITATION 1 L R 37 Bom 231

— s 21—Act No IX of 1908 s 31 —Limitation—Mortgage with possession—Realization of rents and profits equivalent to receipt of interest as such under the terms of the mortgage

LIMITATION ACT (IX OF 1871)—cont'd

— s 21—cont'd

Under the terms of a mortgage deed executed in 1850 the mortgagee was to take possession of the mortgaged property and appropriate the rents and profits in lieu of interest. The mortgagee remained in possession up to 1889 when he was dispossessed. In 1910 he brought a suit for sale. Held that the realization of rents and profits in lieu of interest was equivalent to the receipt of interest as such under the terms of the mortgage and therefore under s 21 of Act IX of 1871 the mortgagee was entitled to compute limitation from the year 1889. Act IX of 1877 having by that time come into operation the plaintiff was in 1910 entitled to bring his suit within the limitation provided by s 31 of Act IX of 1908. **INDARJIT v CAJADHAR SANAT (1913)** 1 L R 35 All 270

— Art 129 and s 29—

See HINDU LAW—ADOPTION 1 L R 40 Mad 846

LIMITATION ACT (XV OF 1877)

See HINDU LAW—ADOPTION 1 L R 40 Mad 846

— s 2, Sch II, Art 35—

See LIMITATION ACT (IX OF 1908) s 20 1 L R 94 All 412

— s 3 Sch II, Arts 13 14—Civil Procedure Code 1852 s 310 A—Execution of decree—Suit involving the cancellation of an order setting aside a sale—Limitation. A Civil Court acting under s 310 A of the Code of Civil Procedure 1852 set aside a sale on an application made about 14 months after the sale. The auction purchaser more than a year after this order sued for possession of the property and for a declaration that the order under s 310 A was passed without jurisdiction. Held that the order whether passed rightly or wrongly was not a nullity and that the order having been passed in a proceeding other than a suit Art 13 of the second schedule to the Indian Limitation Act 1877 barred the present suit inasmuch as the plaintiff could not obtain a decree for possession without first having the order set aside. **KISHORI LAL v KUBAR SINGH (1910)** 1 L R 111 All 93

— s 4 Sch II, Art 179 (2)—Limitation

—Application of execution of decree—Practice of Privy Council—Order of dismissal for want of prosecution of appeals to Privy Council—Order of 15th June 1853 v V—Dismissal of appeal for want of prosecution without order made in the appeal. Under r V of the Order in Council of 15th June 1853 (1) where for a period specified in the order the appellant to His Majesty in Council or his agent has not taken any effectual steps for the prosecution of the appeal it stands dismissed without further order. Such a dismissal for want of prosecution is not the final decree of an Appellate Court within the meaning of Art 179 cl 2 of Sch II of the Indian Limitation Act 1877 from which a period of limitation can be reckoned under that article in support of an application for execution of a decree. In this case the application for execution having been made more than three years after the decree of the High Court was therefore barred by lapse of time and should

LIMITATION ACT (XV OF 1877)—contd**— s 4 Sch II Art 179 (2)—contd**

have been dismissed on that ground under s 4 of the Limitation Act *RAJEEV NATH v. MUKTI DEVI* (1914) **I L R 36 All 284**

— s 5—Suit for order directing registration of document—3 days expiring during a Court holiday—Suit instituted on an opening day is barred. The provisions of s 5 of the Limitation Act apply to suits under s 77 of the Registration Act (III of 1877). When therefore the period of limitation provided in that section for a suit for an order directing the registration of a document expired during the Christmas holidays *Held* that the suit if instituted on the day the Court reopened would not be barred by limitation *Ayabatoollah v. Hossain Ali* **I L R 8 Cal 910** followed *MATAB DAS MOLLAR v. SASI BHUSAN GHATAK* (1911) **16 C W N 20**

— ss 5 and 7—Application to file an appeal in forma pauperis—Delay in making the application—Minor applicant—Excuse of delay—Probate—Grant of probate—Question of title not affected by the grant—Res judicata—Civil Procedure Code (Act V of 1908) s 11. A suit filed in *forma pauperis* was decided on the 10th February 1908. An application for leave to appeal in *forma pauperis* was presented to the High Court on the 13th April 1908, but as it was beyond time it was rejected. On an application to excuse the delay it was excused on the ground that the applicant having been a minor s 7 of the Limitation Act 1877 applied. At the hearing it was objected that the application for permission to appeal in *forma pauperis* must be treated as an appeal and that s 5 and not s 7 of the Limitation Act applied to it. *Held* overruling the contention that whether the application was treated as falling under s 5 or under s 7 of the Limitation Act 1877 the result was the same. If it fell under s 5 as an appeal, then under the second paragraph of that section which applied to appeal the Court had jurisdiction to excuse delay after the period of limitation prescribed for the presentation of an appeal had expired. If on the other hand it be treated as an application and fell under s 7 of the Limitation Act it was clearly within time and there was no need of excusing delay because the section provided that a minor could apply after he had attained the age of majority within a certain period. The probate is conclusive only as to the appointment of executors and the validity and the contents of the will and on the application for probate it is not the province of the Court to go into the question of title with reference to the property of which the will purports to dispose or the validity of such disposition *CHINTAMAN YANKATRAO v. RANCHANDRA YANKATRAO* (1910) **I L R 34 Bom 589**

— ss 6 12—Appeals under Indian Forest Act (V of 1882)—In calculating period of limitation for appeals under the Indian Forest Act time for obtaining copy of judgment not to be excluded. The provision in s 12 of the Limitation Act of 1877 that in computing the period of limitation prescribed for an appeal the time requisite for obtaining a copy of the order appealed against should be excluded does not apply to appeals under s 10 of the Madras Forest Act, 1882. The express power given to the Governor in Council by s 10 of the Forest Act to extend the time for appeal under this section shows that the Legisla-

LIMITATION ACT (XV OF 1877)—contd**— s 12—contd**

ture did not intend that the general provisions of the Limitation Act should apply to such cases. The Madras Forest Act is a special and local enactment and the application of s 12 of the Limitation Act to appeals under that Act affects the period prescribed by that Act within the meaning of s 11 of the Limitation Act. The provisions of s 11 of the Limitation Act exclude the applicability of s 12 of the Act in the case of appeals under s 10 of the Madras Forest Act. *Reference under the Madras Forest Act 1882* **I L R 10 Mad 210** dissenting from *Veeramma v. Abdulah* **I L R 18 Mad 99** followed *VATTA KULAKARAN SOWDAKER ABDU BACKER SAMIB v. THE SECRETARY OF STATE FOR INDIA* (1909) **I L R 11 Mad 505**

— ss 7 and 8 and Art 44—Alienation by guardian of the property of two words members of an undivided Hindu family—Suit by both more than three years after elder's majority but within three years of the younger attaining majority—Limitation. According to ss 7 and 8 and Art 44 of the Limitation Act (XV of 1877) a suit brought by two brothers of an undivided Hindu family to set aside an alienation by their guardian more than three years after the elder attained majority is barred by limitation not only as regards the elder brother's share but also in respect of the younger brother's though the latter attained his majority within three years prior to the institution of the suit *DORASAMI SETHUMADAN v. NONDASAMI SALUVAN* (1912) **I L R 38 Mad 118**

— s 8—Putni Regulation (Reg VIII of 1819) s 14—Suit to set aside sale—All co-sharers if must sue jointly—Parties—Right of minor co-owner to sue separately—Limitation—Limitation Act (XV of 1877) s 8 Sch II Art 12—Ground of exemption from limitation if must be specified in plaint when plaintiff minor—Amendment—Civil Procedure Code (Act VII of 1857) s 54. The decision in *Jogeshwar Roy v. Raj Narain Mitter* **I L R 31 Cal 195** a c 80 **W N 163** did not lay down that under s 50 of the Civil Procedure Code (Act XIV of 1882) a plaintiff could not take advantage of any ground of exemption not set up in the plaint. Nor did it lay down that in no circumstances should the plaintiff who has omitted to set up such a ground be allowed to amend his plaint. When the plaintiff or all the plaintiffs is or are a minor or minors it is not usual for them to plead exemption from the law of limitation as prescribed by that section. So too where one or more of several plaintiffs is or are a minor or minor if the provisions of s 8 of the Limitation Act (XV of 1877) apply time would not have commenced to run against any of them and it would not be necessary to expressly claim exemption. One of several co-owners of a *putni taluk* can alone institute a suit to set aside a *putni* sale as contemplated by s 14 of Reg VIII of 1819 provided the purchaser is made a party and the whole sale is sought to be set aside. *Annoad Perad Roy v. Erastine* **12 B L R 30** referred to. S 8 of the Limitation Act (XV of 1877) has no application to such a suit and a minor co-owner would be entitled to bring such a suit even though the adult co-owners have allowed their right to be time barred. *GANOADHAR SARKAR v. KHAFI ABDUL AJIZ NAWAB FAIZULLA BAKHAT* (1909) **14 C W N 128**

LIMITATION ACT (XV OF 1877)—contd

— s 8 Sch II, Art 179, expl I—*Limitation Act (IX of 1908) s 7—Minor decree holders—Applications for execution by guardian—Attainment of majority by one decree holder—Application by guardian takes effect in favour of all—Right of the major decree holder to give discharge to the judgment debtor in respect of the judgment-debt* Two minor sisters who were born in the years 1881 and 1887 obtained a decree against the defendants in May 1900. The minor decree holders were represented by a guardian appointed by the Court. The said decree was confirmed by the High Court in appeal in March 1901. Subsequently the guardian presented applications for the execution of the decree in 1904, 1905 and 1906 and while the last application was pending the guardian died. Thereupon the decree holder presented an application for execution as majors in 1908. The defendants contended that as the elder decree holder had attained majority the application by the guardian was as to her unauthorized and the execution of the decree was barred as against her. It was further contended that as the elder decree holder could from the time of her attaining majority make an application and give a good discharge to the judgment debtor to the decretal debt without the concurrence of the minor time had therefore run against both under s 8 of the Limitation Act (XV of 1877) or s 7 of the Limitation Act (IX of 1908). *Held* that by reason of the first explanation of Art 179 of the Limitation Act (XV of 1877) an application made by a representative of one of joint decree holders takes effect in favour of all. Therefore though the elder decree holder had attained majority the applications made by the guardian as the next friend of the minor decree holder took effect in favour of both. *Held* further that the contention under s 8 of the Limitation Act of 1877 or s 7 of the Limitation Act of 1908 was inconsistent with the decisions in *Goindram v Taha* 1 L R 20 Bom 333 and *Zamir Hasan v Sundar* 1 L R 20 All 789 the applicability of which had not ceased owing to any change in the words of s 7 of the Limitation Act of 1908. *MAHABHAI CHAND PAVACHAND v JESARI* (1910)
1 L R 34 Bom 672

— s 9—

See **LIMITATION ACT (XV OF 1877) s III**
AND **SCH II Art 148**

1 L R 35 All 227

— s 10—Will—Trustees—Suit by testator's sister for declaration of her share and ownership of the residue of testator's estate—Resulting trust arising by operation of law—Limitation One Jethabhai died on the 17th December 1889 after having made a will dated the 20th February 1889. The will gave certain legacies including one of Rs 300 to the plaintiff testator's sister. Under the will five trustees were appointed and it provided as follows:—Out of these five (trustees) Dave Gaurishankar Kushaly and my nephew (plaintiff's son) Desai Mojilal Premnand should both join and take possession of my properties after my death in accordance with the above will and with the consent of the remaining trustees they are to dispose of the properties in accordance with what is written in the above will and should any outstandings have to be recovered for giving effect to the said dispositions they are to do the same and I do by this will give them power to do

LIMITATION ACT (XV OF 1877)—contd

— s 10—contd

whatever also they may have to do to carry out the will. In the year 1906 the plaintiff having brought a suit for the declaration that she was the heir of the testator her brother and as such owner of the residue remaining after administering his property under the will and for the recovery of the residue a question arose as to whether the suit was time barred on the ground that there was no trust declared with regard to the residue and no direction given to distribute it among heirs at law. *Held* that the suit was not time barred and that once the testator's property was vested in the trustees for a specific purpose it was not necessary that any resulting trust of the residue which necessarily arose by operation of law should be specified in words in the will in order to bring it within the scope of s 10 of the Limitation Act (XV of 1877). *MOJILAL PREMANAND v GAVRISHANKAR KUSHALI* (1910)
1 L R 35 Bom 49

— s 10 Sch II Art 134—

See **LIMITATION 1 L R 43 Cal 434**

— s 12—Limitation Act (XV of 1877) ss 4 & 1st—Appeal—Exclusion of time for taking copies—Decree signed after application—High Court—Practice—Rule treated as appeal An appellant is entitled to the deduction of the time between the delivery of the judgment and the signing of the decree. Where the intending appellant having applied for certified copies of the judgment and decree the copy of the judgment was delivered to him and at the same time an unused folio and the Court fee filed for the copy of the decree were also returned because the decree had not been signed and the applicant had to make a fresh application for a copy of the decree after it had been signed. *Held* that the first application for a copy of the decree should be treated as pending all the time so that the applicant would be entitled to a deduction of the time between the signing of the decree and the date when the copy of the decree was ready to delivery. When application for copy is made before the decree is signed the applicant is not entitled to a deduction of the time between the date of the application and the signing of the decree twice over when the same has been already excluded by reason of the decree not having been ready. *Bens Madhub Mitter v Matungini Dasai*, 1 L R 13 Cal 104 followed. *Kali Sanlar Bajpai v Baidanta Nath Sen* 7 C N 109 and *Dulali Bera v Sarada Kinnar Palit* 3 C N 55 referred to. The rule in this case was treated as an appeal subject to the condition that the order passed would take effect on payment by the successful applicant of proper Court fees. *Mahomed Weliduddin v Hakimani* 1 L R 20 Cal 757 referred to. *TANABATI KOER v LALA JAGDEO NARAIN* (1911)
15 C W N 787

— s 12 Sch II, Art 152—Party applying for portions of the record entitled to deduct time spent in obtaining them. Where a party appealing from the decree of a lower Court applies for copies of the judgment and decree at different times the time which he is entitled to exclude in computing the period of limitation for such appeal is the aggregate of the periods required to grant the copies after the applications were made. *Raman Chetty v Kodiredu* 8 Mad L J 118

LIMITATION ACT (XV OF 1877)—*contd*— s 12 Sec II Art 152—*contd*referred to and approved *SILAMBAN CHETTI v PAMANADHAN CHETTI* (1909)

I L R 33 Mad 256

— s 1c—

See LIMITATION I L R 43 Cal 660

I L R 36 Mad 482

1 ——— Court—*Interpretation*—Court in British India—Court in a Native State in India not included—The word Court as used in s 14 of the Limitation Act (XV of 1877) means a Court in British India and not a Court in a Native State of India *CHANNALATA CHENBA v APA v ABDUL VAHAB* (1910)

I L R 35 Bom 139

2 ——— Plaintiff returned for presentation in proper Court—Power of Court to fix a period of time for such presentation—*Exclusion of time* For the purposes of determining limitation as governed by the provisions of s 14 of Act XV of 1877 the date of instituting the suit must be held to be the date on which the plaint was filed in the Court having jurisdiction to try it excluding only for the purpose of calculating limitation the period excluded under s 14 Where a plaint which had been presented on the last day of the period of limitation was subsequently returned by the Court for presentation within a week in the proper Court and was so presented five days later Held that the suit when so presented was barred by limitation as only the period during which the suit was pending in the Court without jurisdiction would be excluded under s 14 of the Limitation Act *HARI DAS RAY v SARAT CHANDAP DEY* (1913) 17 C W N 515

— s 19—

See LEASE

I L R 40 Mad 910

1 ——— Acknowledgment—Step in aid of execution—Compromise to have part of decree executed at a later date Whereupon a previous application for execution the case was compromised by a joint petition stating that a part of the decree had been satisfied and that the rest will be satisfied at a future date Held that this was an acknowledgment of the judgment debtor's liability which gave a fresh start to limitation under s 19 of the Indian Limitation Act Held further that s 19 of the Limitation Act applies to applications for executions of decrees *Palkhal Chander Tewari v Hemaraj Deb* 3 O L J 317 *Pam Kumar Kur v Jakur Ali* I L R 8 Cal 716 and *Torae Mahomed v Mahomed Malbood* I L R 9 Cal 730 referred to *Quere* Whether a compromise made upon an application for execution reciting that the decree has been executed in part and that the rest of it would be satisfied hereafter and containing no reference to any further proceedings to be taken in execution is not a step in aid of execution *Ghansham v Yulk* I L R 3 All 30 referred to *BRINDES WAFI KOER v AWADH BEHARI LALL* (1910)

15 C W N 82

2 ——— Acknowledgment of debt by Collector or Deputy Collector as agent for Court of Wards save limitation under—*Regulation I of 1901 s 2, Collector's powers under—Court of Wards powers of Under Regulation V of 1901 as amended by Madras Act IV of 1899 the duties of the Court of Wards are not limited to the educa-*

LIMITATION ACT (XV OF 1877)—*contd*

tion of the minor but include the due preservation of the estate The Court of Wards has power to make an acknowledgment of a debt which would bind the ward and give a new starting point for limitation within the meaning of the Indian Limitation Act IX of 1877 s 19 By the power of delegation given in s 2 of Regulation V of 1894 the Collector has power to give such an acknowledgment as agent of the Court of Wards *Surya narayana v Narendra Thattar* I L R 19 Mad 255 distinguished *Beti Maharani v The Collector of Etawah* I L R 17 All 109 commented on No distinction can be drawn between the powers of a Collector and those of Deputy Collector *KONDAMODALI LINGA REDDI v ALLURI SARAVATUDU* (1910) I L R 33 Mad 221

3 ——— Contract Act (IX of 1872) s 208 and 209—*Suit to recover money—Acknowledgment by defendant's Gumasta (agent) after his death—Death of the defendant not known to plaintiff—Limitation* Plaintiffs firm had dealings with one Haji Usman from the 5th January 1901 till the 25th October 1903 Haji Usman's business was managed by a gumasta (agent) Haji Usman died in or about March 1903 and the plaintiffs had no knowledge of his death On the 2nd June 1903 the gumasta wrote to the plaintiffs a post card stating you mention that there are moneys due as to that I admit whatever may be found on proper accounts to be owing by me you need not entertain any anxiety On the 30th May 1906 the plaintiffs brought a suit against the managers of Haji Usman's estate to recover a certain sum of money on an account stated The defendants pleaded the bar of limitation on the ground that there was no acknowledgment of the debt by a competent person Held that the suit was not time barred The gumasta's letter of the 2nd June 1903 was an acknowledgment within the meaning of s 19 of Limitation Act (XV of 1877) The case fell within the provisions of ss 208 and 209 of the Contract Act (IX of 1872) The termination of the gumasta's authority if it did terminate did not take place before the 2nd June 1903 as the plaintiffs did not know of the principal's death and the gumasta was bound under s 209 to take on behalf of his late principal all reasonable steps for the protection and preservation of the interests entrusted to him *EBRAHIM HAJI YAKUB v CHUNILAL LALCHAND* (1911)

I L R 35 Bom 302

4 ——— Acknowledgment—Judgment debt acknowledgment of—*Debt specified in insolvency petition* An application for execution of a decree was not time barred though made more than three years after a previous application where it appeared that the judgment debtor had in the meanwhile filed a petition of insolvency in which the judgment debt in question was specified The petition though it might not have been addressed to the creditors was nevertheless an acknowledgment within s 19 of the Limitation Act *Mansaram Sett v Seth Rupchand* I L R 33 Cal 1017 10 C W N 374 relied on *PAMPAL SINGH v NAND LAL MAHWARI* 16 C W N 346

5 ——— Mortgage—*Pe demization—Limitation—Acknowledgment* Held that an acknowledgment of the title of the mortgagor made by only one of two mortgagees would not avail to save the mortgagor's right to redeem being barred by limitation where the mortgage

LIMITATION ACT (XV OF 1877)—contd

was a joint mortgage and incapable of being redeemed piecemeal *Dharma v Balmukand I L P 18 All 438* followed *JWALA PRASAD v ACHHEY LAL* (1912) *I L R 34 All 371*

Acknowledgment

Suit for redemption—Admission in plaint that a certain person had a right to redeem as a co mortgagor Where in a suit for redemption of a mortgage the plaintiffs who were purchasers of a portion of the mortgaged property admitted in their plaint the right of a representative of one of the original mortgagors to redeem it was held that this was a good acknowledgment within the meaning of s 19 of the Indian Limitation Act 1877, and enured in favour of the representatives of the person so mentioned *Sukhamoni Choudhary v Ishan Chunder Roy I L R 25 Cal 311 I R 25 I A 95* referred to *BALESHWAR v RAM DEO* (1914) *I L R 36 All 408*

Limitation—Ac

Knowledge—Authority of managing partner to acknowledge a debt as due by the firm—Pecunia Held that the manager of a firm who has power to borrow and repay money on behalf of the firm has power also to acknowledge a debt by either immediately giving a promissory note or subsequently upon an adjustment of accounts or in any other way in the course of business making bond file admissions in writing *Held* also that where in the course of a suit for dissolution of partnership a receiver has been appointed to discharge the debts and liabilities of the firm the mere fact that a claim which was within time when made is not adjudicated upon by the Court until after the expiration of more than three years does not render the claim a bad claim against the partnership assets *LALTA PRASAD v BABU PRASAD* (1909) *I L R 32 All 51*

ss 19 20—

See EXECUTION OF DECREES

I L R 43 Cal 207

ss 19 20 21—

Acknowledgment by one partner binding on others—The mere fact that one of the partners of a going concern is in charge of a branch of such concern cannot lead to the inference that such partner has authority to bind the firm by an acknowledgment when pressed for payment A letter by one of two partners to a creditor acknowledging the debt due and asking such creditor to correspond with and supply goods to the other partner on behalf of the firm cannot be construed as authorizing such other partner to make an acknowledgment which will bind the firm for the purposes of limitation *SHAKH MOHI DEEV SAIB v THE OFFICIAL ASSIGNEE OF MADRAS* (1911) *I L R 35 Mad 142*

s 19 Sch II Arts 120 and 148—

Acknowledgment by widow in possession of husband's estate not binding on reversioners—Limitation—Act No XIV of 1859 (Limitation)—s 1 cl 15 *Held* that the widow and daughter of a mortgagor in possession as such of the mortgaged property are not competent to give an acknowledgment of the title of the mortgagor so as to save limitation within the meaning of the Indian Limitation Act 1877 in respect of a suit for redemption brought by the representative in interest of the original mortgagor against the reversioners *Dhagwantha v Sukhi I L R 22 All 33* and *Chudlu*

LIMITATION ACT (XV OF 1877)—contd

—s 19 Sch II Arts 120 and 148—
contd

Singh v Durga Dei I L P 22 All 352 referred to *Held* also that unless there is a distinct provision to the contrary the validity of an acknowledgment set up by a plaintiff as saving limitation in his favour must be decided with reference to the law in force when the suit is brought and not with reference to that in force when the acknowledgment was made *Gurupadapa Dasappa v Virbha drapa Iraaganga I L P 7 Bom 459* referred to *SRI SUDHAKAR LAL v SONI RAM* (1909)

I L R 32 All 33

—s 19 Sch II Art 148—

• See LIMITATION (1a)

*I L R 37 Bom 326***Acknowledgment effect**

of—**Acknowledgment by widow in possession of husband's estate—Suspension of limitation—Act No XIV of 1859—s 2—Act XIV of 1859 s 1 cl 15—Res judicata—Contentions raised for the first time on appeal to His Majesty in Council—Practice of Privy Council** In a suit brought by the appellant on the 4th of March 1907 against the respondents for the redemption of a mortgage dated the 2nd of January 1842 made between the respective predecessors in title of the parties and in which no date for redemption was specified acknowledgments of the mortgagor's right had been made by the widow and daughter of a former mortgagor a predecessor in title of the respondents which the appellant contended extended the period of limitation *Held* that the law of limitation applicable to the case was not Act XIV of 1859 the law in force at the date of the acknowledgments but Act XIV of 1877 which was in force at the time of the institution of the suit Under Art 148 of Sch II to that Act the period of limitation prescribed for a suit to redeem a mortgage was 60 years from the time when the right to redeem accrued and by s 19 an acknowledgment to be effective must be signed by the party against whom such right is claimed or by some person through whom he claims title *Held* that the respondents derived title through the last male owner and not through his widow and daughter who were therefore not competent under s 19 to make an acknowledgment of the right of redemption so as to bind any interests except their own To hold otherwise would be to extend the power of a Hindu female in possession of a limited interest to bind the estate to an extent which was not sanctioned by authority An acknowledgment of liability only extends the period of limitation within which the suit must be brought and does not confer title and with reference to s 2 of Act XIV of 1877 was not a thing done within the meaning of s 11 of the General Clauses Consolidation Act (I of 1863) There was nothing in Art 148 of Sch II of Act XV of 1877 to justify a holding that by reason of the fusion of the interests of the mortgagor and mortgagee (which it was alleged took place between the years 1883 and 1898) the period of limitation which began to run on the 3rd of January 1842 was suspended which would be deciding contrary to s 11 of the Act this suit not being one to which the proviso to that section applied *Burrell v Earl of Egre mont 7 Beav 205* distinguished. The present suit was not barred as *res judicata* by a former suit in 1904 With regard to contentions raised on this

LIMITATION ACT (XV OF 1877)—*cont'd*s 10 Sch II Art 143—*cont'd*

appeal which had not been raised before at any stage of the case and consequently had not been considered by any of the Courts below nor were even suggested in the reasons in the case of the appellant to England their Lordships adhered to the established practice of the Board not to allow new cases to be made for the first time on appeal to His Majesty in Council. *SONI RAM v. KANHAIYA LAL* (1913) I L R 35 All 227

s 20—*Payment of interest on behalf of minor by manager of a joint Hindu family effect of—Duly authorised Agent* A payment of interest by the manager of a joint Hindu family consisting of himself and his minor brothers is a payment by the duly authorised agent of the minors within the meaning of s 20 of the Limitation Act 1877. *SARADA CHARAN CHAKRAVARTI v. DURGA RAM DE SINGHA* (1910) I L R 37 Cal 461

s 22—

See MORTGAGE I L R 38 Cal 342

See NEGOTIABLE INSTRUMENT

I L R 33 Mad 115

See PARTIES I L R 37 Cal 229

I L R 33 All 272

Assignment of original plaintiff's rights—Addition of assignee as plaintiff—S 22 inapplicable—Jungle or forest lands in zamindars—I resumption of ownership of kudataram in the zamindar—Onus of proving contrary on ryots The presumption as regards waste land jungle or forest land in a zamindar is that the zamindar is the owner not only of the meluaram but also of the kudataram and the onus is on the ryots to show that the kudataram right is vested in them. S 22 of the Limitation Act (XV of 1877) does not apply to a case where a plaintiff is added in the course of a suit in consequence of assignment of rights from the original plaintiff but is confined to cases where the new plaintiff is added or substituted in his own right so that he may himself be considered to be instituting a suit to enable him to litigate a right for himself independently of the rights of the original plaintiff. *ARUNA CHELLA AMBALAM v. ORR* (1914) I L R 40 Mad 722

ss 22, 28—Civil Procedure Code

(Act XIV of 1882) s 31—Civil Procedure Code (Act

V of 1908) O I r 9—*Lands attached to ratan—*

Joint owners—Lease—Lease good till the death of

the surviving joint owner—Gordon Settlement of

1864—Suit by representatives of one joint owner

to recover possession—Representatives of the other

joint owner joined as co-defendants with the repre-

sentatives of the lessee—Plaintiff's claim allowed

to the extent of their share—Appeal by plaintiffs

and co-defendants claiming their share—Limitation—

Treatment of co-defendants as co-plaintiffs—Amend-

ment of plaint and decree Certain lands attached

to a ratan belonged jointly to two brothers F and

D. In the year 1872 the lands were let by F

under a perpetual lease which was attested by

D. D. predeceased F. In the year 1905 within

twelve years from the death of F his representa-

tives brought a suit for the recovery of the lands

let by F. They sought to recover the entire lands

on the ground of eldership. The suit was brought

against defendants J, B and C as the heirs of the

LIMITATION ACT (XV OF 1877)—*cont'd*ss 22, 28—*cont'd*

mortgage of the lessee (the original 1st defendant) against defendants 2 and 3 as the heirs of the lessee and against defendants 4 and 5 as the heirs of D. The heirs of defendant 1 and defendants 2 and 3 defended the suit on the ground *inter alia* of limitation the suit not having been brought within twelve years from the date of the lease. Defendants 4 and 5 did not contest the plaintiff's claim. The first Court allowed the plaintiff's claim to the extent of their share namely a moiety on the ground that their claim to that extent was not time barred. On appeal by the plaintiffs and defendants 4 and 5 the latter of whom in appeal claimed their share namely the other moiety the Appellate Court awarded the other moiety to defendants 4 and 5. On second appeal by the heirs of the mortgagee held affirming the decree that the whole claim was within time. A vatan-dar is entitled to alienate vatan lands for the term of his natural life and his children although not separate in interest from him have no right to object to such alienation until after his death. Where a lease of vatan property is effected by one joint owner with the consent of the other joint owner the time for the recovery of the vatan property from the lessee runs from the date of the death of the survivor of the joint lessors. Defendants 4 and 5 having sought to recover in appeal their share which they had not asked for in the first Court held allowing their claim that they being parties to the suit instituted within the twelve years during which their right to a share in the vatan property could be effectually determined the Court must deal with the matter in controversy so far as regards the rights and interests of the parties actually brought before it by the institution of the suit. A party transferred to the side of the plaintiff from the side of the defendant is not a new plaintiff to whom the provisions of s 22 of the Limitation Act (XV of 1877) apply. *NAGENDRABALA DEBYA v. TARAPADA ACHARJEE* I L R 35 Cal 1065 concurred in. Plaintiff and decree of the lower Appellate Court amended by entering defendants 4 and 5 as co-plaintiffs. *HARSHOH v. MANA ENKATRAO* (1909) I L R 34 Bom 91

s 23 Sch II Parts III 115, 118—

Transfer of Property Act s 76 92—Mortgagor's right to compensation for property not delivered to him is based on a continuing obligation and time does not run till redemption—Time runs under Art 35 of Limitation Act from date of tort and not from date of knowledge Under s 92 of the Transfer of Property Act the mortgagor on paying the mortgage debt is entitled to be put in possession of the mortgaged properties and the obligation to do so is a continuing obligation on the mortgagee which cannot cease so long as the right of redemption is not barred. The right of the mortgagor under s 76 of the Transfer of Property Act to have accounts taken and to debit the mortgagee with the loss caused to the mortgaged property is cumulative and does not take away the remedy under s 92 of the Act. Where the mortgagee in possession who is bound by the terms of the mortgage deed to pay the Government revenue due on the land neglects to do so and the mortgaged land is sold a suit for compensation by the mortgagor brought more than six years after such sale and less than six years from the date of the decree in the redemption suit brought by the

LIMITATION ACT (XV OF 1877)—*contd*

—*contd* s 23, Sch II, Parts 115 116

mortgagor is not barred under Arts 111 and 116 of the Limitation Act read with s 23 of the Act. The express covenant in the mortgage deed by the mortgagee to pay to Government revenue only states in words the liability of the mortgagee under s 76 of the Act and does not curtail the general obligation of the mortgagee under the Act. In suits for compensation for tort to immovable property the period of limitation prescribed in Art 36 of Schedule II of the Limitation Act runs from the date of the tort and not from the time when the plaintiff has knowledge of such tortious Act. *SIVACHITANBARA MUDALIAR v KAMATCHI AMMAL* (1909) I L R 33 Mad 71

s 26—
See FISHER I L R 39 Cal 53

s 28 Sch II, Arts 124 144—
See RELIGIOUS FOUNDATION I L R 35 Mad 92

Sch II Arts 2 61 62 120—

Limitation—Sut to recover from a Municipal Board money alleged to have been illegally levied as octroi duty—Municipal Board's powers of taxation. A Municipal Board in disregard of certain lawful orders of the Government of India levied upon a Company trading within the municipal limits certain sums by way of octroi duty over and above what they were legally entitled to levy. *Held* on suit by the Company to recover from the Board the sums so levied that (i) the suit would lie and (ii) that the suit was one for money had and received to the use of the defendant within the meaning of Art 62 of the second Schedule to the Indian Limitation Act 1877. *Morgan v Palmer 2 B & C 720 26 F R 537 and Neale v Harding 6 Trch 349 56 P R 323* referred to. *Seth Karimji v Sardar Karpal Singh Punj Rec 1886 983* distinguished from *PAJUTANA MALWA RAILWAY CO OPERATIVE STORES LD v THE AJMER MUNICIPAL BOARD* (1910)

I L R 32 All 491
Sch II Art 11—Civil Procedure Code Act XLV of 1882 ss 278 281 283—Art 11 of the Limitation Act not applicable where judgment debtor no party to proceedings under s 273 of the Civil Procedure Code. Where in a claim proceeding under s 278 of the Civil Procedure Code the judgment debtor has not appeared and there has been no adjudication between him and the claimant the period of limitation prescribed by Art 11 of Sch II of the Limitation Act will not apply to a suit brought by the defeated claimant to establish his right against the judgment debtor. *SADANA PILLAI v AMORTHATHACHY* (1910)

I L P 34 Mad 533

Sch II, Art 12—

See MUTT HEAD OF I L R 98 Mad 356

Sch II Art 14—Order—Suit to set aside order—Collector—Order ultra vires—Land Revenue Code (Bom Act F of 1879) s 37 Art 14 of the Second Schedule of the Indian Limitation Act only applies to orders passed by a Government Officer in his official capacity. The article does not apply to orders which are ultra vires of the officer passing them. When a Collector passes an order under the provisions of s 37 of the Land Revenue Code (Bom Act F of 1879)

LIMITATION ACT (XV OF 1877)—*contd*

Sch II, Art 14—*contd*

with reference to land which is *prima facie* the property of an individual who has been in peaceful possession thereof and not of the Government, he is not dealing with that land in his official capacity but is acting *ultra vires*. *MALEJAPPA v SECRETARY OF STATE FOR INDIA* (1911)

I L R 38 Bom 395

Sch II Art. 35—

See HUSBAND AND WIFE

I L R 37 Bom 393

Restitution of conjugal rights, suit for—Where after demand and refusal differences are made up time will not run until there is a fresh demand and refusal—Agreement between husband and wife providing for future separation how far valid under Hindu and English law—The Madras Civil Courts Act III of 1873 s 16. Where after demand by the husband and refusal by the wife to return to cohabitation the parties make up their differences limitation will not run under Art 35 of Sch II of the Limitation Act of 1877 until there is a fresh demand and refusal. A Hindu Brahmin after refusal by his wife B to return brought a suit for restitution of conjugal rights in 1903. The suit terminated in a compromise between A and B in July 1904 by which it was agreed that B should return and live with A and that if at any time thereafter she should desire to live apart from A she was to be paid Rs 300 by A. B never returned to live with A who on 6th July 1907 brought a suit for restitution alleging a demand and refusal in February 1907. *Held* that the suit was not barred under Art 35 of Sch II of the Limitation Act and that the demand and refusal prior to 1903 did not furnish the starting point for limitation—*Held* also that the agreement between A and B in July 1904 providing for a future separation was invalid. It was forbidden by the Hindu Law which ought to be applied in determining the marital obligations between the parties. *Tekant Mon Mohini Jemdat v Basanta Kumar Singh* I L R 28 Cal 751 referred to. Such agreement must also be considered as opposed to public policy and unenforceable. *Mitharaj v Sakarikanoobai* 7 Bom L R 602 referred to. Even under the English law the agreement providing for a future separation was invalid and would not operate as a bar to a suit for restitution of conjugal rights. *KRISHNA AYYAR v BALANVAL* (1910) I L R 34 Mad 398

Sch II Arts 36 115 and 120—Contract to sell another's goods without authority breach of—Cause of action only in contract and not in tort as on misrepresentation—Contract Act (IX of 1872) s 235. A suit against a person for breach of contract to sell to the plaintiff certain goods of another on the implied representation that he had authority from his principal to sell them when in fact he had done is not one arising out of or independent of contract but one arising out of and incident to a contract and is governed by Art 115 of the Limitation Act (XV of 1877) and not by Art 36 or 120. s 235 of the Contract Act discussed. *VAIRAYAN v AICHIA* (1913)

I L R 38 Mad. 275

Sch II Arts 39 109—Art 109 not applicable where profits not recovered by defendant—Claim for means profits when plaintiff kept out of

LIMITATION ACT (XV OF 1877)—*contd*— Sch II, Arts 39 109—*contd*

possession as a suit for damages and falls within Art 39—Judgment for possession effect of A suit for net net profits by a plaintiff who had been kept out of possession by the defendant does not for purposes of limitation fall within Art 109 of Sch II of the Limitation Act when no profits have been actually received by defendant. Such a suit is one for damages for trespass on immovable property and falls under Art 39 of Sch II. *Albas v Fasalud Din* 24 Calc 463 not followed. A judgment for possession against a defendant must be deemed to decide that the defendant was in possession at least at the date of judgment. *Rama Bai Peddi v Atayi Lakshmi Ammal* (1909)

I L R 34 Mad 502

— Sch II, Arts 44 91—

See EXECUTOR DE SON OEST

I L R 36 Mad 575

See MAHOMEDAN LAW—ALIMINATION

I L R 34 All 213

— Sch II, Arts 48 49—*Illegal distraint and consequent removal and misappropriation of crops—Suits for damages* Where an execution of an illegal distraint the defendant cut the crop standing on plaintiff's land and removed the same. Held that a suit by the plaintiff for damages in respect of these acts was a suit in respect of specific moveable property within one or other of the two Art 48 and 49 of Sch II of Act XV of 1877. *Hari Charan v Hari Kar* 9 C W N 36. I L R 32 Calc 459 distinguished. *Sripoti Sarkar v Hari Kar* 10 C W N 1090 reversed. *Jadu Nath Dandapat v Hari Kar* (1913)

1 C W N 308

— Sch II, Art 49—

See LIMITATION (8)

I L R 38 Calc 284

— Sch II, Arts 49 120 145—

See LIMITATION I L R 38 Calc 284

— Sch II, Arts 49 145—*Where depository refuses on demand to return thing deposited* Art 145 and not Art 49 applies. Where moveable property is deposited and the depository on demand by the depositor refuses to return the thing deposited the period of limitation applicable to a suit to recover such property is that provided in Art 145 and not that in Art 49 of the Limitation Act. The fact that the possession after demand and refusal is wrongful does not make Art 49 applicable. *Olster* Where a thing is deposited for safe custody the depositor has the right to demand the return of the thing at any time although the deposit might have been for a term. *GANGANNI KONDIAH v COTTIPATI PEDDA KONDAPPA NAIDU* (1909)

I L P 33 Mad 56

— Sch II, Arts 61 83 116 120—*Contract Act 12 of 1872 as to 22—Suits by agent against principal to recover moneys spent by him* fall under Art 61 of Sch II of the Limitation Act and not under Art 116 or 120. The duty of the principal under s 202 of the Contract Act to indemnify the agent is an obligation imposed by law and is attached to the relation of principal and agent constituted by act of parties. Where a registered contract of agency does not provide for such indemnity such obligation cannot be treated as a term or part of such contract and a suit by

LIMITATION ACT (XV OF 1877)—*contd*

— Sch II, Arts 61 83 116

—*contd*

the agent for recovering moneys spent by him on account of his principal will not for purposes of limitation fall within Art 116 of Sch II of the Indian Limitation Act. Art 83 of Limitation Act will not apply and even if it did limitation would begin to run from the date of such payment not from the termination of the agency. That the agent has under s 217 a right of recovery of sums received on account of his principal and a right of lien under s 171 will not justify the right of action until the termination of the agency. The right of the agent to recover conferred by s 20 of the Contract Act and s 171 is nothing to prevent his making his claim immediately after he expended his own moneys. The article applicable to such cases is Art 61 of Sch II of the Limitation Act. That article is confined to cases where the defendant is under a legal liability to make the payment but is not applicable to cases falling under s 70 of the Contract Act. *KANDASWAMI PILLAI v AYAYAN* (1910)

I L R 34 Mad

— Sch II, Arts 62 97—

See LIMITATION I L P 46 Calc

— Sch II, Art 85—*Limitation—Current mutual account* Held that a mutual account within the meaning of Art 85 of second schedule to the Indian Limitation Act 1877 is an account of dealings between two parties which are such as to create independent obligations in favour of one party against the other. *Gyanu I L P 2—Bom 608 and Pam I L R v Harbans Singh* 6 C I J 153 followed. *Bhawan Singh v Tula Ram* All Weekly L (1896) 156 referred to. *CHITTAR MAL v BHALAL* (1909)

I L R 32 All

— *Mutual account to which the course of dealing between A and B that A should finance B and that B should be secured in respect of such advances by commitments of coffee of a value equal to his indebtedness to the account between A and B though current account is not mutual within the meaning of Art 85 of Sch II of the Limitation Act. Although the balance may shift from one side to the other such shifting balance is not conclusive as to mutuality. Payments made on account by one party and credited by the other whether in money or goods do not render the account mutual. There must be independent obligations on both sides to make the account mutual. *Hirada Easwari v Gadigi Muddappa* 6 Mad H C R 140 referred to. *SINI GOWDA v PERANDES* (1910)*

I L R 34 Mad

— Sch II, Art 89 s E—

See ACCOUNTS SUIT FOR

I L R 44 Calc

— Sch II, Arts 69 115—*Suits—Accounts against collecting agent—No express stipulation to account yearly* In the absence of express contract that account should be rendered at the end of each year a suit by a landlord against his collecting agent is governed by Art 69 of Sch II of the Limitation Act (of 1877). *Moti Lal Etc v Arun Choudhary* 1 C I J 211 distinguished. *Jorav Nath v Deb Nath* 3 C I J 110 and *Srinivas*

LIMITATION ACT (XV OF 1877)—contd

—Sch II Arts 87 115—contd

v Chandra Varan I L P 32 Calc 719 followed
DENDRA NATH GHOSH v SURESH ESHA HUQ
MISTR (1908) 14 C W N 121

—Sch II Arts 89 115 116 132—
Suit against gomasta for account—Hypothecation
of immovable property to secure agent's liability
—Limitation—Registered contract—Stipulation to
furnish periodical accounts Ordinarily speaking
 a suit by a principal against his agent for an
 account is governed by Art 89 of the Limitation
 Act (XV of 1877) and the period in three years
 from either the demand for and refusal of such
 account or the termination of the agency. Where
 however there is a definite contract to account
 at the end of each year the appropriate Art would
 be 116 as the contract would be broken by the
 failure of the agent to account at the end of each
 year. In either case if the contract be registered
 Art 116 applies and the period is 6 years. *Mah*
Lal Bose v Amin Chand Chaitopadhyay I C L J
211 relied on. The fact that the agent had
 executed a *tabulyant* whereby he had hypothecated
 certain immovable properties to secure his
 liability would not affect the nature of the suit so
 as to make Art 132 of same Schedule applicable.
JOSEPH CHANDRA v BENODE LAL ROY CHOW
DHURY (1909) 14 C W N 122

BUT See I PRINCIPAL AND AGENT

I L R 43 Calc 248

—Sch II Art 91—Undue influence—
Lease suit to set aside on the ground of—Appli-
cability of the Article—Suit for possession—Whether
setting aside lease by decree of Court necessary—Re-
judication of lease by the plaintiff if sufficient—
Suit for setting aside lease if barred suit for posses-
sion also barred—Trusts Act (II of 1887) ss 86
89 90 91 and 96—Transfer of Property Act (IV
of 1882) s 126—Contract Act (I of 1872) ss 64
and 66—Custom of inalienability in a zamindari
onus of proof as to—Evidence nature of Where
 the plaintiff sued in 1904 to recover possession of
 certain lands which had been leased by his deceased
 father under two registered lease deeds dated
 5th November 1889 and 2nd June 1893 respec-
 tively to the deceased father of the defendants on
 the ground that the leases were obtained by undue
 influence exercised by the father of the defendants
 on the plaintiff's father and the father of the
 defendants had died in 1899 *Held* that the suit
 was barred by limitation under Art 91 of the
 Limitation Act (XV of 1877). A transfer which
 is voidable and which can be effected only by a
 registered instrument can be avoided only by a
 formal re transfer or by a decree of Court. *Janki*
Kunwar v Ajit Singh I L R 15 Calc 58 ex-
 plained and applied. § 86 of the Indian Trusts
 Act even if it were applicable to the case is not
 available to the plaintiff because there was no
 allegation in the plaint that a notice of rescission
 was given to the defendants or their father before
 the suit and the suit itself can operate as a notice
 to the defendants only when a copy of the plaint
 was served on them after the suit was duly meti-
 culated. The defendants therefore were not trustees
 as the date of the suit and the right to immediate
 possession had not then vested in the plaintiff by
 virtue of the said section. §§ 86 and 89 of the
 Indian Trusts Act are not applicable because
 § 96 of the said Act will operate to prevent their

LIMITATION ACT (XV OF 1877)—contd

—Sch II Art 91—contd

application as it enacts that no obligations under
 Chapter IX of the Trusts Act (which contains
 as 86 and 89) can be created in evasion of the
 provisions of any law. The onus of proving in-
 alienability in the case of a zamindari lies on the
 person who alleges it. *Sundaram v Sulammal*
I L P 16 Mad 311 dissented from. A perpetual
 lease reserving no rent to the Zamindar except a
 sum which was payable wholly to the Govern-
 ment towards the revenue due on the leased lands
 is really an absolute conveyance of the properties.
 The case law on the subjects reviewed. *RAJA*
RAJESWARA DORAI v ARUNACHALAN CHETTIAR
(1913) 7 L R 38 Mad 321

—Sch II Arts 91 141—Limitation
 —*Suit to recover property sold by guardian during*
minority of plaintiff—Cancellation of sale deed
ancillary—Decree for possession conditional upon
restoring such portion of the consideration as was
for the minor's benefit Held that in the case of a
 suit to set aside an alienation of the plaintiff's
 property made during his minority by his guardian
 the limitation applicable is that prescribed by Art
 141 of the second Schedule to the Indian Limita-
 tion Act 1877. *Unni v Kunchi Amma I L P*
14 Mad 26 followed. *Abdul Fakhar v Sukh*
doyal Singh I L R 23 All 30 *Jiamman Kunwar*
v Tildai I L R 25 All 435 and *Ram Das Kun-*
war v Abu Jafar I L R 27 All 494 referred to.
 When however such a sale is in part for the benefit
 of the plaintiff he is in equity liable to make good
 to the purchasers the portion of the consideration
 by which he benefited and he would be entitled
 to recover the property only on condition of his
 paying to the purchasers that portion of the con-
 sideration. *Gobind Singh v Baldeo Singh I L*
R 25 All 330 referred to. *BACHCHAN SINGH v*
KANTA PRASAD (1910) I L R 32 All 392

—Sch II Art 95—

See I PRINCIPAL AND AGENT

I L R 37 Calc 81

—Sch II Arts 95 141—

See HINDU LAW—REVERSIONER

I L R 45 Calc 590

—Sch II Art 98—

See HINDU LAW—DEBTS

I L R 38 Mad 308

—Sch II Art 104—Muhammadan law
 —*Dower—Wife put into possession of husband's prop-*
erty in his lifetime and subsequently dispossessed—
Suit by her heir for balance of dower debt—Limita-
tion Held that Art 104 of Sch II of the Indian
 Limitation Act 1877 (Art 104 Sch I Act IX of
 1908) does not apply to a suit by one of the heirs
 of a Muhammadan widow who having been put
 into possession of her husband's property during
 his life time in lieu of her dower is dispossessed
 thereof subsequently to his death. *HAMID*
ULLAH KHAN v NAJJO (1911)

I L R 33 All 568

—Sch II Art 106—Suit for part-
 nership account—Presumption of dissolution of
 partnership from facts of case—Cessation of annual
 accounts rendered yearly for many years and render-
 ing of final account showing division of capital and
 revenue. The question in this appeal which arose
 out of a suit brought in 1902 for a partnership
 account and to recover the plaintiff's share in the

LIMITATION ACT (XV OF 1877)—*contd*Sch II Art 106—*contd*

Properties of a business earned on by them and the defendant was whether the suit was barred by limitation the defendants contending that there had been a dissolution of the partnership in 1891 which the plaintiffs denied. *Held* (affirming the decision of the High Court) that when annual accounts of the partnership business which had been rendered year by year from 1868 to 1891 ceased in the latter year and on 12th April 1891 a final account showing the division of both capital and revenue was made out the defendants afterwards carrying on the business without any interference from the plaintiffs the presumption was in favour of the dissolution of the partnership as at the definite date of the year when the account was thus closed. And their Lordships were of opinion that these facts taken with the other acts and conduct of the parties and the whole circumstances of the case which greatly strengthened the presumption made the inference in favour of the dissolution having occurred at the above date substantially conclusive. The suit therefore not having been brought within three years from that date was barred by Art 106 of Sch II of the Limitation Act (XV of 1877). *JOOPUDY SARAYYA v LAKSHMANASWAMY* (1913)

I L R 50 Mad [P C] 185

Sch II, Art 109—*Suit for mesne profits of putni taluk sold under Reg VIII of 1819* Art 109 of the Limitation Act (XV of 1877) which prescribes a three years rule of limitation is applicable to a suit for mesne profits where possession of the property in suit or a putni taluk was obtained by the defendant under a sale held under Reg VIII of 1819 which was subsequently set aside. *SARAJ PANJAN CHOUHDURY v FREEMOND CHOUHDURY* (1917)

22 C W N 263

Sch II, Art 110—*When arrears become due*—Limitation runs under Art 110 only from date when rent is ascertained by proceedings under Rent Recovery Act. In the case of rents recoverable under the provisions of the Rent Recovery Act such rents become ascertained only when they have been ascertained by means of the procedure provided by the Act. In a suit brought by the tenants against their landlord for a declaration that the latter was not entitled to vary the terms of previous patta judgments in favour of the tenants was given by the High Court in August 1902. Prior to that date the landlord had instituted summary suits under the Rent Recovery Act against the tenants to enforce acceptance of pattas by them in respect of the same lands and the decision in those cases was given by the Sub Collector in May 1904. The landlord tendered pattas as directed in the summary suits and brought suits for rent within three years from the date of the summary decisions but more than three years from the date of the High Court judgment. *Held* in the circumstances that the rent was ascertained and the arrears became due within the meaning of Art 110 of Sch. II of the Limitation on the date of the judgment in the summary suits and not on the date of the Act on judgment of the High Court. *Arunachalam Chettiar v Kader Routhen* I L R 9 Mad 558 distinguished. *Rangayya Appa Rao v Eobbi Srinamulu* I L R 27 Mad 143 referred to. *SYED GULAM GHOSSE SHA SAHIB v SHUJI MOHAMMAD PILLAI* (1910)

I L R 34 Mad 433

LIMITATION ACT (XV OF 1877)—*contd*

Sch II, Arts 110-116—

See LIMITATION I L R 44 Calc 759

Suit to recover rent on a registered lease—Limitation. *Held* that a suit for the recovery of rent based upon a registered lease is governed as to limitation not by Art 110 but by Art 110 of the Limitation Act 1877. *Pam Narsain v Kamta Singh* I L R 26 All 133 followed. *JAGGI LAL v SRI RAM* (1912)

I L R 34 All 464

Sch II Arts 113-144—

See CHACKIDAPPA CHAKRAN LAL

I L R 46 Calc 173

Sch II, Art 116—

See CONTRACT I L R 34 All 429

See LEASE I L R 40 Mad 910

Sch II, Art 118—

See CUSTOMS I L P 100 Calc 418

Sch II Art 120—

See CIVIL PROCEDURE CODE 1882 s 103

I L R 100 Mad 31

See LIMITATION (8)

I L R 38 Calc 284

See LIMITATION (11)

I L R 40 Calc 187

See MAHOMEDAN LAW—ENDOWMENT

I L R 37 Calc 263

Vatan—*Suit by reversioner for declaration as nearest heir*—*Widow of the last male holder*—*Vested right*. The right to sue for a declaration of heirship to a vatan does not accrue until the death of the widow of the last male holder of the vatan the widow having a vested interest in it as the nearest heir. *RAVI VALAD MAHADU v SAKUJI VALAD KALOZI* (1909)

I L R 34 Bom 321

Limitation Act (XV of 1877) Sch II Art 100-103—*Suit by widow of Mahomedan for share against son who got order for grant of letters of administration but did not take out same*—*Representative*—*Time from which limitation runs*. Where on the death of a deceased Mahomedan a contest amongst his heirs as to who should take out letters of administration was decided in favour of the defendant No 1 but he did not furnish security and the order for grant of letters of administration was thus never completed. *Held* that if Art 120 of Sch II of the Limitation Act applied to a suit by one of the other heirs to recover her share from the defendant No 1 who was in possession limitation ran at the earliest from the date of the decision of the Appellate Court affirming his right to take out letters of administration. *Quare*. The other members of the family of the deceased having also been joined as defendants whether defendant No 1 could be allowed to obtain for himself any advantage by urging that he never in fact became the legal representative of the deceased within Art 123 of Sch. II of the Act not having actually taken out letters of administration. *FATEZ ALI KHAN v SITARA BEGUM* (1910) 15 C W N 10

Attachment of wrong man's property—*No suit filed*—*Subsequent sale of property under attachment*—*Fresh cause of action*

LIMITATION ACT (XV OF 1877)—contd

Sch II Art 120—contd

from date of sale—Art 120 applicable—Absence of suit questioning attachment no bar to subsequent suit on sale Though attachment of a person's land as if it belonged to another gives the owner a cause of action on which he could have brought a suit but did not yet the sale of the same at a later date is a fresh and greater invasion of his right and gives him a fresh cause of action on which he could sue within six years from the date of sale under Art 120 of the Limitation Act Though he might have sued after the attachment he was not bound to sue The sale though held in pursuance of the attachment was not a necessary consequence of it *Robert Skinner v Shankar Lal I L R 31 All 10* (note) followed *Per CUNHAM* The attachment gives the judgment creditor certain rights in execution but the title to the property continues in the owner notwithstanding the attachment and it so continues even if the owner's objection to the attachment be disallowed *Varasirha Pau v Gangaram 18 Mad L J 390* referred to *WANTHARAO v NARAYANARAO (1913) I L R 38 Mad 383*

Suit by an ex trustee for reimbursement not governed by—Rights of bond fide de facto trustees for bond fide expenses A trustee of a public trust has a first charge on the trust properties for the purpose of reimbursing himself advances properly made for the trust and Art 120 and not Art 132 of the Limitation Act (XV of 1877) is the one applicable to a suit for recovery of monies so spent and the right to sue does not accrue before the date on which he judicially declared to be no longer a lawful trustee (though it may well be that it does not accrue till he is dispossessed of the trust estate in pursuance of the judicial declaration) *Pearry Mohun Muljee v Varendra Nath Muljee I L R 37 Cal 229* followed The expenses of a suit in which a person posing himself to be a trustee unsuccessfully resists another's right to be the trustee cannot be allowed as a proper charge on the trust property *Obser* The time occupied in defending such a suit is the rightful trustee when no counter claim is made therein for reimbursement of the expenses made by him but only a claim to remain in possession for such expenses cannot be deducted in his favour under s 14 of the Limitation Act *Maha Rajah Jayakundur Bannaree v Din Dayal Chatterjee I W R 309* followed *ABEYASAMIE v SORAY BIVU SAIDA ANNAL (1913)*

I L R 38 Mad 260

Sch II Arts 120 123 144—Period of Limitation applicable to suit by Muhammadan to recover his share of his deceased wife's estate Art 123 of Sch II of the Limitation Act of 1877 applies only when the suit is for a share of an estate which it is the legal duty of the defendant to distribute *Umardara Ali Khan v Melayat Ali Khan I L R 19 All 169* followed Where a Muhammadan dies intestate his estate at once vests in his heirs as tenants in common and there is no one charged by law with its distribution In a suit by one of the heirs to recover his share Art 123 of the Limitation Act does not apply *Kasmi v Ayshamma I L R 16 Mad 69* dissented from Art 144 will apply in the case of immovables and Art 120 when the property sought to be recovered is moveable *Khadessa Hajeer Baffu v Puthay Vettill Ayissa Umman (1910)*

I L R 34 Mad 511

LIMITATION ACT (XV OF 1877)—contd

Sch II Arts 120 125—Applicability of—Sut by one adopted later to set aside his maternal grandmother's alienation after her death—Attestation and ratification by next presumptive reversioners to a female's alienation effect of A Hindu widow sold the suit properties in 1881 and 1889 and died in 1899 Her daughter adopted the plaintiff in 1903 and he sued in 1907 to set aside the sales during the life time of his adoptive mother Held that (a) the suit was not barred (b) Art 120 and not 125 of the Limitation Act was applicable and (c) the cause of action for the plaintiff to question sales arose only from the date of his adoption when alone he became a reversioner Of the two sales in this case the first was assented to by the daughters and attested by the next male reversioner the second was acquiesced in by the daughters and in 1894 ratified by the then presumptive male reversioner Held that the plaintiff was stopped under the circumstances from questioning the sales as a reversioner For the application of Art 125 of the Limitation Act (a) the suit must be one brought during the life time of the alienating female and (b) the plaintiff must be the person entitled to the possession of the land if the female died at the date of the institution of the suit *Chiruvolu Punnamma v Chiruvolu Ierra v I L R 29 Mad 390* explained and distinguished *Gajjala Vetrappa v Gajjala Gangamma 1912 Mad W 912* *Abinash Chandra Marumdar v Harinath Shah I L R 32 Cal 69* *I and Gounda Pillai v Thayammal I L R 28 Mad 47* followed *Per SADASTHA ARIAR J* Consent to an alienation by the next reversioner and a ratification of past alienations stand on the same footing Effect of attestation by a reversioner to a female's alienation considered *NARAYANA v PAMA (1913)*

I L R 38 Mad 396

Sch II, Arts 120 131—Right of tenant to sue in respect of excess collections arises on every occasion when excess collection is made—Art 120 and not Art 131 of Sch II of the Limitation Act applies to such suits A landlord had been collecting excess rents from his tenant from 1872 In respect of the excess collection made in October 1898 the tenant brought a suit in December 1909 for a declaration that the landlord was not entitled to collect such excess—Held that the right to sue for such declaration arose on each occasion the excess was collected that the period of limitation was six years from the date of collection under Art 120 of Sch. II of the Limitation Act and that Art 31 of the schedule did not apply to such suits *SREMAN MADHABUSRI ACHAMMA v GURISETTI NARAYANASWAMI NAIDU (1909)*

I L R 33 Mad 17

Sch II Arts 120 132—

See HINDU LAW—MORTGAGE.

I L R 42 Cal 1088

Second mortgagee for surplus proceeds after sale by first mortgagee—Sale proceeds wrongfully withdrawn from Court in execution of decree on later mortgage suit for money—Sut to enforce mortgage—Civil Procedure Code 1882 ss 244 and 295 cl (c) Certain immovable property was mortgaged on 21st May 1887 to the appellants and on 13th September 1887 the same property was mortgaged by the same mortgagor to the respondents (the mortgage money being repayable on the 18th November 1888) and again

LIMITATION ACT (XV OF 1877)—contd**Sch II Arts 120-132—contd**

on 19th July 1889 to the appellants. On 8th October 1890 the appellants in a suit in which the respondents though made parties did not appear obtained a decree on their mortgage of 21st May 1887 in execution of which the mortgaged property was sold and after satisfying the decree the sale proceeds were deposited in Court. On 14th January 1891 the appellants obtained a decree on their mortgage of 19th July 1889 in a suit to which they did not make the respondents parties and in execution of that decree without giving any notice to the respondent they drew out of Court the surplus proceeds of the former sale though they were aware of the respondents mortgage of 19th September 1887 and of its priority to their own. In a suit brought on 17th November 1900 by the respondents against the appellants for the surplus sale proceeds it was contended that the suit was one for money governed by Art 120 of Sch II of the Limitation Act of 1877 and barred as not having been brought within 6 years from the 18th November 1889 when the money became due. *Held* (affirming the decision of a majority of a Bench of the High Court) that the suit was one to enforce payment of money charged upon immovable property within the meaning of Art 132 of Sch II of the Act and having been brought within 12 years from the date when the money became payable was not barred by limitation. The surplus sale proceeds represented the security which the respondents had under their mortgage of 19th September 1887 and did not cease to represent that security by the fact of the appellants having wrongfully withdrawn the surplus sale proceeds from the Court where they were deposited. Under the circumstances of the case s 290 cl (c) of the Civil Procedure Code 1882 was not applicable. **BARNAMDEO PRASAD v. TARA CHAND (1913)**

I L R 41 Cal 654

Sch II Arts 120-144—Suit by Mahomedan for partition of immovable property governed by Art 144 and not 120 Where a Mahomedan sues for partition of moveables and immoveables his claim as regards immoveables falls within Art 144 and not 120 of Sch II of the Limitation Act. **SYED NOORDEEN SAHIB v. SYED ISRAHIM SAHIB (1910)**

I L R 34 Mad 74

Sch II Art 123—Suit to recover legacy—Legacy not assented to by executor—Probate and Administration Act (I of 1881) s 112—Mahomedan Law—Shiah—Walf—Request for Gadi ul Izzum feast—Fattiah dinners—Valid bequest—Cypres Art 123 of the Second Schedule of the Limitation Act 1877 applies to a suit where the substantial claim is to recover a legacy even though not assented to by the executor and whether or not the suit involves the administration of the whole estate. A Shiah Mahomedan directed his executors by his will to spend a portion of the income of his property upon the following charitable or religious objects: (i) the Gadi ul Izzum feast at Mecca (ii) The Gadi feast at Pehmanpura in Surat and (iii) a Fattiah dinner on the testator's and his wife's account. The Gadi feasts were to celebrate the appointment of Ali as successor of the Prophet. *Held* that the first two bequests were valid but the validity of the third bequest was doubtful. **Kaleeloda Sahib v. Ameerudeen Sahib I L R 18 Mad 201 Zoolaka Biba v. Zynul Abedin I L R 6 Bom. L R 1055 and**

LIMITATION ACT (XV OF 1877)—contd**Sch II Art 123—contd**

Bida Jan v. Kalb Hussain I L R 31 All 136 followed. Where the testator has indicated a general charitable intention in the bequest made by him and if these bequests fail the Court can devote the property to religious or charitable purposes according to the *cypres* doctrine. **SALEBHAI ABDUL KADER v. BAI SAFIARU (1911)**

I L R 36 Bom 111

Sch II Art 124—See **SIEBART I L R 80 Cal 887**See **LIMITATION (2)**

I L R 42 Cal 244

Sch II Art 126—See **HINDU LAW—JOINT FAMILY PROPERTY I L R 38 All 126****Sch II, Art 127—Joint property**

—Exclusion of a co-parcener—Knowledge of exclusion—Decree by another excluded co-parcener for share by partition does not prevent time from running Certain joint family property was in the possession of some of the co-parceners (defendants Nos 1 to 3) who began to hold it adversely to the remaining co-parceners from 1890. In 1895 defendant No 5 one of the excluded co-parceners sued all the co-parceners to recover his share in the property by partition. His share which was one sixth in the property was decreed to him in 1903 and he recovered possession of it in due course. In 1907 another of the excluded co-parceners brought a suit to recover his share by partition of the property. He sought to bring his suit within time by alleging that the possession of defendants Nos 1 to 3 became adverse only after 1893. The lower Courts held that the plaintiff was excluded to his knowledge from enjoyment of the property from 1890 and that his suit was barred under Art 127 of Sch II of the Limitation Act. On appeal—*Held* by CHANDAVAREKAR J. that the decree of 1893 gave a sixth share to defendant No 5 and left the remaining five sixths untouched: the mutual relations of the defendants in the first suit with reference to their five sixths having been left to continue as before the property in their hands remained joint and that the judgment and decree of 1893 did not disturb as between them the previous state of things and stop the limitation that had begun to run as against the plaintiff from 1890. *Held* by BATCHELOR J. concurring that the finding of fact against the plaintiff that he was excluded to his knowledge from enjoyment of joint property by defendants Nos 1 to 3 from 1890 was wholly independent of and unaffected by the decree of 1893 which only decided that the family and the property were joint and that the property was consequently partible. **BARAJI AKORA v. DATTU LAXMAN (1912)**

I L R 37 Bom 64

Sch II Arts 127-142—4 co-parceners in possession of joint lands on behalf of all co-parceners—Alienation by the co-parceners without knowledge of the rest—Adverse possession of his vendor Certain lands belonging to the joint family of plaintiffs and defendant No 1 were in the possession of defendant No 1 on behalf of the family. In 1890 he alienated them to defendant No 2 but remained in possession on executing a rent note in favour of the vendee. The plaintiffs brought a suit in 1906 to recover by partition their

LIMITATION ACT (XV OF 1877)—*contd*Sch II Arts 127 142—*contd*

share in the lands. The defendant No 2 pleaded in defence his adverse possession of the lands from 1880. *Held* that the possession by defendant No 1 before the alienation being for himself and his co parceners and being thus of a fiduciary character it could not begin to be adverse to the co parceners in the absence of intimation conveyed by him to them that he intended to exclude them. **MALEKAPPA v NUDKAPPA (1912)**

I L R 37 Bom 84

Sch II Arts 132 147—

See LIMITATION I L R 35 Mad 191

Sch II Arts 131 162—*Cash allowance—Tastik—Arrears of cash allowance suit to recover*. The plaintiff the manager of the temple of Shri Laxmi Narayan Dev at Hulekal sued to recover from the defendants the managers of the temple of Shree Madhukeshwar at Banawasi a sum of Rs 96 as arrears of a cash allowance (tastik) which the former was entitled to receive from the property of the latter. The defendants admitted the title of the plaintiff to the allowance but pleaded limitation as to the arrears for two out of the six years. The lower Courts applied Art 131 of the Limitation Act 1877 and allowed the whole of the claim. On appeal *Held* that the claim was properly allowed. A cash allowance of the nature as in the present case is according to Hindu law *sidandha* or immoveable property where it is annually payable the right to payment gives to the person entitled a periodically recurring right as against the person liable to pay. The right to any amount which has become payable stands as to such person on the same footing as the aggregate of rights to amounts which are to become payable and which have become actually due. But where there are more than one person entitled to the payment as co sharer and the payment is made to one of them by the person liable to pay the co sharer receiving the amount holds it minus his share on behalf of the rest as money had and received for their use though as to him with reference to the aggregate of rights it is *sidandha* or immoveable property in the nature of a periodically recurring right. The important question is who is the person sued and what is it that is sued for? If what is sued for is the establishment of a title to the right itself then Art 131 applies whether the defendant is the person originally liable to pay or is a co sharer who has received payment from that person. If on the other hand what is sued for is the amount of arrears which has become actually payable to the plaintiff then there is a distinction between the person originally liable to pay and a co sharer of the plaintiff who has actually received payment from that person. Art 131 applies in that case to the person originally liable to pay and Art 62 applies to the co sharer who has received the payment. **SAKHARAM HARI v LAXMIKHYA TIRTHA SWAMI (1910)**

I L R 34 Bom 349

Sch III Art 132—

See MORTGAGE I L R 39 Cal 527

Sch II Arts 132 134 148—

See MORTGAGE 14 C W N 439

Sch II Arts 132 144—*Mortgage—*

Third person redeeming the mortgage at mortgagor's

LIMITATION ACT (XV OF 1877)—*contd*Sch II Arts 132 144—*contd*

deuere—Sale by mortgagor of his rights—Sale deed unregistered—Sale deed could be looked at for evidence of payment of money—Suit by mortgagor to redeem ignoring sale—Lienor's rights—Adverse possession by lienor—Registration Act (111 of 1877) s 17—Evidence Act (1 of 1872) s 91. The plaintiff mortgaged certain property with possession with defendant No 1 for Rs 601 on the 4th April 1873. On the 25th November 1878 defendants Nos 2 to 4 at the request of the plaintiff paid off the mortgage to defendant No 1 and for the sum so paid and for a further payment of Rs 50 the plaintiff sold the property to defendants Nos 2 to 4. The document as to the sale was not registered but ever since the purchase the defendants Nos 2 to 4 were in possession as owners. In 1907 the plaintiff filed a suit to redeem the mortgage of 1873. The defendants Nos 2 to 4 set up in reply the sale of 1878 and contended that the suit was barred by limitation. *Held* that the sale deed being unregistered could not be looked at for proving the sale but it could be looked at as evidence of payment of money. **MAHADNAPPA bin DANAPPA v DARI bin BALA (1878) P J 299** and **Waman Ramchandra v Dhondiba Krishnay I L R 4 Bom 126** followed. *Held* further that the redemption having been made by the defendants for the plaintiff with his knowledge and consent they became entitled to hold the property as lienors and the plaintiff could not recover it from them without paying the amount of Rs 601. **MAHOMED SHUMSOOL v SHAWULRAM L R 2 I A 17** followed. *Held* further that the defendant's lien was alive for twelve years after 1878 that is up to the year 1890 (Art 132 of the Limitation Act of 1877) that when that period expired the lien was gone and their possession after that was without any right and that their title by adverse possession was perfected in 1902. **Ramchandra Yeshwant Sirpoidar v Sadashiv Abaji Sirpoidar I L R 11 Bom 422** explained. *Held* therefore that the plaintiff's suit was barred by limitation. **SAMBHU BIN HAKHMANTA v NANA DIN NARAYAN (1911)**

I L R 35 Bom 438

Sch II, Art 134—

See HINDU LAW—ENDOWMENT

I L R 38 Cal 526

Sch II Arts 134 148—*Mortgage—Redemption by one mortgagor—Nature of possession—Subsequent sale under another mortgage decree—Suit by another representative of mortgagor for redemption—Limitation G in 1850 mortgaged certain property and died leaving a son a daughter and a widow. The son obtained a decree for redemption of the whole which was sold to M H G M and A who redeemed the mortgage. After the passing of this decree G's son and widow mortgaged certain shares in the villages affected by the original mortgage and in 1891 these shares were sold in execution of a decree for sale and purchased by M H and the representatives of G M and A. *Held* on suit by the representative of G's daughter to redeem her share that Art 148 and not Art 135 of the second Schedule to the Indian Limitation Act 1877 applied and the suit was not time barred. **SAID UD DIN KHAN v RATAN LAL (1909)***

I L R 32 All 160

LIMITATION ACT (XV OF 1877)—*contd*

Sch II, Arts 137 142 144—*Adverse possession—Defendant—Successor but independent trespassers—Plaintiffs purchased certain property at an execution sale on the 20th November 1891 the property being at the time of purchase in the possession of trespassers and formal possession was given to them on the 25th November 1892. In 1897 other person also trespassers obtained possession of the property against and not through the persons originally in possession. In 1900 the plaintiffs sued the second set of trespassers for possession. Held that Art 144 of the second Schedule to the Indian Limitation Act 1877 applied and the suit was not time barred. Ram Prasad Janra v Lalki Varan Pradhan I L P 12 Cal 197 followed RAM LAKHAN PAI v GAJADHAR PAI (1910)*

I L P 33 All 224

Sch II, Art 139—

See GRANT I L M 37 Cal 674

Lense of endowed land for a term by Mohunt—No rent paid for over 12 years after the expiry of lease—Successor of Mohunt if may sue to recover possession. The Mohunt of a math granted a lease of land belonging to the math for a term which expired in 1880. It was found that no rent was ever paid since the expiration of the lease more than 12 years after which the succeeding mohunt sued to recover the land from the successors of the lessee. Held that the High Court was right in holding that the suit was barred under Art 139 of Sch. II of the Limitation Act of 1877. MORUNT BHAGWAN PAMAJI DAS v PAM KRISHNA BOSZ [P C] 26 C W N 722

Sch II, Arts 139 144—*Suits against representatives of deceased tenant governed by Art 139 and not 144. A suit against the representatives of a tenant after the determination of the tenancy to recover the property leased is governed by Art 139 and not by Art 144 of Sch II of the Limitation Act. Such a suit would be barred against the representatives if it would be barred against the tenant if alive. Jodappalli Narasimham v Dronamraju Sesharaya Murthy I L R 31 Mad 16 167 doubted SUBRAVETI RAMIAH v GUNDALA PAMAYNA (1909)*

I L R 33 Mad 260

Sch II, Art 141—*Hindu law—Suit by reversioner for possession—Adverse possession by widow of predeceased son of last male owner—Limitation. A separated Hindu died leaving him surviving two widows and a daughter in law the widow of his predeceased son. Upon the death of the survivor of the two widows the daughter in law took possession of the property and remained in possession thereof for more than twelve years adversely to the reversioners. Held on suit by the reversioners to recover possession that their claim was time barred their cause of action having commenced from the death of the survivor of the two widows of the last owner. Sham Koer v Dah Koer L R 29 I A 132 referred to GAJADHAR PANDY v PARBATI (1910)*

I L R 33 All 312

Sch II Arts 142 144—

See LIMITATION (39)

I L R 55 Cal 558

LIMITATION ACT (XV OF 1877)—*contd*Sch II Arts 142 144—*contd*

See MUTT HEAD OF

I L R 55 Mad 346

Suit to recover possession—*Dispossession—Discontinuance of possession—Possession as an agent of minors—Decree by the minors on attaining majority against the agent for possession of the property—Decree not executed and barred by limitation—Agent wrongfully dispossessed by a third person—Money decree against the original owners—Decree holder seeking to attach property—Adverse possession—Civil Procedure Code (Act XI of 1882) s 283. A died in 1819 leaving behind him two minor sons R and D and a mistress A. The latter looked after the minors and managed their property. When they arrived at the age of majority they found that A claimed the property in her own right. In 1891 R and D sued A for the possession of the lands and obtained a decree on the 30th of August 1892 which was confirmed on appeal on the 15th June 1894. This decree was sought to be executed on the 20th June 1897 but the application was dismissed as barred by limitation. A was then wrongfully deprived of the possession of the property by V who sold it to B in 1898. B mortgaged the property to E in 1900. In the same year the plaintiff obtained a money decree against R and D and in execution of it he had an attachment placed on the property but the attachment was removed in 1904 at the instance of B and E. In 1905 the plaintiff brought a suit for a declaration that the property was liable to be attached and sold in execution of his decree against R and D. The defendants B and E contended that the suit was barred under Art 144 of the Limitation Act 1877 inasmuch as neither the plaintiff nor his predecessors in title R and D were in possession of the property within twelve years preceding the suit. Held that the suit having been brought by the plaintiff under 283 of the Civil Procedure Code of 1882 to establish his right to attach and sell the property in dispute as that of his judgment debtors R and D in execution of his money decree all that he had to prove was that on the date of attachment the judgment debtors had a subsisting right to the property and that the suit must therefore be tried as if it were a suit for possession by the judgment debtor. Held also that as A's possession must be deemed to have begun in 1879 as that of bailiff or agent for the minors R and D and to have continued as such until after they had arrived at the age of majority and as there had never been any dispossession by A of R and D while they had been in possession in a suit against A her plea of limitation would be decided by the application not of Art 142 but of Art 144 of the Limitation Act 1877. Morgan v Morgan I All 459 followed Taylor v Hildebrandt I L R 11 (10th Edn) 644 645 followed Lalubhai Papubhai v Jankubhai I L R 2 Bom 338 at p 413 followed and Dadoba v Krishna I L R 7 Bom 31 followed. Held further that though the decree for possession obtained by R and D against A had become incapable of execution by reason of their failure to apply to the Court for its execution within the period prescribed by the law of limitation the right established by it remained and though that right could not be enforced as against A by execution through the Court the decree holders could enter by ousting any trespasser. A included Bandu v Aca I L P 15 Bom 238 followed.*

LIMITATION ACT (XV OF 1877)—contd**Sch II Arts 142 144—contd**

Held therefore that there having been no allegation of possession in *R* and *D* lost by dispossession or discontinuance of possession but the case put forward having been a title in them established by their decree against *A* and a wrongful possession obtained from her after the decree by *F* under whom *B* and *E* claimed the limitation applicable to the suit was that provided by Art 144 not Art 142 of the Indian Limitation Act (XV of 1877) *Fakir Abdulla v Babaji Gungaji* 1 L R 14 Bom 458 followed and *Gangaayal Vagu Karal Mhatra v Vago Dhaqa Mhatra* (1851) P J 212 followed *Vasudeo Arambam Joshi v Ekath Bala Krishna Thir* (1910)

1 L R 35 Bom 79

another under mistake to hold joint possession for more than 12 years—Suit to recover exclusive possession—Limitation—Consent—Act—quiescence—Stoppage—Mistake—Co-sharers adverse possession as between—Unity of possession of tenants in common consequences of Where *A* is the owner of an estate in which the disputed land is situated and *A* and *B* are joint owners in an adjoining state and the land in dispute has been held by *A* and *B* by mutual consent as part of their joint estate for a period of more than 12 years before suit in ignorance of their rights limitation arises either by discontinuance of possession by *A* under Art 142 or by adverse possession of *B* under Art 144 of the Limitation Act *Vasudera v Moguni* 1 L R 24 Mad 387 referred to *Per Jeyaraj C J*—The mere fact of consent does not prevent possession being adverse. The test is whether the person who sets up adverse possession is able to show that he held for himself and if he did the mere fact that there was acquiescence or consent on the part of the other person concerned would in circumstances like these make no difference *Purshottam v Sagay* 1 L R 28 Bom 87 referred to *Per CHAPMAN J*—Art 142 rather than Art 144 of the Limitation Act applied to the case *Dwarika Nath Chowdhury v Atul Shri Baverjee* (1913) 17 C W N 595

Sch II, Art 144—

See HINDU LAW 1 L R 34 Mad 402

See LIMITATION 1 L R 46 I A 187

1 L R 39 Mad 617

See REGISTRATION ACT 1877 s 17 AND

49 1 L R 47 Cal 238

Summary Cases—In

here—in immovable property The right to levy summary cess whether it originated in agreement or in unlawful exaction is an interest in immovable property and is governed by twelve years limitation under Art 144 of the Limitation Act (XV of 1877) *Panchalisingi v Mahasankar* (1911)

1 L R 36 Bom 174

Adverse possession—

Possession of the defendant meaning of if incl des possession of—Defendant a lessor—Nature of adverse possession which can be set up—Effect of s 3 The words possession of the defendant in Art 144 cannot by reference to the definition in s 3 be held to include the possession of another person, a co defendant still in possession under a different title *Padayira v Ram Rao* 1 L R 13 Bom 169 distinguished. The adverse posses

LIMITATION ACT (XV OF 1877)—contd**Sch. II, Art 144—contd**

sion of a defendant must be of the same nature as that sought by the plaintiff and the defendant cannot set up his possession as a permanent lessee as adverse in a suit by the plaintiff for possession as proprietor *Unruvessa v Ma Yar Khan* 1 F R 3 All 24 followed Where the plaintiff brought a suit for possession of certain property purchased by him at an auction sale within 12 years from the date of sale but after the expiry of 12 years brought the defendant appellant on the record on the ground that subsequent to the plaintiff's purchase he had been granted a permanent lease of the property by the original defendants the previous owners who had wrongfully retained possession since the plaintiff's purchase *Held* that the defendant appellant was not entitled to add the period of his lease as adverse possession to his own in answer to the plaintiff's suit *Lakshmi Bibee v Bejoy Chandra Marathe* (1913) 17 C W N 784

Possession of Hindu widow—Assertion in public documents of ownership—Questions decided on inferences from documents—Nature of possession of widow whether in lieu of maintenance or adverse Where a question as to the nature and effect of the possession of property by a Hindu widow is whether the possession is only in lieu of her maintenance and not adverse possession is one decided by legal inferences drawn from documents opinions of the courts though concurrent are not findings of fact and where wrong conclusions from such inferences have been formed they are open to be reversed by the Judicial Committee on appeal. When the widow asserted that she was entitled as full heir to the separate share held by her husband when in a written statement in a suit brought against her she asserted that she and her co widow were the heirs of their husband and had all along been in possession and it was only as an alternative pleading that she set up a title to possession as a right to maintenance when in an application to the court she made an assertion publicly that she and her co widow were the heirs and the only heirs to the property from which assertion mutation of it to her name followed and when the widow made an absolute gift of part of the property—when she made such public assertion of a right to exclusive possession from 1859 to her death in 1895—the true inference was that her possession was adverse and the plaintiff's (respondent's) title was barred by limitation under Art 144 of Sch II of the Limitation Act (XV of 1877) *Satgur Prasad v Paj Kishore Lal* 1 L R 42 All 152

Sch II, Art 146 A—

See MUNICIPAL COUNCIL.

1 L R 38 Mad. 6

Sch II Art 148—Limitation—Suit for redemption—Mortgage by conditional sale—Specified period for redemption—Payment of mortgage debt within specified time—Accrual of cause of action Ordinarily and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created the right of redemption can only arise on the expiration of the specified period. But there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge

LIMITATION ACT (XV OF 1877)—contd**Sch II Art 148—contd**

the debt within the specified period and take back the property. Such a provision is usually to the advantage of the mortgagor. The father of the plaintiff executed a mortgage by way of conditional sale on the 6th of January 1830 in respect of 12 villages in favour of the predecessor in title of the principal defendant and there was at the time of execution a contemporaneous agreement that the sale would be cancelled on payment of the amount of consideration in nine years. In a suit brought on the 6th of January 1890 for redemption the High Court held on the construction of the contract that the suit was not barred as the right to redeem only arose on the expiry of the nine years. *Held* by the Judicial Committee that the case must be decided not on the construction of the contract but on the case made by the plaintiff on the pleadings which was that she was entitled under the agreement to redeem the property within the period of nine years and by the statement of account produced with the plaint which showed that the mortgage debt was actually satisfied under the contract on the 4th of September 1838 and that being so the right to redeem then accrued and the whole suit was therefore barred not having been brought within 60 years from that date (Art 148 of Sch II of the Limitation Act XV of 1877) **BAKHAWAR BEGANI v. HUSAINI KHANUM** (1914)

I L R 36 All 195

Sch II Art 164—

See EX PARTE DECREE

I L R 39 Cal 506

See LIMITATION ACT (IX OF 1908) SCH

I ART 164 I L R 37 All 597

See SUBSTITUTED SERVICE

I L R 118 Cal 394

Sch II Art 170—

See CIVIL PROCEDURE CODE 1882 s 234

I L R 32 All 404

Sch II Art 178—

Limitation Act (IX of 1908) s 15—Execution of decree—Limitation—Execution stayed by injunction. In execution of a decree certain property was attached by the decree holder by means of an application made on the 8th of July 1904. Objection was taken to the attachment which was disallowed on the 10th of March 1908. This was followed up on the 5th of April 1909 by a declaratory suit against the decree holder. An injunction was also granted on the 6th of April 1909 whereby the sale of the property in suit was stayed. The suit terminated on the 26th of June 1909 but the injunction lasted until January 1909. The next application for execution was made on the 14th of April 1910. *Held* that this last application was within time whether the Limitation Act of 1877 or that of 1908 applied. It was not relevant that the decree holder might possibly have obtained execution of the decree against other property of his judgment debtor. *Behari Lal Misir v. Jagannath Prasad* I L R 38 All 651 followed. **GHULAM NASIR UD DIX v. HARDEO PRASAD** (1912)

I L R 34 All 436

LIMITATION ACT (XV OF 1877)—contd**Sch II Arts 178 179—**

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 88 89

I L R 30 Bom 321

Article 179 applies to initiate proceedings—Previous orders in execution effect of as res judicata—Civil Procedure Code (XIV of 1882) attachment under when ceases a question of intention—Erroneous order on a question of law when res judicata. Previous orders passed in execution and allowing execution on a construction of a decree as to mesne profits or as to interest or the like have the force of res judicata though the later application be in respect of a different subject matter. Thus if under the old Civil Procedure Code (Act XIV of 1882) attachment of several properties had been made and more than three years after such attachment sale of some of those properties was ordered the supposition that the attachment was then subsisting that order to sell will act as res judicata when a subsequent application for sale is made within three years thereafter to sell other properties originally attached. Under the old Civil Procedure Code the question whether a particular attachment subsists at a certain time was a question of intention. *Ram Kripal v. Rup Kuar* I L R 6 All 269. *Venkatanarasimha Naidoo v. Papammah* I L R 19 Mad 54 and *Subbarama Ayyar v. Nagammal* I L R 24 Mad 683 followed. The rule that an erroneous decision on a question of law has not the force of res judicata does not apply to such a case. *Palamippa Chettiar v. Sarani Naidoo* 18 Mad L J 548 and *Mangala thammal v. Narayanasami Ayyar* I L R 30 Mad 461 distinguished. It is well established that an application intended to revive and carry through a pending execution is not covered by Art 179 of the Limitation Act (XV of 1877) as it is not an application to initiate a new execution. *Qamar ud din Ahmed v. Jauchir Lal* I L R 27 All 334 and *Suppa Reddiar v. Avda Ammal* I L R 28 Mad 50 followed. The right to apply to continue execution in such cases accrues from day to day and will not be barred until three years have elapsed after the proceedings have ceased to be pending. So the application is not barred under Art 178 either. *Chalavadi Kotiah v. Poloori Al melammah* I L R 31 Mad 71 followed. **SUBBA CHARLAR v. MUTHUVERA PILLAI** (1913)

I L R 100 Mad 553

Sch II, Art 179—

See LIMITATION I L R 33 All 264

See MORTGAGE I L R 40 All 407

1. —Application against one judgment debtor if saves limitation against other—*Civil Procedure Code (Act XIV of 1882) s 45.* An application for execution which conforms to the requirements specified in s 45 236 237 and 238 of the Civil Procedure Code and on which the Court permits execution is an application in accordance with law within the meaning of Art 179 of Sch. II of the Limitation Act 1877. Where a decree was for possession against one set of defendants, for possession through tenants against another set of defendants and for costs and mesne profits against all the defendants and an application was made for execution of so much of the decree as related to costs against some of the defendants but not

LIMITATION ACT (XV OF 1877)—contd**Sch II Art 179—contd**

against the others *Held* that a subsequent application for execution of the unsatisfied portion of the decree against those defendants against whom the previous application was not directed is not barred if made within three years of the previous application. **BARODA LINKER CROW DHURI & NABIN CHANDRA DUTTA (1909)**

14 C W N 465

2 ——— Application for execution in accordance with law—Decree—Execution—Execution made conditional upon payment of Court fees—Application for execution without payment—Dismissal—Second application with payment A decree was passed on the 30th June 1900 whereby partition of immoveable property was ordered but the execution of the decree was made conditional on the payment of the proper Court fees On the 29th June 1903 an application to execute the decree was made but it was dismissed as it was not accompanied by payment A second application to execute the decree was presented on the 27th June 1906 it was accompanied by payment The lower Courts dismissed it on the ground that it was time barred inasmuch as the first application made in 1903 was not one in accordance with law as required by Art 179 of Sch II to the Limitation Act 1877 *Held* that the first application was made in accordance with law for upon that application it was competent for the Court to order that the execution should begin on the Court fees being paid within a certain date *Held* further that the second application was within time *Per CURLIAM* An application for execution of a decree to be in accordance with law must ask for something within the decree and not outside it **NATHUBHAI KASANDAS & PRANJIVAN LALCHAND (1909)**

I L R 34 Bom 189

3 ——— Application for execution returned for amendment of formal defect—Application amended but not refiled within time allowed and registered—Limitation—Limitation Act (XV of 1877) Sch II Art 179 Where an application for execution of a decree made in proper form under s 235 of the Civil Procedure Code (Act XIV of 1882) was returned by the Court for supplying within 10 days the necessary extracts from the Collector's register under s 238 regarding certain shares of a revenue paying mouzah and a correct valuation of this and other properties sought to be attached but the application was not refiled till long after the expiry of the 10 days and some days after the period of limitation expired and the decree holder along with the application filed a petition explaining the delay and it was registered *Held* that the previous application which was returned was a step taken in aid of execution such as would save the amended application from being barred by limitation **Gopal Shah & Janki Koer I L R 23 Cal 217** distinguished and explained. **Asgar Ali & Troilakhy Nath Ghose I L R 17 Cal 631** **Kajfayal Ali & Ram Singh I L R 7 All 359** **Jawal Dube & Lakshmi Charan Ram I L R 20 All 478** **Gopal Chandra Manu & Gosain Das Koley I L R 25 Cal 594** referred to That the decree holder's application to the Collector for the extracts from the Collector's register was itself a step in aid of execution. Proper scope of s 245 of the Code indicated **MATHURA PRASAD & ANURAGO KOZE (1910)**

14 C W N 481

LIMITATION ACT (XV OF 1877)—contd**Sch II Art 179—contd**

4 ——— Rejected application for adjournment to prove service of notice—Civil Procedure Code (Act XIV of 1882) s 248 An application for adjournment to enable decree holder to adduce evidence of service of notice under s 248 Civil Procedure Code is an application made in order to obtain from the Court an order in furtherance of the execution of the decree Such an application even though it is refused is a step in aid of execution **MOWAR NARASINGH DAYAL SINGH & MOWAR KALI CHARAN SINGH (1909)**

14 C W N 486

5 ——— Applications for execution presented by assignee of decree-holder—Dismissal of the application for non production of assignment deed A decree was passed on the 12th October 1894 and an application to execute it was made by the decree holder on the 16th August 1897 The process fee not having been paid the application was struck off The second application to execute the decree was presented on the 16th August 1900 by the assignee of the decree holder but as he did not produce the assignment the application was struck off on the 27th October 1900 The third application was presented by a mukhtear of the assignee on the 11th August 1903 but as neither the assignment nor the mukhtearnama was produced it was struck off on the 9th October 1903 The same mukhtear presented a fourth application on the 19th December 1900 A notice was issued to the judgment debtor under s 248 of the Civil Procedure Code (Act XIV of 1882) and the application was disposed of the decree holder agreeing to accept a payment of Rs 45 from the judgment debtor On the 11th December 1906 the fifth application to execute the decree was filed. The lower Courts holding that the second and third applications could not be regarded as applications for execution made in accordance with law dismissed the fifth application as barred by the law of limitation — *Held* that the present application was not barred for the non production of the mukhtearnama and the assignment did not prove that they did not exist in fact **Abdul Majid & Muhammad Farukh 13 All 39** followed **VENAYAK VAMAN & ANANDA VALAD RAMJI (1909)**

I L R 34 Bom 68

6 ——— Application to certify payment made out of Court—Although a decree under s 53 of the Transfer of Property Act 1882 may not be capable of adjustment under s 257A of the Code of Civil Procedure 1882 yet where the parties had professed to make such adjustment and the judgment debtor having paid certain instalments of the decretal money the decree holder had applied to the Court to have such payments certified under s 253 of the Code, it was *held* that such applications operated to keep the decree alive although at the time there might have been no application for execution actually pending **Sujan Singh & Hira Singh I L R 12 All 599** followed **Tarun Das Bandopadhyay & Bishtoo Lal Mukhopadaya I L R 12 Cal 608** referred to **CHHOTAY SINGH & IHWARI (1910)**

I L R 32 All 257

7 ——— Withdrawal of informal application if is—Civil Procedure Code (Act XIV of 1882) ss 232 235—Transfer of assigned decree to decree holder Where a decree holder

LIMITATION ACT (XV OF 1877)—contd**Sch II Art 179—contd**

applied for execution of a decree and withdrew the application on the objection of the judgment debtors that the decree had been transferred to a third person who had retransferred it to the decree holder and that therefore the execution could not proceed—*Held* that the application was a step in aid of execution and saved limitation *Gopal Sah v Janaki Koer I L R 23 Calc 217* distinguished *MUSARAF ALI v AMIR JAN BIBEZ (1910)* 15 C W N 71

8—Applications when not “in accordance with law”—The plaintiff obtained a decree against the defendants. He sought to execute the decree by filing six *darhasts* all within time. The lower Court held that the sixth *darhast* was not filed in time for the first five *darhasts* it could not be taken into consideration for purposes of limitation as they were not in accordance with law because every one of them sought relief or reliefs which on considering the merits of the *darhasts* the Court could not have granted. On appeal *Held* that the *darhast* in question was in time for the first five *darhasts* were in accordance with law as each one of them claimed relief granted by and therefore within the decree and the question whether on a consideration of all the facts the Court could in the events that had happened grant the relief was only a question for trial on the merits *BANDU KRISHNA v NARA SIMHA (1912)* I L R 37 Bom 42

9—Application for time to obtain copies—required by s. 238 of the Civil Procedure Code (Act XIV of 1882). In the course of proceedings to execute a decree the decree holder filed an application for time to obtain certified copies of extracts required by s. 238 of the Civil Procedure Code 1882. The second application to execute a decree was filed more than three years after the date of the first application though it was within three years of the date of the application for time. It was sought to bring the second application within time by relying on the application for time as a step in aid of execution. *Held* that the second application to execute the decree was presented in time for the application for time to obtain certified copies required by s. 238 of the Civil Procedure Code of 1882 was a step in aid of execution *SHESHADASACHARYA v BHIMACHARYA (1912)* I L R 37 Bom 317

10—Mortgagor's petition for declaration of insolvency—Opposition by mortgagee judgment creditor—Step in aid of execution—Limitation. An application by mortgagee judgment creditor in execution of his decree opposing the insolvency proceeding of the mortgagor judgment debtor is a step in aid of execution under Art. 179 Sch. II of the Limitation Act (XV of 1877) and Art. 182 Sch. I of the Limitation Act (IX of 1908) *LAXMINAR LALLUBHAI v BALA SHANKAR VENKIRAN (1914)* I L R 39 Bom 20

11—Application, oral for adjournment. An application to take a step in aid of execution under Art. 179 of the Limitation Act need not be in writing. *Amar Singh v Tula I L R 3 All 139* and *Monellal Jagann v Vasu Radha I L R 15 Bom 405* followed. An application by the decree holder for an adjournment to enable him to produce records or evidence necessary to effectively conduct the execution proceedings further is an application to get an

LIMITATION ACT (XV OF 1877)—contd**Sch II Art 179—contd**

order in aid of execution *Shekhadasacharya v Bhimacharya 14 Bom L R 1204* *Haridas Vana dhas v Vishaldas Kisanadas I L R 36 Bom 638* *Pitam Singh v Tota Singh I L R 29 All 301* and *Kunhi v Seshagiri I L R 5 Mad 141* referred to *ABDUL KADER ROWTHER v KRISH NAN MALAVAI NAIR (1913)* I L R 38 Mad 695

Sch II Arts 179-180—

See PRIVY COUNCIL PRACTICE OF

I L R 36 All 350

See PETITION I L R 40 Calc 903

1—Sch II Art 180—An order in Privy Council affirming a decree of the High Court includes the directions in such decree an application to enforce any such direction is in point of law an application to execute the order to the whole of which Art. 180 of Sch. II of the Limitation Act is applicable *KAMTAI DEBI v ACHORE NATH MUKHERJEE (1900)* 14 C W N 357

2—“Revival” of decree what is—Civil Procedure Code (XIV of 1882) s. 248 notice under—No revival where notice not issued. Where on an application for execution of a decree more than one year old, order for execution was issued without the notice to the judgment debtor required by s. 248 of the Civil Procedure Code of 1882 such order for execution does not revive the judgment within the meaning of Art. 180 of Sch. II of the Limitation Act of 1877. It is only where such notice has been issued that the judgment or decree is revived. *DESSOO VEN KATESA PERUMAL CHETTY v SRIVINASA RANGA ROW (1909)* I L R 33 Mad 187

3—Execution of decree—Limitation—Terminus a quo—Order of His Majesty in Council dismissing an appeal for want of prosecution an affirmation of the decree appealed from. An order of His Majesty in the Privy Council dismissing an appeal for whatever cause is in effect an affirmation of the Court below and is the only order in the litigation capable of enforcement. Where therefore an appeal to His Majesty in Council from a decree passed by the High Court for sale on a mortgage was dismissed for want of prosecution, it was held that limitation in respect of an application by the decree holder for an order absolute for sale was governed by Art. 180 of the Second Schedule to the Indian Limitation Act 1877 time running from the date of the order of His Majesty in Council. *Tassaduq Rasul Khan v Kashi Pam I L R 25 All 109* and *Oudh Behari Lal v Nagelkar Lal I L R 13 All 278* referred to *Dipiro Dass Goswami v Chunder Seekur Bhullacharye 7 W R 621* distinguished. *ABDUL MAJID v JAWAHIR LAL (1910)* I L R 33 All 154

LIMITATION ACTS XV OF 1877 AND IX OF 1908—**Comparative Statement.—**

The sections of the 1877 Act correspond to the same sections in the 1908 Act except the following—
Section of the 1908 Act. Corresponding section in the 1877 Act

2	3
3	4
4	5 para. I
5	5 para. II & A
6	-
7	8

LIMITATION ACTS (XV OF 1877 AND IX OF 1908)—*concl'd***Comparative Statement—*cont'd***

Section of the 1908 Act	Corresponding section in the 1877 Act
8	7 last clause
21 (1)	
21 (2)	21
29 (1) (a)	2 latter part
29 (1) (b)	6
29 (2)	1 (a)
29 (3)	
30	
31	
32	

Article in the First Schedule of the 1908 Act	Corresponding Article in the Second Schedule of the 1877 Act
11 (1)	11
11 (2)	
11 A	11
33	
34	33
35	
161	160 A
172	171
174	173 A
176	175 A
177	175 B 175 C
178	176
179	177
181	178
182	179
182 cl (4) in the third column	
183	180

LIMITATION ACT (IX OF 1908)See **HINDU LAW—ADoption**

I L R 40 Mad 846

— **inapplicability of, to insolvency proceedings—**See **INSOLVENCY PROCEEDINGS IN**

I L R 89 Mad 74

— **Cause of action** No thing in the Limitation Act can give rise to a cause of action unless a right to sue exists independently of its provisions **BIRHUN SARKAR v A W N WYATT (1911)** 16 C W N 540

— **s 2—**See **LIMITATION ACT (IX OF 1908) Sch I Art 124** I L R 41 Mad 4— **ss 2 and 5—**See **COURT FEES** 3 Pat L J 484— **s 2 (8) Sch I, Art 144—**See **ADVERSE POSSESSION**

I L R 40 Cal 173

— **s 3—**See **CONTRACT ACT (IX OF 1872) s 28**

I L R 35 Bom 344

— **Limitation—Amendment of plaint after expiry of limitation—Zamindari property—Incorrect statement of extent of share claimed** In a suit for pre-emption under the Muhammadan law of a zamindari share it was found that the necessary conditions of the Muhammadan law had been fulfilled but there being some doubt as to the exact share sold the plaintiff

LIMITATION ACT (IX OF 1908)—*cont'd*— **s 3—*cont'd***

had specified it in his plaint as 15 biswasas when in fact it amounted to 17 biswasas **Held** that it was within the competence of the Court to allow the plaintiff to amend his plaint so as to claim the larger share even after the period of limitation for the suit had expired **MHAMMAD SADIQ v ABDUL MAJID (1911)** I L R 33 All 616

— **Question of limitation if may be considered for the first time in appeal** The Court can under s 3 take notice of the question of limitation although it has not been taken up in the Courts below **NAPASINGHA BANA GOSWAMI v PPOLEADMAN TEORAI (1918)** 22 C W N 994

— **ss 4 and 14—Filing suit in a wrong Court on the day of its re opening after recess—Expiry of limitation during recess effect of—Meaning of prosecution in s 14—Court in s 4 meaning of** According to s 14 of the Limitation Act it is only the period during which a suit is actually prosecuted in a wrong Court that can be excluded in favour of a plaintiff but not the period before the filing of the suit though the Court was then closed for recess So if the period of limitation for the suit expired during the period of recess of the wrong Court wherein the suit was filed on the day of its re opening the suit must be held to be barred. It is only the period of closing of proper Court in which the suit must be instituted that can be taken account of under s 4 **Abhaya Churn Chuckerbutty v Gour Mohun Dutt 24 N P 26** followed **Per SEAGER J**—Although the word Court in s 4 is not qualified by the adjective proper as it is in other parts of the Act it would not be reasonable to take account of the closing and re opening of any other Court in which the suit was rightly instituted **Per CHALMERS** According to s 3 the concessions awarded by the different sections of the Limitation Act are in dependent and cumulative **MIRA MOHIDE ROW THER v NALLAPERUMAL PILLAI (1913)** I L R 36 Mad 131

— **ss 3 to 25 29 (1) (b)—**See **LIMITATION** I L R 46 Cal 199

— **ss 3 7 Sch I Art 142—Minor—Representative—Death of the minor after majority but pending disability—Right of personal representative to sue—Limitation** Where a minor acquired a cause of action to sue for possession of property and died within three years after attaining majority his personal representative can although twelve years have expired since the cause of action accrued institute a suit on the same cause of action at any time within the three years period which had already commenced in the life time of deceased In such a suit the deceased must be included in the term plaintiff for the purpose of Art 142 for according to s 3 of the Limitation Act plaintiff includes any person from or through whom the plaintiff derives his right to sue **ANJAY PAMJI v RAMABAI (1916)** I L R 40 Bom 564

— **s 3 Arts 120 132—**See **LIMITATION** I L R 46 Cal 455— **s 3 Art 177—**See **APPEAL, ABATEMENT OF** I L R 35 Mad 292

LIMITATION ACT (IX OF 1908)—*contd*

s 4—

See LIMITATION I L R 38 Bom 656
I L R 2 Lah 127

See MADRAS ESTATES LAND ACT (I of 1909) s 192 I L R 58 Mad 295

General Clauses Act (X of 1897) s 10—*Pre-emption*—Time for payment of pre-emptive price not to be extended beyond period fixed by decree Held that neither s 4 of the Indian Limitation Act 1908 nor s 10 of the General Clauses Act 1897 applies to the payment of money payable by the successful plaintiff under a decree for pre-emption *HIRDE NARAIN v ALAM SINGH* (1918) I L R 41 All 47

ss 4 and 5—

See LIMITATION (43)
I L R 41 Mad 412

ss 4 and 28—

See MORTGAGE DECREE
3 Pat L J 478

ss 4 and 14—*Suit for dower*—Period

of limitation expiring during Christmas holidays—*Suit filed in a Subordinate Judge's Court on its Small Cause side on the re-opening day—plaint returned for want of jurisdiction on the Small Cause side—Plaint presented as an Original Suit in the same Court on its regular side—Limitation bar of* Where the period limited for the institution of a suit for dower expired on a day when the Court was closed for the Christmas holidays and the suit was instituted on the re-opening day as a Small Cause suit in the Court of a Subordinate Judge on its Small Cause side and on the plaint being returned after some days for want of jurisdiction it was filed on the next day in the same Court as an original suit and the defendant pleaded that the suit was barred by limitation Held that the time during which the suit was pending on the Small Cause side of the Court and which the plaintiff was allowed to deduct under s 14 of the Limitation Act could not be tacked on to the period during which the Court was closed under s 4 of the Act so as to save the bar of limitation *UMMATRU v PATHUMMA* (1921)

I L R 44 Mad 817

s 4 Arts 74 75 80 and 120—

See LIMITATION I L R 38 Mad 374
I L R 41 Mad 412

s 4 and seq—

not applicable to Letters Patent
appeals—

See LIMITATION I L R 2 Lah 127

s 5—

6 Pat L J 625
See APPEAL I L R 1 Lah 508

I L R 42 Calc 433

See CIVIL PROCEDURE CODE 1908
O XXII r 9 I L R 42 All 540

XXI r 1 I L R 43 All 660

See COURT FEES ACT ss 4 & 23
3 Pat L J 74

See LIMITATION L R 44 I A 218
I L R 45 Calc 94

I L R 41 Mad 412

LIMITATION ACT (IX OF 1908)—*contd*s 5—*contd*

See PROVINCIAL INSOLVENCY ACT (III of 1907) s 22 36 and 52

I L E 35 All 410

See SECOND APPEAL I L R s Lah 1

1 ——— *Miscalculation of time by pleader—Appeal rejected—Discretion exercise of*—Civil Procedure Code (Act V of 1908) s 2—Decree meaning of A *bona fide* mistake committed by a pleader in calculating the period of limitation may constitute a sufficient cause within the meaning of s 5 of the Limitation Act Whether the miscalculation does constitute a sufficient cause in any particular case must be decided by the Court having regard to all the facts and circumstances of that case Where the Appellate Court refused to admit an appeal presented out of time because according to its view of the authorities a miscalculation by a pleader of the period of limitation was not a sufficient cause for not presenting the appeal in time within the meaning of s 5 of the Limitation Act Held that the decision could be reviewed on appeal as there was no exercise of discretion by the Court It is neither necessary nor desirable that any attempt should be made to find precisely and exhaustively the meaning of the expression sufficient cause which should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of *bona fides* is imputable to the appellant *RAGHAI CHANDRA GHOSH v ASHUTOSH GHOSH* (1913)

17 C W N 807

2 ——— *Provisional admission to file in the absence of respondent—Preliminary objection taken by the respondent at the hearing—Entertainment of the question—Appeal dismissed with all costs—Second appeal* A time barred appeal having been provisionally admitted to the file in the absence of the respondent and at the hearing the respondent having taken a preliminary objection that the appeal was presented beyond time the Court allowed the objection and dismissed the appeal with all costs on the appellant On further appeal by the appellant Held that there being no sufficient cause as a matter of law for extending the time under s 5 of the Limitation Act (IX of 1908) there was no objection to the question being entertained after the provisional admission of the appeal to the file in the absence of the respondent Held further that the appeal against the order dismissing the appeal was a second appeal and not a first appeal because it was an appeal against the decree of an Appellate Court *RAJJI v KRISHNAIAH* (1914)

I L R 38 Bom. 813

3 ——— *Application for substitution of names filed beyond time—Procedure* s 5 of the Indian Limitation Act 1908 does not apply to an application made under O XXII r 4 of the Code of Civil Procedure Where therefore, such an application is made after time the suit or appeal must be declared to have abated and the remedy for the plaintiff or appellant is to proceed by application under O XXII r 9 *SECRETARY OF STATE FOR INDIA v JAWAHAR LAL* (1914)

I L R 36 All 235

4. ——— *Death of party pending judgment—Legal representative not brought on record—Minority of one of the appellants—Verdiction of*

LIMITATION ACT (IX OF 1908)—*contd*

section of a decree the section does not apply to such an application *MIDNAPUR ZIMINDARY CO v THE DEPUTY COMMISSIONER OF MANBUH*

3 Pat L J 132

— ss 5-18—

See CIVIL PROCEDURE CODE (1908) s 148 and 115 4 Pat L J 428

— s 5 and Art 156—

See BENGAL TENANCY ACT (1885) ss 105 and 107 5 Pat L J 472

— s 6—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 330 I L R 37 Mad 186

See CIVIL PROCEDURE CODE (1908) s 48 I L R 37 All 638

See GENERAL CLAUSES ACT s 6 CL (c) 15 C W N 845

— Purchaser from minor if gets rights of minor. The view that the plaintiff having purchased the property from a minor has got by the assignment the rights of a person under disability under s 6 of the Indian Limitation Act cannot be supported after the decision of the Full Bench in the case of *Putra Canka v Nobokissore* I L R 9 Cal 663 *BRAOABAY CHANDRA KAIRANTA DAS v ISHAN CHANDRA KAIRANTA DAS* (1918) 22 C W N 831

— ss 6 7—

See CIVIL PROCEDURE CODE (1908) O XXIV RF 4 5 AND 10

I L R 41 All 473

— ss 6 7 9 15—

See ALIEN ENEMY I L R 46 Cal 526

— ss 6, 8 9—Disqualification saving limitation—Management of estate by Court of Wards if saves limitation Under the Limitation Act 1908 no other cause of disqualification than those mentioned in the Act can be admitted to save limitation and the only disqualifications that ss 6 8 and 9 of the Act recognise are minority in sanity and idiosyncrasy and the suit as regards the properties comprised in the *lobals* of 1890 was barred by limitation under Arts 91 and 142 of the Act. The fact that the plaintiff was a disqualified proprietor who estate was under the charge of the Court of Wards did not prevent the running of time against her during the period the Court remained in charge *HUARMONY SINGHA v WASIR ALI MEERZA* (1916) 19 C W N 1113

— s 6 10—Receipt of interest by a mortgagee from a trustee knowing mortgage to be in breach of trust—Suit by beneficiary for such interest against mortgagee—Applicability of s 10 to such suit—Cause of action for beneficiary to recover such interest—No new cause of action on beneficiary attaining majority Interest received by a mortgagee from a trustee in respect of a mortgage executed by the latter in breach of trust to the knowledge of the mortgagee is not property vested in the mortgagee in trust for any specific purpose within s 10 of the Limitation Act. If on the date of payment of interest the beneficiary be a minor his cause of action to recover the same arises from such date and if he sues for the recovery

LIMITATION ACT (IX OF 1908)—*contd*

of such interest after attaining majority he is bound to sue within the time limited by s 6 of the Act and he does not get a fresh cause of action on attaining majority *RAJA OF RAJNAD v PONNUSAMI TEVAR* (1921) I L R 44 Mad 277

— ss 6 14, 15 and 19—Assignee of a debt due to a minor—Suit by assignee—Limitation for such suit whether saved in right of minor assignor—Attachment of debt prior to sale—Time till sale whether can be deducted in computation—Causes of action for attachment and suit whether same—Acknowledgment in a deposition—Denial of a subsisting debt—Sufficiency of acknowledgment Where a decree holder having attached in 1913 a book debt due in 1911 to a minor judgment debtor sold it in auction and purchased it himself in February 1915 sued in March 1915 to recover it from the defendant who pleaded the bar of limitation Held (i) that the assignee of a debt due to a minor could not avail himself of the privilege of the extension of limitation given by s 6 of the Limitation Act *Rudra Kant Surma Sarkar v Nabo Kishore Surma Biswas* I L R 9 Cal 663 followed (ii) that s 15 of the Act did not operate to save limitation during the time the attachment was in force *Shid Singh v Sila Pam* I L R 13 All 76 followed and *Beti Maharan v The Collector of Fatawa* I L R 27 All 298 referred to (iii) that s 14 of the same Act was also inapplicable as the attachment proceedings were not based on the same cause of action as the suit to recover the debt (iv) that on its appearing that the defendant stated in a deposition that there was once a debt but that he had discharged it the statement did not amount to an acknowledgment within s 19 explanation I of the Act *Bollaparagada Ramamurthy v Tammana Gopayya* 31 M L J 231 followed and (v) that the suit was consequently barred by limitation *RAJASANI CHETTI v THANGAVELU CHETTI* (1919)

I L R 42 Mad 637

— s 6 and Art 120—Suit for declaration by after born sons One H B sold his occupancy rights on 27th August 1900 On 6th May 1918 his four sons instituted the present suit for a declaration that the sale should not affect their reversionary rights The four plaintiffs were born in 1891 1904 1909 and 1911 respectively As regards the eldest son L D he being over 21 years of age when the suit was lodged it was admitted that the suit was barred by limitation The other three sons who were born after the alienation were minors at the time when the suit was instituted and it was claimed that so far as they were concerned the suit was in time having regard to the provisions of s 6 of the Limitation Act inasmuch as two of them were born before their eldest brother had attained the age of 18 and the period of limitation only began to run from that date Held that the three minor plaintiffs not having been in existence at the time when the right to sue accrued could not take advantage of the provisions of s 6 of the Limitation Act and that the suit was consequently barred by limitation *Ramkishore v Jaynarayan* I L R 40 Cal 966 979 (P C) distinguished *LACHMAN DAS v SUNDAR DAS* I L R 2 Lah 538

— s 6 and Art 125—Widow's alienation—Right of several reversioners independent—Not questioned by deceased father's twelve years—

LIMITATION ACT (IX OF 1908)—contd

Right of minor son to question after twelve years but within three years of attaining majority For the purpose of questioning an alienation made by a Hindu female possessing a limited estate one reversioner does not claim through another and consequently laches on the part of a father who died without instituting a suit within twelve years from the date of the alienation does not disentitle his son from filing a suit for the purpose even after twelve years after the alienation if he was a minor at the time and files the suit within three years of attaining majority *S 6 and Art 125 of Limitation Act considered* *Govinda Pillai v Thayammal* *I L R 28 Mad 57* *Bhagwanta v Sukhi* *I L R 22 All 33* *Abinash Chandra Majumdar v Hari Nath Saha* *I C W N 25* *Sakyahani Ingle Rao Sahib v Bhowani Bai Sahib* *I L R 27 Mad 588* and *Chinna Veerayya v Lakshminarasimha* *92 Mad L J 375* followed *Mullapudi Batnam v Mullapudi Ramayya* *I L R 25 Mad 731* and *Chhaganram Ashkram v Bai Motigaeri* *I L R 14 Bom 512* not followed *Chirudolu Punnamma v Chirudolu Perayya* *I L R 29 Mad 390* referred to *Krishnav Lakshminammal* *18 Mad L J 275* distinguished *VEERAYYA v GANGAMMA* (1913)

I L R 36 Mad 570

ss 7 and Art 144—Mortgage—Mahomedan family—Sale by one co her—Suit for redemption by other heirs—One of the plaintiffs a minor—Suit not barred *M* a Mahomedan mortgaged the property in suit to *J* in 1895. *M* died in 1901 and his widow sold the equity of redemption to *J* who obtained possession of the property under the sale. In 1914 *M*'s son *G* and daughters *S* and *K* sued for redemption of the mortgage of 1895 and for possession. Of these plaintiffs *G* and *A* had attained majority three years before suit while plaintiff *S* attained majority in July 1913. The lower Court held the suit barred as regards plaintiffs *G* and *A* under Art 144 read with s 6 of the Limitation Act on the ground that the possession of *J* became adverse in 1901. *Held* that the suit having been brought within three years of the date when the youngest plaintiff *S* attained majority was not barred by limitation under s 7 of the Limitation Act because the right to redeem was indivisible and neither of the plaintiffs *M* and *A* was qualified to discharge or release the equity of redemption *GULAM GOVS v SHIRIRAM PANDURANG* (1918)

I L R 43 Bom 487

s 6 Art 164—Application to set aside ex parte decree made after coming into force of Act governed by Art 164—S 7 of old Act XV of 1871 does not apply—S 6 of General Clauses Act (X of 1897) does not make the new Act inapplicable A decree was passed ex parte against *A* a minor on the 4th September 1894. *A* became a major on 16th January 1909 and applied on 20th January 1909 to set aside the decree. *Held* that the Limitation Act (IX of 1908) which came into force on 1st January 1909 applied and the application was barred under Art 164 of the Act. Under s 6 of the Act the plea of minority was available only in the case of suits and applications for execution. S 6 of the General Clauses Act (X of 1897) had not the effect of making the new

LIMITATION ACT (IX OF 1908)—contd

Act inapplicable *Kali Amma v Palappakkara Manakal* *20 Mad L J 347* followed *CHIDAMBARAM CHETTY v KARUPPAN CHETTY* (1912)

I L R 35 Mad 678

s 6 and Art 168—

See CIVIL PROCEDURE CODE 1908 s 151 AND O XII *I L R 45 Bom 648*

ss 6 and 1 Arts 182 183—

See CIVIL PROCEDURE CODE (ACT V OF 1908 s 144 *I L R 41 Bom 625*

ss 6 7 and 15—

See ALIEY FERNY *I L R 46 Cal 526*

s 7—

1—Minor decree holders—Applications for execution by guardian—Attainment of majority by one decree holder—Application by guardian takes effect in favour of all—Right of the major decree holder to give discharge to the judgment debtor in respect of the judgment debt Two minor sisters who were born in the years 1881 and 1887 obtained a decree against the defendants in May 1900. The minor decree holders were represented by a guardian appointed by the Court. The said decree was confirmed by the High Court in appeal in March 1901. Subsequently the guardian presented applications for the execution of the decree in 1904 1905 and 1906 and while the last application was pending the guardian died. Thereupon the decree holders presented an application for execution as majors in 1908. The defendants contended that as the elder decree holder had attained majority the application by the guardian was as to her unauthorized and the execution of the decrees was barred against her. It was further contended that as the elder decree holder could from the time of her attaining majority make an application and give a good discharge to the judgment debtor for the decretal debt without the concurrence of the minor time had, therefore run against both under s 8 of the Limitation Act (XV of 1871) or s 7 of the Limitation Act (IX of 1908). *Held* that by reason of the first explanation of Art 179 of the Limitation Act (XV of 1871) an application made by a representative of one of joint decree holders takes effect in favour of all. Therefore though the elder decree holder had attained majority the applications made by the guardian as the next friend of the minor decree holder took effect in favour of both. *Held* further that the contention under s 8 of the Limitation Act of 1871 or s 7 of the Limitation Act of 1908 was inconsistent with the decisions in *Govindram v Toha* *I L R 20 Bom 383* and *Zamir Havan v Sundar* *I L R 92 All 199* the applicability of which had not ceased owing to any change in the words of s 6 of the Limitation Act of 1908. *MACHANDRAN PANCHAYD v KESARI* (1910)

I L R 24 Bom. 672

2—Receiver—If can give discharge of debt—Minor owner A receiver upon whom the Court had conferred all the powers of realisation that an owner has can himself give a discharge in respect of a debt. He is not fettered by the restrictions which are laid upon any one of several joint creditors or upon a next friend. Where a decree on a bond was passed on 5th August 1904 in favour of the plaintiffs some of whom were minors the suit having been filed on 21st June 1904 through their manager and ammu

LIMITATION ACT (IX OF 1908)—contd

tear who was appointed Receiver by the District Judge on 15th September 1905 in a suit between the plaintiffs and was put in charge of the whole business of the plaintiffs with all its pending and impending litigation and a Receiver was in charge from that time onwards and no steps were taken in execution of the decree until 11th May 1910 when one of the minors applied for execution alleging that he had attained majority on 5th June 1907 Held that the application for execution was barred by limitation That the decretal debt vested in the Receiver when he was appointed on 15th September 1905 and from that date on wards he was competent to give a discharge when once the debt had vested in him the minority of one or more of the decree holders ceased to have any importance for the rights of the minor no less than the rights of the majors were all absorbed by the Receiver *Jagat Tarini Dass v Aoba Gopal Chaki 1 L R 34 Cal 305* referred to *GIRJA NANDAN SINGH v KANHAYA PRASAD SARU (1913) 18 C W N 138*

3 ————— Suit to recover arrears of Deshpandegiri cash allowance—Three years arrears can be recovered The plaintiffs one of whom was a minor being jointly entitled to a Deshpandegiri cash allowance sued to recover arrears for six years prior to the suit Held that the plaintiffs were entitled to recover the arrears for three years only for the minority of the second plaintiff could not help the plaintiffs inasmuch as the adult plaintiff was in a position to give a discharge on behalf of himself as well as the minor *(Anpat v Sheshgiri 6 Bom L R 667* distinguished *HUCEPAO TIMMAJI v BHIDIRAO GURURAO (1917) 1 L R 42 Bom 277*

4 ————— Death of decree holder—Persons entitled to execute decree being the decree holder's two sons one of age the other not—Application for substitution and death of elder son A decree absolute for sale on a mortgage was obtained on the 19th of December 1906 The decree holder applied for execution on the 23rd of September 1909 but during the pendency of these proceedings he died leaving two sons—J of full age and R a minor On the 29th of September 1910 application for substitution was made by J and R J purporting to act as next friend to his brother and asking the Court to appoint him as such Before the date fixed for hearing however J died and the application was dismissed on the date fixed no one appearing on behalf of the decree holder On the 16th of July 1917 R who had attained majority earlier in the same year applied for execution praying that his application might be regarded as a continuation of the original application of 1909 Held that this application was time barred It could not be regarded as a continuation of the application of 1909 and inasmuch as J could as head of the joint family consisting of himself and R have given valid discharge on behalf of R as well as himself R could not claim the benefit of s 7 of the Indian Limitation Act 1908 *RATY RAY v NIADAR (1919) 1 L R 41 All 435*

5 ————— Joint Hindu family—Eldest brother competent to give a valid discharge as manager of the family—Suit by minor brothers barred In 1915 three brothers members of a joint Hindu family sued to recover possession of property after setting aside a sale deed passed by their

LIMITATION ACT (IX OF 1908)—contd

mother during their minority on the 28th July 1905 Plaintiffs Nos 1 and 2 were minors and plaintiff No 3 was more than twenty one years of age at the date of the suit The suit was held barred as against plaintiff No 3 but a question having arisen whether it was barred as against plaintiffs Nos 1 and 2 under s 7 of the Limitation Act 1908 Held that it was barred as against plaintiffs Nos 1 and 2 also inasmuch as plaintiff No 3 on his attaining majority became the manager of the joint family and as such could give a valid discharge and acquittance of all claims against the defendants without the concurrence of the minor plaintiffs *Per FAWCETT J*—The main object of the Legislature in s 7 (of the Indian Limitation Act IX of 1908) is to limit the indulgence which is otherwise given to minors so that if there are several minors who can claim the benefit of s 6 that concession does not extend to cover the whole period of time up to the youngest of the minors becoming a major but can only be availed of by the eldest of them *Dorassami Serumadan v Nondasami Salutan (1912) 38 Mad 118* followed *BAFU TATYA v BALA RAJU (1920) 1 L R 45 Bom 446*

————— s 7 Sch I Art 44—Joint Hindu family consisting of minors and widows—Manager—Mukhtarnama executed by manager—Management by the mukhtar during the life time and after the death of the manager—Sale by the mukhtar after the death of the manager—Binding effect—Minor—Limitation to set aside s 6 K the manager of a joint Hindu family consisting of minors and widows executed a mukhtarnama providing for the management of the family estate including settlement of money debts and pecuniary claims both during his life time and after his death until his eldest minor son attained majority The mukhtar was empowered to manage the estate as he thought fit including the power of sale and settle claims as K himself could have done during his life time In connection with the registration of the mukhtarnama the Sub Registrar examined the widows in the family including the widow of K the manager who had died in the meanwhile and the deed was registered as the widows admitted the same Subsequently the mukhtar sold *mulgani* (leasehold) rights of the family in certain lands for valuable consideration K's eldest son having attained majority on the 10th December 1894 he with his minor brother brought a suit on the 17th May 1899 to recover possession of the property alleging that the sale of the *mulgani* (leasehold) rights was void *ab initio* The lower Courts having dismissed the suit on second appeal by the plaintiffs Held that (i) the sale by the mukhtar was binding on plaintiffs as having been within the authority conferred by the mukhtarnama (ii) The sale could not be treated as a nullity inasmuch as a dying adult Hindu might appoint a manager and trustee for the minors themselves without interfering with the succession to the property *Raj Lukhee Dabee v Gokool Chander Chowdhury 13 Moo I A 209* and *Soobah Doorgah Lal Jha v Rajah Neelkund Singh 7 W P 74* referred to (iii) The right of plaintiff I if any to challenge the sale was barred at the date of the suit under Art 44 Sch I of the Limitation Act (IX of 1908) by reason of his failure to sue within three years of his attaining majority (iv) Plaintiff 2 a minor was also barred under s 7 of the Limitation Act (IX of 1908) inasmuch as

LIMITATION ACT (IX OF 1908)—contd

plaintiff 1 after attaining majority could have bound the minor plaintiff if he had chosen to give a discharge and acquittance of all claims to the defendants in respect of *mufgana* (leasehold) interests as manager MAHARISHYAR KRISHNA PPA v RAMCHANDRA MANGESH (1913)

I L R 38 Bom 94

— s 7 and Art 44—Sale by a Hindu mother as guardian of her only son—Second son in the womb at the time of sale—Subsequent sale by both the sons to another—First purchaser disposed by the latter—Suit in ejectment—Limitation The plaintiff claimed under a sale deed executed by a Hindu widow as guardian of her only son at a time when she had another son in the womb The plaintiff was afterwards forcibly ejected by the appellant who had obtained a later sale deed from the elder son who executed it both on behalf of himself and his minor brother The plaintiff sued in ejectment more than three years after the first sons attaining majority but within three years of the attainment of majority by the second Held that no suit having been brought by the first son within the period prescribed by Art 44 of the Limitation Act to set aside the sale the plaintiff's right to the share of the first son became absolute and that as the mother did not execute the sale deed as guardian of the second son his share in the suit land did not pass to the plaintiff Held also that as the causes of action for the two sons were different s 7 of the Limitation Act had no application to the facts of the case *Doraisami Serumadan v Vondisami Salusan* I L R 33 Mad 118 distinguished *Kandasami v Irusappa* (1917)

I L R 41 Mad 102

— ss 8 and 9—

See s 6 19 C W N 1113

— s 9—

See CIVIL PROCEDURE CODE 1908 s 48
I L R 3^d Bom 498See LIMITATION ACT 1877 s 19 ART
148 I L R 35 All 227

The 12 years prescribed by s 48 of the Civil Procedure Code must be computed from the day on which it begins to run and is not suspended during minority succeeding to Father who died after decree passed *Bhagwant RANCHANDRA v RAJI MAHOMED ABBAS*

I L R 36 Bom 493

— ss 9 15—

See ALIEN ENEMY
I L R 40 Cal 526

— s 10

See CIVIL PROCEDURE CODE (ACT V OF
1908) ss 92 AND 93
I L R 33 Mad 1064See EQUITY OF REDEMPTION
2 Pat L J 587See HINDU LAW—WILL
I L R 39 Mad 365See MAHOMEDA'S
I L R 36 Bom 214See TRUSTS PROPERTY
24 C W N 52

See WAKF I L R 37 Bom 447

LIMITATION ACT (IX OF 1908)—contd

Whether applicable to suits in respect of property which has not been received by a trustee The insertion in s 10 of the Indian Limitation Act 1908 of the words or the proceeds thereof or for an account of such property or proceeds has not had the effect of exempting from the ordinary rules of limitation suits against trustees for failure to reduce the trust property into possession *New Fleming Spinning and Weaving Company Limited v Kessouji Dail* I L R 9 Bom 373 399 followed *THOLASINGAM CHETTI v VEDACHILLA AYYAR* (1917)

I L R 41 Mad 319

— Straits

Settlements Ordinance No 6 of 1896 s 10— Specific purpose meaning of A specific purpose within the meaning of s 10 of the (Limitation) Ordinance No 6 of 1896 of the Straits Settlements (which in term corresponds to s 10 of the Indian Limitation Act) must be a purpose that is either actually or specifically defined in the terms of the Will or settlement or a purpose which from the specified terms can be certainly affirmed The statement in *Baluani Rao v Puran Mal* I L R 6 All that the purpose of following the property in the hands of the trustees referred to at the end of the section must be the purpose of restoring it to the trust which is specified in the earlier part of the section provides a sound and critical test by which to consider whether or not any particular trust is within the provision of the section *KHAN SIDI TEK v GHUAK HOOI G'OH NEOH (P C)*

26 C W N 405.

— ss 10 and 20—

1 — Suits against *Karia*—S 10 does not apply to suits against a *Karia* That section requires that the property must be vested in the trustees for a specific purpose but it cannot be said that a *Karia* is vested with the property belonging to a joint family The 6 year limitation under Art 120 applies to such suits *BISWAMBAR HALDAR v GIRIBALA DAS*

25 C W N 355

2 — Trustees de son tort — Suit for account A trustee de son tort stands in the same position as an express trustee The claim for accounts 6 years prior to the institution of the suit would be saved by Art 120 the obligation of the trustee being continuous Under the 1908 Article there is no limit to a suit for accounts against a trustee *DEANPAT SINGH v MOHESH NATH TEWARI*

22 C W N 752

— s 10 Sch I Arts 14 120—Deposit — Order of the Collector refusing *payme* & vested in trust—Specific purpose—No bar of time for recovery In 1835 C an ancestor of the plaintiffs had his immovable property sold to satisfy his debt by the then Maharaja of Satara Out of the sale proceeds the debt was paid off and the balance of Rs 1 93 05 was credited in the Government Treasury in the name of C Subsequently when the Satara principality ceased in the year 1843 the said amount came to be credited in C's name in the British Treasury In 1890 C's descendants applied to the British Government for a refund of the amount when it was ordered that the amount be refunded after production of heirship certificate by the applicants and the order was communicated to the then applicants. Subsequently

LIMITATION ACT (IX OF 1908)—contd

for a number of years there were litigations in Civil Court between C's descendants and the purchasers of C's property as regards the validity of sale. Ultimately in 1906 if the father of the plaintiffs made an application to the District Court for a certificate of heirship and an order for the issue of a certificate was passed on the 23rd March 1907. If then made an application on 16th October 1907 to the Collector of Satara requesting for a refund of the amount of Rs 1793 0 5 standing credited in C's name. This application was decided against the plaintiff by the Collector on 6th March 1911. The plaintiffs then appealed to the Commissioner and the appeal was rejected on 17th July 1911. A further appeal to the Government met with a similar fate. Plaintiff therefore on 15th June 1912 filed a suit against the defendant as trustee for the recovery of the amount alleging that the cause of action arose on 17th July 1911 the date when the Commissioner's order was received by the plaintiffs. The defendant contended that the cause of action arose on 6th March 1911 when the Collector rejected the plaintiff's application and the suit was barred under Arts 14 and 120 of Sch I of the Limitation Act (IX of 1908). The Lower Court being of opinion that the money was at most held by the defendant on an implied trust held that s 10 of the Limitation Act did not apply to the case and that the plaintiff's claim could only be decreed on the ground that it was within time under Art 120 of the Limitation Act. The defendant having appealed to the High Court held that the money being vested in the Government when it took over the Satara Treasury in 1848 and the purpose of the credit in the name of C being specific s 10 of the Limitation Act did apply. Held further that the plaintiffs were entitled to succeed on the ground not only that their claim did not fall within Art 14 and would be within time if it fell within Art 120 but that it was one to which the bar of limitation could not be pleaded. **SECRETARY OF STATE FOR INDIA v. BAPUJI MAHADEO (1915) I L R 39 Bom 572**

ss 10 30 Sch I Art 134—

See **LIMITATION** I L R 43 Cal 34

s 10 Sch I Art 120—

See **ADMINISTRATOR** 8 Pat L J 642

s 10 Sch I Arts 124 134 and 144—

See **RELIGIOUS ENDOWMENTS**
3 Pat L J 327

s 12—

See s 5 20 C W N 1303

See **ARBITRATION**
I L R 46 Cal 721

See **APPEAL TO PRIVY COUNCIL**
I L R 39 Cal 766

See **CIVIL PROCEDURE CODE (1909)**
s 122 I L R 40 All 1

See **DECREE AGAINST A MAJOR AS MINOR**
I L R 39 Mad 1031

See **LEAVE TO APPEAL**
I L R 42 Cal 35

See **LIMITATION (67)** 22 C W N 553

LIMITATION ACT (IX OF 1908)—contd

See **PROVINCIAL INSOLVENCY ACT** s 496

I L R 44 All 46

I L R 39 Mad 593

See **PATNA HIGH COURT RULES OF 1916**

5 Pat L J 701

1 ———— Time requisite for obtaining copy—Application for copy made on date the Court closed for annual vacation—Notice posted during the vacation—Copy received after vacation. Where an application for copies of a judgment and decree was made on the day when the Court rose for its annual vacation it was held that the applicant was entitled to the benefit of the whole period of the vacation notwithstanding that the copying department was kept open for some days and a notice posted during the vacation that the applicants' copies were ready. **HABIB CHAND v. HARMUKH (1911) I L R 34 All 41**

2 ———— Application for leave to appeal to Privy Council—Time taken for obtaining copy of decree if may be excluded—Indian Statute permitting exclusion of ultra vires—Order in Council of 1858—Government of India Act of 1858 s 64—Letters Patent cl 39 41—Privy Council Appeals Act (VI of 1874). An application for leave to appeal to His Majesty in Council is not time barred if excluding the time taken for obtaining a copy of the decree appealed from it is found to have been made within 6 months. 8 12 of the Limitation Act of 1903 is within the legislative powers of the Government of India in permitting such exclusion. **ABDULLAH HUSAIN CHODHURY v. ANANDA CHANDRA PAT (1914)**

18 C W N 1068

3 ———— High Court judgment—Application for review—Limitation if runs from before the signing of decree. In computing the period of limitation for an application for review of a judgment of the High Court the party applying for review is entitled to have excluded under s 12 of the Limitation Act the time requisite for taking a copy of the decree and the period of limitation cannot in such a case commence to run until at all events the day the decree was signed by the Judges. **GANGADHAR KARMAKAR v. SEKHAR BASINJI DASTA (1916) 20 C W N 967**

4 ———— Appeal limitation for presenting—Copies of judgment and decree applied for at different times—Both periods if to be excluded—Rule when periods overlap. Under s 12 cl (2) and (3) of the Limitation Act the appellant is entitled to a deduction of the time requisite as well for obtaining a copy of the decree as for obtaining a copy of the judgment and if he has applied for copies of the judgment and decree at different times both these periods should be excluded in computing the periods of limitation allowed for presenting the appeal unless the two periods overlap partially or entirely in which case the appellant is not entitled to have a deduction of the same time twice over. **PAJANI KANTA KAPALI v. KALI MOHAN DAS KAPALI (1916)**

21 C W N 217

5 ———— Appellant filing a copy of decree appealed from obtained by another party—Deduction of time taken to get the copy. An appellant who is required to file with his memorandum of appeal a copy of the decree appealed from may file a copy obtained by another party

LIMITATION ACT (IX OF 1908)—contd

and under s 12 (2) of the Limitation Act he is entitled to a deduction of time taken to obtain that copy *Ram Kishan Shastari v Kashi Bai* (1907) 1 L R 29 All 264 followed. *Ramamurthi Ayyar v Subramania Ayyar* (1902) 12 M L J 355 dissented from *AMIN UD DIN SAHIB v PIRAI BI* (19 0) 1 L R 43 Mad 633

■ Christmas holidays—Deduction of in computing time for appeal The defendant against whom a judgment and decree were passed on 21st December 1919 s e on the first day of the Christmas vacation applied for copies of the same on the 7th January 1920 s e some days after the reopening Held that in computing the time for appeal the defendant was not entitled to deduct the period of the Christmas vacation as time requisite for obtaining copies within section 12 of the Limitation Act *SUBRAHMANYA v NARASIMHAM* (1920)

1 L R 43 Mad 640

7 Limitation—Exclusion of time necessary for obtaining essential copies—Application for copies made after period of limitation had expired In order to obtain the benefit of s 12 of the Indian Limitation Act an appellant must apply once and for all for copies of all essential documents before the period of limitation for appeal has run out He cannot seek in aid the extended period if he finds later that an essential document has been omitted *MULRAY v NIADAR MAL* 1 L R 42 All 260

8 The time requisite for attaining a copy of the decrees within the meaning of this section does not begin until the actual application for a copy has been made *JYOTINDRANATH SARKAR v THE LODHA COLLIERY Co LTD* 6 Pat L J 350

9 Appeal—Exclusion of time between delivery of judgment and signing of decree—Delay in filing folios—Practice. Under s 12 of the Limitation Act 1908 an appellant is entitled to deduct the time between the delivery of judgment and the signing of the decree in computing the period of limitation prescribed for an appeal An applicant for a certified copy should deposit the required number of folios not later than the first day on which the office of the Court is open after that on which the number of folios was notified to him and in calculating the time required for obtaining a copy the applicant is not entitled to deduct the days during which the preparation of the copy was delayed by his own neglect to furnish folios. *RAM ASRAY SINGH v SHEO NARAYAN SINGH* 1 Pat L J 573

■ 12 29—

See PROVINCIAL INSOLVENCY ACT (III OF 1901) s 46 (4)

1 L R 33 All 38
1 L P 34 All 496

s 12 Sch I Art 19—

See LIMITATION ACT (IX OF 1908) s 10
Sch I Art 19

1 L R 39 Cal 510

Limitation—Application for leave to appeal to His Majesty in Council—Exclusion of time requisite for obtaining a copy of the decree Held that s 12 of the Indian Limitation Act 1908 applies to applications for leave to appeal to His Majesty in Council The appellant

LIMITATION ACT (IX OF 1908)—contd

is therefore entitled to exclude the day upon which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree from the period of limitation prescribed *PAM SABUP v JASWANT RAI* (1915)

1 L R 38 All 82

■ 13—Dissolution of partnership—Partnership business carried on out side British India—Absence of defendant out of British India—Suit for dissolution in British Indian Court—Exclusion of time—Cause of action—Jurisdiction of Court—Civil Procedure Code (Act I of 1908) s 20 A partnership consisting of plaintiff defendant No 1 and one S carried on business at Delagoa in South Africa and was managed by defendant No 1 who lived there In June 1902 defendant No 1 returned to British India in July 1903 and was there till November 1910 when he returned to Delagoa Thereafter in October 1915 he came back and settled in British India In April 1916 the plaintiff sued in a British Indian Court for dissolution of partnership The question of limitation arising—Held that the suit was in time for the periods during which defendant No 1 was absent from British India should be excluded from the period of limitation under section 13 of the Indian Limitation Act 1908 *Atul Krishna Bose v Lvon & Co* (1887) 14 Cal 437 followed Where the parties to a suit reside within the jurisdiction of a British Indian Court one of them can sue the other for dissolution of partnership in that Court even although that partnership commenced and was carried on in foreign territory *ISMAIL v ISMAIL ABDEL* 1 L R 45 Bom 1228

■ ss 13 19 and 20—Loan to a partner—One of the partners absent from British India—Suit for loan more than three years after loan but within three years after return of partner whether barred and against whom—Release by some partners of a partnership debt whether binding on legal representative of a deceased partner—Entries in debtor's accounts whether payment of interest or acknowledgment The plaintiff's father was a partner along with the third the sixth and eighth defendants of a firm at E which advanced certain loans in 1903 and 1904 to a firm at S of which the first defendant and the former defendants were partners The first defendant was out of British India from 1903 to 1908 The plaintiff sued in 1909 to recover his share of the loans from the partners of the firm at S The defendant pleaded that the suit was barred by limitation the plaintiff relied in bar of limitation on s 13 of the Limitation Act and also on certain unsworn entries in defendants' account books in which the interest accruing due were added to principal from time to time the first defendant further pleaded a release by defendants Nos 3 6 and 8 of the claim against him as binding on the plaintiffs Held that the suit was not barred by limitation against the first defendant as the plaintiff was entitled to a deduction of the time during which the first defendant was out of British India but was barred against the other defendants under s 13 of the Limitation Act that the entries in the debtor's accounts could not be treated as payments of interest under s 20 of the Limitation Act or as acknowledgments under s 19 of the Act as they were not signed by the debtors Held also that a partner can release a partnership claim, and after the death of a partner the surviving partners

LIMITATION ACT (IX OF 1908)—*contd*ss 13 19 and 20—*contd*

have a right to release such a claim that if a release by any of the partners is fraudulent the other partners can avoid it and seek to recover their share of the released debt but the legal representative of a deceased partner is not entitled to avoid it as the right to do so is personal to the partners. *Held* (on the facts) that the release of the first defendant by the third sixth and eighth defendants was *bona fide* and binding on the plaintiff. **PALANIAPPA CHETTIAR v VERAAPPA CHETTIAR** (1917) I L R 41 Mad 446

s 14—

See s 4 I L R 44 Mad 817

See s 5 I L R 42 Bom 295

See CIVIL PROCEDURE CODE 1908 s 47
I L R 44 Bom 97

See INSOLVENCY I L R 39 Mad 74

See LIMITATION I L R 45 Calc 94

See LIMITATION (54)
I L R 46 Calc 870See LIMITATION (72)
I L R 47 Calc 300See LIMITATION ACT (IX OF 1908) Sec I
ARTS 02 120 I L R 39 Mad 62See REGISTRATION ACT 1908 s 77
24 O W N 4 & 29See RENT SUIT (PREMATURE)
I L R 46 Calc 870

1 ——— *Plaint filed on last day ordered to be returned for presentation in another Court on a later date—Plaint actually returned later—Interval between *bars* suit* Where a plaintiff which was filed in a wrong Court on the last day of limitation was subsequently ordered to be returned for presentation to the proper Court but was not actually returned till three days later and was filed in the proper Court the day following *Held* that the suit was not barred by limitation. Where the final order is promulgated on a later date than that on which it was signed the date of promulgation should be held to be the day on which the proceedings ended within the meaning of expl 1 of s 14 of the Limitation Act. **Abhoya Charan Chakrabarti v Gour Mohun Dutt** 24 W R 28 distinguished **MOHAR DRA PRASAD SINGH v NANDA PRASAD SINGH** (1913) 17 C W N 1043

2 ——— *Withdrawal of suit—Fresh suit filing of whether saved by S 14 of the (Indian) Limitation Act (IX of 1908) applies only to cases where a Court itself decides that it is unable to entertain a suit for want of jurisdiction or other cause of a like nature and has no application to a case where the plaintiff himself with draws his suit on discovery of some technical defect which would involve a failure* **Venajal v Shomeswar** I L R 29 Bom 219 and **Uppendurath Nag Choudhury v Suryakanta Pay Choudhury** 20 I C 205 followed. **ARUNACHELLAM CHETTIAR v LAKSHMANA AYYAR** (1915) I L R 39 Mad 936

3 ——— *Exclusion of time from period of limitation—Time taken up in proceedings *bona fide* before a Court—Proceedings before Collector under s 11A of the Bombay Hereditary Offices Act (Bombay Act III of 1874)—Time cannot*

LIMITATION ACT (IX OF 1908)—*contd*s 14—*contd*

be excluded The time taken up in prosecuting an application before the Collector under s 11A of the Bombay Hereditary Offices Act (Bom Act III of 1874) cannot be excluded from the period of limitation under s 14 of the Indian Limitation Act 1908. **LAXMAN GANESH v KESHAV GOVIND** (1916) I L R 43 Bom 201

4 ——— *Plaint—Return of plaint—Proceedings do not end until the party gets back his plaint—Suit filed on the opening date after vacation—Presentation of plaint into another Court—Exclusion of time—Calculation should be made as if the second Court had been closed for vacation* When a party is ordered to take back his plaint and present it in the proper Court the proceedings do not end until the party gets back his plaint within the meaning of Expl 1 to s 14 of the Limitation Act 1908. The plaintiff sued to recover a sum due on account of dealings with the defendant between 20th May 1913 and 3rd June 1913. The suit was filed in the Haveli Court on the 7th June 1916 the date the Court re opened after the vacation and was then in time. On defendant's pleading that he was an agriculturist the plaint was ordered on the 15th January 1917 to be returned for presentation to the proper Court. The plaintiff took away the plaint on the 20th January 1917 and presented it on the same day in the Haveli Court. It was contended that even if the period from 7th June 1916 to 20th January 1917 was excluded the suit filed in the Haveli Court would still be four days out of time as the period which was allowed to be excluded owing to the Haveli Court being closed for the vacation when the plaint was filed in that Court could no longer be taken advantage of after the order had been made to take back the plaint and file it in another Court. *Held* that the suit in the Haveli Court was in time as the plaintiff was entitled to take advantage of those days during which the Haveli Court was closed for the vacation and the calculation should be made in the same way as if the second Court had been closed for the vacation. **Mira Mohidin Rauter v Vallaperumal Pillai** (1911) 46 Mad 131 not followed. **BAVADAPPA v KRISHNADAS** (1920) I L R 45 Bom 413

5 ——— *Applicability of when the parties in the two proceedings are not the same—Arts 6 and 97 which applies where an execution purchaser of a putni paid rent to the zemindar after the setting aside of the sale by the first Court and during the pendency of the first appeal—Existing consideration meaning of* Plaintiff purchased a putni at a sale held under Peg VIII of 1819 in May 1903. In October 1910 the purchaser paid rent to the zemindar after the sale was set aside by the Court of first instance in May 1910 and during the pendency of an appeal by the zemindar which was ultimately dismissed. There were certain proceedings for assessment of mesne profits between the purchaser and the original putniholder on the basis of the decree for cancellation of the sale. Thereafter the said purchaser in February 1916 sued for recovery of the money paid as rent to the zemindar. *Held* that the suit was barred. In view of the provisions of s 14 of the Limitation Act the Plaintiff was not entitled to a deduction of the time during which the mesne profits proceedings were going on as the zemindar was not a party therein nor was there

LIMITATION, ACT (IX OF 1908)—*could*

■ 14—cold

since October 1910 any period of time when the
 right of the Plaintiff to sue was suspended by
 reason of events over which he had no control.
 That Art 6 of the Limitation Act applied to the
 case. The fact that there was failure of considera-
 tion at the time the payment was made in October
 1910 attracted the operation of the bar imposed by
 Art. 6. Art. 97 did not apply because at the time
 when the money was paid there was no accounting.
 Consideration JANAKI NATH SINGH & BEJOT
 CHAND MAHATRA 26 C W 4 271

not constitute Other causes of a like nature within the meaning of s 14 of the Limitation Act 1908 BRAJA CHALUKY v. TARA CHAND MARYAM 6 Pat L J 593

s. 14 and 15—

See s 6 I L P 42 Md 637

14 and 29--

SELECTION I L P 47 Calc 300

15-

See 3 Pat L J 132
CIVIL PROCEDURE CODE (1905) s 43
I L P 40 All 198

SE LIMITATION (2nd)

1 L R 38 Ind 92

S I I STRATIO ACT 18 CH II
Apr 18 I L P 24 ALL 428

S LIMITATIO ACT 1908 ss 6 AND 15
v Pat L J 132

See SCIT I J R 15 C-1c B-4

1. Period during which execution of decree stayed
to be excluded from period of limitation. On
the 8th August 1909 an application to execute a
decree was made. The court by its direct order
the execution to be stayed until the 1st day of the
judgment debt was paid. The court then made an
order and pending the application the decree was
stayed from the 1st day of January to the 1st day of February
1909. On the 12th August 1911 the decree
holder applied again to execute the decree. The
Lower Court held that the second application was
barred by limitation as having been made more
than three years after the date of the first applica-
tion. On second appeal - Held that the second
application was filed within time for the applicant
was entitled to exclude the period during which the
execution of the decree was stayed in computing
the period of limitation for the second application.
Baird v. Baird (1911) 111

2 _____ in attachment
before judgment is not an injunction or order
within the meaning of s. 13 of the Limitation Act
1908 or Art. 113 of the Russian Decree, 1917.

§ —E t of a liquidation—Sub sequen t annu
it—Suing for limitation for suits—Idem cannot
be r a d i c a t e d of suits—Obtaining of leave to
sue from Court—Condition precedent to sue if
significant to see limitation—Federal Insolvency
Act (III of 193) s 15 c l 2 In computing the
period of limitation for suits in trust again t a

LIMITATION ACT (IX OF 1908)—cont'd

■ 15—cc clh

p= on after an order adjudicating him an insolvent was annulled s 15 of the Limitation Act does not permit the deduction of time during which the order was in force as unrl 16 cl 2 of the Provincial Insolvency Act an order of adjudication does not effect an absolute s of suits against the insolvent but only makes it nece ary that leave to sue should be obtained f om Court befo e a suit could be filed = un t him while the adjudication was in force Sons Pam v Kantaya Lal I L R 35 Ill 2, and Dorasami Padaya chi v Iyalahai I L R 30 M L J 16 referred to Shriram v Moodeen I L R 8 Mad 1009 dt tuncu hed P NATHAN PILLAI v GOVINDASAMI NAIR ET AL (1915)

4

Execution of

decree—Order debaring security pending appeal—
Security not furnished—Appeal was quickly dis-
missed where prior between order for security
and dismissal of appeal to be excluded in calculating
limitation for a second application for execution—
Code of Civil Procedure (Act 10 of 1908) O A P
rr 10 11 13 and 14 Judgment debtor applied
to the High Court for leave to appeal to the Privy
Council and petitioned the Court to stay execution
of the decree—an application for which I had been to
the Lower Court on the 13th December 1913
pending the disposal of the appeal by the Privy
Council It was alleged that the decree holder
was a man of no substance The High Court
accepted the allegation and by an order dated the
27th January 1914 allowed the decree to be
executed only on condition that the decree holder
furnished security The Lower Court fixed the
security at Rs 30,000 and the decree holder being
unable to furnish the amount dismissed the appli-
cation for execution On the 14th October 1916
the judgment debtor applied to the Privy Council
was dismissed for lack thereof and on the 14th April
1918 the decree holder applied for execution of
the decree The judgment debtor objected
that more than three years have elapsed since
the date when the debt was taken as the
13th December 1913 exceeds one of the decrees
was barred by limitation II' that the Court's
order of the 27th January 1914 was in effect an
order staying execution within the meaning of s 15
of the Limitations Act 1908 In view of the decree
holder's mitigation position he has now demanded and that therefore the decree holder
was entitled to exclude the period between the
2nd July 1914 and 1st October 1916

PANDAY
SATEO NARAIN SINGH ATTORNEY AT LAW

5 Pat L J 29

1C—

of inclusion of the sale in the period of limitation. That the word "period" in Article 10 of the Limitation Act is not restricted to an application for setting aside a sale but comprehends enough to include a suit as well as an application and the obvious intention of the Legislature was to allow an exclusion of the period during which the validity of the sale was in controversy whether the sale was impeached by a suit or by an application. PROMOTER NATH POY v. HISORE LAL SHARMA (1916) 21 C.W.N. 204

LIMITATION ACT (IX OF 1908)—*contd*

— s 17—Unlike cases governed by the Indian Succession Act and the Hindu Wills Act in a case governed by the Probate and Administration Act 1881 the obtaining of Probate is not necessary to clothe the executor with the right to sue for debts due to the estate within the meaning of s 17 and therefore time begins to run from the date of Testator's death as the obtaining of a succession certificate is not a condition precedent for filing a suit but only for getting a decree
BALAKRISHNADU v NARAYANASWAMY CHETTY
I L R 37 Mad 175

— s 18—

See LIMITATION ACT 1908 ART 95
I L R 37 Bom 158

See SALE IN EXECUTION
15 C W N 965

See SUCCESSION CERTIFICATE ACT 1889
s 4 I L R 43 All 440

1 ——— Sale application made after time to set aside—Fraud antecedent to sale if may be proved Where upon an application by a judgment debtor to set aside a sale on the ground of fraud made more than 30 days after the sale the Court refused to admit evidence of fraud antecedent to the sale on the ground that such fraud was not material for the purposes of s 18 of the Limitation Act Held that although proof of fraud antecedent to the sale does not necessarily indicate the continuance of that fraud subsequent to the sale it may have an important bearing in the determination of the question whether there was fraud subsequent to the sale sufficient for the purposes of s 18 The question of fraud should be considered as a whole
MOXI DAS v DWARKA NATH DPADA (1912)
17 C W N 478

2 ——— Conditions to be fulfilled before invoking section—Application for setting aside sale on the ground of fraud—Fraud subsequent to sale if necessary to be established S 18 of the Limitation Act provides that where a person having a right to make an application has by means of fraud been kept from the knowledge of such right of the title on which it is founded the time limited for making the application against the person guilty of the fraud or accessory thereto shall be computed from the time when the fraud first became known to the person injuriously affected thereby Consequently whoever desires to avail himself of s 18 has to establish in the first place that there has been fraud and in the second place that by means of this fraud he has been kept from the knowledge of his right to make an application but it is not essential to prove that there has been fraud subsequent to the date of sale
JOTINDRA MOHAN RAI CHOUDHURI v BROJENDRA KUMAR DUTTA (1914)
19 C W N 553

215— s 18 20 21 Sch I Arts 65 739

See PRINCIPAL AND SURETY
I L R 44 Cal 978

s 18 Sch I Arts 62 115 116—

See CONTRACT I L R 41 Mad 488

LIMITATION ACT (IX OF 1908)—*contd*

— s 19—

See s 11 I L R 42 Mad 637

See s 21 I L R 41 Mad 427

See ACKNOWLEDGMENT
I L R 49 Cal 789

See ACKNOWLEDGMENT OF DEBT
I L R 48 Cal 1046

See CIVIL PROCEDURE CODE 1908 s 2
I L R 42 Mad 52

I L R 41 Lah 13

See CONTRACT ACT 1872 s 25
1 Pat L J 121

See EXECUTION OF DECREE
1 Pat L J 214

See HATCHETTA I L R 48 Cal 746

See LIMITATION I L R 43 Cal 211

See LIMITATION, 1877 s 19
I L R 47 Cal 300

See LIMITATION I L R 35 Bom 383
I L R 43 Cal 211

1 ——— Debt entered in schedule filed by Insolvent—Acknowledgment—Limitation Where an insolvent has written down a debt in his schedule as owing that debt to a named person and has signed the schedule that is a sufficient acknowledgment under s 19 of the Indian Limitation Act (IX of 1908) to extend the period of limitation
CHONEY SRIGOPAL CHIRANJIAL v DRANALAL GHASIRAM (1910)
I L R 35 Bom 383

2 ——— Acknowledgment—Joint judgment debtors—Acknowledgment by one portion of debt—Effect Acknowledgment of a judgment debt by one of several judgment debtors keeps alive the decree against such judgment debtor alone and not against the others
Richardson v Younge, L R 6 Ch Ap 418
Bhoglal v Amritlal I L R 17 Bom 173
Dharma v Balmukund I L R 13 All 438 distinguished
Narayana v Venkata I L R 25 Mad 220
Vala Subramania Pallas v Ramanatha Chettiar I L R 39 Mad 421
Ahsanullah v Dalchini Din I L R 27 All 575 relied on If a part only of the debt is acknowledged it is kept alive to that extent only
CHANDRA KUMAR DHAR v PANDIT PODDAR (1912)
18 C W N 493

3 ——— Limitation—Acknowledgment by agent—Law to be applied to test the validity of an acknowledgment Held that the criterion to be applied to test the validity of an acknowledgment of liability put forward by a plaintiff as extending the period of limitation in his favour is the law in force at the time when the plaintiff's suit would otherwise have been time barred and not that in force at the time when the acknowledgment relied upon was made
Vohesh Lal v Bunsit Kumar I L R 6 Cal 340
Rahman Bibi v Halasa Kuar I L R 1 All 640 and Hanuman Prasad v Raghunandan Singh I All L J 355 referred to
Zaid un Nissa Bibi v THE MAHARAJA OF BAYATES (1911)
I L R 34 All 109

4 ——— Acknowledgment of liability The following two letters were sent by first and second defendants respectively to plaintiff's vakil (s) Sir 10th June 1908 With reference to your letter of the 2nd instant I request

LIMITATION ACT (IX OF 1908)—*contd*s 19—*contd*

you to be so good as to furnish me with a copy of a statement of accounts (u) Dear Sir 18th June 1908 With reference to your letter of the 2nd instant on behalf of landing contractor Madras I have to inform you that I wish to examine the accounts as my account does not show such an amount mentioned in your letter I therefore request you will please forward the copy of the account or to instruct your client to send his *gumastah* with his account books Held that neither of the letters amounted to an acknowledgment of liability under the Limitation Act s 19 **ANDIAPPA CHETTY v ALASINGA NAIDU (1913)**

I L R 36 Mad 68

5

Acknowledgment—Requisites for valid acknowledgment at Held that an acknowledgment of a debt to be a valid acknowledgment within the meaning of s 19 of the Indian Limitation Act 1908 need not be addressed to the creditor but may be made to some other person *as eg* by means of deposition in Court Held also that a statement in the form the whole of Janki Prasad's mortgage money owing there being in existence at the time two mortgages held by Janki Prasad, must be taken to apply to both in the absence of evidence indicating a different signification **Moniram Seth v Seth Rupchand I L R 33 Cal 1047** and **Mylapore Iyasaamy Vayapoori Moodliar v Yeo Kay I L R 14 Cal 801** referred to **Mizon Raj v MATHURA DAS (1913)**

I L R 35 All 437

6

Acknowledgment of debt A letter to the effect that the writers after looking into the account will sign it is not an acknowledgment of liability on an account stated within the meaning of s 19 of the Limitation Act **HEIRO PRASAD v GOJADHAR PRASAD SAKU (1914)**

19 B W N 170

7

Acknowledgment of plaintiff's title in statement of boundary of neighbouring land in kabulyat executed by defendant in favour of third party Where in stating the boundaries of lands included in a kabulyat executed by the defendant in favour of a third party he described the land in suit as plaintiff's Held that the statement amounted to an acknowledgment within the meaning of s 19 of the Limitation Act It is now settled that an acknowledgment to whomsoever made if it be an acknowledgment pointing with reasonable certainty to the liability in dispute or the right out of which that liability arises as a legal consequence is an acknowledgment of liability within the meaning of that section **Moniram Seth v Seth Rupchand 10 C B N 874 s c I L R 31 Cal 1047 Majumdar Hera Lal v Desai Narasail 17 C B N 573 Imam Ali v Baiy Nath I L R 33 Cal 613** and **Mylapore Iyasaamy Moodliar v Yeo Kay I L R 14 Cal 801** considered **GURU CH SAKA v SURENDRA KRISHNA RAI CHOWDERY (1913)**

19 C W N 263

8

Letter of acknowledgment construction of—Conditional acknowledgment operation of—Performance of condition necessary for—Contract not to plead limitation legality of—Contract Act (IX of 1872) s 23—Stopple against statute of limitation The plaintiff filed a suit on the 19th September 1912 to recover damages for breach of an oral contract by the defendant of which performance was due in 1903

LIMITATION ACT (IX OF 1908)—*contd*s 19—*contd*

and relied on a letter dated 20th September 1909 written by the defendant to the plaintiff as saving the bar of limitation The letter was to the effect that if certain arbitrators should decide that the defendant should pay any amount he would immediately pay but that if the arbitrators failed to decide the plaintiff might sue and that the defendant would not plead limitation The arbitration failed The plaintiff sued as afore said on the 19th September 1912 but the defendant pleaded limitation in bar of the suit Held (i) that the letter amounted only to a conditional acknowledgment (u) that where there is a promise to pay on a condition that condition in order that the promise may operate as an acknowledgment must be fulfilled *In re River Steamer Company L R 3 Ch 177 822 Maniram Seth v Seth Rupchand I L R 33 Cal 1047* and **Arum chella Rou v Rangiah Appa Row I L R 29 Mad 519** referred to (ii) that the plaintiff was not entitled to a deduction of time which elapsed between the date of the agreement to refer to arbitration and the date of the failure of the arbitration (iv) that an agreement by a debtor not to raise the plea of limitation is void under s 23 of the Contract Act as it would defeat the provisions of the Limitation Act and (v) that parties cannot estop themselves from pleading the provisions of the statute of limitation **Sitha ramay v Krishnasami I L R 33 Mad 374** referred to **RAMAMURTHY v GOPAYYA (1916)**

I L R 40 Mad 701

9

Parties referring unadjusted accounts for adjustment by arbitrators—Acknowledgment if need be addressed to any one and if should be by one willing to pay Where the parties to an *abichalnama* acknowledged that accounts remained unadjusted which the arbitrators were to adjust and each party distinctly agreed that he should have to pay such amount as might be found due from him on adjustment of accounts Held that this was sufficient acknowledgment within s 19 of the Limitation Act Under that section it is not necessary that the acknowledgment should be addressed to any particular person and it is a sufficient acknowledgment even if it be accompanied by a refusal to pay **JANARDAY SHAMA PODDAR v RADHA BULLAR SHAMA (1919)**

23 C W N 921

10

Acknowledgment—Court of Wards Act (Bom Act I of 1905) s 16 Proviso—Offer made by Collector in settlement of claim—Whether the offer can be used as an acknowledgment of debt In 1886 the defendant's family passed in favour of the plaintiff simple mortgage bond for Rs 9500 for a period of ten years The defendant was a minor and a ward of the Collector under the Court of Wards Act (I om Act I of 1904) In 1916 the plaintiff sued to recover the amount due on the bond of 1886 Interest on the bond was paid regularly till 1903 On the 24th May 1915 the Collector wrote a letter to the plaintiff by which the Collector offered to pay Rs 17000 in instalments in satisfaction of the whole of the amount due to the plaintiff The plaintiff relied upon this letter as an acknowledgment of debt to save the bar of limitation On behalf of the defendant it was contended that under the proviso to s 16 of the Court of Wards Act the letter could not be proved Held that the proviso did not plaintiff from using the letter

LIMITATION ACT (IX OF 1908)—*contd*

— s 19 and Sch Art 64—*concl'd*

items are set off one against the other and a balance is struck in favour of one of the parties. In such a case the law implies a new promise by the party from whom the balance is found to be due to pay such balance in consideration not merely of past debts but also in consideration of the extinguishment of the old debts on each side and hence it is not necessary that the balance would be struck within the period of limitation applicable to any of the items in the account. Where the defendant was in the habit of taking loans from the plaintiff and an account of what was due from the former to the latter was made up after the last item in the account was time barred and the defendant signed the plaintiff's account book acknowledging the amount due on that date held that the account was not an account stated and that a suit to recover the amount was not barred by the defendant's acknowledgment. *Horgoval v Abdul 9 Bom H O R* followed *SURAJ PRASAD PANDAY v W W BOUCKE 5 Pat L J 371*

— s 19 and Sch I Art 135—

See CIVIL PROCEDURE CODE O II R 6

I L R 2 Lah 13

— s 19 Sch I Art 148—

See MORTGAGE I L R 38 All 540

— s 19 and Sch Art 181—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss. 2 47 I L R 42 Mad. 52

— s 19 Sch I Art 182 cl 5—
Written acknowledgment—Application made for certifying payments on the decree acknowledging the decree as an outstanding decree—Step in and of execution. The plaintiff obtained a decree on the 3rd July 1900 whereby he was required to pay a sum of Rs 600 by annual instalment of Rs 50 and to redeem the mortgaged land. The decree also provided that on failure to pay any two instalments the plaintiff's right to redeem was to be foreclosed and the defendant was to be placed in possession of the land. The instalments for 1901 and 1902 were duly paid, while the one for 1903 was only paid in part. No other payments were made. On the 20th July 1905 the plaintiff made an application to the Court which was consented to by the defendant for certifying the above payments in satisfaction of the decree. This application referred to the decree as an outstanding decree. On the 14th December 1907 the defendant applied to foreclose the decree but the application was dismissed for want of prosecution. He applied again on the 29th March 1909 for the purpose but his application was dismissed as barred by limitation. The defendant having appealed—*Held* that the application was within time for the application of 1905 was sufficient to give a fresh starting point for limitation either as an acknowledgment within the meaning of s 19 of the Limitation Act (IX of 1908) or as a step in and of execution under Art 182 cl 5 of the First Schedule to the Act. *BACHARAJ NATHALALPANDY v BABAJI TUKARAM (1913) I L R 38 Bom 47*

— s 20—

See s 10

25 C W N 356

See s 21

I L R 41 Mad 427

LIMITATION ACT (IX OF 1908)—*contd*

— s 20—*contd*

See CHEQUE (PAYMENT BY)

I L R 42 Calc 1043

See CONTRACT ACT s 60

1 Pat L J 474

See EXECUTION OF DECREE

1 Pat L J 214

See EXECUTION OF PETITION

I L R 41 Mad 251

See LIMITATION (40)

I L R 44 Calc 567

See PRESIDENCY SMALL CAUSE COURTS ACT 1882, s 69 I L R 38 Mad 438

See PRINCIPAL AND SURETY

I L R 44 Calc 979

1 ————— *Limitation—*
Interest—Payment of part of interest due—Suit for foreclosure. The word interest in s 20 of the Limitation Act means interest or any part of the interest due. *Kollu v Hall, I L R 18 All 95* and *Anwar Hussain v Lalpur Khan I L R 26 All 167* distinguished *ABDUL AHAD v MARTAB BEBI (1913) I L R 35 All 378*

2 ————— *Part payment—*
Payment—recorded by endorsement in the hand writing of the person receiving—Endorsements only signed by the debtor whether sufficient acknowledgment. To save the suit from being barred by limitation the plaintiff relied on part payments made by the defendant. The part payments were recorded by endorsements which the plaintiff admitted were in his handwriting but he contended that the endorsement being signed by the defendant was a sufficient acknowledgment within s 20 of the Limitation Act 1908. *Held* that the fact of payment recorded being not in the handwriting of the person making the payment the provisions of the section were not satisfied. *Saniushwar Mahanta v Lakshmana Mahanta I L R 35 Calc 813* applied *NIWAZKHAN NATHANKHAN v DADABHAI (1916) I L R 41 Bom 166*

3 ————— *Execution of*
decree bearing no interest—Payment saving limitation. Where on an application for execution of a decree which did not bear any interest made more than three years after the date of the previous application the decree holder relied on a payment which the judgment debtor was found to have made to the decree holder within three years of the first application for execution but there was nothing to show that it was paid by way of interest. *Held* that though the decree holder might either apply to certify the payment before execution or might do so in his application for execution of the decree the provisions of s 20 of the Limitation Act would in no way be affected by it. The decree not bearing any interest any payment made by the judgment debtor must be taken to have been made in part payment of the principal and such part payment must appear in the handwriting of the judgment debtor or of his agent duly authorized in this behalf in order that limitation might get a fresh start. *HARENDRA CHANDRA BHATTACHARYA v GAGAN CHANDRA DAS (1916) 22 C W N 325*

LIMITATION ACT (IX OF 1908)—*contd*s 20—*contd*

4 ——— Mortgage—Suit for sale—Limitation—Payment of interest as such—Effect of such payment as against purchaser of part of mortgaged property. A payment made on account of interest as such due on a mortgage debt takes effect under s 20 of the Indian Limitation Act 1908 as much against a person interested in the mortgage as a purchaser of part of the mortgaged property as against the mortgagor himself who makes the payment. *Krishna Chandra Saha v Bhairab Chandra Saha* 1 L P 32 Cal 1077 and *Doms Lal Sahu v Roshan Dobby* 1 L P 33 Cal 1973 referred to *Surya ram Marwari v Barhamdeo Persad* 1 C L J 337 distinguished. *ROSHAN LAL v KANHAIYA LAL* (1918) 1 L R 41 All 111

5 ——— Endorsement of payment in handwriting of payer—Requirement of section where paper illiterate. In the case of an illiterate person if the payer affixes his mark beneath the endorsement written by some one else it is sufficient to satisfy the proviso to s 20 sub s (1) of the Limitation Act but where no such mark is affixed the provision of law has not been complied with. *BALEBRAM KOKER v SOBHA SHEIKH* (1918) 23 C W N 930

6 ——— Part payment—Handwriting in respect of part payment—Part payment must appear in the handwriting of the person making payment. The defendant purchased certain goods from the plaintiff on the 10th September 1912 for which he owed Rs 1350. He also owed another debt of Rs 301 to the plaintiff. On the 4th and 5th July 1913 the defendant paid two sums of Rs 500 and Rs 235 accompanied by a letter which ran thus—“I have sent currency notes of Rs 500 and a Hundi for Rs 235 in all Rs 735. Credit them. The plaintiff applied the sum in wiping out the smaller debt and credited the balance as part payment of Rs 1350. On the 14th October 1915 the plaintiff sued to recover the unpaid balance of Rs 1350 with interest and sought to bring his claim in time by relying on the part payment in 1913. Held that the plaintiff's claim was in time for the requirements of s 20 of the Indian Limitation Act were satisfied as the fact of the payment appeared in the handwriting of the person making the same and it appeared that the payment was in part satisfaction of the principal of the debt. *SAKHARAM MANCHAND v KEVAL PADAM* (1919) 1 L R 44 Bom 292

7 ——— Execution of decree for sale—Part of the hypotheca taken up under the Land Acquisition Act—Compensation paid into Court—Payment of amount to decree holder through Court—Paper showing payment signed by Judge—Judge whether an agent of judgment debtor—Signature of Judge whether sufficient under s 20. After a decree for sale on a mortgage was passed in 1911 a part of the hypothecated property was taken up under the Land Acquisition Act and the Government paid the amount of compensation into Court to the credit of the suit and the same was paid out to the decree holder on the 11th August 1914. When the payment was made the Judge signed a paper showing that payment was made in his presence and through Court. On the decree holder filing an application for execution of the decree on the 10th August 1917 the judg-

LIMITATION ACT (IX OF 1908)—*contd*s 20—*concld*

ment-debtor pleaded the bar of limitation. Held that the Judge should be deemed to have been an agent duly authorized by the judgment-debtor to make the payment and that the signature of the Judge on the paper showing the payment satisfied the condition that the fact of payment should appear in the handwriting of the person making it as required by s 20 of the Limitation Act and that consequently the application for execution was not barred. *Chinnery v Evans* (1884) 11 H L Cas 115 applied. *Lakshmanan Chetty v Sadatappa Chetty* (1918) 35 J L J 511 referred to. *COVINDASAMI PILLAI v DASAI GOUNDA* (1921) 1 L R 44 Mad 971

8 ——— Mortgage decree against mortgagor and purchaser of the equity of redemption—Payment of interest as such by the purchaser effect of. A purchaser of the equity of redemption is a person liable to pay the mortgage debt within s 20 of the Limitation Act hence if under a mortgage decree for sale of the mortgage property to which he is a party though exempted from personal liability he pays interest as such such payment gives a fresh period of limitation for execution of the decree. *Bolding v Lane* (1863) 1 De G J & Sm 127 and *Chinnery v Evans* (1884) 11 H L Cas 115 at 135 followed. *ANKARAN SOWCAR v VENKATASWAMI NAIDU* (1911) 1 L R 44 Mad 544

9 ——— Uncertified payment of an instalment decree of sales limitation—Civil Procedure Code (Act V of 1908) Or 91 r 2—Certification of payment if can be made at any time. After the passing of an instalment decree some instalments were paid within three years of the date of the decree. The payments were not certified to the Court before the application for execution but were certified by a petition presented after the application for execution was made and made a part of the said application. The said application for execution was made more than three years after the date of the decree but within three years from the dates of the said payments. Held that the payments which were evidenced by letter written and signed by the judgment debtor having been made within three years of the decree and within three years of the present application for execution and then having been certified by a petition which was made a part of the application for execution the application for execution was not barred by limitation. *MADAN MOHAN BANIKIA v HARULAL KUNDU* (1920) C W N 534

ss 20 and 21—

See PRINCIPAL AND SECRET

1 L R 44 Cal 978

ss 20 57 Sch 1 Art 5—Suit for money payable for money lent—Payment of interest saving limitation—Creditor's discretion to apply money received to oldest debt—Second appeal—Tender of evidence (bahu khata) at hearing. The plaintiff brought a suit on the 14th May 1909 for money due on an adjustment of accounts. The plaintiff alleged that the last adjustment took place within three years from the date of the institution of the suit when the defendant promised to pay. The Courts below dismissed the suit. The District Judge in appeal however found that the defendant took a loan of Rs 50 from the plaintiff on 21st June 1906 but he refused

LIMITATION ACT (IX OF 1908)—*contd*

s 23—

See MADRAS ESTATES LAND ACT (I OF 1903) s 192 I L R RE Mad 655

s 23 and 26—

See RIPARIAN RIGHTS

3 Pat L J 51

s 26—

See BENGAL FERRIES ACT 1883

5 Pat L J 500

See EASEMENT I L R 39 Calc 59
I L R 1 Lah 206

Suit for declaration of right of way—Necessity of proving that enjoyment of the right ended within two years before suit—Affirmative proof of actual user of necessary—Distinction between enjoyment of a right of easement and actual exercise of the right Plaintiff brought a suit for declaration of a right of way and for removal of an obstruction thereto. The right was enjoyed for more than 20 years peaceably and openly without interruption as an easement and as of right. There was no discontinuance of the enjoyment by reason of the obstruction by the Defendant till within a few days previous to the institution of the suit and there was no suggestion that the Plaintiff voluntarily abandoned or discontinued the exercise of the right at any time before such date. *Held* that it was not necessary for the Plaintiff to prove affirmatively actual user of the way down to a date within two years before the suit. A person may without violence to language be said to be in enjoyment of a right of way during a period of time though he does not actually use the way every moment. Continuation of user does not necessarily mean abeyance in enjoyment. GORAL CHANDRA SEN v BAKSHI BEHARI ROY

20 C W N 121

s 28—

See ADVERSE POSSESSION

I L R 44 Calc 425

See ATTACHMENT

I L R 45 Bom 1020

See CIVIL PROCEDURE CODE 1908 s 92

I L R 38 Mad 1064

See LIMITATION I L R 39 Mad 617

See MORTGAGE DEEDS

s Pat L J 478

See SAPANJAMBAR

I L R 45 Bom 694

Several daughters of a Hindu jointly succeeding to their father's estate—Exclusive possession of one for more than twelve years—Right of survivorship on her death to the estate by survivorship Where on the death of a Hindu his daughters jointly succeeded to his estate but one of them excluded the others from the enjoyment of the estate for more than twelve years and then died after alienating some of the properties. *Held* in a suit by a surviving daughter against the son of the deceased and the alienees to succeed to the estate by right of survivorship that with the extinction of the right to joint possession under s 28 of the Limitation Act the right of survivorship which is only an accre-

LIMITATION ACT (IX OF 1908)—*contd*s 28—*contd*

tion to the right to joint possession was also lost. *Kalam v Vachnar v Rajah of Shivaganga* (1863) 9 M I A 539 at page 611 and *Sachindran v Kishore Dey v Rajani Kant Chuckerbutty* (1915) 27 I C 250 followed. ATCHANNIA v PATTAN (1921)

I L R 44 Mad 131

*s 28 Art 47—Suit to recover possession of lands—Magistrate order of under Criminal Procedure Code (Act I of 1898) s 145—Order passed without proper inquiry—Notice not legally served on the plaintiff—Plaintiff aware of proceedings—Order not without jurisdiction—Applicability of Art 47—Tenant for a term—Landlord treating tenant as a trespasser after the expiry of the term—Subsequent registered notice to quit—Cause of action when Art 47 of the Limitation Act (IX of 1908) is applicable to a suit for recovery of possession of lands in respect of which an order had been passed by a Magistrate acting under s 145 of the Code of Criminal Procedure although the Magistrate might not have made the proper inquiries which he ought to have made before he passed the order if the plaintiff had notice of the proceedings though the notice was not served on the plaintiff in accordance with law. Gangadhar Aiyar v Sankarappa Aiyar 9 Mad L T 91 followed. Where the defendants were tenants for a term under the plaintiff and continued in possession of the lands after the expiry of the term but the plaintiff did not treat the defendants as tenants holding over but as trespassers after the date of the expiry of the term and the magistrate order under s 145 of the Code of Criminal Procedure was passed in the defendant's favour subsequent to the said date. *Held* that the suit for recovery of possession of the lands brought by plaintiff more than three years after the said order was barred under Art 47 of the Limitation Act. Tukaram v Hari I L R 28 Bom 601. Bapu bin Mahadaji v Mahadaji Vasdeo I L R 8 Bom 348 and *Wise v Amerunissa Akhrom* L R 7 I A 73 referred to. Balaji Chand Ghosal v Samiruddin Mandal I L R 19 Calc 645 distinguished. PAB SURAMAYYA v PAMACHANDRUDU (1913)*

I L R 38 Mad 432

s 28 Arts 124 144—Religious endowment—Idere possession of sarbarakar—Suit by descendant of original dedicator to oust son of sarbarakar Where a person had been appointed in 1899 by a Revenue Court sarbarakar of certain endowed property and had remained in possession until 1914 when he died it was held that a suit brought in 1915 by a descendant of the original dedicator to evict the son of the appointee of 1899 and to have herself declared sarbarakar of the endowed property was barred by limitation. *Unanambanda Pandara Sannadi v Golu Landaram* I L R 23 Mad 411 followed. PAM PARI v NAND LAL (1917)

I L R 39 All 636

s 28 Art 144—Right recurring at uncertain intervals—Right to take wood from trees when fallen or cut—Idere possession The father of the plaintiffs in 1867 obtained leave from the Collector to plant trees along a road on land belonging to Government. He expressed his willingness to do so at his own expense and to tend them and the only right he asked for was to get the fallen dry wood from the trees. Subsequently the village passed out of the possession of

LIMITATION ACT (IX OF 1908)—contd

s 28, Art 144—contd

the plaintiffs father and on two occasions in 1900 and in 1910 the defendant who had purchased the village got the proceeds of the sale of such wood. The plaintiffs on both occasions asserted their claim to wood or the price thereof but were unsuccessful. Within six years from the date of the last sale they brought a suit for a declaration of their right to get the dry wood by virtue of the agreement of 1867. The defendant pleaded adverse possession. Held that the right being one which could only be exercised on uncertain occasions and not a right recurring at fixed periods and as there had been disputes as to the right between the parties on two previous occasions it could not be said that defendant had acquired a title by adverse possession. *Q. are Whether s 28 of the Indian Limitation Act 1908 applies at all to a case like this* DEVI PRASAD v. BADRI PRASAD (1918)

I L R 40 All 461

s 29—

See LIMITATION I L R 47 Calc 300

See PROVINCIAL INSOLVENCY ACT s 46

CL (3) I L R 80 Mad 593

s 46 CL (4) I L R 33 All 738

I L R 34 All 496

1—Limitation Act (IX of 1877) s 2 Sch II Art 30—Suit for restitution

of conjugal rights—Limitation. The plaintiff in a suit for restitution of conjugal rights filed in 1910 alleged that his wife had been taken away by two of the defendants under a promise that she should return to him shortly but subsequently they denied all knowledge of her whereabouts. In 1909 he alleged he was informed that she was living at a certain place with one of the defendants. Held that the plaintiff's suit was not barred by limitation. *Binda v. Kaushtika* I L R 13 All 27 referred to. *ATESHA v. FARAZ HUSAIN* (1912) I L R 34 All 412

2—Effect meaning of—Applicability of the Act to affect periods of

limitation prescribed by Provincial Insolvency Act (III of 1907). Held by the Full Bench that recourse cannot be had to the general provisions of the Limitation Act (IX of 1908) in dealing with the admission of petitions and appeals presented after the time prescribed under the provisions of the Provincial Insolvency Act (III of 1907) as such recourse would affect the specially prescribed period of limitation within s 29 (i) (b) of the Limitation Act. *Abu Backer Sahib v. The Secretary of State for India* I L P 34 Mad 105 followed. *LINGAYYA v. CHINNA NARAYANA* (1917) I L R 41 Mad 189

3—The effect of s 29 (1) (b) of the Limitation Act is to make both parts II and III of the Act inapplicable to a special period of limitation prescribed by a special or local law. *SECRETARY OF STATE FOR INDIA v. SHIB NARAIN HAZRA* (1918) 22 C W N 502

s 29 14—

See REGISTRATION ACT 1908 s 24 C W N 29

ss 29 15 (2)—

See SUIT I L R 45 Calc 934

LIMITATION ACT (IX OF 1908)—contd

s 30—

See LIMITATION I L R 43 Calc 34

Mortgage decree against mortgagor and purchaser of the equity of redemption—Payment of interest as such by the purchaser effect of a purchaser of the equity of redemption is a person liable to pay the mortgage debt within s 20 of the Limitation Act hence if under a mortgage decree for sale of the mortgage property to which he is a party though exempted from personal liability he pays interest as such such payment gives a fresh period of limitation for execution of the decree *Bolding v. Lane* (1863) 1 De G J & Sm 192 and *Chinnery v. Evans* (1864) 11 H L Cas 115 at 135 followed. *ASKA RAM SOWKAR v. VENKATASWAMI NAIDU* (1921) I L R 44 Mad 544

s 31—

See LIMITATION I L R 35 Mad 191

1—*Mortgage—Suit for sale—Limitation—General Clauses Act (X of 1897) s 10* The special period of limitation for suits for foreclosure or for sale by a mortgagee prescribed by s 31 of the Indian Limitation Act 1908 namely two years from the date of the passing of the Act expired on a Sunday. Held that a suit for sale to which s 31 applied instituted upon the following Monday was within time. *Sheddas Daulatram Marudai v. Narayan Lalad Asaji* 13 Bom 1153 dissented from. *HIRA SINGH v. MOHAMMAD AMARTI* (1912) I L R 34 All 375

2—*Period of two years for filing suits—Period not prescribed—Last day Sunday—Suit filed on Monday next—Limitation* A question having arisen as to whether a suit for which provision is made under s 31 (1) of the Limitation Act (IX of 1908) if instituted on a Monday one day after the period of two years from the date of the passing of the Act has expired can be taken to have been instituted within the period of two years. Held that the suit could not be taken to have been instituted within the period of two years and that two years specified in s 31 of the Limitation Act (IX of 1908) was not the period of limitation prescribed. *SURENDAS DAULATRAM v. NARAYAN* (1911) I L R 30 Bom 263

3—*Limitation—Mortgage—Suit on mortgage barred under Limitation Act of 1871—Mortgagee's rights not revived by present act* Held that s 31 of the Indian Limitation Act 1908 cannot be construed as reviving rights already barred under the Limitation Act of 1871. *JAY SINGH PRASAD v. SURJA SINGH* (1913) I L R 35 All 167

—Sch I Art 2—*Execution of decree—Sale in execution—Tender of decretal amount by judgment debtor—Refusal of sale-officer to accept tender—Suit for damages—Limitation* The plaintiff sued for damages against a Court Amin under the following circumstances. The plaintiff alleged that in execution of a simple money decree certain immovable property belonging to him had been advertised for sale. On the day fixed for the sale and before it had commenced the plaintiff tendered the decretal amount to the defendant.

LIMITATION ACT (IX OF 1908)—contd

Sch I Art 2—contd

who was the officer deputed to conduct the sale. The defendant however wrongfully refused to accept the money offered to him and went on with the sale and the plaintiff was subsequently obliged to let the sale set aside under O XXI r 59 of the Code of Civil Procedure. The suit was instituted some nineteen months after the alleged cause of action assuming that to be the refusal of the Amm to accept the money tendered or his continuing the sale after the tender had been made had been held that the suit was barred by limitation under Art 2 of the first schedule to the Indian Limitation Act 1908. *Ranclordis Moore v The Municipal Commissioner for the City of Bombay* I L R 35 Bom 557 referred to *MURAT LIL : COFAL SORUP* (1915) I L R 41 All 219

Sch I Art 2 62 10—Limitation

Suit for refund of octroi duty allowed to be decreed. The plaintiff sued a municipal board to a refund of octroi duty. He did not allege that the duty had in fact been levied on him from him. He alleged that he had paid the duty and it became entitled to a refund. The suit was governed by Art 10 and not by Art 62 of the Indian Limitation Act 1908. *Pappalaya Ma v Municipality Coorg* 1908 11 Mys 111. *Municipal Board v L P 2 All 491* *Guru Das v Ram Narain* I L R 10 Cal 60 and *Hanuman v Hanuman* I L R 19 Cal 129 referred to *Municipal Board v Gazi* 1914 I L R 35 All 505

Sch I Art 110 126—

See PARANPERSHI 10 C 1 352

Sch I Art 4 7 101 102 129—

Hereditary archaka of a temple—Sole owner by trust—Sue by archakas for perquisites and damages against trustees—Limitation for suit—*Eraniel Simil C v Courts* 1st (1957) 58 All 123—Sue by temple cognizable by a small court—*Eraniel Simil C v Courts* 1st (1957) 58 All 123. The plaintiff's suit was her share archakas in the temple was suspended from their office in June 1911. By the trustees of the temple the order was passed on the 19th June 1911 and the suspension lasted till 19th July 1911. The plaintiffs alleged that the suspension was illegal and urged that on the 19th June 1911 to recover their pay and perquisites as well as damages for mental distress, loss of dignity etc for an amount below Rs 100 as a grant the trustees the perquisites of the temple and the person who performed the duties of the office during their suspension. The lower appellate Court having held the suit was not barred by limitation as regards perquisites and awarded the cash to the Court of first instance the order of the trustees performed an appeal against the order of remand contending that the suit was barred. The respondents filed objection that the suit was incompetent as the suit was of a small nature. Held that an appeal lay to the High Court against the order of remand as the suit was not barred by limitation. Court

LIMITATION ACT (IX OF 1908)—contd

Sch I Arts 4 7 101 102 120—contd

that Art 102 of the Limitation Act applied to the suit as against the trustees as regards the pay and the perquisites if payable by the temple and the suit was not barred as regards such claims that Art 36 applied to the claim for perquisites if payable by third persons as well as to the claim for damages and the claims were barred and that as against the plaintiff there was either no cause of action or it was barred under Art 36 of the Limitation Act. *BARADWAJ MUDALIAR v ANUNACHALA CHETTIAR* (1917)

I L R 41 Mad 528

Sch I Art 11—

See CIVIL PROCEDURE CODE (Act XIV of 1908) ss 28 282 283 AND 287
I L R 41 Lon 61

See CIVIL PROCEDURE CODE (1908)—

O XXI r 53 I L R 41 All 525
I L R 45 Bom 531
I L R 41 All 623
I L R 41 Mad 585

O XXI r 97 I L R 41 All 57

O XXI r 100 I L R 41 All 652

See LIMITATION I L R 41 All 755

Delhi 1914
Transfer of Property Act (XII of 1879) s 17 and 48—
Transfer of Property Act (XII of 1879) s 48—
Agriculturist Mortgagee—Sue (Conciliator's certificate)—Mortgagee necessary party along with other persons interested—Exclusion of time spent in obtaining Conciliator's certificate—Limitation Defendants 1 and 2 brought a suit on a mortgage against defendants 3 and while the suit was pending defendant 3 mortgaged the same property namely a house along with other properties to the plaintiffs. Defendants 1 and 2 having obtained a decree they applied for execution and sought to recover the decretal debt by sale of the house. Thereupon the plaintiffs intervened and applied that the house should be sold subject to their mortgage lien. The plaintiffs' application being allowed they brought a suit against defendants 1 and 2 to establish their right founded on their mortgage. The suit was brought within one year of the order rejecting their application after the expiry of the time taken up in obtaining the Conciliator's certificate under ss 47 and 48 of the Delhi Agriculturists Relief Act (XVII of 1879) defendant 3 being described in their mortgage as an agriculturist. Defendants 1 and 2 contended that defendant 3 being not a necessary party the Conciliator's certificate was unnecessary and the suit was time barred. Held that under the provisions of the Transfer of Property Act (XII of 1879) defendant 3 was a necessary party to the suit which was brought on the strength of the mortgage and he being an agriculturist the Conciliator's certificate was necessary and the suit was therefore not time barred. *ERANIL SIMIL C v COURTS* (1911)

I L R 33 Bom 621

LIMITATION ACT (IX OF 1908)—contd

Sch I, Art 11 and s 22—

Applicability of dis-
cussed

See CIVIL PROCEDURE CODE 1908

O XXI, ER 58 60 25 C W N 544

Sch I Art 12—

See DECREE AGAINST A MAJOR AS MINOR.
I L R 111 Mad 1031

See CIVIL PROCEDURE CODE 1882

s 456 I L R 1 Lah 27

When in an execution of a decree against a father of a joint family property has been sold, the sons cannot claim to redeem without setting aside the sale within the time prescribed by this section. BHOLA JHA v KELI PRASAD I Pat L J 180

Sch I Art 12A and s 28 and

28—Arrears of revenue—Sale by Revenue Court—Judgment debtor remaining in possession of property

Suit by purchaser for possession—Defence by judgment debtor that the sale was invalid—Judgment debtor not precluded from raising the defence—Revenue sales to be treated differently from sales by Civil Courts—Purchaser's plea of want of notice of judgment debtor's title not valid. The defendants who owned plaint land in a *khoti* village brought a suit against the *khoti* for a declaration that they held the land free of assessment. The suit was dismissed by the lower Courts but on appeal to the High Court it was held in 1900 that the defendants had the right to hold the land free of assessment. While the appeal proceedings were pending the land was sold by the Revenue Court under the provisions of the Land Revenue Code for arrears of assessment due from the defendants and it was purchased by the plaintiff's vendor. The sale was confirmed on the 6th August 1904. After the sale the defendants continued to remain in possession of the property. In 1916 the plaintiff sued to recover possession of the property. The defendants resisted the claim on the ground that the sale was invalid. It was urged on plaintiff's behalf that as he was a purchaser at a revenue sale without notice of defendants' title his title was good as against the defendants. The lower Courts decreed the plaintiff's claim holding that as the defendants did not sue to set aside the sale within one year their right to impugn the sale was barred under Art 12A of the Limitation Act. Held (reversing the decrees of the lower Courts) that the defendants could raise the defence that the sale was invalid though a suit by them would have been barred by limitation and s Art 12A of the Limitation Act. Held also that the plaintiff as a purchaser at a revenue sale could not succeed on the ground that he was a purchaser without notice inasmuch as the sale held by the Revenue Court for arrears of assessment while proceedings were pending in a Civil Court became invalid when it was declared that the defendants were entitled to hold the land free of assessment. Unless a suit falls under s 26 or s 27 of the Indian Limitation Act 1908 there is no bar of limitation to a defence. When a decree is passed against a defendant in a civil suit and his property is put up for sale in execution proceedings and he does not ask for a

LIMITATION ACT (IX OF 1908)—contd

Sch I Art 12A and ss 28 and 28—contd

stay of execution the purchaser at the execution sale acquires a good title although it may happen that eventually the decree against the defendant is set aside in appeal. But there is a great distinction between sales in execution of Civil Court decrees and sales by the Revenue Courts for arrears of assessment. It is a matter of fact the defendant in the revenue proceedings is entitled to hold the lands free of assessments any sale which takes place on the footing that he is bound to pay assessment is invalid and the purchaser at such a sale cannot acquire a good title except by adverse possession. Venkatarahalapathi Ayyar v Robert Fischer (1907) 30 Mad 444 followed. Shival Bhagwan v Shambhuprasad (1905) 29 Bom 435 distinguished. Balkrishen Das v Simpson (1893) L R 25 I A 151 referred to. MAHADEV v SADASHIV (1920)

I L R 45 Bom 45

Sch I Arts 12 ss 166—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 AND 50

I L R 38 Mad 1078

Sch I, Art 12 or 144—

See INAM I L R 42 Mad 673

Sch I Art 13—

See s 11 I L R 44 Mad 902

Attachment of property before judgment—Order raising the attachment—Decree in the suit—Subsequent suit for a declaration that the property is liable to be attached for the decree—Existence of the order whether bar to such suit. An order releasing certain properties from attachment before judgment is no bar to a subsequent suit for a declaration that they are liable to attachment in execution of the decrees in the prior suit and such suit is not governed by Art 13 of the Limitation Act. Bisheshwar Das v Ambika Prasad I L R 37 AU 675 not followed. RAMANAMIA v KANARAJU (1917)

I L R 41 Mad 211

Sch I Art 14—

See s 10 I L R 111 Bom 572

See s 22 I L R 111 Bom 729

See BOMBAY LAND REVENUE CODE 1879 ss 63 AND 70

I L R 45 Bom 820

See INAM I L R 42 Mad 673

Possession of land as owner for fifty years—User of land as graveyard and also as timber depot—Order by Government for discontinuing the user as timber depot—Order ultra vires—Land Revenue Code (Bom Act V of 1879) ss 65 66. The plaintiffs were in possession of the land in dispute as owners ever since 1800 and used a portion of it as a graveyard and on another portion of it they built a shed which was used as a timber shop. In 1871 Government assessed the land and entered it in the Revenue registers as Government waste land. The plaintiffs

LIMITATION ACT (IX OF 1908)—*contd*

Sch I, Art 14—*contd*
 paid no assessment on the land in 1908 the District Deputy Collector passed an order directing the Mamlatdar to remove the building and the wood to be removed forthwith from the said land. The order was finally confirmed by the Commissioner on the 24th April 1909. The plaintiffs filed the present suit on the 2nd February 1910 to obtain a declaration that they were absolute owners of the land to have set aside the order of 1909 and to get a permanent injunction restraining Government from disturbing the plaintiffs in their possession of the land. The lower Court dismissed the suit holding that the plaintiffs were not absolute owners but occupants only and that the suits were barred under Art 14 of the first schedule to the Limitation Act 1908. The plaintiffs having appealed *Held* that as the land in dispute was not used for the purpose of agriculture neither s 60 nor s 66 of the Land Revenue Code (Bomb Act V of 1879) applied to the case and the orders passed by the Revenue Authorities to evict the plaintiffs were *ultra vires*. *Held* further that the suits were not barred by Art 14 of the Limitation Act (IX of 1908) inasmuch as it was not necessary for the plaintiffs to have the order set aside. **RASUL KHAN HAMADKHAN v SECRETARY OF STATE FOR INDIA** (1915) I L R 39 Bom 494

Official order—Held as—
Held that Art 14 only applies to orders passed by a Government officer in his official capacity and not to order which are *ultra vires* and that where a Collector passed orders under s 37 of the Bombay Land Revenue Act 1879 with reference to land *prima facie* the property of an individual in peaceful possession he is dealing with the land in official capacity but acting *ultra vires*. **MALKAN PILLAI v SECRETARY OF STATE FOR INDIA** I L R 39 Bom 325

Collector's Order—
Forfeiture—Appeal—Exclusion of time—Limitation—Revenue Jurisdiction Act (V of 1876) s 11
 On the 6th May 1911 an order was made by the Collector declaring that a survey number belonging to the plaintiff be forfeited to Government for arrears due on the khata. Against the order of forfeiture the plaintiff preferred an appeal to the Commissioner. The appeal being dismissed, the plaintiff filed a suit on the 14th October 1915 to get the order of forfeiture set aside as illegal and *ultra vires*. It was contended that the time taken up in appealing to Revenue authorities be excluded in reckoning the period of limitation. *Held* overruling the contention that the suit not being brought within one year from the date of the order of forfeiture was barred by limitation under Art 14 of the Limitation Act 1908. **GAYENI SHESHO v THE SECRETARY OF STATE FOR INDIA** (1919) I L R 44 Bom 451

Sch I Arts 14 and 91—Suit for a declaration of rights as Vatandar—

See BOMBAY REVENUE JURISDICTION ACT (V OF 1876) s 4(a)

I L R 44 Bom 261

LIMITATION ACT (IX OF 1908)—*contd*

Sch I Arts 19 23—

See LIMITATION (12)

I L R 40 Calc 898

Sch I Art. 22—

See Art 11 25 D W N 544

See Arts 25 26

See Art 12 I L R 45 Bom 45

See Arts 26 and 8

See Art 14 I L R 45 Bom 45

Sch I Arts 62 and 120—*Attachment of debt—Wrongful seizure of moveable property—Suit by claimant to the debt against the decree holder—Article applicable* Neither attachment of a debt nor voluntary payment of it into Court constitutes seizure of moveable property under legal process within the meaning of Art 20 of the Limitation Act. A suit by a claimant to the debt attached against the decree holder to whom the amount of the debt was paid is governed by either Art 62 or 120. **Narasimha Rao v Ganagaraju** I L R 31 Mad 431 distinguished. **YELLAMMAL v AYYAPPA NAICK** (1914)

I L R 38 Mad 972

Sch I Arts 29 36—*Execution of decree—Civil Procedure Code (1908) s 73—Money rateably distributed amongst decree holders to which they were subsequently declared not to be entitled—Suit to recover money so distributed—Limitation* One S brought a suit for money against Y and B and attached before judgment a quantity of grain in their possession. There upon one Y from whom the grain had been purchased objected to the attachment setting up a lien on the grain for unpaid purchase money. The Court allowed M's objection holding that M had a lien to the extent of Rs 2000 where upon S brought a suit for a declaration that M had no lien at all. The property being of a perishable nature was sold by the Court and the proceeds were deposited in Court. The suit of S against M was decreed by the Court of first instance on the 25th of June 1912. Thereafter certain other decree holders of Y and B applied for rateable distribution under s 73 of the Code of Civil Procedure and the Court made the order asked for and paid the sale proceeds of the grain rateably to the decree holders and S on dates between the 19th and the 26th of September 1912. But the declaratory decree obtained by S was reversed on appeal on the 24th of September 1912 and the decree of the lower Appellate Court was affirmed in second appeal on the 30th of April 1914. In June and July 1915 M's son brought suits to recover by virtue of his lien the amounts paid to the various decree holders. *Held* that the suits were not barred by limitation and that neither Art 29 nor Art 36 of the first Schedule to the Limitation Act was applicable to the suits. **Yellammal v Ayyappa Naick** Mad L J 519. **Rajputana Malwa Railway Co-operative Stores Limited v The Amere Municipal Board** I L R 32 All 491 and **Ward & Co v Wallis** (1900) 1 Q B 615 referred to by **WALSH J RAM NARAYAN v BHUJ BANSER LAL** (1917) I L R 39 All. 322

LIMITATION ACT (IX OF 1908)—cont

Sch I Arts 29 36 39—

See ARREST OF SUIT

I L R 42 Calc 25

Sch I Arts 30 31 115—

See LOSS OF GOODS.

I L R 44 Cal 16

Sch I, Art 31—*Limitation—Suits by consignee for damage on account of non delivery of goods—Effect of offer to compromise claim on the part of the railway Company.* On the 16th of January 1913 the plaintiff left at the Pannagar station on the Rohilhand and Kumaun Railway a bundle of gunny bag to be delivered to the Salt Superintendent Sambhar on the Bombay Baroda and Central India Railway. The bundle was not delivered. The plaintiff was subsequently informed that it was lying in the local property office of the latter Railway and that the plaintiff might have recovered it if he liked. On the 17th of March 1914 the Bombay Baroda and Central India Railway wrote to the plaintiff and offered him Rs 20 as compensation. The plaintiff did not accept the offer but on the 7th of July 1919 sued the Railway Company for Rs 20 damage for non delivery of the bundle of gunny bags. Held that Art 31 of the first schedule to the Indian Limitation Act 1908 applied and the plaintiff was barred by limitation. The plaintiff could not pray in aid the Railway Company's letter of the 17th of March 1914 as it was written long after the expiry of the period of limitation and could not be construed as a promise to pay anything. It was at best an offer made without prejudice to compromise the plaintiff's claim. (Ct Indian Peninsula Railway Co v Central India I L R 40 All 511) *Haji Ismail v Coochin Hossein & Company and Private Stationary and Printing Co I L R 46 Bom 1* referred to. *Mulla Sadi Lal v Bombay Baroda and Central India Railway Company I L R 42 All 220*

Sch I Art 31 40 115—

See SPECIFIC JOVABLE PROPERTY

I L R 39 Mad 1

Sch I, Arts 31 and 42—*Indian Act (Limitation) (IX of 1908) s 55—Suits by consignee of goods for surplus sale proceeds—Suits against the Company—Effect of offer to compromise claim on the part of the railway company on the part of the consignee—Suits for compensation or damages from suit for surplus sale proceeds—Money paid and received—Application of Art 31 or 42.* Limitation Act. A suit by the consignee of goods by a railway company for the recovery of the surplus sale proceeds realized by the company by sale of the goods under s 55 of the Indian Railways Act is governed by Art 31 and not Art 31 of the Limitation Act. (K. S. M. P. Co Ltd v H. S. P. M. Co Ltd (1915) I L R 41 Mad 81 referred to. *Tarapore v M. T. S. M. P. Co Ltd (1915) I L R 41 Mad 823*

Sch I Art 32—

See HINDI LAW JURY FRY

I Pa L J 43

See MORTGAGE I L R 4 Calc 125

Effect of a suit on the part of the tenant under the Pannagar Railway Act for recovery of compensation was also claimed. Held that this claim

LIMITATION ACT (IX OF 1908)—cont

Art 32—cont

was governed by Art 32 of the Limitation Act. *Lal Bahadur Das Poon and another v Mohendra Chandra 25 C W N 900*

Sch I Arts 32 147—*Bengal Tenancy Act (VIII of 1850) s 155—Suits to eject tenant under—Limitation Act 3. and not 143 of the first schedule to the Limitation Act governed a suit by a landlord brought under s 155 of the Bengal Tenancy Act to eject a tenant who had allowed a portion of his holding to be encroached upon by a tenant and had exchanged another plot of land of the tenant with the stranger in contravention of the terms of his *Indulhu Sharoo Pass Monid v Jangpur Joy Choudhury I L R 26 Cal 661* and *30 C W N 481* filed on *Tarapore v M. T. S. M. P. Co Ltd (1915) 20 C W N 651**

Sch I Art 38—

I L R 29 All 822

I L R 40 Cal 25

Sch I Art 38—

I L R 29 All 822

I L R 29 All 822

Sch I Art 42—

I L R 42 Cal 500

Sch I Art 42—

I L R 41 Mad 112

I L R 28 Bom 22

Sch I Art 42—

I L R 42 Cal 500

Sch I Art 42—

I L R 33 Mad 112

I L R 39 Mad 118

Sch I Art 42—

I L R 41 Mad 102

Sch I Art 42—

I L R 23 C W N 208

Sch I Art 42—*Limitation Act 31—Suits by a person more than one year after the death of a person.* The mother and natural guardian of a minor having old the minors property a suit to set aside the sale was brought more than three years after the minor attained majority. Held that the suit was barred under Art 44 of the Indian Limitation Act 1908. *Salappa v Chandraappa I L R 111 and 112 and 113* referred to. *Laxman v Pachappa (1915) I L R 42 Bom 628*

Sch I Art 42—*Limitation Act 31—Suits by a person more than one year after the death of a person.* A Hindu widow having a natural guardian during his minority with a suit to set aside the transfer within the period of limitation was barred by Art 44 of the Limitation Act. (K. S. M. P. Co Ltd v H. S. P. M. Co Ltd (1915) I L R 41 Mad 81 referred to. *Tarapore v M. T. S. M. P. Co Ltd (1915) I L R 41 Mad 823*

LIMITATION ACT (IX OF 1908)—co 1d**Sch I, Art 44—contd**

In 1910 the plaintiff the next reversioner sued to redeem the mortgage—*Held* that the suit was barred under Art 44 of the Indian Limitation Act, 1908 for the son sues to have sued to set aside the alienation within three years of his attaining majority. *Per Swan J*—The scope of Art 44 is not limited to sale by guardians who are appointed under testaments or by the Court. The language of the Article is general and wide enough to include sales by natural guardians who may have some authority however limited to alienate the property of the minor that in sales which are not wholly void but are voidable at the instance of the person interested in the property. *Blagwant Govind v Kondsvalad Maladu* (1912) 14 Bom 23 *Dalappa v (Khandappa)* (1910) 1 Bom L R 1134 and *Anandappa v Tolappa* (1911) 1 Bom L R 113 a overruled. *Mallikarjun v Vartari* (1900) 95 Bom 337 *Mata Din v Almad Ali* (1911) 34 All 913 *Mahabaleshwar Krihnappa v Panchandra Mangsh* (1913) 38 Bom 91 and *Laxmata v Panchappa* (1914) 42 Bom 676 referred to. **FAKIRAPPA LIMAYYA v LUMAYYA bin MANADE** (1919)

I L R 44 Bom 742

Suit to recover property transferred by natural guardian on behalf of minor
A suit for the recovery of property transferred during the minority of the plaintiff by his natural guardian must under Art 44 of Sch I to the Limitation Act be brought within three years of attaining majority such a transfer being voidable and not void. **PROJAYDRA CHANDRA SARMA v PROHONYO KUNAR DHAR** 24 C W N 1016

Sch I, Arts 44 91—Suit to set aside a compromise decree—

Se EXECUTOR

I L R 33 Mad 575

Sch I Arts 44 91 95 120—

See CIVIL PROCEDURE CODE 1908
O XXII r 7 I L R 3 Lah 161

Sch I, Arts 44 144—

Se HINDU LAW—GUARDIAN

I L R 38 Mad 1125

Alienation by mother as guardian of the sons—Decree against the sons represented by the mother as guardian ad litem—Sale in execution—Decree and sale whether nullities—Suit by minors to recover possession—Limitation—Civil Procedure Code (I of 1908) O XXXII r 4 (1) Where a mother acting as the guardian of her minor sons mortgaged their property and a decree on the mortgage was passed against the minors represented by the mother as guardian ad litem and properties sold in execution and subsequently the sons sued to recover possession of the properties more than three years after the elder of them attained majority but within twelve years of the sale alleging that their mother was not competent to represent them in the previous suit as her interest was adverse to theirs. *Held* that the decree against the minors was not a nullity and had to be set aside and that the suit was consequently barred by limitation. **KUR PRASAMI AYYANGAR v RAMALAKSHMAL** (1910)

I L R 33 Mad 842

LIMITATION ACT (IX OF 1908)—co 1d**Sch I, Art 4—**

See s 23

I L R 38 Mad 432

Suit for recovery of land previously declared to be in defendant's possession under s 145 of the Criminal Procedure Code (I of 1908)—Limitation—Order not ultra vires because defective—jurisdiction—meaning of In a proceeding under s 145 of the Criminal Procedure Code regularly initiated by a preliminary order under sub s (3) the parties filed written statements. The first party to the proceedings after some witnesses had been examined on his behalf applied to withdraw from the proceedings stating that he would conduct the case in Civil Court and would not enter upon the land till the matter should have been settled by the Civil Court. The Magistrate reciting the above facts declared the second party to be in possession by an order passed on 21st August 1906. The first party instituted the present suit to recover possession on the 2th January 1912 and contended that the suit was not barred by Art 47 of the Limitation Act because the order of the Magistrate was without jurisdiction. *Held* that the suit was barred by Art 47 of the Limitation Act. **LAR MAHAMED BHANA v HEYAT MAHAMED SAHA** (1917) 22 B W N 342

Decree by Mamladars

Mamladars Courts Act (Bombay Act 11 of 1906) Order by Magistrate—Criminal Procedure Code (I of 1908) s 145—Suit for possession—Limitation In 1913 the plaintiff filed a suit under the Bombay Mamladars Courts Act 1906 and obtained an injunction restraining the defendant from disturbing his possession. The District Deputy Collector having purported to interfere in revision the plaintiff applied in 1914 for an order under s 145 of the Criminal Procedure Code but the Magistrate decided against him and allowed possession to the defendant. In 1917 the plaintiff sued to recover possession. *Held* that the order of the District Deputy Collector who had no jurisdiction to interfere should be considered as a nullity and that the suit being filed within three years from the order of the Magistrate was not barred under Article 47 of the Indian Limitation Act 1908. **VEERATESH KEVAL v BHUVU VEERATESH** I L R 45 Bom 1135

Arts 48 and 49—

Suit for goods misappropriated—Indian Contract Act (I of 1872) ss 108 and 178 One K took a jewel of the plaintiff in May 1907 to find a purchaser for it stating that he would settle the price in the presence of the plaintiff but instead of doing so K in June 1907 pledged it with the third defendant who boni fide lent on its security Rs 175. Plaintiff came to know of K's conversion in 1909 and sued in 1911 for the jewel or its value the third defendant and the widow and son of K who died at the end of 1907. *Held* that Art 48 and not 19 of the Limitation Act (IX of 1908) was applicable and that the suit was not barred by limitation. *Held* also that the boni fides of the third defendant does not preclude the plaintiff from recovering the jewel without paying the third defendant the amount of loan. Effect of ss 108 and 178 of the Indian Contract Act considered. **SESHAPPAIYER v SUBRAMANIAM CHETTIAR** (1914)

I L R 38 Mad.

LIMITATION ACT (IX OF 1908)—*contd*— Arts 48 and 49—*concl'd*.

Suit for goods misappropriated—Contract Act (IX of 1872) ss 108 and 178 A commission agent employed to sell a jewel belonging to the plaintiff wrongfully pledged it in 1907 for Rs 175 to the defendant who lent the amount *bona fide* without any knowledge of the plaintiff's ownership Plaintiff coming to know of the wrongful pledge in 1909 sued in 1911 for the recovery of the jewel or its value *Held* (i) that the suit was in time and Art 48 and not Art 49 of the Limitation Act was applicable and time began to run from 1903 when the plaintiff came to know in whose possession the jewel was and (ii) that as the defendant was a pawnee in good faith from one who had judicial possession of the jewel the plaintiff was not entitled to recover the jewel without paying the defendant the amount due to him on the pledge Possession in s 178 of Contract Act (IX of 1872) means judicial possession and not custody *Rameshar Chaudhary v Mata Bhikk I L R 5 All 341 Ram Lal v Ghulam Hussain I L R 29 All 579* and the observations of BACHELOR J in *Nandlal Thaksey v The Bank of Bombay 12 Bom L R 316 335* followed *Seshappaier v Subramania Chettiar (1916)*

I L R 40 Mad 678

— Sch I Art 49—

See *ARREST OF SHIP*

I L R 42 Cal 35

See *ART 31*

I L R 39 Mad 1

See *CONTRACT Act s 162*

26 C W N 772

Limitation begins to run upon refusal to return property detained Where a person to whom moveable property is entrusted to be returned on the fulfilment of certain conditions retains such property after such conditions are fulfilled, he will be deemed to be in possession on behalf of the person entitled, until he refuses delivery mere silence on demand being made will not constitute such refusal The period of limitation for a suit to recover the property thus detained will under Art 49 of Sch. I of the Limitation Act run from the date when the defendant refuses to deliver such property *Gopalasami Ayyar v Subramania Sastri (1912)*

I L R 35 Mad 636

In a suit for recovery of property deposited for safe custody with defendant limitation does not begin to run against plaintiff until the return of the property has been demanded and refused *Laddo Brogan v Jamal To Day*

I L R 42 All 45

— Sch I Arts 49 60 61 62, 81 89 120 and 145—*Specific moveable property meaning of in Art 49—Whether includes money—Residual article when to be applied—Money had and received to the plaintiff's use* Where the karnavan of a Malabar taluk sued a junior for recovery of a sum of lawful money received by the latter but withheld by him in denial of the plaintiff's right to the same *Held* that the case was governed by Art 81 as the defendant had received monies belonging to the plaintiff which *ex rebus sic utantibus* he was bound to refund, and the cause of action was for money had and received to the plaintiff's use, and arose on the date of the receipt, and not on the date of the denial of the

LIMITATION ACT (IX OF 1908)—*contd*— Sch I Arts 49 60 61 62 81 89 120 and 145—*concl'd*

plaintiff's right to the money *Mahomed Wahib v Mahomed Ameer I L R 320 Cal 527* referred to Specific moveable property in Art 49 does not include money though money is moveable property within Art 89 Specific property is property which is recovered in specie i.e. the very property itself not any equivalent or reparation The residuary Art 120 should be applied only as a last resort if no other article is applicable *Sharoop Dass Mondal v Jorgessur Roy Chowdhry I L R 26 Cal 564* referred to *SATKUNNI & GOVINDA (1914)*

I L R 37 Mad 381

— Sch I Arts 49 60 145—*Limitation—Breach—Suit to recover property bailed—Contract or tort* The plaintiff sued for the return of certain property which had been deposited with two persons as follows namely four hundred gold mohurs with Musammatt Chun Kunwar and some pictures and manuscripts with Sobhag Mal *Held* that the limitation applicable to the former suit was that prescribed by Art 60 of the first schedule to the Indian Limitation Act 1908 and to the latter that prescribed by Art 145 or if the suit was looked upon as one in tort Art 49 would apply the period beginning to run from the date when the return of the property was demanded *Kalyan Lal v Kishan Chand (1919)*

I L R 41 All 843

— Sch I Arts 49 115 145—*Gold deposited with goldsmith to be made into ornaments—Suit to recover—Limitation* Where the allegation was that nearly eleven years ago the plaintiff had made over a *loka* of gold to defendant to be made into ornaments but no time was fixed and the latter put him off from time to time until being pressed by plaintiff on 24th March 1914 he promised to make and deliver the ornaments within 15 days but failed to do so *Held* that Art 145 of Sch. I to the Limitation Act applied to a suit for recovery of the gold deposited. Art 145 applies even when the property is not recoverable in specie and does not cease to be applicable merely because the defendant refuses to return the property Such refusal does not bring into operation Art 49 or 49 Even if Art 49 applied limitation would begin running from 8th April 1914 before which there was no refusal If Art 115 applied limitation would run from the same date when the contract was broken *Ganahari Chakravarti v Nabin Chandra Banerjee (1915)*

20 U W N 232

— Sch I, Art 51—

See s 19

I L R Lah 337

— Sch I, Arts 52 53 115 120—*Limitation—suit for recovery of money due on account of materials supplied and work done for constructing a floor and a contract fixing a consolidated rate for both—Claim as land in plaintiff an indivisible one—Variance of compensation in Art 115 and in Indian Contract Act IX of 1872 s 73* The defendant who had taken a contract to construct a building at Lahore employed the plaintiff as a sub contractor to do the work of flooring in the building The plaintiff was to supply Italian marble and other stones required for the flooring and was also to do all the work necessary for constructing the floor and was to be paid a certain sum of money for every square foot of the flooring done by

LIMITATION ACT (IX OF 1908)—*contd.*

Sch I, Arts 52, 56 115 120—*contd.*

him which rate included both the price of the materials supplied and the work done by the plaintiff. The plaintiff sued for the balance of the money due to him on the basis of this contract and the plaintiff made no mention of the price of the materials as distinct from the price of the work. The only question before the Full Bench was what article of the Limitation Act was applicable to the suit. *Held* that the claim as laid in the plaint was an indivisible one and could not be split up into two portions and consequently neither article 52 nor article 56 of the Limitation Act was applicable but that the suit was governed by article 115 and not by article 120. *Padma Anken v Basant Lal* (103 P R 1913) overruled in this respect. Article 115 is a general provision applying to all actions *ex contractu* not specially provided for otherwise. The word compensation in that article as well as in article 116 has the same meaning as it has in section 73 of the Indian Contract Act and denotes a sum of money payable to a person on account of loss or damage caused to him by the breach of a contract. *Vobecomar Mookhopadhyaya v Siru Mullick* (I L R 6 Cal 94) and *Husein Ali Khan v Hafiz Ali Khan* (I L R 34 60 F B) followed. **MAHOMED GHAFI v SIBRAID DIX**
I L R 11 Lah 376

Sch I, Arts 59 60—Loan or deposit—Money left with a trader not being a banker if loan or deposit—Deposit in Art 60 meaning of Under Art 60 of the Limitation Act (IX of 1908) money left in the hands of a trader who is not a banker will be a deposit in circumstances such as would make it money of a customer where the deposit is a banker. Art 60 and not Art 59 of the Limitation Act (IX of 1908) applies to a suit to recover money so deposited even though it is payable on demand. The word deposit in Art 60 is used in a non legal sense. *Official Assignee of Madras v Smith* I L R 32 Mad 68. *Perundentayar Ammal v Nammalvar Chetti* I L R 18 Mad 350 and *Ishar v Khuder Bhadur v Jibun Kumari Bibi* I L R 16 Cal 25 followed. *Dharam Das v Ganga Devi* I L R 29 All 773 and *Ichha Dhany v Yatha* I L R 13 Bom 338 dissented from. *Sinclair v Brougham* (Birbeck Bank Case) (1914) A C 393 referred to. **SUBBAMANIAN CHETTIAR v KADIRESWARI CHETTIAR (1916)
I L R 39 Mad. 1081**

Sch I Arts 60 145—See ART 49 I L R 41 All 643

Limitation—Suit to recover money deposited with banking firm. There is no doubt since the passing of the Indian Limitation Act 1908 that a suit for the recovery of money deposited with a banker and repayable on demand is governed by Art 60 and not by Art 59 of the first schedule to the Act. *Dharam Das v Ganga Devi* I L R 29 All 773 referred to. **JUGOT LAL v KISHAN LAL** (1915)
I L R 37 All 292

Sch I Arts 60 61 62—See ART 49 I L R 37 Mad 381

Sch I Arts 60 63—Interest due on the various transactions with Nattukottai Chettis—Hindu widow—Interest in her husband's assets—Acquiescence in treating it as part of her husband's

LIMITATION ACT (IX OF 1908)—*contd.*

Sch I Arts 60 63—*contd.*

estate—Effect on her death. If a Hindu widow acquiesces in treating the interest on the investments of her husband's assets as part of her husband's estate it will descend on her death to her husband's heirs. If money is deposited with Nattukottai Chettis on Thavanas with the understanding that at the end of each Thavanas period the interest for that period is not payable but is to be added to the principal and both are to be treated as a fresh deposit. Art 60 of the Limitation Act is applicable to the recovery of such interest and it becomes payable only on demand. Art 63 does not apply. **NATAYANAN CHETTI v SUFFIAN CHETTI** (19-0)

I L R 43 Mad 629

Sch I Art 61—

Revenue paid by person in possession under an order which is subsequently reversed on appeal—Suit to recover revenue so paid from successful compeller—Limitation. A obtained possession of certain revenue paying property under an order passed in mutation proceedings and whilst in possession paid the revenue due in respect of the property. But the order in favour of A was subsequently set aside and B obtained possession under the order of the appellate court. *Held* that A's claim to recover the revenue which he had paid during the period of his possession was a claim for money payable to the plaintiff for money paid for the defendant and the limitation applicable was that prescribed by Art 61 of the first schedule to the Indian Limitation Act 1908. **ALAYAR KHAN v BIRI KUNWAR**

I L R 42 All 61

Sch I Arts 61 99 120—Contribution suit—Limitation when begins to run—Date of payment. One P B deposited a certain sum of money in a Bank owned by R and his two brothers S and G. P B brought a suit and obtained a decree for the money deposited against R and the representatives of his brothers S and G. On appeal the High Court exempted G's representatives from liability under the decree in so far as they inherited the share of the family property from G. R B executed his decree against R and advertised some properties exclusively belonging to R for sale. On the 8th December 1900 one Paja S as the purchaser of certain mehals belonging to R and his son (the plaintiff) paid in the decretal amount and the execution case was finally struck off. R put in an application stating that the petition filed by the decree holder stating satisfaction of the decree was without his knowledge and that the negotiations between Raja S and himself regarding the sale of the properties had not been concluded. Raja S sued R for specific performance of the contract to sell and ultimately the High Court held that he could not get a decree for specific performance but was only entitled to get back the money advanced with interest from the 8th December 1900. On 11th January 1906 Raja S in execution of this decree sold certain properties belonging to the plaintiff the sale being confirmed on 21st June 1906 when Raja S obtained payment. On 3rd February 1908 the plaintiff instituted a suit for contribution against the legal representatives of R's brother S. *Held* that it was doubtful whether Arts 61 and 99 Sch I of the Limitation Act were applicable to the present case and under Art 120 the

LIMITATION ACT (IX OF 1908)—*contd*Sch I Arts 61 & 120—*concl'd*

period of limitation was six years from the time when the right to sue accrued. The date of payment by Raja S was not the date of payment by R within the meaning of Art 99 of the Limitation Act. The plaintiff's right to sue accrued when the decree obtained by Raja S was satisfied by sale of plaintiff's property and the suit being brought within two years from the date of that payment was not barred by limitation. *JANKI KOEP v DOMI LAL* (1913) 18 C W N 439

Arts 61 and 116—Well jointly owned by parties—Registered agreement for effecting repairs of well jointly—Repairs made at plaintiff's costs—Suit for contribution of expenses—Claim not for compensation for breach of a contract in writing registered—Limitation three years. The plaintiff and the defendant jointly owned a well. They entered into a registered agreement to the effect that the repairs of the well were to be made by them jointly. The repairs were effected by the Municipality at the instance of the plaintiff who paid a certain amount to the Municipality in 1911. The plaintiff having sued the defendant in 1916 for the contribution claimable in respect of the repairs of the well it was contended that the suit being covered by Art 116 of the Limitation Act 1908 was not barred by limitation. *Held* that the suit being in fact a suit for contribution in which the right of action did not rest upon the registered contract was time barred after three years. *SUBAJPRASAD DWARKADAS v KARMAJI ABDULMITA* (1916) I L P 44 Bom 591

Art 62—

See ART 2 I L M 26 All 555

See ART 31 I L R 44 Mad 823

See BHAGAL ZAMINDARI REVENUE ACT I Pat L J 374

See BHAGDARI AND HARWADARI TREASURES ACT (BOM V of 1802) s 3

I L R 39 Bom 358

See CIVIL PROCEDURE CODE (ACT V of 1908) s 11 I L P 40 Bom 614

See CONTRACT I L R 41 Mad 488

LIMITATION ACT (IX OF 1908)—*contd*Art 62—*concl'd*

suit was barred by Art 62 of the first schedule to the Indian Limitation Act 1908. *Mahomed Wahid v Mahomed Ameer* I L R 32 Cal 597 followed. *Umaradara. Ali Khan v Wilayat Ali Khan* I L R 19 All 169 and *Mahomed Riasat Ali v Hassan Hanu* I L R 21 Cal 157 referred to. *AMINA BIBI v NAJM U D DISSA* (1915) I L R 37 All 233

3 ———— Limitation—Suit for money had and received—Suit by heir to recover share of inheritance from person appointed to wind up estate. Where pending arbitration in respect of the distribution of the estate of a deceased person amongst his heirs the estate was by their consent put in charge of a third party who was to realize the assets and pay the debts it was held that a suit by one of the heirs to recover from such person her share by inheritance was a suit for money had and received and was governed by Art 62 of the first schedule to the Indian Limitation Act 1908. *MASIN UD DIN v IMTIAZ UD NESSA BIBI* (1914) I L P 37 All 40

4 ———— Limitation—Succession certificate obtained by one of the heirs of a deceased person—Suit by remaining heir for recovery of her share. A certain Mahomedan in the year 1903 obtained a succession certificate to realize debts due to his deceased uncle and realised some of those debts. In the year 1913 the widow of his brother who had died subsequent to the death of his uncle brought the present suit for her husband's share of the money realised. *Held* that Art 62 of the first schedule to the Indian Limitation Act 1908 governed the suit and as no money had been realised by the holder of the succession certificate within three years of the suit it was barred by limitation. *AMINA BIBI v NAJM U D DISSA BIBI* I L R 37 All 233. *Parasram Rao Tania v Radha Bai* I L R 31 All 318. *Mashid ud din v Imtia. un nissa Bibi* I L R 37 All 40. *Mahomed Wahid v Mahomed Ameer* I L R 32 Cal 597 followed. *Umaradara. Ali Khan v Wilayat Ali Khan* I L R 19 All 169 distinguished. *ABDUL GHAFAR v NUR JAHAN BEGUM* (1915) I L R 37 All 434

5 ———— Suit for refund of consideration money where there is total failure of consideration. When there is total failure of consideration with regard to a lease a claim to a refund of the consideration money is governed by Art 62 of the First Schedule of the Limitation Act. *BISWANATH GORAI v SORENDRA MOHAY GHOSH* (1913) 18 C W N 120

6 ———— Suit for money taken in execution of a decree—Compensation—Suit for money had and received. In execution of a decree certain rents due to the judgment debtor from his tenants were attached prior to the passing of this decree the judgment debtor had sold the property to a third party. The decree holder got the court a writ to realize the rent due from the tenants and they were deposited in Court and ultimately paid over to the decree holder. The purchaser brought the present suit against the decree holder for the recovery of the money within three years of the payment to him. *Held* that the suit was money had and received within the meaning of art 62 of the I L R the Indian Limitation Act. *Jagjivan Jafardas v*

1 ———— Payment by cheque. In case of payment by a cheque limitation runs not from the date of the delivery of the cheque but from the date of the receipt of the money by the payee. *SECRETARY OF STATE FOR INDIA v MAJOR HIGGINS* (1913) I L R 38 Bom 293

2 ———— Limitation—Debt due to all the heirs of a deceased recovered by some of them—Suit by remaining heir for recovery of her share. Some of the heirs of a deceased Muhammadan brought a suit upon a mortgage in his favour impleading as a defendant the remaining heir. The plaintiffs obtained a decree and in execution thereof brought the mortgaged property to sale on the 1st of May 1906 and purchased it at a price for the sum slightly in excess of the amount of the decree and costs. The decree holders and purchasers paid in the excess and filed a suit. On the 1st of June 1911 the remaining heir applied to recover her share in the property and in the alternative a share in the property released. *Held* that the plaintiff had no cause of action so far as the property was concerned and that as to the money her

LIMITATION ACT (IX OF 1908)—*contd*Art 62—*co cit*

Gulam Jilani Chowdhury I L R 8 Bom 17
disentled from NADAR SINGH & GANGA DRI
(1916) I L R 38 All 6-6

Arts 88 and 89—*Hindu joint family—*

Part tie of immovable properties—C's securities
left joint—Manager failing to account—Suit
for account—Manager holding as an agent—Limita
tion Plaintiff and his two brothers lived jointly.
They divided their immovable estate in 1893
but kept joint certain cash securities as they were
all in the name of their elder brother I am ing.
At the time of the partition it was orally agreed
that I am ing should realize the securities and
divide the proceeds among the three brother.
Ramsing did not divide the proceed nor gave any
account. He died on the 6th January 1914
thereafter plaintiff demanded an account from
Ramsing's son but he having refused a suit was
filed by the plaintiff for an account on the 3rd
January 1917. Both the lower Courts dismissed
the suit as being barred under Art 1 of the
Limitation Act 1908. On appeal to the High
Court. Held that the suit was not barred as
it was governed by Art 89 of the Limitation Act
inasmuch as Ramsing must be considered as an
agent of his brothers and time would not begin
to run until the account was demanded and refused.
Litico Tewary v Doona Tewary (1896) 24 Calc
309 doubted (ACB v JIRU (10 0)

I L R 45 Bom 313

Sch I Arts 62 and 97

Ss LIMITATION I L R 86 Calc 670

Sale of land by one

having a voidable title and putting purchaser in
possession thereunder—Dispossession by person
entitled to avoid—Cause of action for return of
purchase money only on dispossession A who
had a title to certain immovable property void-
able at the option of C sold it to B and put B in
possession thereof. C then brought a suit against
A and B got a decree and obtained possession
thereof in execution. Held that B's cause of
action for the return of the purchase money arose
not on the date of the sale but on the date of his
dispossession when alone there was a failure of
consideration and that the article applicable was
Art 97 of the Limitation Act. Cases on the
subject reviewed SUBBARAO & RAJAGOPALA
(1914) I L R 88 Mad. 887

Arts 62 102—

S ART 2 I L R 36 All 555

Sch. I, Arts 62, 120—

Ss ART 20 I L R 38 Mad 972

See CIVIL PROCEDURE CODE 1882 s 315

I L R 35 All 419

LIMITATION ACT (IX OF 1908)—*contd*Sch I Arts 62 120—*contd*

family and the property of all was managed for
a series of years by one member of the family
acting as if he were the *larta* of a joint Hindu
family. Held on suit by the widow of one of
the members of the family to recover from the
manager her deceased husband's share of money
received by the defendant as manager but owned
by all the three members of the family in equal
shares that the suit was not a suit for money
had and received but was one to which Art
120 of the first schedule to the Indian Limita-
tion Act applied. *PARSOTAM RAO TANTIA v*
RADHA BAI (1914) I L R 37 All 318

2 *Suit for money on*
the ground of wrongful rateable distribution governed
by Art 62 and not by Art 120 of the Limitation Act—
S 14 of the Limitation Act—Time taken to file and
to prosecute a revision petition against order of
wrongful distribution not to be deducted under s 14
A suit for money under s 73 cl (2) Civil Pro
cedure Code on the ground that the plaintiff
and not the defendant was entitled to receive
the same in proceedings in execution of a decree
for rateable distribution governed by Art 62
and not by Art 120 of the Limitation Act (IX
of 1908) the cause of action arising on the date
of wrongful payment to the defendant. In com
puting the period of limitation for the filing of
such a suit the plaintiff is not entitled to deduct
under s 14 of the Limitation Act the period of
time taken by him to file a revision petition in
the High Court or the time during which the
plaintiff was prosecuting the revision petition
against the order of wrongful distribution. Vishnu
Bhikaji Phadke v Achut Jogannath Ghate I L R
15 Bom 433 followed Ramaswamy Chetty v
Hanrikishna Chetty 21 Mad L J 705 not
followed BAIKYNATH LALA & RAMADASS (1914)
I L R 38 Mad 62

3 *Civil Procedure*
Code (Act V of 1908) O XXII rr 11 and 9—
Withdrawal of surplus sale proceeds belonging to
the plaintiff by defendant—Suit instituted more
than three years from date of withdrawal. Where
an application for substitution was made more
than six months after the appellant's death before
the Registrar and the respondents did not put in
any objection before the Registrar to the hearing
of the appeal the application for substitution was
treated as an application for the restoration of the
appeal after abatement. The plaintiff a pur
chaser at auction sale of a revenue paying estate
made default in the payment of Government
revenue and the estate was sold and the surplus
sale proceeds were withdrawn by the defendants
the original proprietors whose names still remained
in the register and a suit was instituted by the
plaintiff for the recovery of the money so with
drawn more than three years after the date of
withdrawal. Held that Art 62 of the Limitation
Act applied and the suit was barred by Limitation
Muhammad Wahib v Muhammad Ameer I L R
32 Calc 577 and Lachmi Narain Singh v Dhanu
dhari Prasad Singh 17 Ind Cas 351 referred to
Money paid to one party with the implied intention
that it should finally reach the hands of the party
to whom it actually belongs is money within the
meaning of Art 62 paid to that party for the use
of the actual person in whom the right to receive
it vests. HARIHAR MISSEER & SYED MOHAMMED
(1916) 20 C W N 933

1 *Separate Hindu*
family—Property managed by one member—Receipt
of money by that member—Suit for partition. Three
brothers who had been living with their father
as a joint Hindu family obtained under the will
of their father in whose hands it was separate
property a considerable amount of movable and
immovable property. The property bequeathed
was divided by the will into three lots but the
legatees still continued to live as a joint Hindu

LIMITATION ACT (IX OF 1908)—*contd*Sch I Arts 62 120—*contd*

4 ————— Suit by one part owner of a jaghir against another who was also manager—Suit for account and recovery of income—Nature of suit—Suit in a District Munsif's Court for one year's income—Plaint returned for presentation to proper Court—Plaint not represented—Subsequent suit in a District Court for income due for previous years—Civil Procedure Code (Act V of 1908) O II s 2 suit if barred under The plaintiff and the defendant were co sharers in a jaghir of which the latter was appointed by the Government as manager The former sued the latter in a District Munsif's Court for his share of the net income due for the year 1912 but the plaint was returned for presentation to the proper Court as the valuation of the suit exceeded the pecuniary limits of the jurisdiction of the said Court the plaintiff did not represent the plaint in any Court but subsequently instituted the present suit in 1913 in the District Court for an account and recovery of his share of income due for the years 1900 to 1907 The defendant pleaded that the suit was barred by limitation and by O II r 2 of the Civil Procedure Code Held that the suit was one for an account which was governed by Art 120 and not Art 62 of the Limitation Act and that the suit was not barred by limitation *Muhammad Habibullah Khan v Safdar Husain Khan* I L R 7 All 20 followed Held also that the suit was not barred under O II r 2 of the Civil Procedure Code **FURBA RAO v PAMA RAO** (1916)

I L R 40 Mad 291

5 ————— Money paid to one party with the implied intention that it should finally reach the hands of the party to whom it actually belongs to within Art 62 *HARIZAR MANSAR v SIED MOHAMED*

1 Pat L J 374

Sch I Arts 62 120 122—

See TRANSFER OF PROPERTY ACT ss 82 100 I L R 33 All 708

Sch I Art 63—

S: Art 60 I L R 43 Mad 629

Sch I, Art 64—

See LIMITATION ACT 1908 s 10 AND ART 64 5 Pat. L J 371

See SUBSTITUTED SERVICE

I L R 38 Cal 394

Sch I Arts 64 69 115—Suit by principal against agent for recovery of money found due on adjustment of account—Limitation A suit contemplated by Art 89 of Sch I of the Limitation Act is a suit in which accounts have to be taken Where an account has been rendered Art 69 has no application Where an account has been taken and adjusted and a specific sum has been found due from the agent to the principal the principal becomes entitled to sue forthwith for recovery of that money and the position is not altered even if the agent continues thereafter to hold his office as agent of that principal *Butler v Butler* (1891) applies to such a suit *KESHO PRASAD SINGH v BAWAN LAL* (1910)

21 C W N 591

LIMITATION ACT (IX OF 1908)—*contd*

Sch I, Art 65—

See PRINCIPAL AND SURETY

I L R 44 Cal 978

Sch I Art 66—

See ART 116 I L R 38 Bom 177

See CIVIL PROCEDURE CODE (1908) O XXIV, s 6 I L R 41 All 581

Sch I Arts 66 115 145—Deposit of money repayable at a fixed date—Art 66 and 115 applicable Art 145 not applicable—Deposit in Art 145 meaning of—Probate and Administration Act (V of 1881)—Title of executor to sue even without Probate or Letters—Limitation Act s 17—Same word re enacted in a repealing Act—Construction same meaning as in the repealed Act Art 145 of the Limitation Act (IX of 1908) is not applicable to deposits of money Deposit in Art 145 means only deposit of goods to be returned in specie when wanted it is the sort of bailment known to lawyers under that name in the Roman Law of Bailments which was accepted by Bracton and afterwards by Lord Holt in *Copps v Barnard* (1703) 5 M L O 173 s c 2 *Rayn* 299 as fit to be enforced in England *Jehur Chand v Bhaduri v Jibun Kumar Bibi* I L R 16 Cal 25 and *Perundeviyalar Ammal v Nam malwar Chetty* I L R 18 Mad 390 followed *Administrator General Bengal v Kristo Kamini Dassee* I L R 31 Cal 619 and *Lala Gobind Prasad v Chairman of Patna Municipality* 6 C L J 555 not followed A loan repayable at a fixed date is governed by Art 66 and is not by Art 115 Unlike cases governed by the Indian Succession Act and the Hindu Wills Act in a case governed by the Probate and Administration Act (V of 1881) the obtaining of probate is not necessary to clothe the executor with the right to sue for debts due to the testator and the estate is represented by the executor even in the absence of probate within the meaning of s 17 of the Limitation Act and time begins to run from death of the testator's death as the obtaining of a succession certificate is not a condition precedent to the filing of a suit but is only necessary before getting a decree Where a word which is used in one sense in one Act is re enacted in a subsequent Act which repeals the former then unless there is some strong reason to the contrary it must be read in the same sense in the subsequent Act in which it is re enacted *Mayor of Portsmouth v Smith* I R 10 A C 361 s 1 referred to Testatrix lent money to the defendant on 15th August 1900 and died on 16th January 1901 The will was governed by the Probate and Administration Act Held that a suit by the executor in 1910 was barred by limitation either under Art 66 or 115 of the Limitation Act *BALAKRISHNAN v NARAYANA WAI CHETIA* (1914)

I L R 37 Mad 175

Sch I Art 73—Limitation—Promissory note—Writing restraining or postponing the right to sue Defendant borrowed money from a bank and executed a promissory note in favour of the bank on the 13th of June 1913. But on the same date he also wrote to the bank a letter in which he stated—The sum of Rs. 700 which I have borrowed from the Bank to day I undertake to pay principal and interest within one year If I cannot pay in within the time specified then they (the Bank) may realize (the

LIMITATION ACT (IX OF 1908)—*contd***Sch. I Art 73—*concl'd***

money) in any way they please. *Held* that this letter amounted to a writing restraining or postponing the right to sue within the meaning of Art. 73 of the first schedule to the Indian Limitation Act, 1908 and limitation accordingly did not begin to run against the Bank until the period of one year from the date of the note had expired. **JWALA PRASAD v SHAMA CHARAN** I L R 42 All 55

Sch. I, Art 74 75 80 and 120—**See LIMITATION**

I L R 38 Mad 374

I L R 41 Mad 412

Sch I Art 75—**See CONTRACT**

3 Pct L J 412

1 **Bond—Option of suing for whole amount due in default of payment of instalments—Limitation** A bond payable by instalments gave to the creditor the option of suing for the whole amount due on default in payment of any instalment or of suing for the instalments separately. Two instalments were paid the third was not and more than six years after default in payment of this instalment nothing further having been paid on the bond the creditor sought to recover the whole amount due stating that the cause of action arose on the date when the third instalment became due. *Held* that the suit was time barred. **Ajudhia v Kunjal** I L R 30 Ill 123 distinguished. **AMOLAK CHAND v BAIJNATH** (1913) I L R 35 All 455

2 **Limitation—Bond—Instalment—Power to sue for whole amount on default of payment of any instalment—Terminus a quo** Where a bond payable by instalments provides that the creditor shall have power to sue for the whole amount of the bond upon default being made in payment of any one instalment this does not mean that the creditor is obliged to sue for the whole within the period of limitation from the first default made. He may if he so chooses waive this right and sue for such instalments as remain due and are not barred by limitation. **Ajudhia v Kunjal** I L R 30 All 123 followed. **Amolak Chand v Baijnath** I L R 35 All 455 and **Chandan Singh v Bidhya Dhar** 16 Indian Cases 806 distinguished. **MOHAN LAL v TIRA RAM** (1918) I L R 41 All 104

3 **Bond repayable by instalments the whole to become payable on demand on default in paying one instalment—Meaning of on demand—Water** A bond repayable by instalments contained the following stipulation—In default of our making such payment also the amount that may be found due for all future drawings shall be paid in a lump on your demand. *Held* that the cause of action for recovery of all the instalments would not arise until demand is made by the obligee in terms of the stipulation and that in consequence the whole amount did not become due merely on failure to pay an instalment. **Hanmantram Sadharam v Arthur Douglas** I L R 8 Bom 561 followed. The words on your demand mean when you require. Failure to make the demand will constitute a waiver of the right stipulated for. **Hurri Pershad Choudhry v Nand Singh** I L R 21 Cal 542 547 and **Jadab Chandra Bakshi v**

LIMITATION ACT (IX OF 1908)—*contd***Sch I, Art 75—*concl'd***

Bhaurab Chandra Chuckerbutty I L R 31 Cal 297 dissented from. **KABUNAKARAN NAIR v KRISHNA MENON** (1913) I L R 56 Mad 60

Sch I, Art 78—**See LIMITATION (53)**

I L R 46 Cal 168

Sch I Art 80—

See LIMITATION ACT 1908 ARTS 73 AND 80 I L R 42 All 55

Promissory note payable on demand—Agreement fixing time for payment—Suit by payee—Limitation from the expiry of the period fixed Art 80 of the Limitation Act is the article applicable to a suit by the payee on a promissory note payable on demand but accompanied by an agreement fixing a period for payment and time begins to run from the expiry of the period fixed in the accompanying agreement. **Simon v Hakim Mahomed Sherif** I L R 19 Mad 368 and **Somasundaram Chettiar v Narasimha Chariar** I L R 29 Mad 212 overruled. **ANNAMALAI CHETTI v VELAYUDA NADAR** (1915) I L R 39 Mad. 129

Sch I, Arts 81 89—

See ART 49 I L R 37 Mad 381

Sch I Art 83—Limitation—Suit upon a covenant in a registered deed of sale to recover excess money paid for redemption of a mortgage on the property sold One S B on 20th May 1899 sold certain immovable property. The sale deed was registered the consideration money being Rs 3900 out of which Rs 2000 was to be paid by the vendee to a mortgagee and in the event of the mortgage money being in excess of Rs 2000 S B was to liable for such excess. The vendee was forced to sue the mortgagee for redemption and obtained a decree on 21st July 1911 on payment of Rs 3176 90. This payment was made on the 5th December 1911 and on 20th July 1916 the vendee brought the present suit against the heirs of S B (who had since died) for recovery of Rs 1176 90 and Rs 383 70 costs of the redemption suit. *Held* that the combined effect of article 116 read with article 83 of the Limitation Act gave the period of 6 years for the suit time running from the date when the plaintiffs were actually damaged i.e. the 5th December 1911 when the payment was actually made by the plaintiffs and that the suit was therefore within time. **Srinivasa Raghavar v Ramaswami** (I L R 31 Mad 452) and **Iam Borai Singh v Mohardra Feroz Singh** (16 Indian Cases 73) followed. **Paghubar Dial v Madan Mohan** (I L R 16 All 3) not followed. **Hari Tiwari v Paghunath Tiwari** (I L R 11 All 20) distinguished. **Shree Narain v Beni Madho** (I L R 23 All 285) **Evidip Dube v Mahaul Dube** (I L R 34 All 43) **Bhajakari Saha v Behary Lal** (I L R 33 Cal 831) and 27 Mad. L J notes 46 referred to. **ABDUL AZIZ KHAN v MUHAMMAD BAKSHI** I L R 2 Lah 316

Sch. I, Art 84—**See ATTORNEY AND CLIENT**

I L R 40 Cal 249

LIMITATION ACT (IX OF 1908)—contd

Sch I, Art 85—

Limitation—Mutual open and current account, where there have been reciprocal demands between the parties Held that an account with a bank which commenced by the custom of borrowing money from the bank and which at no time showed a balance in favour of the customer was not a mutual open and current account where there have been reciprocal demands between the parties within the meaning of Art 85 of the first schedule to the Indian Limitation Act 1908 Ram Pershad v Harbans Singh 6 C L J 155 and Hajee Syul Mahomed v Ashraf-un-nissa 1 L R 6 Calc 7-9 referred to BAKER OF MUTTAI LIMITED v KAMTA PRASAD (1916) 1 L R 30 All 33

Limitation—suit for balance due on a current account where last item is within time but that item was advanced more than three years after the close of the year in which the last preceding item was entered Held that where the last item in a mutual open and current account was advanced to defendants within limitation, but this item was advanced more than three years after the close of the year in which the last preceding item was entered the suit is barred by limitation in respect of the previous account—vide Art 85 of the Limitation Act. RUSTOMJI'S LAW OF LIMITATION II Edition page 303 referred to GOVIND RAM v JAWALA RAM 1 L R 1 Lah 12

Sch I Art 89—

See ACCOUNT SUIT FOR

1 L R 43 Calc 108

1. *Death of principal—Agent continuing in service of firm—Old agency if subsists—Contract Act (IX of 1872) ss 209 253—Demand of accounts—Agent failing to comply of refusal—Agent not responding to demand for explanation of account papers submitted if refusal—Obligation to explain papers The death of the principal terminates the agency Where on the death of the principal the agent continued in the service of his successors in interest Held—That a new agency not governed by the original contract was created Where under such new arrangement parties agreed that account should be submitted from year to year a suit against the agent would not be governed by Art 115 but by Art 89 of Sch I of the Limitation Act. Feroze v Baroda Kishore 11 C L J 43 not followed. Shih Chandra Ruy v Chandra Narain Mukerjee 1 L R 32 Calc 719 s c 1 C L J 23^a and Anghar Ali Khan v Khurshed Ali Khan 1 L R 24 All 27 relied on. If there has been a demand for accounts and the agent has not responded to the call there is by implication a refusal within the meaning of Art 89 This is the case also where the agent has submitted accounts but has failed to respond to the principals demand to explain them Chandra Madhab Barua v Nabin Chandra Barua 1 L P 40 Calc 103 not followed. MADHUSUDAN SEV v RAKHAL CHANDRA DAS BASAK (1915) 19 C W N 1070 1 L R 43 Calc 248*

2. *Agent liability of to principal suit on—Limitation—Agency termination of—Indian Contract Act (IX of 1872) Money is moveable property within the meaning of Art 89 of the Limitation Act Ashgar Ali*

LIMITATION ACT (IX OF 1908)—contd

Sch I Art 89—contd

Khan v Khurshed Ali Khan 1 L P 21 All 27 followed Art 89 applies to suits by a principal against an agent for moveable property received by the latter and not accounted for and time begins to run when the account is during the continuance of the agency demanded and refused or when no such demand is made when the agency terminates An agency is determined when the agent ceases to represent the principal though his liability in respect of acts done by him as agent may continue Libu Ram v Jim Dayal 1 L P 17 All 511 and Fint v Bullock Das 1 L P 16 Calc 75 disented from Joge h Chandra Chose v Bode Lal Jai 11 C W N 1 not followed VENKATACHALAM v NARAYAN (1914) 1 L R 30 Mad 3-6

Dismissal to render accounts when amounts to a refusal A rent collector employed under a registered agreement was called upon to render accounts up to 12th April on or before the 13th May 1914 No accounts were rendered as demanded and on 11th October 1914 the said rent collector was dismissed and ordered to render accounts up to date Subsequently a suit for accounts was instituted on the 27th August 1915 Held that Arts 115 and 116 of the Limitation Act did not apply to the case. In order to make them applicable it must be shown that the suit was not specifically provided for in the schedule Art 89 applied to the case as the term moveable property includes money and consequently excludes the operation of Arts 115 and 116 That there having been a demand for accounts non-compliance with the demand amounted to a refusal and the suit in so far as it claimed accounts up to 12th April 1914 must be deemed barred by limitation as it was instituted after the lapse of three years from the date of refusal s c 13th May 1914 Madhusudan v Pakhal (1) Nabin v Chandra (2) and Mahabir v Sheikh Bahadur (3) and other cases referred to That the agency having been terminated by the dismissal on the 11th October 1915 and the suit having been brought within three years from that date the plaintiff was entitled to accounts from the defendant other than the accounts demanded in April 1914 The suit was thus in time for the accounts from 13th April 1914 to 11th October 1915

PANDIT RAM RAM MOHAPATRA v JAGADISH NATH ROY

28 C W N 91

Sch I Arts 88 115—

s c Art 64 21 C W N 591

Sch I Arts 89 115 and 120—

See LAMBHAR 4 Pat L J 304

Sch I Arts 89 115 132—

See PRINCIPAL AND AGENT
1 L R 43 Calc 248
1 L R 41 Mad 1

Sch I Art 91—

See LIMITATION ACT 1877 ART 91

See TRUSTEES OF A TEMPLE
1 L R 39 Mad 456

LIMITATION ACT (IX OF 1908)—*contd*Sch I, Art 91—*contd*

See Art 14 I L R 44 Bom 261

See Art 44 I L R 2 Lah 164

See KNOJA I L R 33 Bom 419

Held that in a suit to set aside an alienation of the Plaintiff's property made during his minority by his guardian the limitation applicable to Art 141 of Sch II of the Limitation Act 1877 *BACHCHAN SINGH v KANTA PRASAD* I L R 32 All 392

Alienation by Hindu widow—S if by reversioner to recover possession of property alienated—*Alienation joint to be sham*—*Limitation* A Hindu widow having alienated a property of her husband the reversioners sued more than three years after the date of alienation to recover possession of the property. It was found that the alienation was merely a sham. The lower Courts held that Art. 91 of the Second Schedule of the Limitation Act 1908 did not apply and decreed the suit. The defendant having appealed *Held* that Art 91 of the Second Schedule of the Limitation Act had no application for the apparent obstacle presented by the mortgage proved usual and ineffectual *MAN CHHABAI v LAKSHMI LALLUBHAI* (1910)

I L R 40 Bom 51

Sale deed executed by a minor—*Void instrument*—*Suit to recover possession*—*Suit for cancellation of sale deed whether necessary* Art 91 Sch. I of the Indian Limitation Act 1908 does not apply to a suit for possession where the plaintiff alleges and proves that a sale-deed is void because it was executed by him whilst a minor but does not claim expressly to have it cancelled or set aside *NARAYAN GOLYDA v CHAWAGOLYDA* (1918)

I L R 42 Bom 638

Plaintiff fraudulently made to execute a deed of a different nature from that agreed upon—*Suit to recover property affected*—*Limitation*—*Void or voidable* Where it is established that the plaintiff by defendants' misrepresentation was got to execute a deed of sale believing the same to have been a deed of a different kind the transaction is void and not voidable only and Art 91 of the Limitation Act has no application to his suit to recover the property *SAYNI LIBI v SIDDIK HUSAN MUMSHI* (1918)

23 C W N 93

Sch I Arts 91 120—*Limitation*—*Suit for declaration that nominal lessee is not the beneficial lessee but merely benamidar or the plaintiff* *Held* that a suit for declaration that the defendant whose name appeared in a certain lease as lessee had no interest under the lease and that the person really interested in the lease was the plaintiff was governed as to limitation by Art 170 and not by Art 91 of the first schedule to the Indian Limitation Act 1908 the cause of action accruing to the plaintiff when his position as a lessee was challenged *BASANT LAL v CHHIDANI LAL* (1913) I L R 35 All 149

LIMITATION ACT (IX OF 1908)—*contd*

Sch I Arts 91 120—*Suit to set aside a mortgage*—*Mortgage deed executed without consideration and not intended to be operative*—*Cause of action* A suit to set aside a mortgage deed was brought nine years after its execution on the ground that the defendant only recently threatened to bring a suit on the basis of it though when it was executed it was never intended to be acted upon no consideration having passed for it. *Held* that the suit was barred by limitation no matter whether Art 91 or Art 120 of the first schedule to the Limitation Act applied to the suit the fact entitling the plaintiff to have the documents set aside having been known to him from the very outset *Singarappa v Talaru Sanyappa* I L R 28 Mad 349 and *Vithai v Hari* I L R 25 Bom 78 referred to *QASIM BEG v MUHAMMAD ZIA BEG* (1910)

I L R 37 All 640

Sch I Arts 91, 100 and 120—*Suit or setting aside or cancelling a written instrument on the ground of fraud and declaration of title*—*Deed if need be set aside when instrument void ab initio* Plaintiff prayed inter alia (1) for a declaration that a deed of gift was void and inoperative in that the donor signed the deed believing owing to the fraud and misrepresentation of the donee that it was only a power of attorney and (2) for a declaration of title in certain Government Promissory Note the subject of the deed of gift. The deed was signed on the 12th July 1908 and the donor came to know of the fraud on the 23rd January 1915 and the suit was instituted on the 22nd December 1919. *Held* that the three years limitation provided by Arts 91 and 120 of the Limitation Act did apply to the suit inasmuch as the principle laid down in *Foster v Mackinnon* (1) that the alleged deed is no deed was applicable so that the deed being void ab initio did not require to be set aside or cancelled. *Held* further with reference to the relief sought for in cl (2) of the prayer that Art 120 of the Act would apply and that Sec 18 would prevent the period of limitation from running until the fraud became known *SARAT CHANDRA GUPTA v KANAI LAL CHAKRABARTY* 26 C W N 48

Sch I Arts 91 and 124

See TRUSTEES OF A TEMPLE

I L R 39 Mad 456

Sch I Arts 92 93—*Suit to declare the forgery of an instrument*—*Attempt*—*Lease*—*Attempt to record a lease under the Record of Rights Act* (Bom Act 14 of 1903) is not an attempt to enforce. The defendant applied to the Mamlatdar to record under the Record of Rights Act 1903 a lease under which he claimed to be entitled to a rent of 400 cocoanuts from the plaintiff. The application was made on the 4th August 1908 but the plaintiff having complained that the document was a forgery the Mamlatdar declined to record it. The defendant then applied to the Collector who on the 11th August 1909 ordered that the lease should be recorded. On the strength of the record the defendant sued in the Mamlatdar's Court for the enforcement of the terms of the lease and recovered in April and July 1912 cocoanuts of the value of upwards of Rs 40. Within three years of the recovery of these cocoanuts the plaintiff brought the suit to recover back the value of the cocoanuts on the footing of the alleged lease being a forgery. The defen

LIMITATION ACT (IX OF 1908)—*contd***Sch I Arts 92, 93—*contd***

dant contended that the suit was barred under Art 93 of the Limitation Act on the ground that it was filed more than three years after the 4th August 1908 the date of an attempt to enforce it against the plaintiff. *Held* that the suit was not barred under Art 93 of the Limitation Act 1908 as the first real attempt to enforce the lease took place when the defendant attempted to recover the rent under the lease and that attempt was made within three years of the institution of the suit. The attempt to get the lease recorded under the Record of Rights Act could not be put higher than an unsuccessful attempt to have a document registered in a case in which registration was necessary (Art 92) and that such an attempt was not an attempt to enforce the lease. **ACHUT PATAPE & GOPAL SUBBAYA (1916)**

I L R 40 Bom 22

Sch I Art 95—

See ART 12 I L R 38 Mad 1076

See ART 91 26 C W N 480

Sch I Art 95—*Relief not claimed distinctly on the ground of fraud—Executor—Suit without probate—Decree—Limitation from the date of testator's death—Fraud in the performance of contract no ground for rescission—Partnership—Fresh agreement—Devotion—Suit for an account on the footing of continuance of original partnership—Suit not maintainable* Art 95 Sch I of the Limitation Act (IX of 1908) has no application where on the face of the plaint no equitable relief is claimed on the ground of fraud. **Abdul Hakim v Karpam Dayal I L J 18 Bom 186** and **Gour Mohun Gouli v Dinanath Karmolar I L R 25 Cal 49** referred to. An executor is capable of instituting a suit without obtaining a probate although he might not be able to proceed as far as decree without obtaining a probate. Fraud in the performance of a contract apart from its making is no ground for rescission and restoration of the parties to the position in which they were before the contract was entered into. A testator appointed his widow as the guardian of his minor children and executrix (by tenor) of his will. On his death the widow consented to the retention of the testator's share in a partnership business by the surviving partners and subsequently to a transfer of the same to another business. In an action brought by one of the testator's sons as administrator against the surviving partners for an account of all the assets of the testator at the time of his death retained and employed by the defendants in their business. *Held* dismissing the suit that the testator's widow was perfectly competent as his executrix to enter into the arrangement which was a novatio with the surviving partners so as to bind the estate and the suit against the partners on the footing of a continuance of the original partnership was not maintainable. **JAMSETJI NASSAR WANJI v HIRJIBHAI NAGROJI (1912)**

1 L E 37 Bom 158

Sch I Arts 95, 120—

See ART 44 I L R 2 Lah 164

Sch I Art 96—*Mistake—Discovery of mistake when first Court's decree was passed—Appeal—Dismissal of appeal—Time begins to run from the date of the first Court's decree* In 1903

LIMITATION ACT (IX OF 1908)—*contd***Sch I Art 96—*contd***

plaintiff No 2 obtained a decree for partition against the defendant his father and plaintiff No 1. In execution of that decree a compromise was effected between the parties and certain properties including a mortgage debt due to the family were allotted to plaintiffs Nos 1 and 2. The plaintiffs sued the mortgagors in 1910 to recover the mortgage amount but the suit was dismissed as it was held that the consideration for the mortgage had been paid off. The decree of the trial Court was passed in 1912. The plaintiffs appealed but the appeal was dismissed on the 11th July 1914. On the 28th June 1917 the plaintiffs sued to recover from the defendant their share of the loss. The Subordinate Judge found that it was a case of mutual mistake under which all the parties considered that the mortgage was a perfectly good asset and therefore held the defendant liable to contribute to the loss. On appeal to the High Court it was contended that the suit was barred by limitation. *Held* that the suit was barred under Art 96 of the Limitation Act as the discovery of the mistake dated not later than the first Court's decree which was passed in 1912 and time began to run against the plaintiff from that date. **Hulunchand v Pirichand (1914) 21 Bom J 1 637** relied on. Under Indian law an original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal. **MARTAND MAHADEV v DUORDO MORESHWAR (1920)**

I L R 45 Bom 582

Sch I Art 97—

See ART 6 I L R 38 Mad 587

Money due on an existing consideration which afterwards fails—Limitation Defendant No 1 agreed with the plaintiff in September 1908 for a price to procure from defendant No 2 a re-conveyance of a house to the plaintiff. In November 1908 defendant No 2 conveyed the house to F. In 1910 F sued to recover possession of the house from the plaintiff and obtained a decree in July 1911. The plaintiff sued in January 1912 to recover the consideration money. The lower Courts held that the suit was within time under Art 97 of the first schedule to the Indian Limitation Act (IX of 1908). On appeal *Held* that the suit was time barred even under Art 97 for after the sale to F defendant No 1 could not have had anything to do with the house and the possession which the plaintiff was allowed to retain must have been on F's sufferance. **GULARCHAND BALARAM v NARAYAN (1916)**

I L H 41 Bom 31

Failure of consideration suit on—Sale by a member of joint Hindu family—Mitakshara law—Suit by vendee for 200 sessions—Previous sale by manager—Suit dismissed finally by High Court on Second Appeal—Subsequent suit for refund of price and costs of litigation—Suit within three years of decree of High Court whether barred—Failure of consideration when—Costs of litigation whether recoverable—Courts of review in High Court whether recoverable. Where a purchaser of the share in certain lands of a member of a joint Hindu family governed by the Mitakshara law sued to recover possession of the same from another who had previ

LIMITATION ACT (IX OF 1908)—contd**Sch I, Art 97—contd**

ously purchased the entire lands from the managing member of the family succeeded in the Original Court but failed in the lower Appellate Court on appeal and in the High Court on Second Appeal and in the review therein and where he brought another suit within three years of the decree in the High Court for refund of the price paid by him and for the cost of the litigation against his vendor who pleaded the bar of limitation *Held* that the suit was not barred by limitation under Art 97 of the Limitation Act as the consideration failed only when it was finally determined by the High Court in Second Appeal that the sale by the plaintiff's vendor could not take effect against the prior sale by the manager and that the costs of litigation were legally recoverable except the costs of review which was a luxury indulged in by the plaintiff *Hanuman Kamat v Hanuman Mandur I L P 19 Calc 199* distinguished *Subaroya v Rajagopala I L R 33 Mad 887* and *Venkataramayya v Lanka Pam Brahman 35 M L J 194* followed *SAEYOTHANA RAO v CHINNASAMI PILLAI (1918)*

I L R 42 Mad. 507

Sch I Arts 97 62—Failure of consideration—Sale of land—purchaser stepping into possession—Loss of possession at the suit of a third party the real owner—Suit to recover purchase money from vendor—Limitation In 1903 the defendant sold certain land to the plaintiff under the bond *vide* belief that he was entitled to do so and placed the plaintiff in possession In 1909 the true owner of the land recovered possession thereof from the plaintiff In a suit by the plaintiff to recover the purchase money from the defendant the Court of the first instance held that the suit was barred by limitation under Art 62 of the First Schedule to the Limitation Act (IX of 1908) for the purchase money paid to the defendant was money had and received to the plaintiff's use On appeal it was held that the claim was within time under Art 97 of the Act On appeal to the High Court *Held* that the suit was governed by Art 97 inasmuch as possession given under the purchase to the plaintiff was an existing consideration as long as it lasted *Hanuman Kamat v Hanuman Mandur I L P 19 Calc 193* followed *NARSING SHIVAKAS v PACHU PAMBAKAS (1913)*

I L R 37 Bom 538

Arts 97 116—Breach of contract

Damages suit to recover—Limitation In 1911 the plaintiffs bought two lands under a registered sale deed and went into possession One of the lands was let to a tenant The tenant claimed the land as his own and established his title to the land in 1913 the decree was confirmed by the High Court In 1917 the plaintiffs sued their vendors for cancellation of the sale of 1911 and to recover the consideration money together with the amount spent by them in improving the land and the costs incurred by them in defending the suit brought by the tenant The trial Court held that the consideration for the sale failed in 1913 when the tenant established his claim in a Court of law and that the suit was barred by Art 97 of the Indian Limitation Act On plaintiff's appeal *Held* that though the cause of action arose in 1913 the contract of sale having been registered the suit was governed by Art 116 of the Indian Limitation Act and was

LIMITATION ACT (IX OF 1908)—contd**Arts 97 116—contd**

in time *Subbaroya v Rajagopala (1914) 38 Mad 887* *Hukumchand v Prithchand (1918) 21 Bom L R 632* and *Martand Mahadev v Dhondo Morchkar (1920) 45 Bom 589* followed *Per MacLEOD C J*—It must specially be noted that it is not the case that the seller had no title at all so that it could be said that he was selling nothing and that therefore the transaction was void *ab initio* nor is it a case where the purchaser got no possession Here undoubtedly at the time the sale deed was passed it was considered that the defendants had a good title to convey the free hold and it was only in 1913 when (the tenant) filed his suit that it was discovered that there was a claimant who asked to be allowed to redeem and his claim eventually proved successful *Per LAWCETT J*—A distinction should be made between cases where from the inception the vendor had no title to convey and the vendee has not been put in possession of the property and other case, such as the present one where the sale is only voidable on the objection of third parties and possession is taken under the sale I think it is only in the first class of cases that the starting point of limitation will be the date of sale *MULTAKMAL v BUDHIMAL (1920)*

I L R 45 Bom 955

Sch I Arts 90 120—

See ART 61 I R C W N 480

Sch I Arts 101 102—

See ART 4 I L R 41 Mad 528

Sch I Art 102—

See ART 2 I L R 58 All 555

Sch I Art 106—Suit for partnership accounts—Limitation Act (IX of 1908) Art 106—Specific assets realised within period of limitation If a suit for general partnership accounts and a share in partnership profits is itself barred the plaintiff in such a suit cannot be allowed to proceed speculatively against any and every partnership asset which may have been realised by the defendant after dissolution and within the period of limitation *Mercurys, Hornmays v Pustoms, Burjors I L P 6 Bom 698* distinguished *ARMED SULEMAN v BHAGWANDAS VISRAM AND Co (1909)*

I L R 34 Bom 515

Sch I Arts 106 and 120—

See s 19 22 C W N 104

Question as to what amount to a dissolution of a partnership dissolved and which article was applicable to the case *HARANDHAN PODDAR and others v SODARSON PODDAR*

25 M W N 847

Sch I Art 109—Usufruct or mortgage—Suit by mortgagee for possession and mere profits—Limitation Where a usufructuary mortgage is wrongfully kept out of possession of the mortgaged property his proper remedy is a suit for possession and for mere profits As regards the latter remedy the period of limitation applicable is that prescribed by Art 109 of the First schedule to the Indian Limitation Act 1908 *RAM SAKUR v HARPAL (1916)*

I L R 39 All 200

Suit on mortgage—Profits received by transferee—pendent lite—Suit by purchaser at mortgage sale to recover same—Pro

LIMITATION ACT (IX OF 1908)—*contd.***Sch I, Art 109—*concl'd***

filed if wrongfully received The words wrongfully received in Art 109 of the Limitation Act include receipts of profits that cannot be legally substantiated. It was held in a suit between the purchaser at a mortgage sale and the holder of a usufructuary mortgage granted by the mortgagor after the passing of the mortgage decree that the usufructuary mortgage was void as against the purchaser owing to the application of the doctrine of *lis pendens*. The purchaser having sued the usufructuary mortgagee to recover rents realised by the latter from certain tenants of the property before the Plaintiff obtained possession under his purchase. *Held* That Art 109 of the Limitation Act applied to the case. **NAGENDRA NATH LAL v. SAPAT KAMINI DAS** **11 B C W N 336**

Sch I Art 110—

See **BENGAL TENANTS ACT 1883** Sch

III Art 2 **1 Pat L J 506**

See **CONTRACT ACT** ss. 23 AND 27

1 Pat L J 37

See **LIMITATION (38)**

1 L R 44 Calc 759

Madras Rent Recovery Act (VIII of 1865) as 9 and 10—When rent ascertained and payable Rent is payable within the meaning of Art 110 of Sch I of the Limitation Act only when it is ascertained. When proceedings are taken by the landlord under s. 9 of the Madras Rent Recovery Act after the end of the *faisla* to enforce acceptance of a *patta* tendered within the *faisla* the landlord has to await an adjudication under s. 10 of the Act and limitation begins to run in respect of a suit for rent only from the date of such adjudication as it was only then that it can be said that the rent for the suit *faisla* was ascertained. **Pangnyya Appa Rao v. Bobba Srinamulu** **1 L R 27 Mad 143** followed. **SINGAPAM PHILLAI v. SYED GOLAN GHOUSE SHA** (1913) **1 L R 100 Mad 438**

Sch I Arts 110 116—Registered lease—Suit to recover arrears of rent—Limitation Art 116 Sch I of the Limitation Act (IX of 1908) applies to suits for debts or sums certain due upon registered instruments. **LALCHAND NANCHAND v. NARAYAN HARI** (1913)

1 L R 37 Bom 656

Sch I, Arts 110 115 120—

See **JOINT PROPERTY**

1 L R 39 Mad 44

Sch I Art 113—

See **ART 83** **1 L R 2 Lah 316**

See **BENGAL AGRA AND ASSAM CIVIL COURTS ACT** **4 Pat L J 447**

See **CHAUKIDARI CHAKARAN LAWS**

1 L R 46 Calc 173

Contract between two parties that on payment of a specified sum by one to the other the latter would transfer a decree in his favour to a third party—Suit by such third party for specific performance of the contract—Limitation—Starting point A agreed with B that on the latter paying him a specified sum of money he would transfer a decree in his favour to C. In a suit by C against A for the specific performance of the contract by the execution of a deed of transfer

LIMITATION ACT (IX OF 1908)—*contd.***Sch I Art 113—*concl'd.***

Held that the suit was governed by the second part of Art 113 and time began to run from the date on which C had notice that performance was refused and not from the date of payment to A by B of the sum agreed in the contract. Applicability of the doctrine of *certum est quod certum reddi potest* to third parties considered. **VENKAY NA v. VENKATAKRISHNAIA** (1917)

1 L R 41 Mad 18

Sch I Arts 113 116 120—

See **SPECIFIC RELIEF ACT 1877** s. 30

1 L R 34 All 43

Sch I Arts 113 143—Deed of exchange—Express covenant—Transfer of Property Act (IX of 1882) s. 119—Implied covenant—Breach of covenant—Disposition of plaintiff's suit for recovery of possession of plaintiff's lands—Suit filed more than the 3 years after but within twelve years of disposition whether barred Where a deed of exchange executed in 1903 between the plaintiff's father and some of the defendant contained a covenant which only limited the option provided by s. 119 of the Transfer of Property Act and was otherwise of the same nature as one that would be implied under that section and the plaintiff being disposed of in 1908 of the lands given by the defendants sued in 1916 to recover the lands given by his father under the exchange and the defendants pleaded the bar of limitation. *Held* that Art 143 and not Art 113 of the Limitation Act applied to the case and that the suit was in time. **BRECHINASA ATIANGAR v. JOHNSA POWTHER** (1919)

1 L R 42 Mad 690

Sch I Art 114—

See **HINDU LAW—(CUSTOM)**

5 Pat L J 164

Sch I Art 115—

See **ART 83** **26 B W N 61**

1 L R 43 Calc 248

See **ART 140** **1 Pat L J 80**

See **LAMBARDAR** **4 Pat L J 304**

See **JOINT PROPERTY** **1 L R 39 Mad 44**

See **PARTNERSHIP** **15 C W N 852**

See **PROCEDURE** **1 L R 48 Calc 832**

See **LODS OF GOODS** **1 L R 44 Calc 16**

See **SPECIFIC MOVABLE PROPERTY** **1 L R 44 Calc 16**

See **SPECIFIC MOVABLE PROPERTY** **1 L R 44 Calc 16**

See **SPECIFIC MOVABLE PROPERTY** **1 L R 44 Calc 16**

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See **SPECIFIC MOVABLE PROPERTY** **1 L R 44 Calc 16**

LIMITATION ACT (IV OF 1908)—contd**Sch I, Art 115—contd**

recover commission due to him. *Held* that the suit was one for compensation under a contract for services rendered which for purposes of limitation was governed by Art 115 of Sch I to the Indian Limitation Act and was not one for wages within the meaning of Art 102 of the said Act. *Ganesha Krishna v Madhavani Patil* I L P 6 Bom 15 Parbhatty Nath Poy Choudhry v Maitho Puro I L P 3 Cal 26 Nalacoomar Mookhopadhyay v Suru Mullick I L P 6 Cal 94 and *Vithala Debi v Chandu Das Deb* I L P 43 referred to. *See* HIL CHANDRA DAS v CAUTI SHANKAR (1916)

I L R 39 All 81

2. ————— To a suit against a surety guaranteeing a promissory note payable on demand Art 115 and not Art 63 applies. *GREENATH ROY v PEARL MOHAN MOOKERJEE* (1899) 21 C W N 479

Arts 115 and 116—

See CONTRACT I L R 41 Mad 488

Arts 115 126—

See PARTNERSHIP 15 C W N 882

Arts 115 145—

See ART 6 I L R 37 Mad 175

Sch I Art 116—

See ART I L P 44 Bom 500

See ART 01 I L R 44 Bom 591

See ART 83 I L P 2 Lah 216

See ART 9 I L R 45 Bom 955

See ART 110 I L R 37 Bom 656

See LIMITATION 23 C W N 336

I L R 33 Mad 101

See LIMITATION ACT ART 113

I L R 34 All 43

See SALE DEED I L R 118 Mad 1171

1. ————— Bond executed by defendant alone and accepted by plaintiff and subsequently registered suit upon—Limitation Art 116 of the Limitation Act applies to a suit brought by the plaintiff to enforce a debt due upon a bond executed by the defendant alone and accepted by the plaintiff and subsequently registered. *CHELLAPEROO CHOWDHARI v BANCA BEHARI SEV* (1915) 20 C W N 408

2. ————— Principal and agent—Agent bound to render accounts at stated periods—Suit for accounts against heir of agent—Limitation An agent for the management of zamindari property was appointed by a registered mukhtarnama one of the conditions of the appointment being that the agent should render accounts every six months. The agent died and the principal sued his heirs to recover a sum of money alleged to be due in respect of a period from 1891 to 1911. *Held* that Art 116 of the first schedule to the Limitation Act 1908 applied and that the plaintiff was not entitled to get accounts for a period longer than six years before suit. *Jhapa Jhanessa Bibi v Dama Sundari Chaudhary* 16 C W N 104 followed. *MATHURA NATH v CHEDDU* (1917) I L R 39 All 355

LIMITATION ACT (IX OF 1908)—contd**Sch I Art 116—contd**

3. ————— Company registered under the Indian Companies Act (VI of 1882)—Suit for dividend by a shareholder governed by Art 116—Registered in Art 116 meaning of a suit by a shareholder against a company registered under the Indian Companies Act (VI of 1882) to recover dividends duly declared by the company is governed by Art 116 of the Limitation Act as the right to a dividend arises out of the contract between the shareholders contained in the registered memorandum and articles of association. Registered in Art 116 means registered not only under the Indian Registration Act (III of 1877) but also under special Acts such as the Indian Companies Act which requires the memorandum and articles of association of a company to be registered. A dividend is a debt on a contract in writing registered within Art 116 of the Limitation Act. *Piron Press and Sagar Mill Co Ltd v NANA VEN KATARAMA CHETTI* (1918) I L R 42 D 33

Sch I Arts 116 110

See LIMITATION I L R 44 Cal 220

Sch I Arts 116 120—

See ART 113 I L R 34 All 43

Sch I Arts 116 132—

See MORTGAGE I L R 46 Cal 448

Sch I Arts 116 120 131 132—

————— Suit to recover arrear of annuity charged on immovable property—Claim for personal decree only—Limitation *Held* that Art 131 of the first Schedule to the Indian Limitation Act is applicable only to suits in which the plaintiff claims to recover money charged upon immovable property to raise it out of that property and not to a claim in which merely personal decree is asked for. *Ramdin v Kalka Prasad* I L P 7 All 500 followed. *Held* also that the words of Art 131 to establish a periodically recurring right are altogether inapplicable to a suit to recover arrears of payments due under a registered contract. *Dost Muhammad Khan v Sohan Singh Punj* Rec 1906 p 303 followed. A suit of such a nature is governed by either Art 116 or Art 120 of the first Schedule to the Indian Limitation Act. *LACHVI NARAIN v TURAB UN NISSA* (1911) I L R 34 All 246

————— Sch I Arts 116 66 s 19—Pegged bond—Suit to recover money due on the bond—Period of limitation—Acknowledgment contained in promissory notes On the 17th June 1897 the defendant passed a registered mortgage bond in favour of the plaintiff. It was attested by one witness and made the mortgage amount repayable in three instalments the last one becoming due on the 24th June 1900. On the 24th Aug 1903 the defendant passed a promissory note in favour of the plaintiffs wherein he stated: "An account is taken to day and the amount due under the mortgage deed is set apart. Again on the 11th Aug 1906 he passed another promissory note which recited: "Besides this the mortgage debt is distinct. The plaintiff sued on the 6th Aug 1910 to recover the money due under the bond. *Held* that the words used in the two promissory notes amounted to acknowledgments within the meaning of s 19 of the Limitation Act. *Held* further that the suit was governed by Art

LIMITATION ACT (IX OF 1908)—contd

Sch I Arts 118 66 s 19—concl'd

116 and not by Art 66 of the Limitation Act for though the suit was in form a suit for money due on a bond it was in substance a suit for compensation for breach of a contract *Ramdin v Kalla Pershad L R 12 I 1 12* and *Bulakh Ganu Shet v Tukarambhat I L R 14 Bom 377* commented on *DEKAR HARI v CHHAGATLAL NAPSIDAS (1913)* I L R 38 Bom 177

Sch I Art 118—

S c HINDU LAW (CUSTOM)

5 Pat L J 164

Hindu Law—Adoption—Suit questioning the validity of adoption—Limitation—Adoption of an orphan—Entries in Revenue register A suit questioning the validity of an adoption would be time barred if not brought within six years under Art 118 Sch I of the Limitation Act (IX of 1908) *Srinivas v Hanumanth I L R 21 Bom 260* followed *Thakur Tirbhukan Bahadur Singh v Raja Pameshar Bahad Singh L P 33 I 1 156* and *Umar Khan v Yazuddin Khan L P 39 I 1 19* explained and distinguished. The adoption of an orphan is not valid in law. The Collector's Register is purely for the purposes of Government Revenue and its entries are not evidence of title. *Srinivas Sarjeyav v Balwant Venkatesh (1913)* I L R 37 Bom 518

Adoption—Death of adopter—Adopting mother making a second adoption during widow's lifetime—Adopter in possession of the property to the knowledge of the plaintiff—Suit by reversioner of first adopted son to recover property challenging the second adoption brought after six years—Suit barred by limitation One D a holder of Vatan and non Vatan property having died without leaving a son. M his senior widow adopted a son A. A died a minor in 1892 leaving a widow. In 1901 U adopted defendant No 1 a son to D and from the date of his adoption defendant No 1 remained in possession of the whole estate to the knowledge of the plaintiff. In 1904 A's widow died. In 1912 the plaintiff claiming as the reversionary heir of A sued to recover possession of the property challenging the adoption of defendant No 1. Defendant No 1 pleaded limitation and adverse possession. *Held* that there had been no adverse possession sufficient to bar the plaintiff's suit but it was barred under Art 118 of the Limitation Act 1908 as it was not brought within six years from plaintiff's knowledge of defendant No 1's adoption. *Held* also that though the adoption of defendant No 1 might be invalid by Hindu Law and M's power of adoption might have been already exhausted nevertheless the law of limitation would effectively defeat the plaintiff's claim. *Mohesh Narain Moonshi v Taruck Nath Motra L R 20 I 4 30* followed. *Held* further that defendant No 1's adoption to D who was not the last male holder affected the plaintiff for the property in dispute was an ancestral estate and that D as well as A were ancestors of the plaintiff. *CHANDRASAPPA v KALIANDAPPA (1917)* I L R 41 Bom 728

Limitation—Sale—Covenant to make good loss in case of tender being compelled to pay money in excess of sale consideration—

LIMITATION ACT (IX OF 1908)—contd

Sch I Art 118—concl'd.

Breach of covenant—Suit against vendors on covenant of indemnity Where vendees are suing their vendors on a covenant of indemnity contained in their sale deed having been obliged to redeem a prior mortgage the existence of which the vendors did not disclose limitation runs not from the date of the sale deed but from the date when the plaintiffs suffered actual loss by reason of their being compelled to pay off the prior mortgage charge. *Hari Tiwari v Jagannath Tiwari I L R 11 All 27* referred to *PAM DELATY v HARDWARE LAL (1918)* I L R 40 All 605

Art 118 and s 0—*Suit for declaration that an adoption is untrue or invalid—Nearest reversioner's consent to adoption for a bride—No suit by nearest reversioner—Suit by remote reversioner more than six years after adoption came to knowledge of the nearest reversioner—Plaintiff born after adoption and before suit barred—Bar of limitation* A suit for a declaration that an alleged adoption is untrue or invalid instituted by a remote reversioner more than six years after the adoption came to the knowledge of the nearest reversioner is barred under art 118 of the Limitation Act. Neither the fact that the nearest reversioner did not himself bring such a suit because he had been bribed to give his consent to the adoption nor the fact that the remote reversioner who sued was born after the alleged adoption and before the suit became barred under art 118 gives the latter any fresh cause of action or stops time running which had begun to run against the whole body of reversioners from the date of adoption. *VIVEKA SIVATTA v ADHYA (1921)* I L R 44 Mad 218

Sch I Art 119—*Suit for declaration that an adoption was valid—Limitation* A decree was passed in 1900 on the basis that there was no adoption. In 1901 the adoption of plaintiff was denied by defendant No 1 still the plaintiff did nothing till 1913 when he filed a suit to have it declared that the decree of 1900 was invalid and not binding on him. *Held* that the plaintiff's adoption having been challenged in 1901 the present suit was barred under art 119 of the Indian Limitation Act 1908. *Srinivas v Hanumanth I L R 24 Bom 260* followed. *SHARMA v BALARAM SAHEBAN (1918)* I L R 43 Bom 63

I L R 43 Bom 63

Art 120—

See s 8 I L R 1 Lah 558
See s 10 I L R 39 Bom 572
See Art 4 I L R 41 Mad 528
See Art 52 I L R 2 Lah 376
See Art 91 I L R 35 All 149
See Art 109 I L R 37 All 640
See ADMINISTRATOR 2 Pat L J 642
See ARREARS OF REVENUE I L R 47 Cal 331

See HINDU LAW—JOINT FAMILY—Pat L J 497

See HINDU LAW—WIDOW I L R 1 Lah 984
I L R 44 Mad 951

See JOINT PROPERTY I L R 39 Mad 111

LIMITATION ACT (IX OF 1908)—*contd*Art 120—*contd*

See LAMBARDA. 4 Pat L J 304

See LIMITATION 1 L R 46 Cal 455

See LIMITATION ACT 1908 ART 113
I L R 34 All 43

See MINERAL RIGHTS. 5 Pat. L J 273

See NORTH WESTERN PROVINCES AND
ODISH MUNICIPALITIES ACT
I L R 35 All 368

See RECORD OF RIGHTS. 3 Pat L J 36

See TRANSFER OF PROPERTY ACT 1882
S. 109
I L R 33 All 708

Suit to enforce an award—

See CIVIL PROCEDURE CODE 1908 s. 11
SCH II r 20 I L R 45 Bom 329

1 ———— *Suit for declaration of title—Previous unsuccessful application for correct entry in village papers—Cause of action—Limitation* In 1875 the owners of certain zamindari property sold their interest in it with the exception of 26 bighas. In 1888 the vendors were recorded as exproprietary tenants of these 26 bighas. In 1903 the representatives of the vendors applied to have the village papers corrected, but their application was dismissed and they were told to go to the Civil Court. In 1910 the representatives of the purchasers applied to have rent assessed on the 26 bighas and obtained an order in their favour. The representatives of the vendors thereupon brought the present suit in the Civil Court for a declaration that they were proprietors. *Held* that whatever cause of action the plaintiffs might have had before the proceedings of 1910 the order passed in those proceedings gave them a fresh cause of action and their suit was not barred by limitation. *Legge v Ramfaran Singh* I L R 20 All 35. *Albar Khan v Turaban* I L R 31 All 9. *Sheopher Singh v Deonarayan Singh* 10 All L J 413. *Purshottam v Parmanand & Co* No 279 of 1908 and *Skinner v Shanker Lal* S A No 963 of 1907 referred to. *ALLAH JILAI v UMPAO HUSAIN* (1914) I L R 38 All 492

2 ———— *Pre-emption right of*
—*Knowledge of sale when essential for the article to apply* In a suit by an otidar to enforce his right of pre-emption the right to sue cannot be said to arise unless the plaintiff has the necessary knowledge of the sale. Such a right can only be exercised when the otidar knows first of all that the property is sold or attempted to be sold to another person and what the terms on which it is proposed to be sold. Without such knowledge he is not in a position to elect. *Ramasami Pillai v Chinnar Asari* I L R 24 Mad 449 and *Kurri Veerardas v Kurri Bapireddi* I L R 29 Mad 336 distinguished. *Chenna Krishnan v Vishnu* I L R 6 Mad 198. *Varaderon v Keshavan* I L R 7 Mad 399 and *Ammottis Ilayi v Kunhayan Kutti* I L R 15 Mad 480 commented on. *MAHIMALI v KUNHITAKKI HAJI* (1912) I L R 33 All 67

3 ———— *Hypothecation of movable property—Suit to recover money lent by sale of the hypothecated property—Limitation* Where a plaintiff who has lent money on the security of

LIMITATION ACT (IX OF 1908)—*contd*

movable property seeks to recover the money by sale of the hypothecated property and does not ask for a personal decree against the debtor the limitation applicable is that provided for by Art 170 of the first schedule to the Indian Limitation Act 1908. *Madan Mohan Lal v Kanhai Lal* I L R 17 All 284. *Am Chand Baboo v Jagabundhu Ghose* I L R 22 Cal 21 and *Mahalinga Nadar v Ganayathi Subbari* I L R 27 Mad 598 followed. *DEOKINANANDAN v GAPIA* (1918) I L R 40 All 512

4 ———— *A suit to enforce a mortgage of a turn of workshop is not governed by Art 132 but by Art 120 of the Limitation Act*. *VARASINGHA BANA GOSWAMI v PROLNADIAN TEOKARI* (1918) 22 W N 994

5 ———— *Suit for declaration of title—Cause of action—Limitation* In the settlement records of 1887 a certain plot of land was recorded as the separate property of the defendants. In 1914 the defendants applied for partition and claimed that this plot belonged to them in severalty was in their separate possession and should be assigned to their mahal. The plaintiffs traversed this statement alleging that the settlement record was wrong and that the plot in question was in fact part of the inhabited site and belonged to all the co-sharers jointly. The court required the plaintiffs to institute a suit in the Civil Court to have the question of title to the plot in dispute decided. *Held* that such suit was not barred by limitation. The proceedings taken in the partition court whereby the plaintiffs found themselves if their statements of fact were true for the first time in danger of being actually dispossessed of their joint ownership of the plot gave rise to a fresh cause of action altogether independent of any cause of action which might have been furnished to them by the settlement entry made in the year 1887. *Akbar Khan v Turaban* I L R 31 All 9. *Rahmat Ullah v Shamsuddin* 11 A L J 877 and *Allah Jilai v Umrao Hussain* I L R 38 All 492 referred to. *HALI PRASAD MISHR v HARBANS MISHR* (1919) I L R 41 All 509

6 ———— *Though attachment of a mans lands as if it belonged to another gives the owner a cause of action on which he could have brought a suit but did not yet the sale of same at a later date is a fresh and greater invasion of his right and gives him a fresh cause of action on which he could sue within six years from the date of sale*. *ANANTHANA RAO v NARAYANARAO* I L R 36 Mad 285

7 ———— *Suit to declare entry in record of rights incorrect—Limitation* whether runs from date of signing of certificate of final publication—*Prayer for confirmation of possession under no allegation of disturbance of position—Limitation* The period of limitation applicable to a suit to declare an entry in a record of rights to be incorrect is that provided by Art 120 of Sch. I to the Limitation Act and it commences running from the date of the final publication and not from the date of the signing of the certificate of final publication of the record of rights. Where in such a suit the plaintiff added a prayer for confirmation of possession without however alleging that his possession had in any way been dis-

LIMITATION ACT (IX OF 1908)—*contd*

turbed or threatened to be disturbed by the defendant. *Held* that the Court of first instance was right in treating the prayer as one for declaration of possession and Art 120 applied to the suit. **RAJANI VATH PRAMANIK v MONARAM MANDAL (1919)** 23 C W N 883

§ ———— *Held* that in a sale in contravention of s 93 of the Transfer of Property Act and purchase by mortgagee—Suit by mortgagor for recovering property governed by Art 120. **UTTAM CHANDRA DAW v RAJ KRISHNA DALAL** 24 C W N 229

§ ———— *Mortgage—Subrogation*—One of the mortgagors paying off the mortgage amount—Payment creating a charge in favour of the creditor—Creditor not entitled to sell the property until declaratory decree obtained—*Limitation* In 1887 a mortgage of the plant property was executed in favour of four brothers. On the 22nd August 1901 the plaintiff one of the mortgagors advanced a sum of money to enable the mortgagor to pay what was required to make the last payment on account of the mortgage of 1887 on the understanding that a further mortgage would be executed by the mortgagor in favour of the plaintiff. The mortgage was executed but it proved ineffectual for want of proper attestation. The plaintiff therefore brought a suit in 1914 for sale of the mortgaged property on the ground that the payment made by him in 1901 created a charge on the property to the extent of the money advanced. *Held* that the payment made in 1901 enabled the plaintiff to establish his right to a charge on the property but mere payment would not give the plaintiff any right against the property either to go into possession or sell it. He was bound to ask for a declaratory decree that a charge was created before the Court could have jurisdiction over the property. *Held* further that the plaintiff's claim to get a declaratory decree was governed by Art 120 of the Limitation Act and was therefore barred as not having been brought within six years from the date of payment in 1901. **BULLER v PIC 1910** Ck 277 referred to. **CHHOTULAL HASBANDAS v VISHNU CANESH (1909)** I L N 43 Bom 597

10 ———— *Limitation—Suit to recover money under an award—money originally recovered by plaintiff under a decree passed on the award—but refunded on the decree being set aside on appeal—date when the right to sue accrues—fresh cause of action* Plaintiff and defendant in 1909 submitted a dispute to arbitration. An award was duly made and a decree passed in terms of it on the 19th October 1909. In execution of the decree plaintiff realised Rs 4,000 on 14th January 1911. The decree was set aside on appeal to the Chief Court on 4th August 1913 and on 4th May 1914 the Rs 4,000 were refunded to the defendant. On 20th February 1919 plaintiff brought the present suit claiming the Rs 4,000 and interest as due to him under the award. The question was whether the suit was barred by limitation. *Held* that on the annulment of the satisfaction a fresh cause of action arose and that the claim was therefore within time under article 120 of the Indian Limitation Act. **Muthuveerappa Chetty v Adavakappa Chetty (I L R 43 Mad 846)** followed. **Pance v Surnomoyee v Shoshnee Mookhee (10 Moo I A 244)** referred to.

LIMITATION ACT (IX OF 1908)—*contd*

Soni Ram v Kanhaya Lal (I L R 30 All 227 P C) distinguished. **KARTAR SINGH v BHAGAT SINGH** I L R 2 Lah 320

——— **Sch I, Arts 120 115** A suit by some of the co-sharers in a ferry against others for recovery of their share of profits is governed by Art 120 and not 115. **KISHOR DEVAL SINGH v KISHOR**

DEO JHA 1 Pat L J 60

——— **Sch I Arts 120 125—**

See HINDU LAW—REVERSIONER

I L R 41 All 497

——— *Limitation—suit by reversioners for a declaration in respect of a mortgage made by a Hindu widow who has a daughter living—sch I and 1 in art 193 includes a house* On 24th January 1908 **Musammal A D** widow of **C R** mortgaged a house to one **U C**. On 12th August 1916 the plaintiffs collateral of **U P** sued for a declaration that the mortgage should not affect their reversionary rights. **Musammal A D** had a daughter living who admittedly was entitled to possession on her mother's death though with limited interest. *Held* that the suit is governed by art 120 (and not by art 193) of the Limitation Act and that the starting point of limitation is the date of the mortgage. **Perammam v Gopaladasayya (I L R 41 Mad 653 (F B))** and rulings cited in *Fa-tumja's Limitation Act 2nd Edition* page 391 referred to. **Abinath Chandra v Majumdar (9 Cal 118 25)** and **Gowda Pillai v Thayammal (14 Mad 1 J 209)** distinguished. *Semble* that land in art 125 includes a house and its site. **Isha Ram v Sher Singh (5 Indian Cas 812)**. **Sant Ram v Ganga Ram (32 P R 1904)** and **Musammal Ralli v Sunder Singh (103 P R 1912)** referred to. **D v Raj v Shiv Ram (70 P R 1914)** distinguished. **SOMAN SINGH v UTTAM CHAND**

I L R 1 Lah 69

——— *Hindu law—Hindu widow—Suit for declaration that alienation by widow enures only for her life* *P* reversioners—*Right of suit* *Held* that although the existence of nearer reversioners may be a bar to a more remote reversioner suing for a declaration that an alienation made by a Hindu widow does not enure for a longer period than the life time of the widow yet *Pe* is not entitled to wait until limitation has expired in respect of all the nearer reversioners for such a suit is under Art 125 of the first schedule to the Indian Limitation Act 1909 twelve years from the date of the alienation for nearer and more remote reversioners alike. **KUNWAR BAHADUR v BIKDRAHAN (1914)** I L N 37 All 195

——— **Sch I Arts 120 and 131—**

See ENHANCEMENT OF RENT

2 Pat L J 124

——— **Sch I Arts 120 132 141 and 144—** Immoveable property whether proceeds of sale of it or any interest therein—**General Clause A 1 X of 1897** s 3 (25)—*Benefit to arise out of land*

LIMITATION ACT (IX OF 1908)—*contd*

Sch I Arts 120 132, 141 and 144
—*contd*

—*Land acquisition Act (I of 1894)* A claim for the proceeds of what was once immovable property but which has been substituted for movable property is not a claim for immovable property or any interest therein or any benefit arising out of land. Where therefore certain property was compulsorily acquired under the Land Acquisition Act 1894 and the plaintiff sued the vendor for the value of the property so acquired held that the period of limitation for the suit was 6 not 12 years. *I AL PADIA KUTEN I ALI v NALPATAN LALJI* 3 Pat L J 522

—Sch I Arts 120 142—

See Art. 82 I L R 88 All 708

Hypothecation decree—movable property—Movable property converted into immovable property—Substituted security—Mortgage as a part of the mortgaged property—Merger A hypothecation decree is not a mortgage and a mortgage decree is not a mortgage. A mortgage which is converted into movable property and a mortgage which is converted into immovable property has become converted into immovable property. The mortgage becomes entitled to the substituted security and also to the larger period of limitation prescribed by Art 130 of the first Schedule to the said Act. It does not necessarily follow that because a person in the position of a mortgagee purchases a portion of the mortgaged property the mortgage thereby becomes *pro tanto* extinguished. Everything depends upon the terms of the sale and unless it is stipulated that the mortgage is to be extinguished or unless there are circumstances from which an intention to extinguish the mortgage in whole or part may be inferred it cannot be held that the mortgage merges in the purchase. *Gova Malani v Kharas Ali Kharas I L R 93 Cal 56* *Jua Ali Beg v Sasa Mal I L R 9 All 128* referred to *JANTA DEVI v LALA PAM* (1916)

I L R 39 All 74

—Sch I Arts 120 124 144—

See MUTT I L R 41 Mad 124

Limitation for suit by one of several mortgagees of a Khankah for recovery of joint possession of a site belonging to the Khankah wrongfully alienated by one of his co mortgagees Held that the limitation for a suit by one of several mortgagees of a Khankah to recover joint possession of a site belonging to the Khankah wrongfully mortgaged with possession by one of his co mortgagees is 12 years under either art 134 or art 144 of the Limitation Act. *Samble* that a suit by a worshipper of a religious institution for declaration that an alienation by the trustee thereof is void and that the alienee be ejected is governed by art 120. *See Ram v Paras Ram (9 P R 1904)* referred to *1st* that a suit brought by the successors or of a trustee of such an institution against the alienee of the property for value to recover the property for and on behalf of the trust is governed by art 134 and the term *terminus a quo* is not the date when the successor succeeds to the office but the date of the alienation. *Har Gian Das v Baldeo Das (10 P R*

LIMITATION ACT (IX OF 1908)—*contd*

Sch I Arts 120 134 144—*contd*

1908) (F B) *Sajeel Pura v Cour Mohan Das (I L R 24 Cal 415)* *Sagun Balkrishnashet v Hays Husein (I I P 7 Bom 500)* referred to *SHADI v ABDUL RAHMAN*

I L R 1 Lah 66

—Sch I Arts 120 142—*Dispossession and discontinuance of possession—Meaning of—Suit to determine rights of parties to order under s 146 Criminal Procedure Code—Period of limitation for—Suit of lies against Magistrate—Magistrate a stakeholder—Declaratory suit against rival claimants—Continuing wrong—The defendants attempted to interfere with the plaintiff's possession of the disputed property and a breach of the peace becoming imminent proceedings under s 146 Criminal Procedure Code were instituted and resulted in an order of attachment under s 146 Criminal Procedure Code. The plaintiff sued for declaration of his title and for recovery of possession. Held that though deprived of possession the plaintiff was not dispossessed or had continued possession within the meaning of Art 140 of the Limitation Act. Meaning of dispossession and discontinuance of possession explained. That no cause of action against the Magistrate the suit could be brought only against the defendants. *Gowans v Gindran I L R 90 All 170* dissented from *Paja of Venkataraj v Itakazh I L R 26 Mad 410* followed on this point. *Klogerda Achari v Marquis I L R 17 Cal 514* *819* and *Pama Suomy v Mulu Suomy I I R 30 Mad 10* referred to. That plaintiff having proved his title the suit must be treated as a suit for declaration of title under s 42 of the Specific Relief Act. That it was a case of continuing wrong independent of contract and accordingly under s 3 of the Limitation Act a fresh period of limitation under Art 140 began to run at every moment of the time the wrong continued. Continuing wrong defined. *Paja of Venkataraj v Itakazh I L R 26 Mad 410* dissented from *Mafabharat v Abdul Hamid I C L J 73* *Binda v Kausala I L R 13 All 196* *Ananda v Veyyanna I L R 15 Mad 492* and *Jugal Kishore v Lakshman Das I L R 23 Bom 659* referred to *BROJENDRA KISHORE ROY CHOWDHURY v SABO JINI RAY* (1915)*

20 C W N 481

—Sch I Arts 120 142 144—

See UNSETTLED PALAYAM

I L R 41 Mad 749

—Sch I Arts 120 144—*Landlord and tenant—Tenant building on the land adjacent to the landlord's house—Staircase of the tenant's house supported by a pillar on the landlord's land—Injunction to remove the staircase—Trespass—Adverse possession—License* In the year 1893 the defendant while a tenant of the house of which the plaintiff had taken a permanent lease in 1905 built his own house on the adjoining land and put up a staircase supported by a pillar. The plaintiff contended that the land on which the pillar rested belonged to him and that the pillar was put up by his predecessor or in title nine years before suit. In 1912 he asked the defendant to pull down the staircase but the latter having refused filed a suit on July 21 1913 praying for a mandatory injunction directing the defendant to remove the staircase. The Subordinate Judge found that the land under the staircase belonged to the plaintiff

LIMITATION ACT (IX OF 1908)—contd**Sch I Arts 120 144—contd**

off but dismissed the plaintiff's suit on the ground that the pillar existed on the land for nineteen years. The Assistant Judge held that as the plot belonged to the plaintiff he was entitled to get the staircase removed. On appeal to the High Court it was contended that the staircase was standing on the land either by the license of the plaintiff's predecessor in title or adversely to them but in any case the plaintiff's suit was barred under Art 120 or 144 of the Limitation Act 1908. *Held* (i) that the plaintiff's suit was barred under Art 120 of the Limitation Act 1908 as it was not brought within six years from 1893 when the license to construct the staircase could have been granted (ii) That the plaintiff's claim was also barred by adverse possession as the lower Courts having found that the staircase was put up nineteen years before suit the presumption was that from that date the defendant's possession was adverse. **HANUMAN KISHOREN v SHIVABAS RANCHAND (1916)** I L R 42 Bom 333

Sch I Arts 121 to 144—**See SALE FOR ARREARS OF REVENUE.**

I L R 43 Cal 59

I L R 43 Cal 412

Sch I Arts 121 and 142—

A suit for recovery of possession brought with 12 years from the date on which the Collector gave symbolical possession to the purchaser is within time coming under Art 142 not 121. **MOHUN CHANDRA DES v PEYARI LAL DAS** I L R 44 Cal 412

Sch I Arts 121, 142 144—In a suit for Khas possession and mesne profits of land purchased by plaintiffs at a sale for arrears of Government Revenue the Defendant contended that they had been in adverse possession for a long time and that their occupation was in the nature of an incumbrance and plaintiffs were not entitled to avoid same. *Held* that the interest which defendants acquired was an incumbrance within Art 121 and the suit was barred. **PRASANKA KUMAR DUTT v JANENDRA KUMAR DUTT**

I L R 43 Cal 79

Sch I, Art 123—**See BURNING LAW**

I L R 44 Cal 279

See RESIDUARY ESTATE

I L R 41 Cal 971

See WILL CONSTRUCTION OF

I L R 43 Bom 845

Sch I Arts 123 144—

Mahomedan law Joint property—Property devolving on sons on father's death—One of the sons selling his share to a third person—Suit for partition—Property held by sons as tenants in common—Time to run when one co-tenant excludes the other from joint property. Two mahomedan brothers M and S succeeded to their father's property according to Mahomedan law. G mortgaged his share in the property to the plaintiffs and eventually sold the equity of redemption to them. The plaintiffs sued to recover possession of G's share by partition. The trial Court dismissed the suit as time barred under Art 123 of the Indian Limitation Act 1918. *Held* that the proper Article applicable would be Art 144

LIMITATION ACT (IX OF 1908)—con d**Sch I Arts 123 144—contd**

of the Limitation Act as the plaintiff's suit was in terms a suit to have partitioned property which the two persons were holding as tenants in common. **KALLARGOWDA v BIRISHAYA (1920)**

I L R 44 Bom. 943

A Mahomedan dying in testate—Estate undivided—Heirs holding as tenants in common—Suit by a heir to recover his share—Adverse possession—Where members of a mahomedan family continue to live as tenants in common without dividing the estate of a deceased ancestor limitation will not run from the time of his death and a suit for a distributive share of the deceased's estate will not be governed by Art 123 but by Art 144 of the Limitation Act, 1908. **Kallargowda v Birishaya (1920)** 41 Bom. 943 followed. **ABUDIN HANBUDA v BU UMBAO (1920)** I L R 45 Bom 519

Art 124—**See LIMITATION c (25)**

I L R 42 Cal 244

See RELIGIOUS ENDOWMENT

I Pat L J 327

Slams in Malabar constituted trustee of a temple and its properties—Absolute transfer by the slams of the trusteeship and temple properties to defendant's predecessor—Effect of adverse possession for over statutory period on succeeding slams—S 2 (d) of Limitation Act definition of plaintiff in—According to the customary law of Malabar a *slamom* is descendible from one *slam* to another in a peculiar line of succession. A suit by a *slam* to recover a hereditary office of trustee of a temple and its properties attached to the *slamom* is governed by Art 124 of the Limitation Act and adverse possession for over the statutory period of the office of trustee and the properties of the trust as against a prior *slam* is a bar to a suit by the successor to recover the same. Though the successor gets his title not by any act of his predecessor but by succession according to the law of the land he derives his right to sue only from or through his predecessor within a 2 cl (3) of the Limitation Act. **Gnanasambarda Pandara Sannadhi v Velu Pandaran, I L R 23 Mad 217 231 applied RAJA OF PALGHAT v RAMAN UNNI (1917)**

I L R 41 Mad 4

Sch I Arts 124 140—**See LIMITATION (18) L R 41 I A 267****Sch I Arts 124 144—**

See s 23 I L R 38 All 636

Sch I Art 125—

See s 6 I L R 36 Mad 570

See ART 120 I L R 41 All 492

Held that although the existence of nearer reversioner may be a bar to a more remote reversioner suing for a declaration regarding an alienation by a Hindu Widow yet he is not entitled to wait until limitation has expired in respect of all the nearer reversioners before bringing his suit. **KUTWAR BAHADUR v HINDRA BAN**

I L R 37 All 195

Alienation by a Hindu widow—Failure of existing reversioner to sue to set aside within twelve years effect of on

LIMITATION ACT (IX OF 1908)—contd**Sch I, Art 125—co 17**

Future reversioners—Representative character of the suit. A suit by a reversioner to set aside an alienation by a Hindu widow is a representative suit on behalf of all her reversioners then existing or thereafter to be born and all of them have but a single cause of action which arises on the date of the alienation. Hence if by failing to sue within twelve years allowed by Art 125 of the Limitation Act (IX of 1908) the existing reversioners become barred by limitation reversioners thereafter born are equally barred. *See Kataravayra Pillai v Sullammal I L R 33 Mad 406 Jarakammal v Narayanaswami Ayyar I L R 33 Mad 731* followed *Gorinda Pillai v Thayammal I L R 28 Mad 57 Veerayya v Gargamma I L R 36 Mad 50 Narayana v Pama I L R 33 Mad 396* and *Penkala Row v Tularam Poo (1917) Mad W N 30* overruled *Senye*. A decision one way or other in a suit by one of them binds all of them. *Per M. HAGIRI ARJAN J. See* That Art 125 does not apply to persons not born at the date of the alienation but that the right to declaratory relief of this nature is only conferred on persons alive at the date of the alienation. *VARADACHARI v GORALA DA. ATYA (1918) I L R 41 Mad 659*

Sch I Art 126

See PARTNERHIP 15 C W N 882

Sch I, Art 126 144, 148—Sale of equity of redemption by one of two mortgagors—Redemption by vendee—Possession of property by vendee for more than twelve years—Sale by the other co mortgagor to another—Suit by latter to redeem his half share—Suit more than twelve years after first vendee took possession on redemption whether barred The first defendant and his father G mortgaged with possession the suit lands to the second defendant in 1892 in 1897 G sold the equity of redemption to the third defendant who redeemed the lands and obtained possession in 1898 The first defendant sold his interest in the lands in 1910 to the plaintiff who instituted a suit in 1912 to redeem his half share in the property on payment of half the mortgage debt The third defendant pleaded that the suit was barred by limitation. *Held* that Art 148 of the Limitation Act was not applicable to the case and the suit was barred by limitation as the case fell within Art 126 *See* The suit was also barred under Art 144 *Jai Kishen Joshi v Budhanand Joshi I L R 33 All 138 Bhaty Shamrao v Hayimya Mahomed 14 Bom L R 314* followed and *Ramaswami Ayyar v Vanaramala Ayyar I L R 23 Bom 137 s c 26 I C 873 Vasudeva Mudaly v Srinivasa Pillai I L R 30 Mad 496*, explained *MURIA GOUNDAN v PANASWAMI CHETTY (1918) I L R 41 Mad 650*

Sch I Art 127—

See CRIMINAL MEMOS

I L R 41 Bom 18

See KNOJAS I L R 38 Bom 449

See LIMITATION ACT 16 7 SCH II ARTS 129 AND 144

I L R 47 Bom 64 & 84

See MAHOMEDAN LAW

I L R 38 Mad 1099

LIMITATION ACT (IX OF 1908)—contd**Sch I Art 127—contd**

Applicability of the Article to Mahomedan—Suit to recover share in joint family property The following question was referred to a Full Bench—Whether Art 127 of the Second Schedule of Act XV of 1877 can apply to the property of a Mahomedan (or any other person not being a Hindu) and not having been proved to have adopted as a custom the Hindu law of the joint family. *Held* (SHAN J dissenting) that it did not. *ISAF AHMED v ANHRAJ AHMAJJI (1917) I L R 41 Bom 588*

Sch I Art 128—Execution of decree—Limitation—Step in aid of execution—Application for transfer of decree—Civil Procedure Code (1882) s 223 *Held* that an application made to the Court passing a decree to transfer it for execution to another Court in an application to take a step in aid of execution within the meaning of Art 182 of the first schedule to the Indian Limitation Act 1908. *Chandra Nath Goswami v Guroo Prosunno Ghose I L R 92 Cal 378* followed *TODAR MAL v PHOLA KUTWAR (1913) I L R 35 All 889*

Sch I Art 130—

See SARANJAN I L R 40 Bom 606

See SARFARJANDAR I L R 45 Bom 694

Land entered in record of rights as liable to assessment—Suit to assess rent—Limitation—Suit if maintainable by a co-sharer landlord—Bengal Tenancy Act (VIII of 1885) ss 183 and 103B Defendant's lands having in 1910 been entered in the record of rights as liable to be assessed with rent the recorded landlord brought the present suit for assessment of rent. The District Judge held that the right to have the rent assessed having accrued to the plaintiff more than twelve years before the suit it was barred by limitation under Art 130 of the Limitation Act and dismissed the suit disagreeing with the Munsif's finding that the suit having been brought within twelve years of the publications of the record of rights was within time. *Held* that the Munsif was wrong in taking the entry in the record of rights as the starting point for limitation as such an entry confers no title. That the suit was not one for resumption or a cessment of rent free land within the meaning of Art 130 but a suit for the assessment of land presumably liable to be assessed. That the fact rent has not in fact been paid more than twelve years before suit is not *per se* sufficient to support a decree for dismissal of such a suit for the right to have rent assessed must continue so long as the relationship continues of landlord and tenant of land liable to be assessed. That such a relationship and liability were to be presumed from the record of rights and it was for the defendant to rebut this presumption by evidence. A suit to assess rent is consistent with and arises out of the general law and the land revenue system of the country and is not one which the landlord is required or authorized to do under the Bengal Tenancy Act within the meaning of s 148 of that Act. A co-sharer landlord is therefore entitled to institute such a suit. That had s 183 of the Bengal Tenancy Act applied, the fact that the plaintiff had joined his co-sharers as defendants would not have justified the Court in entertaining the suit on grounds of justice and equity. *DHARMANJOY BANERJEE v UPENDRA NATH DEB (1918) 22 C V 5 655*

LIMITATION ACT (IX OF 1908)—cont'd

Sch I Art 131—

See Art 120

1 Pat L J 124

See ADVERSE POSSESSION

I L R 45 Bom 638

See ENHANCEMENT OF RENT

2 Pat L J 124

See INADAM

I L R 41 Bom 169

See LIMITATION ACT 1903 Art 116

I L R 34 All 246

Suit to recover sums due under periodically recurring right governed by Art 131 of sch II of the Limitation Act (IX of 1908) applies to suits to recover sums due under a periodically recurring right whether there is a prayer for a declaration of plaintiff's right or not. Held therefore that a suit to recover arrears of adama allowance for a period of eight years was not barred as to any portion of it. *TAJIBUDDIN OF CALCUTTA v. ACHUTHA MENON* (1914)

I L R 38 Mad 916

Sch I Arts 131 132—

See Art 116

I L P 34 All 246

Arts 131 and 141—

See ADVERSE POSSESSION

I L R 45 Bom 638

Sch I Art 132—

See Art 89

I L R 43 Calc 248

See Art 116

I L R 46 Calc 448

See Art 120

I L P 39 All 74

See LIMITATION

I L R 41 Calc 654

I L R 42 Calc 244

I L R 48 Calc 625

1 — Limitation—*Mahikana*—

Suit for *mahikana*—Decree asked for against property charged? Where a plaintiff sued for the recovery of *mahikana* for 11 years and claimed a decree against the property on which the *Mahikana* was charged it was held that the suit was within time having regard to Art 132 of the first schedule to the Indian Limitation Act 1908. *Kallar Roy v. Ganga Pershad Singh* I L R 33 Calc 938 distinguished *SHARMA AIR v. PAULLO* (1913)

I L R 25 All 185

■ Limitation—Suit

to enforce payment of money charged upon immovable property—*Installment bond*—Meaning of *be comes due*? A mortgage deed executed on the 16th July 1890 provided that the mortgagors pay the principal amount secured in ten years by instalments of Rs 625 yearly and that interest should be paid monthly. There was this further clause—If we fail to pay the interest aforesaid in any month on the principal by the stipulated period as specified above or no payment is made in a year the mortgage shall under all those circumstances be at liberty to realise the entire amount with the interest aforesaid in a lump sum through the court by means of a suit from the mortgaged and other moveable and immovable property and the person of us the executors. There was also this further provision—If the mortgagees in order to get interest do not bring a suit in default of any instalment and we are unable to pay the money the interest should continue up to the stipulated period of ten years

LIMITATION ACT (IX OF 1908)—cont'd

Sch I Art 132—con 1

and after it up to the date of realization. No payment was ever made of either principal or interest and the mortgagees ultimately brought a suit on the mortgage on the 17th June 1912. Held by *PICHARD C J* and *TUNBALL J* (*BANERJI J* dissenting) that the suit was barred under art 132 of sch I to the Indian Limitation Act 1908 the mortgage money having become due when the first default was made. *Isaudeva Mudaliar v. Srinivasa Pillai* I L P 39 Mad 496 *Ker v. Bulcher* 2 Q B D 509 *Siah Chand Natar v. Hardar Mallu* I L P 1 Calc 231, and *Perumal Ayyan v. Magiram Bhupanthar* I L R 29 Mad 215 referred to. *Nelloorappa Goundan v. Kumara Sams Goundan* I L P 72 Mad 90 *Maharaj of Benares v. Nand Ram* I L R 29 All 431 *Shankar Prasad v. Jalpa Prasad* I L P 16 All 371 *Ayudhia v. Kurnul* I L P 30 All 193 and *Jineer Das v. Mahabhar Singh* I L P 1 Calc 167 distinguished. *Per BANERJI J* Having regard to the second of the provisions above cited the suit was not barred by limitation. Where a creditor is authorised to wait for the full period stipulated for repayment the money does not become due within the meaning of art 132 of the first schedule to the Indian Limitation Act 1908 until that period expires. *GAYA DIX v. JEWAKAN LAL* (1914)

I L P 37 All 400

3 — Account—suit for

against agent—Stipulation to render accounts—Limitation. A suit by the principal against his agent for recovery of sums to be found due upon adjustment of accounts by sale of immovable properties hypothecated by the agent is a suit to enforce a charge on immovable property within the meaning of Art 132 of the Indian Limitation Act. *Hafizuddin Mandal v. Jadu Nath Saha* I L R 35 Calc 293 followed. *Jogesh Chandra v. Benode Lal Poy* 14 C W N 199 not followed. *MADHUSUDAN SEN v. PARUL CHANDRA DAS* (1915)

I L R 11 Calc 248

19 C W N 1070

4 — Suit for the re-

covery of *mahikana*—Limitation—Distinction between personal claim and claim against property charged. Where a plaintiff sued for the recovery of *mahikana* for eleven years and claimed a decree against the property on which the *mahikana* was charged it was held that the suit was within time having regard to Art 132 of the first schedule to the Indian Limitation Act 1908. *Shida Ali v. Phulio* I L P 35 All 185 followed. *Ram Din v. Kala Prasad* I L R 7 All 502 referred to. *NATHU v. GHANSHAM SINGH* (1918)

I L R 41 All 259

5 — Loan of paddy

secured on land—Suit to recover—Limitation. Where a mortgage bond to secure a loan of paddy provided that in default of payment of the paddy and the interest which was also provided to be paid in paddy the mortgagees would be entitled to attach and sell the mortgaged property and realise the dues and if that was insufficient would be entitled to realise them also from other moveable and immovable property of the mortgagor and from his person. Held that it was clear that upon failure to deliver the paddy the mortgagees were entitled to recover money and not to claim specific paddy and hence the mortgagees a suit to enforce the bond was governed by Art 132

LIMITATION ACT (IX OF 1908)—contd**Sch I Art 132—contd**

of Sch. I of the Limitation Act **JOGENDRA NATH SINGH v MOHAN LAL KHAN (1919)**

23 C W N 951

6 **Loan of paddy charged on land—Suit to recover—Limitation** A mortgagor borrowed a quantity of paddy from the mortgagee (valued in the bond at Rs 192) agreeing to repay the paddy with interest at a certain date failing which the mortgagee was to be entitled to recover the price of the paddy with interest by sale of the mortgaged land *Held* distinguishing **Pash Behari Das v Kunja Bihari Patra 24 C L J 313** that Art 132 of the Limitation Act applied to a suit by the mortgagee to enforce the bond **INDRA NARAYAN SHAO v DINABAR SAMANTA (1919)** 23 C W N 949

7 **Suit to recover the value of paddy charged upon immovable property is a suit to enforce payment of money charged upon immovable property within the meaning of Art 132 of the Act** **RAJCHAND SUR v ISWARCHANDRA GURI AND OTHERS (1920)**

25 C W N 57

8 **Limitation—Bond payable by instalments—Stipulation empowering creditor to sue for whole amount in default of payment of interest—Terminus a quo** A mortgage bond provided a period for repayment but also provided that if the borrower made default in the payment of any instalment of interest the creditor could sue for the whole amount due *Held* that limitation under article 132 of the first schedule to the Indian Limitation Act 1908 began to run from the date of the first default that being the date when according to the terms of the bond the whole money became due **Mata Tahal v Bhagwan Singh 19 A L J 406** not followed **NATHI v TUBSI** 1 L H 43 All 671

9 **Mortgage—Bond payable by instalments—Total amount due exigible on default of payment of any instalment—Limitation—Terminus a quo** In a mortgage bond dated the 21st of February 1903 it was stipulated that the mortgage debt would be payable at the end of twelve years. It was further stipulated that the mortgagors would pay Rs 500 annually in payment mostly of interest and that if default was made in such annual payment the mortgagees were to have power without waiting for the expiry of the stipulated period to set aside all the stipulations embodied in the document and to bring a suit in court to realize the entire principal together with interest and costs from the persons of the mortgagors and from the hypothecated property. No annual instalment was ever paid. The mortgagees brought a suit on their bond on the 21st of February 1911 that is to say on the last day of a period of twelve years from the time that the mortgage money was expressed to be payable. *Held* that article 132 of the first schedule to the Indian Limitation Act 1908 applied and the suit was barred **Caya Din v Jumman Lal I L R 37 Ill 400**, followed **PANCHAM ANWAR HUSAIN** 1 L R 43 All 596

Sch I Arts 132, 75—Mortgage bond—Interest payable annually—Principal payable on a future date—Principal and interest payable immediately on default—Option to mortgagee to enforce payment—Suit after twelve years from default of

LIMITATION ACT (IX OF 1908)—contd**Sch I Arts 132 75—contd**

barred—Gift by a Hindu widow of a mortgage bond due to her husband—gift if valid and to what extent—Suit by widow complicity of transferee in continuance—Decree nature of Suits for money due on hypothecation bonds though containing stipulations for payment in instalments are governed by Art 132 and not by Art 75 of the Limitation Act (IX of 1908) and there is no warrant for importing into the former the words of the latter article A hypothecatee is not bound to take advantage of a clause in his bond which in case of default in payments of interest enables him (a) to demand the principal before its due date and (b) also claim a higher rate of interest from the date of default. Hence a suit restricted to a claim to recover the principal and interest at the original rate brought within twelve years from the date originally fixed for payment of the principal though beyond twelve years from the date of first default in respect of interest is not barred by limitation **Attalakaruppa Goundan v Kumarasami Goundan I L R 22 Mad 22** **Ately v Earl of Essex 18 Eq 290** and **Governors of Magdalen Hospital v Knolls 5 Ch D 175** followed **Perumal Appan v Alagarasami Bhagavathar I L R 20 Mad 245** explained. A gift by a Hindu widow of a mortgage bond executed to her in discharge of a debt due to her husband is valid to the extent of the interest that had accrued due at the date of the gift and the transferee is competent after her death to prefer a second appeal in a suit filed by her on the bond and obtain a decree for recovery of interest only due thereon **VARNA v ASHMANI ARMA (1916)**

1 L R 89 Mad 981

Sch I Arts 132 144—Limitation Mortgage—Suit for sale on a mortgage impleading defendants alleged to be in adverse possession of the mortgage property *Held* that a suit for sale on a mortgage can always be brought under art 132 of the first schedule to the Indian Limitation Act 1908 against all persons in possession whose possession is subsequent to the date of the mortgage provided that the suit is brought within twelve years from the time at which the money became due. Such a suit does not become a suit for possession governed by art 144 because it may be necessary to implead persons who are in possession and claim a title by possession adverse to the mortgagor **Karan Singh v Bakar Ali Khan I L R 6 All 1** distinguished **Nandan Singh v Jumman I L R 34 All 610** and **Amrinder Mandal v Mahan Lal Dey I L R 33 Calc 1015** referred to **RAJ NATH v NARAYAN DAS (1914)**

1 L R 36 All 567

Sch I Art 134—**See HINDU LAW—ENDOWMENT**

1 L R 33 Calc 526

1 L R 40 Mad 745

See LIMITATION I L P 43 Calc 54

S. MUTT—HEAD OF

1 L R 38 Mad 356

See MAHOMEDAN LAW—ENDOWMENT

1 L R 47 Calc 866

See MAHOMEDAN LAW—WIDOW

1 L R 43 All 127

S. PELICIOUS ENDOWMENTS

3 Pat L J 327

LIMITATION ACT (IX OF 1908)—*contd*Sch I Art 134—*contd*

1 ———— *Mortgage—Sale by mortgagee—Suit for redemption by mortgagee against mortgagee and vendee—Plea of purchase for consideration—Omission of the words in good faith in Art 134* The omission of the words in good faith from the Art 134 of the first schedule to the Limitation Act of 1908 does not entitle a person who purchases with full knowledge that his vendor's title is merely that of mortgagee to the benefit of article DUCRAL SIKH v KALLU (1911) I L R 37 All 660

2 ———— *Puñs lease granted by deed as transfer for valuable consideration—Non payment of premium for creation of lease if alters nature of transfer—Suit by deed for recovery of possession—Limitation—S 30 when applies* The grant of a puñs lease of a property belonging to an idol by the deed is a transfer for valuable consideration within the meaning of Art 134. Sch I of the Limitation Act whether or not and premium was paid for the creation of the lease and a suit brought more than 12 years after the date of the lease by the then deedholder to recover possession of the property is barred under Art 134 S 30 of the Limitation Act only applies when there is a period of limitation prescribed both by the Act of 1877 and the Act of 1908 RAMESHAR MALIA v RAM CHANDRA ACHARIA GOSWAMI (1918) 19 C W N 1032

3 ———— *Transfer with possession by mortgagee—Transferee taking possession of some items later than date of transfer effect of—Transferee not taking possession at all of some other items effect of—Limitation from what date date of transfer or date of possession Transfer in Art 134 meaning of—Question referable to a Full Bench when—High Court Appellate Side Rules n 9 Held by the Full Bench (WALLIS O J and COURTS TROTTER J contra) that Art 134 of the Limitation Act does not apply to a transfer from a trustee or mortgagee under which possession is not taken by the transferee Per WALLIS O J, and COURTS TROTTER J—Art 134 of the Limitation Act applies to a transfer from a trustee or mortgagee under which possession is not taken by the transferee Where possession is taken under the transfer not on the date of the transfer but some time later Held (a) Per WALLIS O J and COURTS TROTTER J—Art 134 of the Limitation Act applies and time begins to run from the date of transfer and not from the date of taking possession (b) Per ABDUR RAHIM and SESHAIAH ARIAR J J—Art 134 of the Limitation Act applies but time begins to run not from the date of transfer but from the date of taking possession and (c) Per SRINIVASA AYYANGAR J—Art 134 of the Limitation Act is not applicable to the case It applies only in cases where the transferee takes possession on the date of transfer and where the mortgagee is entitled even on the date of transfer to sue the transferee for possession Per SRINIVASA AYYANGAR J—Obiter Transfer in Art 134 means transfer of title and not transfer of possession. Held by the Full Bench—Under r 2 of the Rules of the High Court Appellate Side only a question of law involved in the determination of the case may be referred to a Full Bench and that the third question referred to*

LIMITATION ACT (IX OF 1908)—*contd*Sch I, Art 134—*contd*

them did not so arise in the case SLEET KUTTI v KUSHI PATRUSIMA (1917)

I L R 40 Mad. 1040

4 ———— *Mortgagor and mortgagee—Redemption—Purchase by mortgagee at a Court sale—Transfer by mortgagee to third persons—Mortgagee re purchasing from the transferee—Mortgagor entitled to redeem the property repurchased* The properties in suit were mortgaged with possession in 1882 by two persons S and D In 1885 in execution of a money decree against the mortgagors the properties were sold and the interest of the mortgagor S alone was purchased by the mortgagee at a Court sale In 1892 three of these properties Survey Nos 11 54 and 87 were sold by the mortgagee to third persons and in 1893 the mortgagee bought back Survey Nos. 54 and 87 from the vendees The plaintiffs mortgagors sued for redemption of all the properties in 1910 The lower appellate Court held that D alone was entitled to redeem all the properties in suit except Survey Nos 11 54 and 87 in respect of which the claim to redeem was barred under Art 134 of the Limitation Act 1908 and that D could have no right to claim compensation on account of these lands. On appeal to the High Court by D Held that D's claim for redemption and compensation in respect of Survey No 11 was rightly disallowed but that he was entitled to redeem Survey Nos 54 and 87 as these properties having come back into the possession of the defendant he must be treated as mortgagee and not as an innocent transferee without notice HALU DEVTA v PURCHAND KISONDAS (1910)

I L R 44 Bom 648

5 ———— *Suit by Mahal to recover possession of Waf property mortgaged by previous Mahal—Date from which limitation to be reckoned was held to be 12 years from the date of the mortgage NARAIN DAS v BAZI ABDUR RAHIM*

24 C W N 690

6 ———— *Mortgage—Transfer by mortgagee—Rights of the transferee—Redemption—Construction of statute—Legislative exposition* The plaintiffs sued in the year 1906 to redeem a mortgage effected prior to the year 1854. The representatives in title of the mortgagee claiming to be absolutely entitled mortgaged the land with possession to A in 1891 and he sold his rights to defendant B The suit having been brought more than 12 years after the alienation to A defendant B claimed as against the plaintiffs the interest of a mortgagee by virtue of his adverse possession under Art 134 of the Limitation Act (XV of 1877) Held that it was obligatory on the plaintiffs to redeem defendant B before they could recover possession of the property Yesu Pamy, Kalnath v Balkrishna Lakshman I L R 15 Bom 583 Malvi v Fakirchand I L R 2 Bom 225 and Ramchandra v Sheikh Mohidin I L R 23 Bom 614 followed Abharam Gopuram v Shyama Charan Bhandi I R 36 I A 143 and Ithar Shyam Chand Jiu v Ram Kanai Ghose I L R 38 Cal 596 explained The alteration in the language of Art 134 of the Limitation Act (IX of 1908) was a legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees. Swift v Jewsbury L R 9 Q B

LIMITATION ACT (IX OF 1908)—contd**Sch I, Art 134—contd**

312 and *Morgan v London General Omnibus Company* 12 Q B D 201 referred to: **BAGAS UMARJI v NATHARHAI UTAMRAM** (1911)

I L R. 36 Bom 148

Neither under Muka medan nor Hindu Law is property conveyed to a *Shebait* or *Mutwals* on dedication—They are not trustees in the English sense but of specific property is specifically entrusted to such a person for specific purposes he might be regarded as trustee with regard to that property. Where the head of a *Mutt* gave a permanent lease of property which had been granted for the general purposes of the *Mutt* and no necessity for the alienation was established *Held* That Art 134 of the Limitation Act which is controlled by s 10 of the Act did not apply to the case as the property in question was not property specifically conveyed to the *Matasthipathe* in trust.

Also that the rent received in the lease was not valuable consideration within the meaning of the article *Held* further that as according to the well settled law of India a *Mohant* is incompetent to create any interest in respect of *Mutt* property to endure beyond his life the possession of the lessee did not become adverse within the meaning of Art 144 of the Limitation Act until he died and the acceptance of rent by his successor being properly referable only to a new tenancy created by himself which it was within his power to continue during his life the possession of the lessee did not become adverse again until his death. The legal position of *Mohants shebaites sayyadanashins* and *mutwallas* discussed. Ordinarily speaking the *sayyadanashin* has a larger right in the surplus income than a *mutwali* for so long as he does not spend it in wicked living or in objects wholly alien to his office he like the *Mohant* of a Hindu *Mutt* has full power of disposition over it. **SIR VIDYA VARUTHI THIRTHA SWAMIGAL v ALKASANI ATTAR**

26 C W N 538

Sch I Arts 134, 144—

See ART 120 I L R. 1 Lah 168

See ADVERSE POSSESSION

I L R. 30 Mad 879

See RELIGIOUS ENDOWMENT

I L R. 44 Mad 831

Suit for redemption by co mortgagor—Property already redeemed re mortgaged and finally sold in second mortgage—**Limitation—Transfer of Property Act (IV of 1882) s 95** In 1860 the father of a family of four sons mortgaged some of the family property. In 1877 after the death of the father one of the sons again mortgaged the property and with the money borrowed on the second mortgage paid off the first mortgage. The second mortgagee or his son remained in possession of the property as mortgagee until 1893 when the second mortgagor sold it to the son of the second mortgagee. In 1912 a grandson of the original mortgagor sued for redemption of the mortgage of 1860 *Held* that the suit was barred by limitation under Art 144 of the first schedule to the Indian Limitation Act 1908 whatever might have been the position of the members of the family (which was not clear) as regards jointness or separation Art 134 does not apply to a person who being interested in part of

LIMITATION ACT (IX OF 1908)—contd**Sch I Arts 134 144—contd**

a mortgage redeems the whole such person being merely a charge holder and not a mortgagee **Ashfaq Ahmad v Wazir Ali I L R 14 All 1** distinguished. **JAI KISHAN JOSHI v BUDHANAND JOSHI** (1915) I L R 38 All. 138

Hindu Law—Reter

soner—Suit by reversioner to recover possession after death of daughter of the last male owner—Lands mortgaged usufructually by last male owner in 1866—Sale in 1900 by mortgagee after male owner's death during daughter's lifetime—Death of daughter in 1908—Suit in 1914 by reversioner against vendee for possession of lands—Bar of limitation A Hindu reversioner instituted a suit in 1914 to recover possession of certain lands which has been usufructually mortgaged by the last male owner in 1866 and had been sold for consideration by the mortgagee in 1900 after the death of the last male owner and during the lifetime of his daughter who had inherited his estates and died in 1906. The vendees who were unpleaded in the suit pleaded *inter alia* the bar of limitation *Held* that article 134 and not article 141 of the Indian Limitation Act (IX of 1908) applied to the case and that the suit was barred by limitation **SESHA NAIDU v PERIASAMI ODAYAR** (1921) I L R. 44 Mad. 951

Sch I Arts 134 144 and 148—Mortgage—Mortgagee in possession dealing with mortgaged property as full owner—Adverse possession A mortgagee in possession professing himself to be the full owner and not merely a mortgagee mortgaged the property to a third party who claims having brought a suit on their mortgage and obtained a decree put up the property for sale and purchased it themselves. Subsequently they sold by private contract the property which they had so purchased. The representatives of the original mortgagor then sued for redemption *Held* that neither article 134 nor article 148 of the first schedule to the Indian Limitation Act 1908 applied to the suit but article 144 and the suit was barred. The ultimate purchasers the defendants were entitled to add to the period of their possession the period of possession of the auction purchasers their predecessors **Husain Khan v Husain Khan I L R 29 All 471** **Seeti Kulkarni v Kumbhar Pathumma I L R 40 Mad 1040** **Ammu v Rama Krishna Sastry I L R 2 Mad 296** **Chinto v Janki I L R 18 Bom 51** **Ahamed Kulkarni v Paman Vambudri I L R 25 Mad 99** **Bhagwan Sahai v Bhagwan Din I L R 9 All 97** **Shro Nath Singh v Malpat Singh - A L J 234** referred to **Babu Ram v Danke Behar Lal A L J 424** followed **RAM PIARI v BUDH SEN** I L R 43 All 164

Sch I Arts 134 and 148—Mortgage

—Transfer from mortgagee—Suit for redemption—Mortgagee's right of redemption not defeated by reason of mortgagee's transfer In 1882 certain lands were mortgaged with possession by the plaintiff's father. In 1883 the mortgagee mortgaged the lands to the predecessor in title of the defendants representing himself as absolute owner. In 1916 the plaintiff having sued for redemption the defendants contended that the suit was barred under Art 134 of the Limitation Act 1908 *Held* that the suit was not barred as on the facts the proper Article applicable to the case was Art 143 not Art 134 of Sch. I of the Limitation Act 1

LIMITATION ACT (IX OF 1908)—contd**Sch I Arts 134 and 148—contd**

Per MACLEOD C J—A suit to recover possession is not the same thing as a suit to redeem a mortgagor's right to redeem the period of limitation for which is 60 years under Art 148 will not be defeated merely because his mortgagee transfers the mortgage to another person
TATRAMITA v SHRIDELISAR (1919)

I L R 44 Bom 614

Sch I Art 135—

See CONTRACT ACT ss 126 AND 140

I L R 42 All 70

See MORTGAGE I L R 38 All 97

Sch I Art 137—

See POSSESSION 4 Pat L J 463

Sch I Arts 137, 139 142—Suit for possession by auction purchaser—Onus on plaintiff to prove judgment debtor's possession at date of sale or that judgment-debtor became entitled to possession within 12 years of suit The plaintiff an auction purchaser of certain lands sued to recover possession on declaration of title His case was that the judgment-debtor was in possession at the date of the sale and subsequently and when he went to take possession on their vacating the land he was met by the defendant who alleged that they had been in possession from before the execution sale and contended that the suit was barred *Held* that the suit was governed either by Art 137 or Art 139 or Art 142 of the Limitation Act and the onus was entirely on the plaintiff to prove not only that he had a title but a subsisting title which he had not lost by the prescriptive sections of the Limitation Act *ie* he must show which Article of the Limitation Act saved his suit from the bar of limitation and the lower Court erred in law in throwing the burden of proof on the defendants to show that they had been in adverse possession for over 12 years
DOKARI JODDAR v NILMAVI KUNDU (1916)

22 C W N 319

Sch I Art 138—

See CIVIL PROCEDURE CODE 1908 s 47

I L R 35 Bom 452

See POSSESSION 4 Pat L J 463

Date when sale becomes absolute significance of—Arts 137 138 and 144 which applies when an execution purchaser obtains symbolical possession but is kept out of actual possession—S 16 if applies to a suit for possession by such an execution purchaser A tenure was purchased at an execution sale which was confirmed in August 1902 Symbolical possession was delivered to the purchaser in January 1904 An application for setting aside the sale was made in June 1906 and was rejected in April 1906 Being kept out of actual possession the purchaser brought a suit for possession in July 1914 and added some Defendants in March 1916 *ie* more than 12 years from the date on which the sale became absolute as well as from the date when symbolical possession was delivered to the execution purchaser *Held* that the sale became absolute on the confirmation of the sale in August 1902 and not in April 1906 when the application for setting aside the sale was dismissed. The confirmation of a sale cannot be kept in abeyance (when no proceedings are taken to set aside the sale before the confirmation) in order to

LIMITATION ACT (IX OF 1908)—contd**Sch I, Art 138—contd**

enable the judgment debtor to take such proceedings afterwards So if Art 138 of the Limitation Act applied the suit would be barred even deducting the time during which the application for setting aside the sale was pending Art 137 did not apply as the judgment debtor was in possession at the date of the sale Art 138 too was not the proper article applicable to the case The purchaser obtained symbolical possession which was as effective as actual possession against the judgment debtor and if the latter continued in possession it was adverse against the purchaser from the very day on which he got symbolical possession The purchaser therefore had a fresh cause of action for instituting the suit for possession against the judgment debtor In such a case Art 138 does not apply but Art 144 applies *Gopal v Krishna Rao I L R 25 Bom 275* referred to Where Art 144 applies no deduction of time under s 16 of the Limitation Act or under the general principles of equity is allowable and the suit was therefore barred
BRJENDRA KUMAR ROY CHOWDHURY v ASHUTOSH POY

28 C W N 364

Sch I Arts 138 144—

Execution of decree—Successive purchasers of same property—Suit by subsequent purchaser to recover from earlier purchaser—Limitation Art 139 of the Limitation Act only applies to suits in which the auction purchaser is the plaintiff and the judgment debtor or some one claiming through him is the defendant
Ram Laxman Rai v Gayadhar Rai I L R 34 All 224 and **Khiroda Kant Roy v Krishna Das Laha 12 C L J 378** referred to
BRAGWANT SINGH v BHOLI SINGH (1913)

I L R 35 All 432

Limitation—Suit for joint possession—Purchase of undivided share—Effect of an order for formal possession against the judgment debtor On the 20th of March 1900 plaintiff purchased at an auction sale in execution of a decree an undivided one-third share in certain mauz land On the 20th of September 1900 plaintiff obtained under s 319 of the Code of Civil Procedure 1881 formal possession of the property purchased On the 18th of September 1912 plaintiff filed a suit for recovery of joint possession of the share *Held* that the suit was within time
Mangal Prasad v Devi Din I L R 19 All 499 **Jagan Nath v Milap Chand I L R 28 All 720** **Narain Das v Lalla Persad I L R 21 All 269** and **Rahim Bahash v Muhammad Hafiz 10 Indian Cases 319** referred to
RAJEN DRA KISHORE SINGH v BHAGWAN SINGH (1917)

I L R 39 All 480

Sch I Arts 139 142—

See ART 137

22 C W N 319

Sch I Art 140—

See LIMITATION (18) L R 41 I A 267

Sch I Arts 140 141—Suit by a reversioner—Mortgage—Redemption—Widow's disappearance of—Presumption of death—Onus of proof—Indian Evidence Act (I of 1872) s 103 One S died leaving him surviving his widowed daughter in law R In 1860 R passed a mortgage bond in

LIMITATION ACT (IX OF 1908)—contd**Sch I, Arts 140 141—contd**

favour of the 1st defendant's father. In 1805 R disappeared and was not heard of since 1870. In 1911 the plaintiff as the reversioner of S sued to recover possession of the property alienated by R. The defendants pleaded limitation. The first Court decided in plaintiff's favour on the ground that under s 103 of the Indian Evidence Act the Court must presume that R died at the time of the suit and therefore the claim was in time. The lower Appellate Court reversed the decree and dismissed the suit holding that the presumption of R's death at the time of the suit could not be drawn and that the *onus probandi* which lay heavily on the plaintiff to show when P died was not discharged. The plaintiff, having appealed, *Held* that it lay on the plaintiff to show affirmatively that he had brought his suit within twelve years from the actual death of R. *Veeman v Deod Knight 2 H & W 544* followed. Art 141 of the Limitation Act is merely an extension of Art 140 with special reference to persons succeeding to an estate as reversioners upon the cessation of the peculiar estate of a Hindu widow. But the plaintiff's case under each Article rests upon the same principle. The doctrine of non-adverse possession does not obtain in regard to such suits and the plaintiff suing in ejectment must prove whether it be that he sues as remainderman in the English sense or as a reversioner in the Hindu sense that he sues within twelve years of the estate falling into possession and that onus is in no way removed by any presumption which can be drawn according to the terms of s 103 of the Evidence Act 182. *JAYAWANT JIVANRAO v RANCHANDRA NARAYAN (1915)*

I L R 40 Bom 239

Sch I, Art 141—

See ART 131 I L R 45 Bom 638

5 HINDU LAW—ENDOWMENT

I L R 43 Mad 665

5c HINDU LAW—JOINT FAMILY PROPERTY

I L R 47 Calc 274

See HINDU LAW—SUCCESSION

I L R 98 All 117

See HINDU LAW—WIDOW

I L R 43 Mad 855

Disposition in life

time of full owner—Adverse possession against limited owner before Limitation Act of 1871 effect of—*Thak and survey maps as evidence of title and possession*. Art 141 only applies to cases where it is proved that the last full owner was in possession at the time of his death. If he himself was dispossessed and time began to run against him the fact that on his death he was succeeded by his widow daughter or mother would not arrest the operation of the law of limitation. Under the law as it stood before the Limitation Act of 1871 came into operation adverse possession which extinguished the title of the female heir also extinguished the title of the reversioner and once the title was extinguished while the Limitation Act of 1809 or Reg. III of 1793 or Pcg. II of 1805 was in force it could not be revived by the introduction of the Limitation Act of 1871. *MOREN DRA NATH BISWAS v SHANMUGISSA KHATUN (1914)*

19 C W N 1280

LIMITATION ACT (IX OF 1908)—contd**Sch I, Arts 141 142, 144—****See HINDU LAW—JOINT FAMILY**

I L R 42 Bom 69

Sch I Arts 141 144—Alienation by a widow—Death of the widow—Property taken by surviving co widow—On her death property resting in the daughter as reversionary heir—Suit by daughter's son to recover possession—Adverse possession. One D died leaving two widows K and R and daughters S and T. In 1897 the senior widow K sold the property in suit to defendant No 1. In July 1902 A died. Thereupon R as the surviving co widow took the property for a widow's estate. R died on January 17 1903. On her death the daughters S and T inherited the property. S died in 1907 and T in 1911. On January 13 1915 S's son brought a suit to recover possession of the property sold by A. Both the lower Courts held that the suit was barred by limitation under Art 144 of the Limitation Act 1908. On appeal to the High Court it was contended that the suit was governed by Art 141 of the Limitation Act 1908 and if not in any case it was not barred by adverse possession under Art 144. *Held* that Art 141 of the Limitation Act 1908 did not apply as that Article was restricted to suits by a plaintiff whose right and title to sue for possession occurred upon the death of a female holding the limited woman's estate. The suit was however not barred under Art 144 of the Limitation Act 1908 as no adverse possession began to run against the plaintiff until the death of R on January 17 1903. *MAKARJUN MAHADAO v AMRITA TUKARAM (1918)*

Art 142—

See ART 120 20 C W N 481

See ART 121 I L R 44 Calc 412

See BENGAL SURVEY ACT 1805 s 41

H Pa' L J 51

See HINDU LAW—JOINT FAMILY

I L R 38 Mad 684

See LIMITATION ACT 1908 ART 121

I L R 43 Calc 779

See POSSESSION 1 Pat L J 146

Suit for possession—De facto possession with defendant—Burden of proof. Where the plaintiff alleges possession of land and it is found that part of the land is *de facto* in possession of the defendant the case falls under Art 142 and not Art 144 of Sch. II to the Indian Limitation Act (IX of 1908). Every suit for possession of immovable property in which the plaintiff alleges that he has had possession must fall under Art 142. It is only where the plaintiff does not allege that he has ever been in possession that the case will fall under Art 144. In the former class of cases the plaintiff is bound to show that the disposssession or discontinuance of possession which gives rise to the starting point of limitation was within twelve years of the date of the suit. *SCRAPPA v VENKAPPA (1914)*

I L R 39 Bom 335

In cases under Art 142 of the Limitation Act although the Plaintiff's title is proved the onus is not upon the Defendant to show that the Plaintiff lost his title

LIMITATION ACT (IX OF 1908)—contd**Sch I Art 152—contd**

day of limitation *Held* that the Judge had jurisdiction to accept the memorandum of appeal so presented although he was not obliged to do so *Sai Anar v Herra Lal T N W P H C Rep 5* overruled *THAKUR DIN RAM v HARI DAS (1912)* I L R 34 All 482

I presentation of appeal beyond the prescribed period of limitation—Proper order to endorse on such memorandum of appeal—Suits Valuation Act (VII of 1887) s 8—Court Fees Act (VII of 1870) s 7 sub s (4) cl (c)—Bombay Civil Courts Act (Bom Act XIV of 1869) ss 8 and 26—Partly following mistaken advice as to proper Court to which to appeal—Sufficient cause for not presenting appeal in proper time—Power of Desai in Belgaum District to alienate hereditary property of the Vatan as against his widow his adopted son and the servants of the Vatan—Bombay Population XII of 1927—Bombay Act II of 1863 Where a memorandum of appeal is presented beyond the prescribed period of limitation the proper order which the Court should endorse on it would be that it was presented for admission on the date when the memorandum of appeal was handed into the office of the Court and that notice of the order and its dates should be given to the respondent *Krishnasami Panikondar v Ramsami Chettiar I L R 41 Mad 412 I L R 45 I A 25* followed. An appeal from a Subordinate Judge which from its nature should rightly have been presented to the District Court and not to the High Court was not presented to either Court until after the period of 30 days prescribed by the Limitation Act 1908 Sch I Art 152 had expired for an appeal to the District Court. It was then on 19th July 1910 presented to the High Court well within the 90 days allowed for such an appeal but the High Court directed it to be presented to the District Court which made an order admitting it without prejudice to any objection that may be taken by the respondent as to its being barred by limitation. It appeared that the District Judge had when Legal Remembrancer advised that the appeal rightly lay to the High Court when it was presented to that Court on 19th July 1910. After the District Judge had admitted the appeal it was by order of the High Court removed to that Court and after hearing the parties and considering the affidavits which were filed an order was made by the High Court admitting the appeal on the ground that they were satisfied that there had been sufficient cause shown for not having preferred the appeal to the District Court within the prescribed period of limitation. *Held* that the appeal was not barred by limitation the fact that the defendants had acted on mistaken advice as to the law in appealing to the High Court in 1910 did not preclude them from showing that it was owing to their reliance on that advice that they had not presented the appeal to the Court of the District Judge within the proper period. *Brij Indar Singh v Kanshi Ram I L R 40 Cal 94 I L R 44 I A 218* referred to. On the question whether a Desai in the Belgaum District could dispose by will of the hereditary lands of the Vatan as against his widow his son adopted by the widow and the hereditary servants interested in the Vatan property their Lordships of the Judicial Committee agreed with the High Court in holding

LIMITATION ACT (IX OF 1908)—contd.**Sch I, Art 152—contd**

that such property was not alienable. Only the testator's private property was alienable. *Surya Debarai v THE COLLECTOR OF BELGAUM (1918)* I L R 43 Bom 376

Sch I Art 154—

See SANCTION FOR PROSECUTION

I L R 40 Cal 239

I L R 39 Mad 750

Sch I Art 155—Applicability of 19 appeals under Land Acquisition Act (I of 1894) Art 155 of the Limitation Act (IX of 1908) applies to appeals filed under s 54 of the Land Acquisition Act (I of 1894) *Agar Muhammad Hamadhani v Cohen (1886) I L R 13 Cal 221* referred to *RAMASAMI PILLAI v DEPUTY COLLECTOR OF MADURA (1920)* I L R 43 Mad 51

Sch I Art 158—

See ARBITRATION I L R 40 Cal 721

Arbitration—Award—Application to set aside—Form of—Practice The form which an application to set aside an award under the Second Schedule of the Civil Procedure Code should take is nowhere prescribed or indicated. It is sufficient if some notice is given to the proper office that the party objects to the award and the date on which such notice is given is for the purpose of the Indian Limitation Act the date on which the application is made. *GOPALJI KALLIANJI v CHHAGANLAL VITHALJI I L R 45 Bom 1071*

Art 161 read with s 17 Provincial Small Cause Courts Act (IX of 1887)—Application for review of judgment made on the last day of limitation without the required deposit of security is barred—Limitation Act (IX of 1908) s 5 s 5 empowers the Court to grant extension of time for the deposit after the application was made in time. An application for review of judgment in a Small Cause Court suit was made on the last day of the period prescribed for limitation, but without deposit of the amount of costs or security for the same as required by s 17 of the Provincial Small Cause Courts Act. On the following day the Court allowed the applicant time for making the deposit which was eventually made and the application for review was granted. *Held* that as the application failed to comply with the provisions of s 17 of the Provincial Small Cause Courts Act the application for review was not a proper application in time and it was barred under Art 161 of the Limitation Act. It was doubtful whether s 5 of the Limitation Act applied to the case at all as the application for review was made within time. *ABDUL SHEKH v MAHAMMAD AYUB 24 C W N 380*

Sch I Art 161—

See LIMITATION (67) 23 C W N 553

Sch I Art 164—

See s 6 I L R 35 Mad 678

See EX PARTE DEGREE

I L R 35 Cal 506

See PROBATE I L R 41 Cal 519

LIMITATION ACT (IX OF 1908)—*contd*Sch I, Art 164—*contd*

Limitation Act (XI of 1877) s 14 and Sch II Art 164 and (IX of 1908) s 14 and Sch I Art 164 applicability of—Application to set aside ex parte decree passed before Amending Act—Provincial Small Cause Courts Act (VI of 1882) s 17—Deposit of security after application—Power of Court to extend time—Fraud knowledge of onus of proof as to— *Scoble* Where an application to set aside an *ex parte* decree is made after the Limitation Act of 1908 came into operation although the decree was passed before it came into force the provisions of the Act of 1908 and not those of the Act of 1877 would apply. An *ex parte* decree was obtained in a Small Cause Court on the 7th August 1908 and on the 14th December 1908 a fraudulent entry was obtained in the records of the Court that the decree had been partially executed by attachment of moveables. On the 26th February 1909 the judgment debtor first became aware of the existence of an *ex parte* decree against him. On the 10th March he applied before another Court to have the *ex parte* decree set aside. Subsequently the application was returned for presentation to the Court which passed the decree. On the application being refused in that Court it was registered as an ordinary application to set aside an *ex parte* money decree. On the 7th August 1909 it was discovered that the decree was a Small Cause Court decree and an order was made giving the petitioner time to deposit the amount of the decree under s 17 of the Provincial Small Cause Courts Act. The time having subsequently been extended the amount was ultimately deposited on the 28th August 1908. *Held* that in the circumstances whether the Limitation Act of 1877 or that of 1908 applied the application was not liable to be rejected as time barred as under s 14 of the Limitation Act the judgment debtor would be entitled to a deduction of time from the 15th March to the 7th August when he was prosecuting another legal proceeding in good faith also in the circumstance he must be deemed to have first become aware of the decree as a decree of the Small Cause Court on the 7th August 1909. That regarding the application as having been filed on the 7th August 1909 no question as to the deposit being made out of time as prescribed by s 17 of the Provincial Small Cause Courts Act arises. The provisions of s 17 of the Provincial Small Cause Courts Act are mandatory where an application under that section is filed without security but where the security is deposited within the time allowed by law for the application the applicant has a right to have his application heard on the merits. Where an application is made by a party on the allegation that an entry in a judicial record is fraudulent there is nothing to prevent the application being entertained without a preliminary enquiry into the truth of the allegation. *Bhobunesary v Jadbendra Narain Mullick I L R B Calc 869* distinguished and doubted. Where a fraud has been committed by a person who has obtained property thereby the party defrauding can resist the application of the injured party on the ground of limitation only if he can show that the injured complainant had clear and definite knowledge of the facts constituting the fraud at a time too remote for the suit to be brought and the mere suggestion of being defrauded is not sufficient for the purpose. *Fahim*

LIMITATION ACT (IX OF 1908)—*contd*Sch I, Art 164—*contd*

Shoy v Turner I L R 17 Bom 341 followed
Basiruddin Mandai v Sonaula Mandai (1910)
 15 C W N 102

Application to set aside an ex parte decree passed when Act No XI of 1877 was in force—Limitation. The plaintiff obtained an *ex parte* decree on the 20th of November 1904 which was made absolute on the 24th of August 1907. The proclamation of sale was brought to the village on the 10th of December 1912. The defendant on the 9th of January 1913 applied to have the *ex parte* decree set aside. The plaintiff contended that the defendant had knowledge of the decree prior to 1910 and therefore her application was barred by Art 164 of the Indian Limitation Act of 1908. The defendant contended that Art 164 of the Limitation Act of 1877 applied to her case. *Held* that the defendant's application was barred by Art 184 of Act IX of 1908. *Hope Mills Limited v Vukhal das Pranjyandas 12 Bom I L R 730* referred to. *Jia Bibi v Ilahi Baksh (1915)*

I L R 37 All 597

Arts 164 and 181—Ex parte decree setting aside of—Defendant dead after decree—Executor not brought on the record—Executor application by to set aside ex parte decree—Application made more than thirty days after decree—Civil Procedure Code (I of 1908) s 146. Where a decree was passed *ex parte* against a defendant who died seven days after the decree and an application to set it aside was made by the executor of the deceased defendant more than thirty days after the passing of the decree. *Held* that Art 164 and not Art 181 of the Limitation Act (IX of 1908) applied to the case and that the application was barred. On the true construction of Art 164 of the Limitation Act read with s 146 of the Code of Civil Procedure (Act I of 1908) the word defendant in the said Art 164 is wide enough to indicate the executor of the original defendant though the executor may not have been brought on the record when the application was made. *Ganoda Prasad Roy v Shib Narain Mukherjee I L R 29 Calc 33* referred to. *VENKATASUBBAYYER v KRISHNAMURTHI (1913)*

I L R 38 Mad 442

See also COMPANIES ACT 1882 ss 160 AND 169 I L R 1 Lah 187

Sch I Arts 185 181—

Civil Procedure Code (1908) s 47—Execution of decree—Limitation—Application by judgment debtor to be restored to possession of immoveable property taken by the decree holder in excess of that decreed. *Held* that the application of a judgment debtor for restoration of immoveable property seized by the decree holder in excess of what has been decreed is governed by Art 181 of Sch I to the Indian Limitation Act. *Fatnam Ayyar v Krishna Dass Vistal Dass I L R 21 Mad 494 Har Din Singh v Lochman Singh I L R 25 All 313* distinguished from *ABDUL KARIM v ISLAMUN-NISSA BIBI (1916)*

I L R 38 All 339

Execution of decree for possession of immoveable property—Delivery to decree holder of lands in excess of the decree—Application by judgment-debtor for restoration of excess

LIMITATION ACT (IX OF 1908)—contd**Sch I Arts 165 181—contd**

lands—Limitation for such applications—Applicability of Arts 165 or 181 of the Limitation Act Art 181 and not Art 165 of Sch I of the Limitation Act (IX of 1908) governs an application made by a judgment debtor for restoration of immoveable property delivered to the decree holder in execution proceedings in excess of what had been decreed *Ratnam Ayyar v Krishna Doss Vetal Doss* 1 L R 21 Mad 494 overruled *Abdul Kharim v Islamunnissa Bibi* 1 I R 38 All 339 followed *VACHALI ROHINI v KOMBALIASSAN* (1919) 1 L R 42 Mad. 753

Sch I Art 166—

See ART 12 1 L R 38 Mad 1076

See CHOTA NAGPUR TENANCY ACT 1908 s 231 1 Pat L J 493

See CIVIL PROCEDURE CODE 1908 s 47 O XXIV P 14

1 L R 45 Bom 174

See HIGH COURT CIVIL CIRCULARS

1 L R 45 Bom 1132

Sch I Arts 166 181—

See BENGAL TENANCY ACT s 6

14 C W N 1096

See CIVIL PROCEDURE CODE 1908 ss 47 141 15 1 L R 43 Bom 235

See SALE 1 L R 48 Calc 975

Exonerated defendants

—Sale of properties including share of exonerated defendants—Application to set aside sale—Limitation In a decree awarding maintenance a charge was created on the shares of some of the defendants in lands belonging jointly to them and the appellants but the shares of the latter were expressly exonerated. In execution of the decree however the lands were sold by Court auction including the shares of the appellants therein. On an application by them a year and seven months later to set aside the sale of their share *Held* that art 181 and not art 166 of the Limitation Act applied and that the application was not barred *SESHAGIRI PAO v SRINIVASA RAO* (19.0) 1 L R 43 Mad. 311

Sch I, Art 168—

See s 4 1 L R 45 Bom 648

—Application for realisation of an appeal dismissed in default—Inherent powers of Court—Civil Procedure Code Act V of 1908 s 151 This application for restoration of an appeal dismissed in default was filed on the 17th November 1919 the order dismissing the appeal was made on the 27th January 1919. The applicant urged that he was not to blame for his non-appearance and did not discover for several months that the appeal had been dismissed. *Held* that the application is barred by limitation under art 168 of the Limitation Act. *Held* also that the inherent powers of the Court under s 151 of the Code of Civil Procedure cannot be invoked in breach of the clear provisions of the Limitation Act. *Devi Palsh Singh v Habib Singh* (1 L R 30 All 331 P O) distinguished *BISWA MAL v KESAR SINGH*

1 L R 1 Lah 363

LIMITATION ACT (IX OF 1908)—contd**Sch I Art 171—**

See CIVIL PROCEDURE CODE 1908 O I P 10 1 L R 35 Bom 393

Sch I Art 178—

See ARBITRATION 4 Pat L J 394

See CIVIL PROCEDURE CODE 1908 SCH II CLS 1st AND 20

1 L R 38 All 85

Sch I Art 179—

See APPEAL TO PRINCY COUNCIL

1 L R 99 Calc 785

See s 12

1 L R 59 Calc 510

1 L R 38 All 82

—Decree—Execution proceedings—Application for time to obtain copies of decree and judgment—Step in aid of execution An application for time to enable the applicant to obtain copies of decree and judgment made after presenting a *darkhast* to execute a decree is a step in aid of execution. *Kunhi v Sheshagiri* 1 L R 5 Mal 141 followed *Kartick Nath Pandey v Juggernath Ram Marwari* 1 L P 27 Calc 255 dissented from *HARIDAS NAWABHAI v VITHALDAI KESAN DAS* (1912) 1 L R 80 Bom 638

—Sch I Art 180—Application by decree holder for possession of properties purchased in Court auction—Application filed more than three years after confirmation of sale—Proceedings to set aside sale effect of—Suspension of cause of action After a Court sale had been confirmed without opposition on 20th April 1913 an application was made on 3rd January 1914 to set it aside on the ground of fraud and it was set aside on 27th June 1915 as to part of the properties sold. The auction purchaser having applied on 17th February 1917 for delivery of the remaining properties on a reference to a Full Bench *Held* (Per ABHAY PANTH OFFG C J SADASTHA AYYAR J SESHAGIRI AYYAR J and BURY J) that the application was not barred under art 180 of the Limitation Act as time should be computed from the date of the order disallowing the petition to set aside the sale on the ground of fraud and not from the date of the first confirmation. *Bairnath Sahai v Ramgout Singh* (1896) 1 L R 23 Calc 775 (P O) followed *Per* OLD FIELD J.—As the question referred was not when the cause of action arose on the facts of the case but whether the existing cause of action became suspended the answer is that when once a cause of action has arisen it is not suspended by later events. *Per* SADASTHA AYYAR J.—The cause of action was suspended during the interval. *MUTHU KORAKKAI CHETTY v MADAR ANNAL* (1920) 1 L R 43 Mad 185

Sch I Arts 180 183—

See LIMITATION 1 L R 42 Calc 778

Sch I Art 181—

See s 19 1 L P 42 Mad 52

See ART 164 1 L R 28 Mad 442

See ART 165 1 L P 38 All 339

See ART 166 14 C W N 1096

See CIVIL PROCEDURE CODE (1908) O

XXI B 2 O XXIV B 4 5

1 L R 39 All 532

LIMITATION ACT (IX OF 1908)—contd

Sch I, Art 181—contd

See CIVIL PROCEDURE CODE (1908)
O XXI r 59-92 2-2 C W N 3

O XXIV r 5

I L R 39 All 641

I L R 38 All 21

I L R 40 All 203

25 C W N 376

r 6 I L R 40 All 551

S & COMPANIES ACT 188... 100 AND
109 I L R 1 Lah 187

See EXECUTION OF DECREE.

I L R 35 All 178

3 Pat L J 103

See LIMITATION I L R 42 Calc 294

See MORTGAGE I L R 37 Calc 786

See MORTGAGE DECREE.

4 Pat L J 213 & 523

See PRESCRIPTION 3 Pat L J 367

Filing affidavit to prove

service of notice under O XXI r 59 of the Civil Procedure Code (Act V of 1908) step in aid of execution. Filing an affidavit to prove service on judgment-debtor of notice issued under O XXI r 22 of the Civil Procedure Code was equivalent in this case to applying to the Court to take a step in aid of execution. *Pratapa Das v Pratap Chandra Daloi* (1917)

[21 C W N 423]

Mortgage—Suit for sale

—Application for final decree—Limitation—An application for final decree in a suit for sale on a mortgage being an application in the suit and not an application in execution the fact that one such application has been made within the prescribed period of limitation does not operate to extend the period of limitation in favour of a second application the first having been dismissed for default. *Itmad Khan v Ismail Gatra* (1917)

I L P 40 All 235

Execution of decree—

Limitation—Execution tempo arily suspended by an injunction. While an application for execution of a final decree in a mortgage suit was pending a suit was brought for a declaration that the decree itself had been obtained by fraud and on the 9th of December 1914 an order staying execution was passed. On the 26th of April 1915 this suit was dismissed. An appeal was filed but it too was dismissed on the 10th of April 1917. The next application for execution of the mortgage decree was made on the 11th of June 1918. Held that the application was time barred. *Ruddar Singh v Dhanpal Singh* I L P 26 All 156 followed. *Yonud-din Khan v Chayya Singh* 2 A L J 76 and *Qamaruddin Ahmad v Jauhar Lal*, I L R 27 All 331 distinguished. *Balwanth Singh v Budeh Singh* I L R 42 All 564

Consent decree—In tol

ments—Application for decree absolute for sale—

Limitation—Civil Procedure Code (Act V of 1908)

O XXXI. An application for a decree absolute for sale of a mortgage charge under the terms of a consent decree which provided for satisfaction of the decretal debt by instalments is an application under the Civil Procedure Code (Act V of

LIMITATION ACT (IX OF 1908)—contd

Sch I Art 181—contd

1908) O XXIV and is governed by Art 181 Sch I of the Limitation Act (IX of 1908). Such application must be made within 3 years from the time the right to apply accrues. *Datto Atmaran v Shavekar Dattatraya* (1913)

I L R 38 Bom 32

Limitation—Execution

of decree payable by instalments with option of getting possession of land in case of default of payment—application for possession more than 3 years after first default. In 1909 the appellant obtained a decree against the respondents for Rs 370 payable by annual instalments of Rs 25 which provided that in default of payment of the whole or part the judgment debtors would put the decree holder in proprietary possession of 5 bighas 4 biswas of land. In April 1918 the decree holder applied to be put in possession of the land and failed to prove that any instalment had been paid under the decree. The lower appellate Court held that the claim for possession was time barred more than three years having elapsed since the date to the first default. The decree holder appealed to the High Court. Held that it was not intended that the option given to the decree holder of obtaining possession of the land on a default being made in payment was to be exercised only on the occurrence of the first default. The decree holder was entitled to apply for delivery of possession on the occurrence of any subsequent default and the present application was consequently within time under art 181 of the 1st Schedule of the Limitation Act. *Muhammad Islam v Muhammad Ahsan* (I L R 16 All 237) and *Shankar Prasad v Jalpa Prasad* (I L R 16 All 371) followed. *Musammal Kirja Devi v Das* aundhi Pam (3 P R 117) not followed. *HAR GOPAL v RAM RACHHEAL* I L R 2 Lah 145

182—Application to

execute decree—Limitation—Decree against property of deceased debtor in the hands of his brother not a decree against the estate of the deceased generally—Time does not run until brother gets possession of estate. Pending the trial of a suit for money against J J died whereupon the Plaintiff P had J's brother E substituted on the records in the place of J and got a decree on 27th July 1906 which did not provide that E was to be personally liable but declared that the decretal amount was to be realised by the sale of the property belonging to J and left in E's possession. There was no decree against the estate of J in the possession of any one also. All J's property was at that time in the possession of the widow of J. E brought a suit to recover that property from J which was decreed by the trial Court on 15th August 1908 but the High Court on Appeal (having stayed execution in the meantime) reversed this judgment on 2nd August 1909. This decision of the High Court again having been reversed by the Privy Council decreeing E's suit on appeal on 22nd July 1914 P applied for execution of the decree on December 1914. Held that the application was not barred by limitation. In order to make the provision of Art 182 of the schedule to the Limitation Act applicable the decree sought to be enforced must have been in such a form as to render it capable in the circumstances of being enforced. *Shahid Kavaruddin Ahmed v Jauhar Lal* L P 32 I A 102 (1905) referred to. That the

LIMITATION ACT (IX OF 1908)—contd

application for execution could not have been executed until *E* had come into possession of the property of *J* and by Art 181 of the Limitation Act the period of limitation for making the applications was three years from the time when the right to apply accrued. **MAHARAJA SRI RAMESHWAR SINGH v HOMESWAR SINGH (I C)**

25 C W N 337

Limitation—decree for sale.—Appeal A preliminary decree in a suit on a mortgage declared the liability of each of the properties against which the mortgage was sought to be enforced and also that each would be liable for a proportionate part of the amount found to be due on the mortgage. The amounts and property liable therefore were specified in the decree. Against his decree some only of the defendant appealed and as against them only the decree was set aside. More than 3 years after the decree of the first Court though within three years of the appellate decision the decree holders applied for a final decree against the defendant who had not appealed. *Held* that the application was time barred. **GRAN SINGH v ATA HUSAIN**

I L R 43 All 320

Appeal against preliminary decree for sale in a mortgage suit.—Application for final decree under O XXXII r 5 Civil Procedure Code—Article applicable and starting point of limitation An application for a final decree for sale under O XXXIV r 5 Civil Procedure Code is governed by art 181 of the Limitation Act and the starting point in cases where there has been an appeal from the preliminary decree is the date of the appellate decree whether the latter confirmed or varied the preliminary decree. **Bhup Indar Bahadur Singh v Brij Bahadur Singh (1901) I L P 23 All 152 (P C)** applied. **Juscurn Boid v Pritichand Lal Chowdhury (1919) I L R 46 Calc 670 (P C)** explained. **Vishwanatha Sastri v Sitaleshwari Ammal (1921) 13 L W 37** distinguished. **VENKAYYA v SATHIRAJU (1921)** I L W 44 Mad 714

Sch I Arts 181 182—

See INJUNCTION I L R 46 Calc 103

Civil Procedure Code (Act V of 1908) s 48—Decree—Execution—Amendment of the decree—Date of judgment the date of the amended decree—Right to apply to make the decree final under Civil Procedure Code (Act V of 1908) O XXXIV s 6—Limitation—Starting point—Procedure On the 17th November 1897 a decree on an award was passed. The decree did not embody the terms of the award. Plaintiff applied for execution of the decree. It was opposed by the defendants on the ground that the decree did not specify the relief that was granted and was on that account incapable of execution. The Court then directed the plaintiff to obtain an amendment. On January 28 1899 the decree was amended so as to bring it into consonance with the directions of the award and was dated 28th January 1899. Several applications for execution were made the last of which was dated 2nd December 1909. The lower Court held the application in time and allowed execution to proceed. On appeal it was contended (1) that the application was barred so far as it related to two

LIMITATION ACT (IX OF 1908)—contd

sums of Rs 875 and 1 s 6 000 which under the decree were to be paid forthwith that is 17th November 1897 the date on which the decree was passed and which must be taken as the starting point for limitation. (2) that the application as a whole was barred by limitation as the application must be treated as an application for a decree final for sale under O XXXIV r 5 of the Civil Procedure Code 1908 and as such it was barred under Art 181 of the Limitation Act 1908 for the right to apply accrued when default in payment was made and that was found to have been in 1902. *Held* (1) that the recovery of the two sums was barred as the decree was to be referred to 17th November 1897 the date of the judgment and not to 28th January 1899 the date of the amended decree. (2) that the application was not barred as the right to apply under O XXXIV, r 5 never accrued to the plaintiff until the Code of 1908 conferred it upon him the plaintiff was therefore entitled to claim that under Art 181 of the Limitation Act 1908 he would have a period of three years from 1st January 1909 when the new Code of Civil Procedure came into force. **Amlook Chand Parrock v Sarai Chunder Mukerjee I L R 38 Cal 913** distinguished. **NARAYAN KACHAR INANIDAR v BANDO KRISHNA (1918)** I L R 42 Bom 309

Redemption of mortgage—Decree for redemption—Application for time to pay the mortgage amount into Court and recover possession—Limitation—Dekhan Agriculturists Relief Act (XVII of 1879) s 15B On the 17th January 1907 the plaintiff obtained a decree in a redemption suit brought under the provisions of the Dekhan Agriculturists Relief Act 1879. The decree remained unexecuted. In 1915 the rights under the decree were assigned by the plaintiff to the respondent who applied to the Court on the 27th September 1915 to be allowed to pay the mortgage amount into Court and get possession of the property under the decree. The lower Courts held the application was in time and ordered warrant for possession to issue. On appeal to the High Court **HEATON and PRATT JJ** having differed in opinion referred the following point of law to a third Judge—Is the application or is it not time barred under Art 181 of the Schedule to the Limitation Act the application being regarded as one to extend time for the payment of the mortgage debt. *Held* by **SNAIL J** (agreeing with **HEATON J** but differing from **PRATT J**) that treating the application as one to extend time for the payment of mortgage debt it was barred under Art 181 of the Limitation Act. *Held* further by **SNAIL J** that even if the application was treated as one not merely for the extension of time for the payment of the mortgage debt but for the recovery of possession of the property as in terms it purported to be it was an application for the execution of the decree and as such it was time barred under Art 182 of the Limitation Act. **VASUDEVA VENKUNATH R GOPAL PARASHAM (1919)** I L R 43 Fcm 689

Sch I Arts 181 182—

See MORTGAGE I L R 38 Calc 913

See MORTGAGE DECREE

I L R 39 Mad 544

LIMITATION ACT (IX OF 1908)—cont'd**Sch I Art 182—**

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss. 38 "9 41 AND 50 ETC
I L R 37 Mad 231
I L R 39 Bom 250

See EXECUTION OF DECREE

I L R 76 All 482
I L R 37 All 527
3 Pat L J 235

See LIMITATION (44)

I L R 45 Calc 630

See LIMITATION ACT (V OF 1877) SCH II ART 140

I L R 39 Bom 20

See LIMITATION ACT 1908 s 20

4 Pat L J 365

See MORTGAGE DECREE

I L R 39 Mad 544

1 ——— Suit for account—

Court fee paid months after date of judgment—
Starting point of limitation—Step in aid of execution For the purpose of Art 182 of the first schedule of the Limitation Act the date on which the Court passed its judgment is the date of the decree and the fact that the Court fee required to be paid in order to validate the decree (which was passed in a suit for account) was not put in till some months later did not give a different starting point for computing the period of limitation. The payment of the Court fee did not constitute a step in aid of execution within the provisions of the Limitation Act **BRADJAN BENJARY SHARMA v GURISH CHANDRA SHARMA (1913)**

17 C W N 959

2 ——— Execution of decree

of Presidency Small Cause Court—S 48 Civil Procedure Code (Act V of 1908) not applicable to such Court—Transfer to City Civil Court for execution of a decree more than 12 years old—S 182 applicable—S 48 applicable to City Civil Court not for Although a decree may be transferred by the Court which passed it to another Court for execution the law of limitation applicable for its execution is that applicable to the decrees of the former Court i.e. of the Court which passed them A different rule will lead to anomalous consequences A decree of the Presidency Small Cause Court (Madras) passed in 1898 was transferred for execution to the City Civil Court S 48 Civil Procedure Code not being applicable to the Court of Small Causes Held that an application for the execution presented to the City Civil Court in 1910 was not barred the article applicable to the cause being Article 182 of the Limitation Act that the fact that s 48 of the Civil Procedure Code was applicable to the City Civil Court was immaterial **Sambasiva Mudaliar v Ponchanadu Pillai 17 Mad L J 441 I L R 31 Mad 74 Tinsoree Dawn v Debendra Nath Mookerjee I L R 17 Cal 491 and Jogemaya Dassi v Thackumani Dassi I L R 24 Cal 473 followed Her Highness Ruckmaboye v Luloodhoy Motichand 5 Moo L A 234 not applicable Per CURTIS A transfer of a decree by the Court which passed it to another Court does not make the decree one passed by the latter Court Even after transfer the control of the execution is still left in several respects in the hands of the Court which passed the decree eg recognition**

LIMITATION ACT (IX OF 1908)—cont'd

of a signment application for execution against legal representative stay of execution issuing precepts and certificate of non execution or partial execution etc **SEE KRISHNA DOSS v ALUMBI AMMAL (1913)** I L R 30 Mad 108

Part of a decree containing unascertained amount—Execution of whole decree three years after ascertainment—No bar—Policy of Limitation Act as to period of limitation for execution of decree For the purposes of limitation regarding execution of a decree the decree must be taken as a whole and ordinarily when a portion of the decree is not executable by reason of the fact that the amount due under that portion is left to be determined at a future time limitation begins to run as regards execution of the whole decree only from the time of ascertainment of the amount left undetermined even though it might have been open to the party to have executed the other portions earlier **Haji Ishfaq Hussain di Lala Gouri Sahai 13 C L J 351 I L R 33 All 764 Patnachalari Ayyar v Venkatarama Ayyar I L R 29 Mad 46 and Krishnan v Nylakardian I L R 8 Mad 137 followed Gopal Chandra Manna v Govind Lasa Kalay I L R 25 Cal 594 Krishnama Chari v Mangammal I L R 26 Mad 91 Abdul Faki man v Maidin Saiba I L R 92 Lcm 60 and Gouri Sahai v Ashraf Hussain I L R 29 All 673 applied Subramanya Chettiar v Alagappa Chettiar I L R 30 Mad 268 and Neral Chandra Sodooklan v Amaria Lall Sodookhan I L R 76 Cal 888 referred to C M A No 74 of 1913 (unreported) not followed A decree in a second appeal dated 30th July 1906 was as follows—**

Appellant (defendant) do pay respondent (plain-
tiff) Rs 64 11 4 for his costs in this second appeal
Rs 78 3 7 for his costs in the memorandum of
objections and also his costs in the lower Appellate
Court which will be ascertained and taxed by that
Court The costs in the lower Appellate Court
were ascertained by that Court on 1st December
1906 The application for the execution of the
whole decree was made on 7th August 1909 i.e.
more than three years after the decree in second
appeal but within three years after ascertainment
by the lower Appellate Court Held that the exe-
cution of the decree was not barred The policy
of the Limitation Act in the case of execution of
decrees is to lay down a simple rule and to treat
the decree as a whole except when the decree
itself directs that different portions of the relief
granted are to be rendered by the defendant to
the decree holder at different times Per CURTIS
Under Art 182 there is only a single starting
point where there has been an appeal review or
amendment although it might be open for a de-
cree holder to apply for the execution of a part
of the decree before proceedings in appeal review
or amendment have terminated **VEDANATHA
AIYAR v SUBRAMANIA PATTAY (1913)**

I L R 36 Mad 104

Part of a decree containing unascertained amount—Execution of whole decree three years after ascertainment—No bar—Policy of Limitation Act as to period of limitation for execution of decree For the purposes of limitation regarding execution of a decree the decree must be taken as a whole and ordinarily when a portion of the decree is not executable by reason of the fact that the amount due under that portion is left to be determined at a future time limitation begins to run as regards execution of the whole decree only from the time of ascertainment of the amount left undetermined even though it might have been open to the party to have executed the other portions earlier **Haji Ishfaq Hussain di Lala Gouri Sahai 13 C L J 351 I L R 33 All 764 Patnachalari Ayyar v Venkatarama Ayyar I L R 29 Mad 46 and Krishnan v Nylakardian I L R 8 Mad 137 followed Gopal Chandra Manna v Govind Lasa Kalay I L R 25 Cal 594 Krishnama Chari v Mangammal I L R 26 Mad 91 Abdul Faki man v Maidin Saiba I L R 92 Lcm 60 and Gouri Sahai v Ashraf Hussain I L R 29 All 673 applied Subramanya Chettiar v Alagappa Chettiar I L R 30 Mad 268 and Neral Chandra Sodooklan v Amaria Lall Sodookhan I L R 76 Cal 888 referred to C M A No 74 of 1913 (unreported) not followed A decree in a second appeal dated 30th July 1906 was as follows—**

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itself directs that different portions of the relief
granted are to be rendered by the defendant to
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Under Art 182 there is only a single starting
point where there has been an appeal review or
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cree holder to apply for the execution of a part
of the decree before proceedings in appeal review
or amendment have terminated **VEDANATHA
AIYAR v SUBRAMANIA PATTAY (1913)**

I L R 36 Mad 104

LIMITATION ACT (IX OF 1908)—contd

Roy v Mahanta Balbhadra Das (1917) 3 P L J 367, dissenting from *HAMIDALLI & AHMEDALLI I L R 15 Bom 1137*

Sch I Art 182 (2)—

See **CIVIL PROCEDURE CODE 1908 s 145 I L R 44 Bom 34**

Revision to the High Court—
Order in not giving any fresh starting point for execution of original decree—Effect of reversal or modification in revision—Appeal meaning of in Limitation Act—Letters patent appeal from revisions: no appeal. An order of the High Court passed in the exercise of its revisional powers is not an order on an appeal within the meaning of Art 182 sub cl (2) so as to create a fresh starting point for the calculation of limitation. *PER CURIAM* Unlike the word appeal in ss 15 and 39 of the Letters Patent the word appeal in the Limitation Act is used in the narrower sense so as to exclude a revision: this is clear from the three classifications in the Limitation Act: suits appeals and applications which last include applications for revision. If the High Court interferes on revision either there is a decree passed by the High Court which may be executed under the first clause of Art 182 or the case is sent down with a direction to the lower Court to amend its decree. The latter appears to be the regular course and in such event there is no room to employ any sub clause other than sub cl (1) or the new sub cl (4). Where a revision petition is simply dismissed no fresh starting point of limitation arises. When the order appealed against cannot give any fresh starting point (*viz* the order in the revision petition) an order in a Letters Patent appeal therefrom cannot give one as if it were an appeal within the meaning of Art 182. *Chappan v Moidin Kutti I L R 22 Mad 68* Secretary of State for India in Council v *British India Steam Navigation Company 15 O W N 848* and *Harish Chandra Acharya v Nawab Bahadur of Murshidabad 15 O W N 879* distinguished. Judgment of *WALLIS J* confirmed. *SUBRAMANIAM PILLAI & SEETHAI ARNAL (1913) I L R 38 Mad 125*

Mortgage suit decreed against some defendants and dismissed against others who were allowed costs against plaintiffs—
Appeal by the defendants against whom suit decreed effect of an application by the other defendants for execution of decree for costs against plaintiffs. The appellant was the plaintiff in a mortgage suit and obtained a decree except against two of the defendants whose property was exempted from liability and whose costs the plaintiff was directed to pay. The defendants against whom the suit was decreed appealed. The two other defendants applied for execution of their decree for costs against the appellant. The lower Court held that limitation ran from the date of the decision of the appeal preferred by the defendants against whom the suit had been decreed. Held that in dealing with the question of limitation in these cases the Court should see whether the original decree was really one decree or an incorporation of several decrees and whether the appeal against it imperilled the whole decree or not for the execution of which the application is made. That the order dismissing the plaintiff's suit with costs as against two

LIMITATION ACT (IX OF 1908)—contd

of the defendants and the order decreeing it with costs as against the other defendants were not one and the same decree because they were embodied in one formal order. There was no appeal against the decree by which the plaintiff was directed to pay costs to two of the defendants and the fact that there was an appeal against an entirely different decree which was recorded in the same document did not affect the question of limitation when no order that could have been passed in that appeal could possibly have affected the decree sought to be executed. *LAW & BENARASHI PRASHAD CHOWDHURY (1914) 19 C W N 287*

Suit for ejectment—
Decree against some defendants on consent and against others on contest—Appeal by contesting defendants—Dismissal of appeal—Execution of decree application for within three years of dismissal of appeal but more than three years after the first Court's decree is barred as against consenting defendants. A suit for ejectment brought against two sets of defendants A and B was decreed on 17th September 1903 against set A upon consent and against set B upon contest the result being embodied in one decree which did not define the respective shares of the two sets of defendants. An appeal preferred by set B alone in which they did not make set A parties was not disposed of until 8th May 1908. On 7th May 1910 application was made for execution of the decree against both sets of defendants. Held that the application was not time barred as against set A, even though set A did not and could not appeal against the decree of 17th September 1903 inasmuch as the appeal of set B was of necessity against the entire decree—there being no chance or risk of the Appellate Court modifying the decree even as against set A. That on appeal by the contesting defendants the whole matter was reopened and the decree holders were entitled to the benefit of Art 182 cl 3 cl (2) of Sch I of the Limitation Act. *Baful Nath v Menon Des I L R 36 All 350 s c 18 O W N 740* and *Ashraf Hossein v Gouri Sahai L P 78 I A 37 s c 15 O W N 370* and *Lau v Benarashi Prashad 19 C W N 287* referred to. *Quare* Whether time runs against the decree holder from the date of the final decree in the appeal irrespective of the question whether the appeal did or did not imperil the decree whereof execution was ultimately sought. *IORENATH SINGH v GURU SAGAR (1915) 20 C W N 178*

Decree modified by High Court in revision if gives new start to limitation. A decree was passed on consent by the High Court directing that the plaintiffs do pay to the defendant the price to be ascertained by the first Court of a certain property within one month from the date of the valuation being made and that upon such payment the defendant do convey the property to the plaintiff. The first Court made the valuation and embodied it in a supplementary decree. An appeal from this decree was rejected by the High Court but in revision the said Court on 14th June 1909 held that no supplementary decree should have been passed and that the decree of the High Court became capable of execution one month after the making of the valuation *viz* on 12th January 1905. The defendant applied for execution of the decree on 23rd August

LIMITATION ACT (IX OF 1908)—contd**Sch I, Art 182 (2)—contd**

1911 *Held* that under cl (2) of Art. 182 of the Limitation Act limitation ran from the order in revision passed by the High Court on 14th June 1903 which modified the decree of the first Court and the application was within time **CHELAPADA HALDAR v TARIT BHUSAN RAY CHOUDHURY (1915) 22 C W N 158**

4 final decree or order—abatement of appeal—date from which limitation runs—Code of Civil Procedure (Act I of 1908) s 111 et seq (3) and 11 Art 182 (2) of the Limitation Act 1908 which provides that limitation shall run from the date of the final decree or order of the appellate court does not apply where the appeal has abated by operation of law and not on account of any final decree or order of the appellate court e.g. where the appeal abates by reason of non substitution of any of the parties but there is no order of the appellate court declaring the appeal to have abated—**TIKAIT KRI HNA PRASAD SINGH v RAJA WAJIF NABAIN SINGH 5 Pat L J 731**

Appeal filed in wrong Court—Order of Court returning appeal for presentation to proper Court—Appellate Court meaning of—Time for executing decree Where a Court decides that an appeal has been wrongly presented to it and orders a return of it for presentation to the proper Court such an order is neither a final order of the Appellate Court nor a withdrawal of the appeal within art 182 (2) of the Limitation Act Appellate Court in the article means an Appellate Court having jurisdiction to hear the appeal *Per OLFIELD J (SESHAGIRI ATYAR J doubting)*—A mortgagor in whose favour a decree for redemption has been passed can execute the decree by sale of the mortgaged properties **Govinda Narayan v Iccaran (1913) 1 L P 38 Mad 3rd followed ABDUL KADIR v SAMFANDIA TEVAR (1920) 1 L R 43 Mad 835**

Limitation—Appral—Appral filed though no appeal lay—Terminus a quo—Civil Procedure Code 1908 s 48 Where an appeal has been filed the twelve years period of limitation referred to in s 48 of the Code of Civil Procedure 1908 begins to run from the date of the decree in appeal not withstanding that the decree in appeal may be merely a decree dismissing the appeal on the ground that no appeal lies **Akshay Kumar v Chunder Mohan I L P 16 Cal 250 and Faruk Rahman v Shah Muhammad Khan I L R 30 All 385 referred to RUP NARAY v SHRO PRAKASH I L R 43 All 405**

(Sub cls 2 and 3)—Application for rehearing of suit dismissed for default dismissal of appeal—where there has been appeal—Re view The words where there has been an appeal in cl (2) of art 182 of Sch I to the Limitation Act 1908 mean where there has been an appeal against a decree in the suit and do not include an appeal against an order made on an application to set aside that decree An order dismissing an application for rehearing a suit which has been dismissed for default is not a review of judgment within the meaning of cl (3) of art 18th **KARUPAN ZAMINDAR v RAI BEJRAJ v NARAYAN LAL 3 Pat L J 119**

LIMITATION ACT (IX OF 1908)—contd

Application for ascertainment of mesne profits—Application for execution Civil Procedure Code (XII of 1882) s 211 212 and 11 In application for ascertainment of mesne profits is an application for execution of a decree and is governed by Art 18th of the Limitation Act 1908 **Uttamram v Kishordas (1899) 24 Bom 149 and Ramana v Balu (1912) 37 Mad 186 approved Puran Chand v Roy Radha Kishen (1921) 19 Cal 13th disapproved GANGADHAR v BALKRISHNA SOJRI 1 I L R 45 Bom 819**

Sch I Art 182 cl (5)—

See 10 I L R 36 Bom 47

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 37 38 39 150 I L N 42 Mad 821

See EXECUTION I L R 40 Mad 1069

See GUJARAT TALUKDARS ACT (BOM ACT VI OF 1888) s 29 II I L N 43 Bom 44

See LIMITATION 1 L R 46 Calc 22

1—Execution of decree—Step in aid of execution—Substituted service *Held* that an application by a decree holder seeking to execute his decree for substituted service on the judgment debtor is an application to take some step in aid of execution within the meaning of art 182 (5) of the first schedule to the Indian Limitation Act 1908 **Pitamb Singh v Tala Singh I L R 29 All 301 referred to ANINA BIRI v BANARSI PRASAD (1914) 1 L R 38 All 439**

2—Execution of decree—Limitation—Step in aid of execution—Application by decree holder to be put into possession of property purchased by him in execution of his decree *Held* that an application by a decree holder to be put in possession of property which he has purchased in execution of his decree is an application to take a step in aid of execution of the decree within the meaning of Art 182 (5) of the first schedule to the Indian Limitation Act 1908 **Moti Lal v Motilal Singh I L R 19 All 477 and Bhagwati v Banwari Lal I L R 31 All 82 referred to BABU PAM v PARI LAL (1919) 1 L N 41 All 479**

3—Application by decree holder purchaser for delivery of possession if a step in aid of execution *Per NEWBOLD J (CUMING J contra)*—An application by a decree holder to be put in possession of property purchased by him at a sale in execution of his decree is an application to the Court to take a step in aid of execution within the meaning of cl 5 of art 18th of the First Schedule of the Limitation Act *Per CUMING J* All steps in execution of a decree which can save limitation must be taken by the decree holder as decree holder and not as auction purchaser **ANNADA PROSONNA SEN v SOMODDHI MIRDHA (1919) C W N 926**

4—Application for execution of decree by transferee—Injunction against transferee—Subsequent application by persons entitled to execute decree—Limitation—Bar whether saved by previous application An application for execution of a decree made by a transferee of the decree after he has been restrained by injunction

LIMITATION ACT (IX OF 1908)—*contd*

Execution of decree—
Notice on decree holder issued by executing Court forwarded to another for service—Date from which limitation to commence—Filing of affidavit by identifier of step in aid of execution—Limitation if runs from date of application or date of disposal thereof
 Where the notice for the execution of a decree is forwarded by the Court to another Court within the local limits of whose jurisdiction the judgment debtor resides the period of limitation under cl II of Art 182 of the Limitation Act begins to run from the date when the notice actually left the Court of execution and the fact that in the Court of service it was made over to the person on a later date cannot extend the period of limitation
Ratan Chand Osual v Deb Nath Barua 10 C W N 303 (1906) distinguished. The date on which an application for execution of a decree is disposed of is not the date from which the period of limitation runs. It commences on the date on which the application was actually made. The mere filing by the decree holder's identifier of an affidavit of service unaccompanied by any application oral or written does not give a fresh start to limitation.
Pran Krishna Das v Pratap Chandra Datta 21 C W N 423 (1917) distinguished.
ANNAPURNA THAKURANI Shebati KRISHNA PRASAD MISHRA v DHIRENDRA NATH CHAKRABARTY
 24 C W N 55

Execution of decree—
Step in aid of execution—Order to issue notice—Actual issue of notice—Time runs from the actual issue
 Cl 6 of Art 182 of the first schedule to the Indian Limitation Act 1908 makes the time run not from the date when the Court passes an order to issue the notice but from the date on which the notice is actually issued.
MILKANTH LAKSHAN v RAGHU DIN MAHADEU (1918)
 I L R 42 Bom 553

Execution of decree—
Date of issue of notice—Minority—Superiority of a minority after limitation has commenced to run
 Held on a construction of art 182 (6) of the first schedule to the Indian Limitation Act 1908 that the expression the date of issue of notice must be taken as the date on which the order of the Court directing that notice be issued to the judgment debtor is passed. Held also that when the decree holders are all of full age at the time of a passing of the decree execution of which is sought and limitation has already commenced to run the subsequent intervention of a minority does not entitle the decree holders to the benefit of s 7 of the Indian Limitation Act 1908.
Bhagat ois 7 of the Indian Limitation Act 1908
Bihari Lal v Bam Nath I L R 21 All 704 referred to.
Zamir Hasan v Sundar I L R 22 All 199 distinguished.
KALKA BAKISH SAGHI v RAM CHAMAN (1918)
 I L R 40 All 630

Sch I Art 182 Sub cl 7—

See s 20 4 Pat L J 365
 See CIVIL PROCEDURE CODE (1908) O XXI R 2 I L R 38 All 204

Execution of decree—
Decree payable by instalments—Whole decree executable on failure to pay any one instalment—Limitation
 When a decree payable by instalments provides that the decree holder shall have discretion or power on default being made in payment of any one instalment to realize the

LIMITATION ACT (IX OF 1908)—*contd*

full amount of the decree with interest without waiting for any future instalment to become due. Held that this does not mean that the decree holder is bound to execute the decree for the whole amount remaining due when default is made but he may still continue to execute the decree by instalments as they become due.
Gaya Din v Jhumman Lal I L R 37 All 400 and
Chatar Singh v Amur Singh I L R 38 All 701 distinguished.
Shankar Prasad v Jaiya Prasad I L R 16 All 371 referred to.
IACHIMI NARAIN v SARJU PRASAD (1916)
 I L R 30 All 230

Sch I Art 182 Expl I—*Execution of decree—Limitation—Execution of decree of first Court and of decree of Appellate Court for costs carried out separately*
 In execution of a decree against S D attached a decree held by S against himself and others for possession of certain property and costs. This decree had been the subject of an appeal by D and one other of the judgment debtors which had resulted in a decree for costs against the two appellants only. The last application for execution of this decree was made in 1907. As to the lower Court's decree D made various applications for execution and succeeded in realizing all that was due under it. S became insolvent and the receiver sold to one M what ever rights S may have had under either decree but on application for execution made by the purchaser it was held that there was nothing more to realize under the original decree and that execution of the appellate decree was barred by limitation.
GHULAM MUHAMMUD DIN KHAN v DANBAR SINGH (1918)
 I L R 40 All 206

Sch I Art 182(5)—Expl II—*Proper Court interpretation of—Execution proceedings before Sangli Courts are proceedings before proper Courts—Intermediate application barred by limitation—Subsequent application if made in time and not objected to are not barred*
 On the 10th September 1907 a decree was passed by the Sangli Court. An application was made to that Court to execute the decree but it proved infructuous. On the 11th November 1907 a second Darkhast was made to that Court but it was transferred to the Shapur Court on the 14th idem. It resulted in recovery of Rs 11 412 odd on the 24th March 1915. The third Darkhast was presented to the Sangli Court on the 9th August 1915 but it was disposed of on the 10th November of the same year. The next Darkhast was made to the Belgaum Court but it was disposed of on the 16th May 1917. The present Darkhast which was filed in the same Court on the 27th August 1917 was objected to as having been barred by limitation on two grounds: (1) the proceedings from November 1907 to November 1915 not being before proper Courts did not save limitation; (2) the third Darkhast which was filed more than three years after the date of the second Darkhast having been barred by limitation. The subsequent Darkhasts also were similarly barred. Held (overruling the objections) that the proceedings before the Sangli Court operated to save limitation because those Courts were proper Courts within the meaning of Art 182 cl 5 Expl II of the Indian Limitation Act 1908. Held further that as much that the third Darkhast was barred by limitation yet inasmuch as proceedings were taken thereunder until the disposal of the Darkhast

LIMITATION ACT (IX OF 1908)—*contd*

they provided a new starting point for limitation and the subsequent Darkhasts which were in time and not objected to were not affected by the bar of limitation *Abdullah Fa irbah v Dayabhas Amuliah* (1916) 40 Bom 394 distinguished *Desaiappa v Dundappa* (1919) 44 Bom 227 followed. *PARBUTLING APPA v GURUNTH BALAJI* (1940) I L R 45 Bom 453

Sch I Arts 182 183—

See s 6 I L R 41 Bom 625

See REVIVOR I L R 43 Calc 903

Sch I Art 183—

See CIVIL PROCEDURE CODE 1908 O 45 a. 15 I Fa' L J 335

See LIMITATION I L R 47 Calc 746
I L R 42 Calc 776

Revivor of decrees of

Original Side of the High Court—Revivor of decree on notice to one only of two judgment-debtors not operating as revival against the other. A revivor of a decree of the Original Side of the High Court made on an application for execution against one only of two judgment debtors in the case does not keep the decree alive so as to enable the decree holder to execute it against the other judgment debtor after twelve years from the date of the decree *McLAREN v VEERIAH NAIDU* (1915) I L R 38 Mad 1102

Application to enforce

Privy Council order—Revivor meaning of. On 22nd January 1915 an application for execution of an Order of Her late Majesty in Council dated the 28th November 1899 was made to a Subordinate Judge to whom the execution proceedings were transferred. *Held* that the application was governed by Art 183 of the 1st Schedule of the Limitation Act 1908 according to which an application to enforce an Order of the Sovereign in Council must be made within 12 years from the date on which a pre-ent right to enforce the order accrued to some person capable of releasing the right providing *inter alia* that where the Order has been revived 12 years shall be computed from the date of such revivor. Where on an application for execution notice is issued under s 216 of the Code of Civil Procedure 1877 or s 248 of the Code of Civil Procedure 1882 and the Court has decided that the decree is still capable of execution and makes an order for execution there has been a revivor within the meaning of the article. Where an Order in Council is transmitted to a subordinate Court for execution without any notice being given to the judgment debtors it would not be a revivor of the Order. *TRIBHUKAN DEO NARAYAN SINGH v BADRI MISSEK* (1916) 20 C W N 1051

20 C W N 1051

Decree of Original—

Side of High Court against two persons jointly—Revivor of decree on notice to one only under s 248 of Civil Procedure Code (XIV of 1882) whether a revivor against the other also. On the Original Side of the High Court an order of revivor under s 248 Civil Procedure Code (XIV of 1882) of a decree against two persons jointly when made on an application for execution against only one of them does not keep the decree alive as against the other so as to enable the decree holder to execute it against that other judgment-debtor more than

LIMITATION ACT (IX OF 1908)—*contd*

twelve years from the date of the decree. Art 183 of the Limitation Act (IX of 1908) which is applicable to execution of decrees passed on the Original Side of the High Court differs in this respect from Art 182. *KRISHNAIAH v GAJENDRA NAIDU* (1917) I L R 40 Mad 1127

LIMITATION AMENDMENT ACT (XI OF 1909)

See MADRAS DISTRICT MUNICIPALITIES ACT (IV of 1884) s 168

I L R 58 Mad 456

See MUNICIPAL COUNCIL

I L R 38 Mad 6

LIMITED COMPANY

See PUTNI LE SEE

I L R 42 Calc 1029

assignment of lease to—

See LESSOR OR LEASE

I L R 48 Calc 176

LIMITED GROUND

See APPEAL I L R 41 Calc 406

LINGAYET PANCH KALAS MARRIAGE

See VATANDAN JOSHI

I L R 40 Bom 112

LIQUIDATED DAMAGES

See INTEREST I L R 42 Calc 652

LIQUIDATION

See COMPANIES ACT (VI of 1882) ss 58 147 I L R 40 Bom 134

See COMPANY

I L R 42 Bom 159 264

LIQUIDATOR

appointment of—

See COMPANIES ACT (VII of 1913) ss 207 (a) 208 I L R 38 All 412

charges created by—

See COMPANY I L R 42 Bom 215

in possession—

See MORTGAGE I L R 39 Calc 810

Release of—

See COMPANY I L R 47 Calc 620

Registered company—

Property of the company vesting of—Official Assignee.—Distribution of proceeds in Court when governed by Civil Procedure Code (Act I of 1908)—Release.—Companies Act (VII of 1913) ss 13 (3) 3 (3) 271 215 232. The Liquidator of a registered company differs in this respect from the Official Assignee in that the property of the company does not vest in him. The distribution of the proceeds which had come into Court before an application was made (to the High Court) to pass an order in favour of the liquidator must be governed by the provisions of the Code of Civil Procedure. *AMRITA LAL KUNDU v ANKUL CHANDRA DAS* (1915) I L R 43 Calc 588

I L R 43 Calc 588

LIMITATION ACT (IX OF 1908)—contd

Execution of decree—
Notice on decree holder issued by executing Court forwarded to another for service—Date from which limitation to commence—Filing of affidavit by identifier if step in aid of execution—Limitation if runs from date of application or date of disposal thereof Where the notice for the execution of a decree is forwarded by the Court to another Court within the local limits of whose jurisdiction the judgment debtor resides the period of limitation under cl 6 of Art 182 of the Limitation Act begins to run from the date when the notice actually left the Court of execution and the fact that in the Court of service it was made over to the peon on a later date cannot extend the period of limitation *Ratan Chand Oswal v Deb Nath Barua* 10 C W N 303 (1906) distinguished The date on which an application for execution of a decree is disposed of is not the date from which the period of limitation runs It commences on the date on which the application was actually made The mere filing by the decree holder's identifier of an affidavit of service unaccompanied by any application oral or written does not give a fresh start to limitation *Pran Krishna Das v Protap Chandra Dalal* 21 C W N 423 (1917) distinguished *ANAPURNA THAKURANI Shobai KBI HNA PROSAD MOTRA v DEHENDRA NATH CHAKRABARTY* 24 C W N 55

Execution of decree—
Step in aid of execution—Order to issue notice—Actual issue of notice—Time runs from the actual issue Cl 6 of Art 182 of the first schedule to the Indian Limitation Act 1908 makes the time run not from the date when the Court passes an order to issue the notice but from the date on which the notice is actually issued *MILKANTH LAXMAN v RAGHU DIN MAHADEV* (1918) 1 L R 42 Bom 553

Execution of decree—
Date of issue of notice—Minority—Superintention of a minority after limitation has commenced to run Held on a construction of art 182 (6) of the first schedule to the Indian Limitation Act 1908 that the expression the date of issue of notice must be taken as the date on which the order of the Court directing that notice be issued to the judgment debtor is passed Held also that when the decree holders are all of full age at the time of a passing of the decree execution of which is sought and limitation has already commenced to run the subsequent intervention of a minority does not entitle the decree holders to the benefit of s 7 of the Indian Limitation Act 1908 *Bhagat Bihari Lal v Dam Nath I L R 27 All 704* referred to *Zamir Hasan v Sundar I L R 22 All 199* distinguished *KALKA BAKHSH SINGH v RAM CHABAN* (1918) 1 L R 40 All 630

Sch I Art 182 Sub cl 7—

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See CIVIL PROCEDURE CODE (1908) O

XXI R 1 I L R 38 All 204

Execution of decree—
Decree payable by instalments—Whole decree executable on failure to pay any one instalment—Limitation When a decree payable by instalments provides that the decree holder shall have discretion or power on default being made in payment of any one instalment to realize the

LIMITATION ACT (IX OF 1908)—contd

full amount of the decree with interest without waiting for any future instalment to become due Held that this does not mean that the decree holder is bound to execute the decree for the whole amount remaining due when default is made but he may still continue to execute the decree by instalments as they become due *Goga Din v Jhummam Lal I L R 37 All 470* and *Chatar Singh v Amir Singh I L R 38 All 201* distinguished *Stanley Prasad v Jaiya Prasad I L R 16 All 371* referred to *LACHMI NARAIN v SAREJU PRASAD* (1916) 1 L R 39 All 230

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Sch I Art 182(5)—Expl II—**Proper Court interpretation of—Execution proceedings before Sangli Courts are proceedings before proper Courts**

—**Intermediate application barred by limitation—**
Subsequent application if made in time and not objected to are not barred On the 10th September 1907 a decree was passed by the Sangli Court An application was made to that Court to execute the decree but it proved infructuous On the 11th November 1907 a second Darkhast was made to that Court but it was transferred to the Shahu par Court on the 14th idem It resulted in recovery of Rs 11 412 odd on the 24th March 1910 The third Darkhast was presented to the Sangli Court on the 4th August 1915 but it was disposed of on the 10th November of the same year The next Darkhast was made to the Belgaum Court but it was disposed of on the 16th May 1917 The present Darkhast which was filed in the same Court on the 27th August 1917 was objected to as having been barred by limitation on two grounds (1) the proceedings from November 1907 to November 1915 not being before proper Courts did not save limitation (2) the third Darkhast which was filed more than three years after the date of the second Darkhast having been barred by limitation the subsequent Darkhasts also were similarly barred Held (overruling the objections) that the proceedings before the Sangli Court operated to save limitation, because those Courts were "proper Courts" within the meaning of Art 182 cl 5 Expl II of the Indian Limitation Act 1908 Held further that as much as the third Darkhast was barred by limitation yet inasmuch as proceedings were taken thereunder until the disposal of the Darkhast

LIS PENDENS—*contd*

to set aside a mortgage made by B to C also as invalid, the plea of B and C that both the sale and mortgage were good was upheld. Pending the suit D bought B's rights in a Court auction. In a subsequent suit by C to enforce the mortgage. *Held* that D's purchase was not affected by *lis pendens* as there was no contest between B and C in the previous suit as to the validity of the mortgage and that D was entitled to plead that the mortgage was invalid as having no consideration. **KRISHNAYA v MALLYA (1911)**
I L P 41 Mad 458

Suit to set aside gift of immovable property—Amendment of plaint—Change of description of property—Amendment not necessarily relating back to date of suit—Mahomedan law—Gift—Circumstances in which a gift becomes irrevocable In 1908 a Mahomedian lady executed a deed of gift transferring seven items of house property to her daughter in law S. In February 1910 the donor instituted a suit for revocation of the gift and summons was served upon the defendant in March 1912. In the plaint it was alleged that the gift had in fact been cancelled as regards items 1 and 7 of the property comprised in the deed of gift as the result of a decree in litigation between an heir of the donor's husband and the donee and the plaintiff sued for cancellation of the gift in respect of the remaining items including Nos 2 and 5. On the 16th of May 1912 item No 6 (a house) was sold by the donee to T for Rs 1000. On the 21st of May 1912 the plaintiff asked for and obtained leave to amend her plaint by substituting item 6 for item 5. Subsequently to this the defendant added a plea to her written statement to the effect that item No 6 had been sold by her to T on the 16th of May 1912. Nevertheless no steps were taken by the plaintiff to bring T on to the record as a defendant. In this suit a decree was passed in favour of the plaintiff. In 1911 T the vendee of item No 6 sued for possession of the property sold to her impleading as defendants the original donor and B her niece to whom the house had been transferred by a deed of gift in April 1914. *Held* that the plaintiff was entitled to succeed. The claim was not barred by the doctrine of *lis pendens* inasmuch as an amendment of a plaint such as that obtained by the donor in her suit for revocation of the gift made by her would not relate back to the date of the filing of the suit. Moreover according to the Mahomedan law the gift in favour of S became irrevocable on the execution of the sale by the donee in favour of T. **WALI BANDI PIRI v TABEYA HIRI (1919)**
I L R 41 All 534

Alienee made a party to the litigation—Compromise between original parties behind the back of the alienee—Whether binding on the alienee An alienee *pendente lite* who has been added as a party to the litigation is entitled to object to a decree being passed in terms of a compromise arrived at between his alienor and the opposite party. **VEERARAGHAVA REDDI v SUBBA REDDI (1910)**
I L R 43 Mad 37

LIST OF MEMBERS

See COMPANY I L R 45 Calc 480

LITIGATION

protection of—

See GRANT I L R 44 Calc 585

LOAN

See CONTRACT ACT s 74

I L R 36 Bom 164

See LIMITATION ACT (IX of 1908) Arts 59 60
I L R 39 Mad 1081

LOCAL BOARDS ACT (V OF 1884)

— s 54 144 to 147—

See NEGOTIABLE INSTRUMENTS ACT (V OF 1881) ss 11 AND 6
I L R 43 Mad 816

LOCAL BOOKING FORM

See RAILWAY COMPANY

I L R 47 Calc 6

LOCAL CUSTOMS

See RAILWAY RECEIPT

I L R 38 Mad 664

LOCAL FUND CODE

— r 549—

See NEGOTIABLE INSTRUMENTS ACT (V OF 1881) ss 5 AND 11
I L R 43 Mad 818

LOCAL GOVERNMENT

delegation of power to—

See PENAL CODE (ACT XLV OF 1860) ss 183 AND 209
I L R 38 Mad 602

order of authorising complaint—

See JURY RIGHT OF TRIAL BY

I L R 37 Calc 467

powers of—

See BYE LAWS I L R 47 Calc 547

See JURY RIGHT OF TRIAL BY

I L R 37 Calc 467

ratification by—

See SECRETARY OF STATE

I L R 37 Mad 55

Rules of—

See MUNICIPALITY

I L P 47 Calc 426

See PENAL CODE (ACT XLV OF 1860) ss 188 AND 209
I L R 38 Mad 602

LOCAL INQUIRY

See COMPLAINT I L R 46 Calc 834

See LOCAL INSPECTION

LIS PENDENS

See ASSIGNEE OF A MONEY DECREE
I L R 38 Mad 36

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XAI, p 63
I L R 38 Mad 535

See COMPANY I L R 42 Bom 215

See RES JUDICATA.
I L R 35 Bom 189

See SALE FOR ARREARS OF REVENUE
14 C W N 677

See TRANSFER OF PROPERTY ACT s 5.

Misdescription of Property—

See SPECIFIC RELIEF ACT s 31
26 C W N 36

Civil Procedure Code (Act XIV of 1882) s 248 311 313—Non service of notice of an irregularity—Sale of putni mahals for arrears of rent—Purchase of putni mahal by executor of deceased dar putnadar's estate in his personal capacity—Application under s 311 for setting aside sale by executor as such and under s 313 by purchaser in personal capacity D the zamindar of a putni mahal sold his interest in the property and then brought a suit against C the putnadar for the arrears of the putni rent that had accrued prior to the sale and obtained a decree Shortly afterwards D died after having assigned all his properties including this decree to certain trustees for the payment of his debts The putni was then put to sale under Reg VIII of 1819 for non payment of rent and F who was the executor to the estate of his deceased father who was dar putnadar under C deposited the arrears for saving the dar putni interest from the effect of the sale and obtained possession as mortgagor The putnadar's interest in the putni was then sold in execution of a money decree and purchased by S The trustees appointed by D took out execution and the putni was fixed for sale F instituted a regular suit for a declaration that the decree under execution was not a rent decree and for a perpetual injunction upon the decree holders not to execute the same against the putni mahal The suit was decreed by the first Court but dismissed by the High Court on the 8th April 1908 F applied for leave to appeal to the Privy Council which was granted on the 30th June 1908 The trustees applied for the sale of the putni mahal and they impleaded O alone as judgment debtor The sale took place on the 6th July 1908 and the property was purchased by F in his personal capacity For setting aside the sale an application under s 311 Civil Procedure Code was made by S also by F as executor to the estate of his deceased father F also made an application in his personal capacity under s 313 Civil Procedure Code The District Judge allowed these applications and set aside the sale The judgment of the Privy Council was subsequently delivered on the 4th March 1914 and it was held that the suit instituted by F should have been decreed Held that the facts were sufficient to attract the application of the doctrine of lis pendens and the act of the decree holders in bringing about the sale could not prejudice F and make the judgment of the Privy Council nugatory

LIS PENDENS—cont'd.

Shital v Shambhu I L R 29 Bom 435 distinguished That although C the former putnadar, had no subsisting interest in the property the decree holders having chosen to treat him alone as the judgment debtor were bound to serve him with notice of the sale though they were not bound to issue notice on S the purchaser of the putni interest whose suit failed whom they were not willing to treat as the legal representative of C and against whom they did not want to execute the decree That non service of notice under s 249 Civil Procedure Code was not a mere irregularity and vitiated the sale *Paghnath Das v Sunder Das 18 C W N 1038* followed That the auction purchase of the putni was made by F in his personal capacity and he was not debarred from applying under s 313 Civil Procedure Code for setting aside the sale *MONARAJ BAHADUR SINGH v SURENDRA NARAIN SINGH 1914) 19 C W N 152*

*Mortgage suit settled ment of land by mortgagor with tenants pending suit and before suit—Tenants if acquire rayats title—Mortgagor's power to grant leases binding on mortgagee Where pending a mortgage suit the mortgagor settled a number of persons on different portions of the land and the latter got their names entered in the record of rights as tenants in occupation Held in a suit by the plaintiff in the mortgage suit who had purchased the mortgaged property in execution of his own decree to recover possession from the tenants that the plaintiff should recover The principle of *Benad Lal Pakrashi v Kalu Pramanick I L R 20 Cal 708* should not be extended so as to affect the application of the doctrine of lis pendens But tenants who were settled on the land by the mortgagor before the mortgage suit but after the mortgage could keep their lands against the plaintiff upon proof (the burden where of would be upon them) that the leases in their favour were granted on the usual terms in the ordinary course of management The mortgagor has not anything like a general authority to deal with or affect the mortgaged property during his possession thereof The true position is that he may make a lease conformable to usage in the ordinary course of management *MAHAN MOHAN SINGH v RAJ KISHORI KUMARI (1912)**

21 C W N 68

*Act (IV of 1882) s 52—No contest between defendants—Alienation by one defendant to a stranger pending suit whether affected by lis pendens The rule of lis pendens enunciated in s 52 of the Transfer of Property Act does not differ from the English rule and it protects parties to litigation against alienations by their opponents pending suit and the prohibition contained in the section is like res judicata applicable between parties to the suit who are ranged on the same side and between whom there is no issue for adjudication Any other party in s 52 means any other party between whom and the party alienating there is an issue for decision which might be prejudiced by the alienation *Bellamy v Sabine (1857) De O & J 666* and *Fayaz Husain Khan v Prag Narain I L R 29 All 339 345* applied In a previous suit by A to set aside a sale made by him to B as void and invalid and consequently*

LOCAL SELF-GOVERNMENT ACT (BENG III OF 1853)

S 11 (2)—*District Board of Manbhum bye laws framed by—Encroachment hanging verandah of ss* A hanging verandah would be an encroachment if it amounted to an unlawful gaining upon the right of user by the public. That right extends to all forms of traffic which have been usual or customary and all such that are reasonably similar or incidental thereto. The question whether a hanging verandah amounted to an encroachment would depend in each case upon the question whether in the particular circumstances it constituted an invasion of the public right of user as described above. The public have a right of user not merely on the roadway but also on the side lands attached to the road. **HIRAJI BALDEO v. MANBHUM DISTRICT BOARD (1913)**

18 C W N 1120

LOCUS DELICTISee **EMIGRATION** I L R 37 Calc 27**LOCUS POENITENTIAE**See **SECURITY FOR GOOD BEHAVIOUR.**
I L R 43 Calc 1128**LOCUS STANDI**

to maintain suit—

See **UNDER TENURE SALE OF**
I L R 37 Calc 823**LOCUSTS**

Locusts owner's right to drive away from land—Liability to neighbour owner on whose land they alight for injury done. Visitations of locust even where unpleasantly frequent are in the nature of extraordinary and incalculable events rather than a normal incident like the rise of a river in a rainy season. The principles of law laid down preserving or regulating the settled course of a river on which depend many of the rights and benefits of adjacent owners are not necessarily appropriate to the course of an insect pest which has no settled course and which it is the interest of every one concerned to repel or destroy. An owner may therefore protect his land from such a visitation and turn away the pest without being responsible for the consequences to neighbouring owners. Even if such visitations be regarded as a normal incident of agricultural industry the owner would be entitled as an agricultural operation to drive away the swarm just as he would be entitled to scare crows without regard to the direction they may take in leaving. **GREY v. STEYN & HATTINGH (1911)**

15 C W N 589

LORRY (HAND DRAWN)See **PUBLIC CONVEYANCES ACT (BOM ACT VI OF 1893)** s 1
I L R 37 Bom 374**LOSS OF GOODS**See **CARRIERS** I L R 30 Calc 311
I L R 41 Calc 89
I L R 47 Calc 1027See **RAILWAYS ACT (IX OF 1890)** s 72
21 C W N 1125See **RAILWAY COMPANY**
16 C W N 766
I L R 41 Calc 576
I L R 47 Calc 5See **SHAWL** MEANING OF
I L R 39 Calc 1029

Notice—Railway administration—Railways Act (IX of 1890) ss 3(6) 77 140—Scope of s 140—Notice to Government through Collector—Limitation Act (IX of 1908) Sch I Arts 30 31 115—Contract—Breach of contract for non delivery S 140 of the Railway Act has not the effect of cutting down the connotation of the words railway administration as contained in s 3(6). It only provides for the convenience of the party aggrieved that if he wants to serve the notice on the Manager of the State Railway or the Agent of the Railway Company he must do so in one of the ways mentioned there. If the party chooses to give notice to the Government or the Native States or the Railway Company, there is nothing in the Act to prevent his doing so; the latter alternative may enhance his trouble but it cannot take away his rights. **Secretary of State for India v. Dip Chand Poddar, I L R 24 Calc 306** **Great Indian Peninsula Railway Co v. Chandra Bai I L R 23 All 552** **Janaki Das v. Bengal Nagpur Railway Co 16 C W N 356** **Periannan Chelli v. South Indian Railway I L R 22 Mad 137** **Nadiah Chand Shaha v. Wood I L R 35 Calc 194** referred to **Per CHATTERJEE J.** Notice served upon the Government through the Collector with months is sufficient to satisfy the requirement of s 77 of the Act. Art 30 of the 1st to the Limitation Act does not apply; plaintiff's case is not for the loss of and where the defendant does not plead any loss. **Per CHATTERJEE J.** Art to suits against a carrier for non delivery of or delay in delivering the time for suit is one year from the time the goods ought to be delivered. Contemplates a suit by the consignee; it casts upon the carrier the onus of showing the goods should have been delivered. **CHATTERJEE J.** When there is a written contract Art 115 of the Sched to the case **Mofa Singh Chauhan v. H I L R 7 Bom 473** **Danmull v. B Steam Navigation Co I L R 12 C 12** referred to **RADHA SHYAM BASAK v. GOVT OF STATE FOR INDIA (1910) I L R 4 NO C**

Damages—Liability to deliver goods—Cal Act (Beng III of 1890) ss 112 113 **Sole real meaning of** In an action against a consignee against the Portioners of Calcutta for non delivery landed by them—**Held** that the prov

LOCAL INQUIRY—contd

— order based on—

See DISPUTE CONCERNING LAND

I L R 46 Calc 1056

LOCAL INSPECTION AND INVESTIGATION

See PRACTICE

I L R 35 Bom 317

— by Judge—

See RIGHT OF SUIT

I L R 30 Mad 501

*Power of Magistrate to make such inspection during a trial to understand the evidence and to determine the creditability of witnesses—Importing into judgment facts observed on such inspection—Disqualification of Magistrate—Illegality of conviction—Criminal Procedure Code (Act V of 1898) ss 148 202 293 294 556 Explanation A Magistrate may inspect the place of the occurrence of an offence in cases where he cannot follow or understand the evidence without seeing the features of the land and he does not merely by doing so disqualify himself from trying the case. But every possible precaution should be taken that the inspection is only a view of the local features and an immediate report of what he has seen should be placed on the record and laid open to the scrutiny of the parties. The Magistrate can use the testimony of his own senses to test the veracity of the witnesses before him as regards the features of the locality but he cannot import into the case other matters of facts which he has himself observed. Where the Magistrate did not merely view the place of occurrence for the purpose of following or understanding the evidence and testing it in respect of the features of the locality but imported into his judgment matters of opinion and inference based on circumstances not on the record and did not place thereon the results of his local inspection—Held that he had committed an error of jurisdiction which may have materially prejudiced the accused and that the conviction was therefore bad in law. The Explanation to s 506 of the Criminal Procedure Code does not directly authorize a Magistrate to make a local inspection but saves his jurisdiction to try a case notwithstanding his having made such inspection or investigation and does not do away with the restrictions under which they should be made. *Girish Chunder Ghose v Queen Empress* I L R 20 Calc 857 *Hari Kishore Mitra v Abdul Baki Miah* I L R 21 Calc 970 *Queen Empress v Manikam* I L R 19 Mad 963 *In re Lalji* I L R 19 All 30. *Saifur Dulali v Empress* 3 C W N 607 *Andam Mondal v Itabara Sircar* 9 C W N 2000. *Lal Behari Saha v Dejoy Sarkar Sirdar* 10 C W N 181 referred to. *RABSON SHEIK v EMPEROR* (1910) I L R 37 Calc 340*

Results of inspection not recorded at the time but embodied in the trying Magistrate's judgment—Effect of omission of contemporaneous record—Facts so found not impugned before the Appellate Court—Legality of the conviction—Prejudice A Magistrate trying a case may view the place of occurrence in order to follow or understand the evidence but he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way

LOCAL INSPECTION AND INVESTIGATION

—contd

or the other *In re Lalji* I L R 19 All 30 approved of. There is nothing in the Criminal Procedure Code to prevent a Magistrate from holding a local investigation for the purpose of elucidating any matter in dispute and in so far as it conforms to the provisions of the law of evidence it cannot be excluded. He should place on record the results of the local investigation but it is not a positive rule of law that a note thereof must be made on the spot. Where the facts established by the local investigation are impugned and there is no contemporaneous record of them the Appellate Court cannot act on them but if they are not impugned the Court cannot exclude them from consideration because there is no such record when the accused is not prejudiced by the irregularity. *Joy Coomar v Gundhoo Lall* I L R 9 Calc 303 followed. *Baiton Sheikh v Emperor* I L R 37 Calc 340 *Giri Chunder Ghose v Queen Empress* I L R 20 Calc 857 distinguished. Where the defence suggested that the alleged place of occurrence a mound of earth was not scalable nor large enough to accommodate the number of assailants said to have been present upon which the trying Magistrate suspected the locality and found the facts against the accused but made no separate note thereof on the record of the time though he embodied them in his judgment and they were not impugned before the Appellate Court but it was sought to exclude them on the ground of the omission of such note. Held that the omission of the Magistrate to record a note of the results of the local inspection at the time had not prejudiced the accused and that the conviction was not bad on that ground. *ATTAR RAI v EMPEROR* (1912) I L R 39 Calc 476

Irregularity whether vitiates trial Where in the course of a trial the Court sent out a Sub Deputy Magistrate to hold a local investigation and examine him as a witness after he had made the investigation. Held that the sending out of the Sub Deputy Magistrate was at most an irregularity and unless it prejudiced the accused the trial was not vitiated thereby. That under the circumstances of the trial the irregularity did not prejudice the defence. *RADHA MADHAB PAIKRA v EMPEROR* (1910)

15 C W N 414

Proper mode of conducting local investigations—Practice Great care ought to be taken by a Magistrate who holds a local investigation to see that he is not approached by an outsider and that he does not allow his mind to be affected by outside matters. The proper thing for him to do is to be attended by a representative of either side for the purpose of identifying the points which are material in the case on the one side or the other and he ought not to allow himself to enter into general conversation with the people of the neighbourhood about the case. *CHANDRA KUMAR GHOSE v MAHENDRA KUMAR GHOSE* (1910)

I L R 44 Calc 711

LOCAL LIMITS

See SECURITY FOR GOOD BEHAVIOUR

I L R 46 Calc 215

LOCAL SELF GOVERNMENT ACT (BENG III OF 1885)

S 2 (2)—*District Board of Manbhum* by laws framed by—*Encroachment hanging verandah* is a hanging verandah would be an encroachment if it amounted to an unlawful gaining upon the right of user by the public. That right extends to all forms of traffic which have been usual or customary and all that are reasonably similar or incidental thereto. The question whether a hanging verandah amounted to an encroachment would depend in each case upon the question whether in the particular circumstances it constituted an invasion of the public right of user as described above. The public have a right of user not merely on the roadway but also on the side lands attached to the road. *HIRAJI BALDEO v. MANBHUM DISTRICT BOARD (1913)* 18 C W N 1120

LOCUS DELICTI

See EMIGRATION I L R 37 Calc 27

LOCUS POENITENTIAE

See SECURITY FOR GOOD BEHAVIOUR.
I L R 43 Calc 1128

LOCUS STANDI

to maintain suit—

See UNDER TENURE SALE OF
I L R 37 Calc 823

LOCUSTS

Locust owner's right to drive away from land—Liability to neighbour ing owner on whose land they alight for injury done. Visitations of locusts even where unpleasantly frequent are in the nature of extraordinary and incalculable events rather than a normal incident like the rise of a river in a rainy season. The principles of law laid down preventing or regulating the settled course of a river on which depend many of the rights and benefits of adjacent owners are not necessarily appropriate to the course of an insect pest which has no settled course and which it is the interest of every one concerned to repel or destroy. An owner may therefore protect his land from such a visitation and turn away the pest with out being responsible for the consequences to neighbouring owners. Even if such visitations be regarded as a normal incident of agricultural industry the owner would be entitled as an agricultural operation to drive away the swarm just as he would be entitled to scare crows without regard to the direction they may take in leaving. *GREYVON STEYN v. HATTINGH (1911)* 15 C W N 569

LORRY (HAND DRAWN)

See PUBLIC CONVEYANCES ACT (BOM ACT VI OF 1863) s 1
I L R 37 Bom 374

LOSS OF GOODS

See CARRIERS I L R 39 Calc 311
I L R 41 Calc 80
I L R 47 Calc 1027

See RAILWAYS ACT (IX OF 1890) s 72
21 C W N 1125

See RAILWAY COMPANY
16 B W N 766
I L R 41 Calc 576
I L R 47 Calc 11

See SHAWLS MEANING OF
I L R 39 Calc 1029

Notice—Railway administration—Railways Act (IX of 1890) ss 3(6) 77 140—Scope of s 140—Notice to Government through Collector—Limitation Act (IX of 1908) Sch I Arts 30 31 115—Contract—Breach of contract for non delivery S 140 of the Railway Act has not the effect of cutting down the connotation of the words railway administration as contained in s 3 (6). It only provides for the convenience of the party aggrieved that if he wants to serve the notice on the Manager of the State Railway or the Agent of the Railway Company he must do so in one of the ways mentioned there. If the party chooses to give notice to the Government or the Native States or the Railway Company there is nothing in the Act to prevent his doing so; the latter alternative may enhance his trouble but it cannot take away his rights. *Secretary of State for India v. Dip Chand Poddar* I L R 24 Calc 396. *Great Indian Peninsula Railway Co v. Chandra Bai* I L R 28 All 552. *Janak Das v. Bengal Nagpur Railway Co* 15 C W N 356. *Periannan Chellu v. South Indian Railway* I L R 22 Mad 147. *Nadiah Chand Shaha v. Wood* I L R 35 Calc 194 referred to. *Per CHATTERJEE J.* Notice served upon the Government through the Collector within six months is sufficient to satisfy the requirements of s 7 of the Act. Art 30 of the 1st Schedule to the Limitation Act does not apply where the plaintiff's case is not for the loss of the goods and where the defendant does not plead or prove any loss. *Per CHATTERJEE J.* Art 31 applies to suits against a carrier for compensation for non delivery of or delay in delivering goods and the time for suit is one year from the time when the goods ought to be delivered. This Article contemplates a suit by the consignee and further it casts upon the carrier the onus of proving when the goods should have been delivered. *Per CHATTERJEE J.* When there is breach of a written contract Art 115 of the Schedule governs the case. *Mohan Singh Chawan v. Henry Condor* I L R 7 Bom 478. *Danmull v. British India Steam Navigation Co* I L P L Calc 477 referred to. *RADHA SHYAM MAJAK v. SECRETARY OF STATE FOR INDIA (1916)* I L R 44 Calc 10
20 C W N 790

Damages—Port Commissioner's liability to deliver goods—Calcutta Port Act (Beng III of 1890) ss 112 113 and 114—Sole risk meaning of In an action for damages by a consignee against the Port Commissioners of Calcutta for non delivery of goods landed by them—*Held* that the provisions of

LOSS OF GOODS—*contd*

s 113 of the Calcutta Port Act (Beng III of 1890) protected the Port Commissioner and the Port Commissioners were in the absence of any default on their part after the expiration of three days from the date of landing free from liability in respect of the goods *PURNA CHANDRA HUNDU v THE PORT COMMISSIONERS OF CALCUTTA* (1918) 1 L R 46 Cal 56

LOTTERY

See *CONTRACT ACT* (IV of 1872) s 30
1 L R 42 Bom 676

LOVE POTION

See *CAUSING DEATH BY RASH OR REGLI-
GENT ACT* 1 L R 39 Cal 855

LOWER APPELLATE COURT

power of—

See *PENALTY* 1 L R 43 Cal 148

LUGGAGE

undisclosed—

See *CARRIERS* 1 L P 41 Cal 80

LUNACY

See *HINDU LAW—SUCCESSION*
1 L R 33 All 117

See *LUNACY ACT* 1912 Ch V
1 L R 42 All 504

*Jurisdiction of Court as to inquisition—Reside meaning of—Lunacy Act (IV of 1912) s 37 38 and 62 D a member of a family having its ancestral abode in the district of Pabna ordinarily lived in Calcutta. A his wife took him to Pabna and after some time instituted proceedings for his inquisition in lunacy in the Court of the District Judge of Pabna. Held that D had two places of residence one in Calcutta and the other in Pabna, that as resident in Calcutta he was subject to the jurisdiction of the High Court under s 38 of the Indian Lunacy Act (IV of 1912) and the District Court of Pabna had no jurisdiction to entertain the proceedings instituted by A. *Orde v Skinner* 1 L R 3 All 91. *Srinivasa v Venkata* 1 L R 34 Mad 257 relied on. *ANILKALA CHOWDHURANI v DHIRENDRA NATH SARKAR* (1920) 1 L R 48 Cal 577 24 C W N 178*

LUNACY ACT (XXXV OF 1858)

See *HINDU LAW—ADOPTION*
1 L R 40 Mad 660

Scope of enquiry under—Pa darshan in J document executed by under circumstances rendering it inoperative—Suit relating to lunatic's property how to be brought. The Lunacy Act contemplates only the question of lunacy or sanity at the time of the enquiry there is no provision in it that the enquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind and

LUNACY ACT (XXXV OF 1858)—*contd*

the finding of the District Judge in the lunacy proceedings did not carry things back further than the enquiry which commenced in November 1906 and notwithstanding the result of that enquiry the burden still rested on the plaintiffs of showing that N was of unsound mind on the 16th September 1906—the date of the execution of the lease. That A being of unsound mind at the time of the execution of the lease it created no title in the defendant which barred the plaintiffs right to possession. That even if lunacy at the date of the execution of the lease was not established the transaction could not stand as it did not appear that the lease was explained to N a *pardanashin* lady of weak intellect and was understood by her. *Held* (as to the contention that apart from lunacy the transaction would be voidable and not void and could not be avoided by any one but N and in a suit to which her manager was a party) that the Poojaries were competent plaintiffs even if the lease was not void but voidable. That even if a lunatic's manager can sue still there is no established rule of practice in the Calcutta High Court that requires suits relating to the lunatic's property to be brought by him and not by the lunatic. On the contrary the Code of Civil Procedure contemplates suits by persons of unsound mind whether so adjudged or not. It is true that a person so incapacitated has to sue by a next friend but a next friend is not a party and the absence of a next friend in the present suit was immaterial. That in any case the objection did not affect the merits of the decision of the lower Court under s 90 Civil Procedure Code it was not a ground for reversal of that decision. *CASSIDEE MAHMOODI v K. B. DUTT* (1914) 19 All W N 45

*Lunacy proceedings under Act XXXV of 1858 orders reports and statement in evidence—Indian Evidence Act (I of 1872) ss 11 13 40 41 42 and 145 Where the question was whether proceedings in lunacy held under Act XXXV of 1858 are admissible in evidence in a subsequent suit to show that the Defendant was a lunatic at a particular time it was held that the orders and report made under the Act by the Judge before whom the lunacy proceedings were had were admissible in evidence. *Hill v Clifford* 1 L R (1907) 2 Ch 236 and *Harvey v King* 1 L R (1901) A C 601 referred to. *SRIJATI PADMARATI DASGI v BORO MALI SPAL* 24 C W N 378*

§ 14—

*Guardian of lunatic powers of—Lease unauthorized for more than five years if void or voidable—Avoiding a lease suit if must be brought for A lease for more than five years granted by the guardian of a lunatic without the authority of the Court as required by s 14 of the Lunacy Act is voidable and not void. It is not necessary that a suit should be brought to avoid the lease and when the plaintiff on becoming *sui juris* brought a suit for damages in respect of occupation of the land leased electing to treat the lease as a nullity. *Held* that there was sufficient avoidance of the lease. *TARINI KANTA BHATTACHARYEE v BHABANI NATH DEY SARKAR* (1912) 16 C W N 762*

LUNACY ACT (XXXV OF 1858)—*contd*s 14—*contd*

Sale by Manager with out obtaining order of Court—void—Pre-emption—compromise in suit for land—whether a sale—Transfer of Property Act 11 of 1902 s 54 One J D was judicially decreed in and his wife Musammat K. N. was appointed his Manager. On 19th January 1883 she sold part of her husband's estate to N. R. father of present defendant respondent M. P. without obtaining an order of the Court. The property sold was already in possession of N. R. as mortgagee and the mortgage money was part of the consideration for the sale. On 10th May 1883 Musammat K. N. was removed from the Managership and M. D. the brother of the lunatic was appointed in her place and N. R. was informed that the sale was invalid but nothing further was apparently done. In July 1890 there was a dispute in mutation proceedings in connection with the sale but mutation was granted mainly on account of the vendee's possession. On 3rd March 1909 the lunatic J. D. died and on 29th February 1912 his sons who had attained majority instituted a suit against the representatives of M. P. for the possession of the land sold by their mother on the ground that the sale was void and also for redemption on payment of P. 200. The defendants pleaded that the plaintiffs were governed by Muhammadan Law and that the mother was herself a sharer that the suit was barred by limitation and acquiescence that plaintiffs were estopped that they had gained a title by adverse possession and that plaintiffs had benefited by the purchase money. But before any evidence was recorded the suit was compromised the plaintiffs giving up all their claims on payment of Rs 500 and the suit was accordingly dismissed. In August 1913 a cousin of J. D. instituted the present suit for pre-emption on the basis that the compromise was a sale of the land. Held that under the provisions of s 14 of Act XXXV of 1858 the sale by Musammat P. N. was void and as such could not be ratified. Held also that by the compromise the sons of J. D. did not sell the land they merely abandoned in consideration of Rs 500 their rights to obtain a decision of the Court in a case which was genuinely contested and therefore no claim for pre-emption was competent. *Janki v. Gurja Dal* (1 L. R. 7 All 482 F. B.) *Gul Muhammad Khan v. Khan Ahmad Shah* (29 P. R. 1893) *Tikara Ram v. Dharam Chand* (45 P. R. 1895) *Ashana Tanhai v. Alta Shetti Patil* (1 L. R. 34 Bom. 139) *Rani Meera d. Kuwar v. Rani Hulas Kuwar* (L. R. 11 A. 157 166 P. O.) *Abdul Wahid Khan v. Shalaki Bibi* (1 L. R. 21 Calc. 496 P. C.) *Raj Bahadur v. Jagrup Pandey* (42 Indian Cases 37) *Mirza Muhammad Ali v. A. Qise* (9 O. C. 86) *Khurshaid Ali v. Rashid Hussain* (9 D. C. 331) *Laj Singh v. Harnam* (70 Indian Cases 351) *Miles v. New Zealand Alfred Estate Co* (32 Ch. D. 266 291) referred to also *Pollock and Mulla's Indian Contract Act 3rd Edition* p. 152. *MASIHUDDIN v. MATU RAM*
I L R 1 Lah 109

LUNACY ACT (IV OF 1912)

Procedure—Inqui-

sition as to person alleged to be a lunatic—Court not competent to delegate its judicial functions to an

LUNACY ACT (IV OF 1912)—*contd*

arbitrator or commissioner—Expert evidence. It is not competent to a Judge who has to conduct an inquisition under the Indian Lunacy Act 1912 into the state of mind of an alleged lunatic to abrogate his own judicial functions and appoint some person by way of an arbitrator or commissioner to make a report on the state of mind of the alleged lunatic. If a Judge in these or similar circumstances finds it necessary to have expert opinions as to him it is his duty to call such persons as may be able to give the evidence needed and examine them upon oath. *MUHAMMAD PANDI v. LACHMI PANDI*
I L R 43 All 459

ss 37 38 and 62—

See LUNACY

I L R 48 Calc 577

Before a District Court can institute inquisition under s 62 as to a person possessed of property it must be established not merely that such person is residing with its jurisdiction but also that he is not subject to the jurisdiction of the High Court mentioned in s 37 as the jurisdiction of the two Courts is not concurrent. *SRINATH ANILADALA CHODHURANI v. DHIRENDRA NATH CHOWDHURY*
I L R 48 Calc 577
25 O W N 178

s 56—Guardian of lunatic obtaining District Judge's permission to take out compensation money in deposit with Land Acquisition Judge—Later if may refuse to pay. Where the natural guardian of a lunatic in whose name a sum of money representing his share of compensation money paid by the Land Acquisition Collector was in deposit in the Court of the Land Acquisition Judge obtained an order from the District Judge under s 56 of Act IV of 1912 for payment to him of a portion thereof for the maintenance of the lunatic the Land Acquisition Judge had no jurisdiction to refuse the guardian's application for withdrawing the money. *SATYENDRA NATH DEY v. THE SECRETARY OF STATE FOR INDIA* (1916)
20 O W N 975

s 62 63—Relative in s 63 meaning of—Wife's brother if a relative—Inquisition proceedings if may be started on verified petition only without medical certificates. The brother of the wife is a relative within the meaning of cl 11 of s 63 of the Lunacy Act competent to apply to the Court for the initiation of proceedings for inquisition. A District Judge is competent to take action for inquisition on a verified petition unaccompanied by medical certificates which under the rules of the High Court must be filed in such proceedings in the Original Side of that Court. *MANI LAL SIL v. NEPAL CHANDRA PAL* (1917)
22 C W J 547

s 72—Lunatic—Appointment of guardian of person of lunatic—Wife of lunatic not necessarily excluded by s 72. s 72 of the Lunacy Act is a kind of warning that particular care should be exercised by the court where a person is entitled to inherit part of the property of a lunatic and is therefore benefited by his death to see that the appointment of such person as guardian of the person of the lunatic is a beneficial one. The section however does not absolutely pre-

LUNACY ACT (IV OF 1912)—contd

s 72—contd.

clude such an appointment and in some cases the appointment of for instance the wife of the lunatic may be the most suitable notwithstanding that she is one of the heirs *Fazal Rab v Khatun Bibi* I L R 15 All 29 distinguished *AMIR KAZIM v MUSI IMRAN* (1916),

I L R 99 All 158

Chap V—**Lunacy—Requisition as**

to mental condition of alleged lunatic—Procedure
An inquiry under Chap V of the Indian Lunacy Act once started must be prosecuted to the end. Before such an inquiry is ordered there ought to be a careful and thorough preliminary inquiry and the Judge ought to satisfy himself that there is a real ground for an inquiry. An application for an inquiry should ordinarily be supported by affidavit or by examination on oath of the applicant and by a medical certificate of some doctor as to the condition of the alleged lunatic. It would also be desirable in many cases that the Judge should seek some personal interview with the alleged lunatic with a view to satisfy himself that there is a real ground for supposing the existence of an abnormal mental condition which might bring the person within the Lunacy Act. *MUHAMMAD YAQUB v NAJIB AHMAD*

I L R 42 All 504

LUNATIC

See COSTS I L R 34 Bom 374

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 471

I L R 43 Bom 134

See DECREE I L R 44 Calc 627

See GUARDIAN AD LITEM

[14 C W N 258]

See LUNACY ACT

adoption by—

See LUNACY ACT (XXXV OF 1858)

I L R 40 Mad 660

Lunatic suit against—

Ex parte decrees against unrepresented lunatic—Ignorance of Court as to fact of lunacy—Jurisdiction of Court—Fraudulent purchase by de facto manager of lunatic—Rights of purchasers from such fraudulent purchaser One N was a lunatic not adjudged as such. During his lunacy a suit for rent was brought by the landlord for two plots of land belonging to the lunatic and two rent decrees were obtained ex parte against the lunatic who was not at all represented in the suit. The fact of the lunacy was not brought to the notice of the Court. At the auction sales in execution of the decrees the properties were purchased by a person who was the lunatic's de facto manager who again sold them to other persons who purchased with full knowledge of the lunacy. Held that as the lunatic or his estate was not represented in the rent suit the sales under the decrees of the Court therein obtained were nullities and the purchaser acquired no title by his purchase. The purchaser being besides a fraudulent purchaser who had acted deliberately in breach of his trust as de facto manager of the lunatic could not in any case be allowed to take advantage of the Court sales even if they

LUNATIC—contd

had been made with jurisdiction. As he had no title whatever the purchasers from him also acquired no title. *Pasik Lal Datta v Bidhumukh Dass*, I L R 33 Calc 1094 relied on *Khavraj Mal v Daim* I L R 32 Calc 296 315 doubted. *HAKIMULLA v NABIN CHANDRA BARUA* (1914)

18 C W N 1329

LURKING HOUSE TRESPASS

See PENAL CODE (ACT XLV OF 1860)

s 406 I L R 37 All 395

I L R 38 All 517

See PENAL CODE s 443 and 444

Theft—Penal Code (Act

XLV of 1860) ss 456 457 350—Trial for house trespass and theft under ss 457 350 Penal Code—Disbelief of story of theft—Finding of intention to make immoral proposals—Conviction under s 456 legality of—Prejudice—Criminal Procedure Code (Act V of 1898) s 238—Necessity of charging intention in cases under s 456—Intention how determined—Rule of construction of decided cases On a trial for offences under ss 457 and 380 of the Penal Code although the alleged intention to commit theft has failed the Court can under s 238 of the Criminal Procedure Code convict the accused of a minor offence under s 456 of the Penal Code if he has not been prejudiced thereby. Where on an allegation that the accused entered the room of a widow at night and committed theft he was tried summarily for offences under ss 457 and 380 and set up the defence of previous intrigue and entry with such intent at her invitation but the Court disbelieved the stories of theft and intrigue and found the entry to have been without her consent and in order to make immoral proposals to her annoyance. Held that that the conviction under s 456 of the Penal Code was legal and that the accused had not been prejudiced in the circumstances. *Jharu Sheikh v King Emperor* 16 O W N 696 distinguished. *Kailash Chandra Ghakrobarty v Queen Empress* I L R 16 Calc 657. *Balmaland Ram v Ghansamram* I L R 22 Calc 391. *Premarundo Shaha v Brindabun Chung* I L R 22 Calc 994. *Emperor v Ishri* I L R 29 All 46. *Sher Singh v Empress* (1883). *Punjab Rec 14 Loh Ram v Queen Empress* (1898). *Punjab Rec 12 Ranrang v King Emperor* (1902). *Punjab Rec 18 Queen Empress v Bolu* (1886). *Ratan unrep Cr C 293* approved. In determining the question of prejudice the nature of the case made at the trial the evidence given and the line of defence of the accused are matters to be taken into consideration. *Reg v Goindas Haridas* 11 Bom H O 96 referred to. To sustain a conviction under s 456 of the Penal Code it is not necessary to specify the criminal intention in the charge. It is sufficient if a guilty intention may be determined from direct evidence or from the conduct of the accused and the attendant circumstances of the case. *Balmaland Ram v Ghansamram* I L R 22 Calc 391. *Rex v Dixon* 3 All 481 referred to. Every judgment must be read as applicable to the particular facts proved or assumed to be proved. *Quinn v Leathem* (1901). *A O 495* followed. *KARALI PRASAD GURU v EMPEROR* (1910) I L R 44 Calc 358

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M

MACHINERY

hire of—

See HIRE PURCHASE AGREEMENT

I L P 44 Calc 72

Overhead to 1 of
Calcutta Corporation of machinery—Machinery
attached to land if can be taken to assess
assessing value of land—Local Municipal Act
(Beng III of 1884) s 6 (5) 101 (proviso) J
BEACHCROFT J. It cannot be properly said that
everything which is contained in a system comes
within the description of Machinery. It may be
because mechanical contrivances are employed in
the working of some parts of that system. The
test to be applied with reference to any parti-
cular parts of the system is whether it is essential
to or assists in the working of the mechanical
contrivance. The overhead tank of the Calcutta
Corporation is nothing more than a building for
the storage of water the water so stored being
used when the need arises to supplement the
amount of water pumped into the mains from
the underground reservoir. It forms part of the
system for supplying Calcutta with water and
is filled from the same pumps which pump the
supply of water into the mains. Held by the
majority (FLETCHER J dissenting) on the above
finding that the tank was not machinery
within the third proviso to s 101 of the Local
Municipal Act 1884 *Chamberlayne v Collins*
"O L T & S 21, *Re Mulley and Finn* (1891)
W N 64 Kirby v Hindustan Union Association
Committee [1906] A C 43 and *Messrs Dock*
and Harbour Board v Assessment Committee of
the Birkhead Union [1901] A C 176 referred
to COSSIGOR CHITPORA MUNICIPALITY v THE
CORPORATION OF CALCUTTA (1919)

I L R 46 Calc 910

MADRAS ABKARI ACT (MAD ACT I OF 1886)

s 56 64—Offence under section 56
not by license but by his d pot writer—Conviction
legality of ss 56 and 64 of the Abkari Act
(Madras Act I of 1886) should be read together and
not only the licensee but also the actual offender is
liable to prosecution for offences under s 56 of the
Act. *Re Sudalamuthu I Veer v Cr R 617*
followed *Re MUTHAYYA* (1915)

I L R 39 Mad 895

MADRAS ACTS

1859—XXIV

See MADRAS DISTRICT POLICE ACT

1863—X

See MADRAS RELIGIOUS ENDOWMENTS
ACT

1864—II

See MADRAS REVENUE RECOVERY ACT

1865—VII

See MADRAS IRRIGATION CESS ACT

See MADRAS WATER CESS ACT

1877

1877

1877

XXI

See MADRAS DISTRICT POLICE ACT

1881—II

See MADRAS DISTRICT POLICE ACT

V

See MADRAS LOCAL POLICE ACT

1884—I

See MADRAS DISTRICT POLICE ACT

1884—L

See MADRAS COMPENSATION FOR TENANTS
IMPROVEMENTS ACT

1888—III

See MADRAS CITY POLICE ACT

1889—L

See MADRAS VILLAGE CEMENTS ACT

1889—III

See MADRAS TOWNS NUISANCE ACT

1891—I

See MADRAS GENERAL CLAUSES ACT

1891—II

See MADRAS PROPRIETARY
VILLAGE SERVICE ACT

1895—III

See (MADRAS) HEREDITARY
OFFICES ACT

1896—IV

See MADRAS MARRIAGE ACT

1897—IV

See MADRAS SURVEY AND BOUNDARIES
ACT

1900—I

See MADRAS COMPENSATION FOR TENANTS
IMPROVEMENTS ACT (MADRAS)See MADRAS TENANTS IMPROVEMENTS
ACT

1900—V

See IRRIGATION CESS AMENDMENT ACT

1902—I

See MADRAS COURT OF WARDS ACT

1903—I

See MADRAS PLANTERS LABOUR

MADRAS ACTS—cont'd

1904—III

See MADRAS CITY MUNICIPALITY ACT

1905—II

See MADRAS PORT TRUST ACT

1905—III

See MADRAS LAND ENCROACHMENT ACT

1907—I

See MADRAS MOTOR VEHICLES ACT

1908—I

See MADRAS ESTATES LAND ACT

1914—I

See HINDU TRANSFERS AND BEQUESTS ACT MADRAS**MADRAS CITY MUNICIPAL ACT (MAD III OF 1904)**

s 120—Exercising a trade that amounts to—Where a person has a servant at A who purchases piece goods there and forwards them to B where they are sold and the profits are earned such person exercises his trade within the meaning of s 120 of the Madras City Municipal Act at B and not at A. There may be kinds of business in which the buying of goods is the most important part of the business and in such cases it cannot be said that the profits are earned elsewhere. *HAJEE SHAH MEERA ROWTHER v THE PRESIDENT OF THE CORPORATION OF MADRAS* (1909) I L R 53 Mad. 82

ss 121 125 172 and 177—Right of appeal—Scope of revision assessment finally of order of when no objection made within 15 days. Petitioner's name appeared in the classification made under s 121 Madras City Municipal Act of 1904 and he was served with a notice to pay profession tax under s 125 of the Act. He did not pay the tax nor did he apply for revision within fifteen days of the notice. *Held* that under s 177 the assessment was final and that no appeal lay. Profession tax is a matter within the scope of s 172. The first clause of s 172 of the Act of 1904 is wider than the corresponding clause of s 190 of Act I of 1884. s 172 of the Act of 1904 must be construed to mean that all complaints against any tax or toll leviable under Part IV and all applications for revision in respect of any such tax or toll are cognisable by the President and two Commissioners. It should not be read so as to limit the complaints and the applications for revision as to the question of classification. *Muthuswamy Ayyar J in Daries v President of the Madras Municipal Commission* I L R 14 Mad 140 141 not followed. *Municipal Council of Cocanada v The Standard Life Assurance Company* I L R 74 Mad 205 distinguished. *VEERABHADRAN v THE PRESIDENT OF THE CORPORATION OF MADRAS* (1910)

I L R 31 Mad. 130

s 150—Kept meaning of—A vehicle under repair is one kept and taxable. Even a vehicle that is under repair and therefore unfit for immediate use is a vehicle kept within the meaning of s 150 (1) of the Madras City Municipal Act (III of 1904) and so becomes liable to be taxed under that section. The word kept is not qualified by the words for hire. It is not necessary that the owner should have possession

MADRAS CITY MUNICIPAL ACT (MAD III OF 1904)—cont'd

s 150—cont'd

of the vehicle in order to make it taxable. *KRISHNA POW v MADRAS MUNICIPAL CORPORATION* (1916) I L R 40 Mad. 545

s 172 177—

See S 121

I L R 34 Mad 130

ss 262 and 420—*Re-construction of pandal whether within the section*. The re-construction of an old pandal with inflammable materials without the written permission of the President of the Corporation is prohibited by s 262 and is an offence punishable under s 420 of the Madras City Municipal Act (III of 1904). s 262 of the Madras City Municipal Act (III of 1904) was intended to reproduce s 264 of the Madras City Municipal Act (I of 1884). *CORPORATION OF MADRAS v VAPADACHARI* (1918)

I L R 42 Mad. 7

s 287—Final meaning of in s 287 (3)—Standing Committee whether special tribunal or independent body—New additions to building—Whether mandamus or injunction appropriate—Remedy to remove them. The plaintiff as the owner of house and premises No 36 in Sargama Chetty Street in the City of Madras obtained permission from the Municipality of Madras City to execute certain repairs therein. The President being of opinion that under cover of the permission granted she had made considerable additions and alterations made a provisional order under s 287 cl (1) of the Madras City Municipal Act (III of 1904) directing their removal and subsequently confirmed that order under cl (2) of s 287. Any appeal by the plaintiff to the Standing Committee having proved ineffectual she filed a suit in the City Civil Court for the issue of a perpetual injunction restraining the Corporation from enforcing the alleged addition. *Held* that when a right and an infringement thereof are alleged a cause of action is disclosed and unless there is a bar to the entertainment of a suit the ordinary Civil Court are bound to entertain the claim and that a suit for injunction will therefore lie. *Held* further that the Standing Committee cannot be held to be an independent body or a special tribunal authorized to settle finally disputes as between the tax payers or house owners and the Corporation of which they are the members. Instance of Special Tribunal pointed out. *Elas Sankar v The Municipal Corporation of Bombay* I L R 31 Bom 604 referred to. *Held* also that the word "Final" in s 287 refers to proceedings before the Corporation and is intended to bar an appeal from the Standing Committee to the general body of Commissioners but not to shut out the jurisdiction of the courts. The suit was properly brought against the President as he was acting on behalf of the Corporation. *Bhaskaran Choudhury v Corporation of Calcutta* I L R 36 Cal 61 distinguished. *VALLI ANNAL v THE CORPORATION OF MADRAS* (1912) I L R 33 Mad 41

s 366—Order by Health Officer to remove is patient to isolation hospital—Removal to old house—Disobedience of order—Charge under s 269 Indian Penal Code whether sustainable—Duty of prosecution—Essentials of offence—Illegality and unlawfulness distinction between. A person who was directed by the Health Officer acting under s 366 of the Madras City Municipal

MADRAS CITY MUNICIPAL ACT (MAD III OF 1901)—*con tid*

s. 366—*contd*

Act to remove his son to an isolation hospital removed him to an isolated house *Held* that he was not guilty of an offence under s. 260 Indian Penal Code. Although under s. 366 cl (3) of the Madras City Municipal Act a person disobeying an order under the section is to be deemed to have committed an offence under s. 260 Indian Penal Code the prosecution must prove not only that there has been disobedience to the order but also that he had unlawfully or negligently done an act which he knew or had reason to believe would spread infectious disease *Celestine v Matthews (1887) 1 L R 21 Cal.* 491 referred to *KAVIA SWAMY MUDALIAR v KING EMPEROR (1906)*
I L R 43 Mad 344

s. 403 (Etc Laws under)—

bye law 169—*Export of sale of wholesome drink (aerated water)—Food in by law not covered by drink* The word food in bye law 169 framed under the Madras City Municipal Act (III of 1901) which prohibits the carrying or keeping for sale any article intended for human food which is unwholesome or unfit for human consumption does not include drinks such as aerated water *The Crown Prosecutor v CHANDAPATHI IYER (1914)*
I L R 39 Mad. 362

s. 413 (Rule made by)—*Presidency Magistrate holding an inquiry under rules framed under vol a Court under Charter Act (1852) s. 104 s. 104 s. 15—Jurisdiction—The Indian High Courts Act (1861) s. 104 s. 104 s. 15* The High Court has no jurisdiction to review an order passed by a Presidency Magistrate in an inquiry held by virtue of the rules framed by Government under the Madras City Municipal Act (III of 1901) whereby a Magistrate may decide as to the competency or otherwise of a card date for a municipal election. The Magistrate is not a Court subject to the appellate jurisdiction of the High Court within the meaning of that word in s. 15 of the Charter Act (24 & 25 Vict c 104) He is in the position of a referee between the President of the Municipal Corporation and the candidate *VJJI RAGHAYLU PILLAI v THEAGORAYA CHETTI (1914)*
I L R 38 Mad 581

s. 420—

See s. 202

I L R 42 Mad 7

MADRAS CITY POLICE ACT (III OF 1888)

s. 75—

1—*Place of public resort—Madras harbour is a place of public resort—Disorderly behaviour in harbour gives rise of an offence under s. 75—Public place meaning of—Right of public to go if necessary—Madras Port Trust Act (II of 1905) bye law 99 meaning of* The Madras harbour is a place of public resort within the terms of s. 75 of the Madras City Police Act. Though the bye laws passed under the Port Trust Act provide for the prosecution of trespassers of persons who enter the harbour premises without having business there or with the ships lying in the harbour yet the bye laws were not intended to exclude respectable members of the public who have been freely allowed to enter the harbour premises. A legal right of access by the public is not necessary to constitute a public place. A public place is one where the public go no matter

MADRAS CITY POLICE ACT (III OF 1888)

—*contd*s. 75—*contd*

whether they have a right to go or not *The Queen v Willard 14 Q B D 63* followed *Kiston v Ayle (1859) 1 Q J 145* referred to *THE CROWN PROSECUTOR v GOVINDARAJULU (1915)*
I L R 39 Mad 886

—*Arack shop is a place of public resort within the section—The public have a right under the terms of the license granted to arack shopkeepers to sit out on such shops and such shops are places of public resort within the meaning of s. 75 of the Madras City Police Act III of 1888* *THE CROWN PROSECUTOR v MOONOO SANY (1906)*
I L R 33 Mad 83

s. 76—*Effect of condition of license by servants of license holder—Corruption not only of the holder but of servants also prohibited by Under s. 76 of the Madras City Police Act only a licensee under the Act is liable to punishment for a breach of the conditions of the license whether committed by himself or his servants. But the section does not contemplate proceedings against the servant or agent of the licensee* *MASTANA SITALI v KING EMPEROR (1910)*
I L R 43 Mad 438

MADRAS CIVIL COURTS ACT (III OF 1873)

—s. 12, 13—*Court Fees Act (III of 1873) s. 7 (12)—Suits Valuation Act (III of 1887)—Suits to redeem—Suits in subordinate Court—Valuation for purposes of jurisdiction and court fees same—Court fees payable only on principal debt secured by the suit—Lien on order of subordinate Court to pay court fees on appeal—No jurisdiction to the High Court but to the District Court in a suit for redemption of a mortgage instituted in the subordinate Judge's Court the amount of the principal of the debt was Rs 380 and odd the plaintiffs paid court fees on that amount but the subordinate Judge erroneously ordered the plaintiffs to pay court fees on the total amount payable on redemption Rs 7018 and odd and the plaintiffs paid the deficient court fees. The subordinate Judge passed a decree in the suit in favour of the plaintiffs. The defendants preferred an appeal to the High Court. The respondents objected that the appeal did not lie to the High Court but to the District Court. *Held* that the amount of the principal debt must be taken as determining the jurisdiction under the Civil Courts Act and consequently that the suit lay in the Subordinate Judge's Court and that the appeal lay to the District Court and not to the High Court. The authority of the Full Bench decision in *Zamir v Collector of Madras 1 L R 3 Mad 284* is unaffected by the Suits Valuation Act (III of 1887). The order of the subordinate Judge and the court fees on the total amount payable on redemption cannot deprive the District Court of jurisdiction to hear the appeal and confer it on the High Court. *Fauzdar v Madhava 1 L R 16 Mad 326* followed *Jayappa Muttan v Chandra Mohan Parryer 1 L R of Cal 954* distinguished *Jayappa Muttan v Chandra Mohan Parryer (1910)*
I L R 39 Mad 447*

s. 12—

See APPEAL

I L R 40 Mad. 4

MADRAS CIVIL COURTS ACT (III OF 1873)

—contd

s 14—

See COURT FEES ACT 1870 s 7

I L R 39 Mad 873

See JURISDICTION I L R 38 Mad 795

Court Fees Act (VII of 1887) s 7, (v) and (vi)—Suit for pre-emption—Valuation of suit for purposes of jurisdiction—Suit originally filed in District Munsif's Court—Return of plaint as beyond its jurisdiction—Presentation of plaint in a Subordinate Judge's Court—Plaint again returned by latter Court—Appeal to District Court against order of District Munsif whether competent—Election of remedies—Civil Procedure Code O XLV r 1 The plaintiff instituted the suit in a District Munsif's Court to enforce his right of pre-emption in respect of the suit lands which had been mortgaged to him on 10th for Rs 3 190 and were sold to some of the defendants for Rs 4 500. The District Munsif returned the plaint for presentation to the proper Court holding that the suit was beyond his pecuniary jurisdiction. On the plaint being presented in a Subordinate Judge's Court it was returned again by that Court which held that the former Court had jurisdiction. The plaintiff thereupon preferred an appeal to the District Court against the order of the District Munsif. The defendants raised a preliminary objection that the appeal was incompetent and also contended that the District Munsif had no jurisdiction to entertain the suit. *Held* that the appeal to the District Court was maintainable although the plaintiff had filed the plaint in the Subordinate Judge's Court in pursuance of the order of the District Munsif. *Held* also that the proper valuation of a suit for pre-emption is for purposes of jurisdiction in accordance with s 14 of the Madras Civil Courts Act that fixed in the manner provided by the Court Fees Act s 7 (b) and that so valued the present suit was within the jurisdiction of the District Munsif's Court. **NARAYANAN NAIR v CHELIA KATHIRI KUTTY (1918)**

I L R 41 Mad 721

s 16—

See LIMITATION ACT 1877 SCH II ART 35

I L R 34 Mad 399

See MAPPELLAS OF NORTH MALABAR

I L R 38 Mad 1052

Marriage—Hindu Law—Validity of marriage of Hindu with Christian women converted to Hindu religion—Such marriage valid if recognised by the usage of the particular caste though opposed to orthodox Hindu tenets—Suit abatement of—Suit by reversioner for declaration on behalf of all reversioners does not abate on death of plaintiff A marriage contracted according to Hindu rites by a Hindu with a Christian woman who before marriage is converted to Hinduism is valid when such marriages are common among and recognised as valid by the custom of the caste to which the man belongs although such marriage may not be in strict accordance with the orthodox Hindu religion. Under the Hindu system of Law clear proof of usage will outweigh the written text of the Law. Under s 16 of Madras Act III of 1873 any proved custom concerning marriage must be upheld. Apart from custom such a marriage between parties who do not belong to the twice born classes is valid under Hindu Law. It is only

MADRAS CIVIL COURTS ACT (III OF 1873)

—contd

s 16—contd

persons who belong to the twice born classes that are enjoined to marry in their own class. All other persons must be treated as Sudras and marriages between members of different classes of Sudras are valid. Where a caste accepts a marriage as valid and treats the parties thereto as members of the caste the Court will not declare such a marriage null and void. A declaratory suit by a reversioner brought not only on his own behalf but on behalf of the body of reversioners does not abate on the death of the plaintiff. **MUTHUSAMI MUDALIAR v MASILAMANI (1909)**

I L R 33 Mad 342

s 17—Original suit tried partly by a District Munsif—Subsequent appointment as Subordinate Judge—Decree passed by successor in the Munsif's Court—Appeal from the decree—Competency of the Subordinate Judge to hear the appeal—Disqualification under the common law and a statutory law nature of—Objection when to be taken—Waiver—Mere bias or prejudice ground of disqualification, when—Appropriate remedy Where a District Munsif tried an original suit in part and was promoted to be a Subordinate Judge and his successor in office as a District Munsif completed the trial of the suit and passed a decree therein and an appeal preferred against the decree was heard and disposed of without objection by the Subordinate Judge who had tried the original suit in part. *Held* that the disposal of the appeal by the Subordinate Judge was not legally invalid and ought not to be set aside by the Appellate Court. S 17 of the Madras Civil Courts Act introduces a statutory disqualification as regards District and Subordinate Judges but is confined to the case where the appeal to be heard in the Appellate Court is against the decree or order passed by the District or Subordinate Judge himself in another capacity. S 17 of the Madras Civil Courts Act does not make any distinction between the Judge being a nominal party or a really interested party. The interest which disqualifies a Judge must be pecuniary interest or one which involves some individual right or privilege or it must be an interest arising out of the near relationship of the Judge to a party to the cause. Mere bias or prejudice on the part of a Judge does not disqualify him in the absence of a statutory provision. Even as regards relationship to a party to the cause a Judge was not under the common law disqualified by such relationship and it is only by statute law that such a disqualification could be imposed on a Judge. Under the common law there is no disqualification imposed on a Judge to sit in his own Court in review of his own decision (it is so under the statute law also) or even to review it on appeal in the Appellate Court if he become an Appellate Judge having appellate jurisdiction over the tribunal in which he decided the cause as Original Judge. Where there is no statutory or common law disqualification in the Judge of the Court below an Appellate Court should not set aside the judgment of the Lower Court on the mere ground that it might have been swayed by bias or prejudice. Even in such a case unless objection was taken before the Judge of the Lower Court itself at or during the trial of the cause to his hearing the suit or appeal the Appellate Court should not interfere except in a strong or clear case of failure of justice in the Lower Court through bias or

MADRAS CIVIL COURTS ACT (III OF 1873)—
—*concl'd***s 17—*concl'd***

prejudice. The appropriate remedy in such cases was for the party to have applied to the proper superior Court to have the case transferred to another Court. **VENKATAPATHI NAYANIPUR v MAHOMED SAHIB (1913) 1 L R 38 Mad 571**

MADRAS COURT OF WARDS ACT (MAD I OF 1902)**s 35—**

See **HINDU LAW—REVERSIONERS**

1 L R 40 Mad 871

ss 41 37—Non notification of pecuniary claims as required by s 37 effect of—Cessation of interest whether final—postponement of payment of notified claims to notified claimant after cessation of Court of Wards management. The direction contained in s 41 of the Madras Court of Wards Act (II of 1902) to postpone payment of pecuniary claims against a ward of the Court which are not notified to claims notified to the Collector as required by s 37 of the Act applies only to the Court of Wards and not to others authorised to execute decrees under the Civil Procedure Code and that to others in respect of unsecured claims and the direction is not operative after the ward's estate ceases to be under the Court of Wards. Hence a mortgage decree against a person which the decree holder failed to notify to the Collector while the person was under the Court of Wards is executable in Civil Courts without any liability to postponement to notified claims after the Court of Wards management ceases. But non notification of existence of the claim as required by s 37 entails a final cessation of interest from six months after the notification prescribed in s 37 of the Act except in the event specified in s 37 (f). **Depuru Kalappa Peddy v Umada Rajah 1 Mad W 75** considered. **PUNGA ROW v RAJAH OF KARVETTAH (1917) 1 L R 41 Mad 503**

s 49—(1)—Notice of suit—Suit for money is a suit relating to property of a ward. A suit for money is a suit relating to the property of a ward within the meaning of sub s (f) of s 49 of Madras Act I of 1902 (Madras Court of Wards Act) and requires a notice of suit under that section. A mere demand for payment is not a notice of suit. **VENKATACHALAPATHY v SRI RAJAH D S v SIVA RAO NAIDU BAHADUR (1912) 1 L R 37 Mad 283**

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)

See **MUNICIPAL COUNCIL**

1 L R 38 Mad 6

s 10—

See **RIGHT OF STREET**

1 L R 36 Mad 120

s 53—Shipping Company—Ships calling at ports to load and unload goods—Calling at Cocanada for loading goods—Agent at Madras—Sub Agent at Cocanada—Contracts with shippers entered into only by agent at Madras—Company whether trading or carrying on business at Cocanada—Company whether liable to be taxed in Cocanada. Where a shipping company which earned profits by carriage of goods by sea and in the course of its business called at several ports in various parts of the world was in the habit of loading and un-

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*concl'd***s 53—*concl'd***

loading goods at Cocanada and it appeared that the Company had its principal Agent at Madras who employed a Sub Agent at Cocanada but that all contracts with shippers could be and were entered into only by the Agent at Madras and the Company was assessed by the Municipality of Cocanada to pay tax under s 53 of the District Municipalities Act (IV of 1884) for exercising its trade and carrying on business in Cocanada. Held that the Company was not exercising any trade or carrying on business in Cocanada so as to be liable to be taxed under s 53 of the Madras District Municipalities Act because the freight earning contracts with the shippers were not entered into at the port of Cocanada. **Granger v Gough [1896] A C 325** and **Lovell and Christmas Limited v Commissioner of Taxes [1908] A C 46** followed. **MUNICIPAL COUNCIL OF COCANADA v THE CLAN LINE STEAMER LIMITED (1918) 1 L R 42 Mad 455**

ss 53 and 60—Holds office meaning of M a District and Sessions Judge whose usual place of business was within the Municipality of C resided for sixty days within the Municipality of K during the annual recess and during that period did some administrative but no judicial work. Held (a) that M held his office during that period within the Municipality of K within the meaning of s 53 of the District Municipalities Act (IV of 1884) and (b) that a payment by him of profession tax for the half year covering the sixty days to the Municipality of K was a lawful payment which would exempt him under s 60 of the Act from liability to pay the tax again for the same half year to the Municipality of C. **Chairman Ongole Municipality v Moinsay 1 L R 17 Mad 403** distinguished. **MOORELY v THE MUNICIPAL COUNCIL OF CUDDALORE (1914) 1 L R 38 Mad 879**

ss 72 and 73—Theatre unfit for use and unused owing to removal of part of roofing—Exemption from tax. A building cannot be held to be completely demolished or destroyed within section 3 (c) of the Madras District Municipalities Act (IV of 1884) so as to be completely exempt from liability to tax simply because part of its roof is removed for the purpose of effecting repairs and the building is thus rendered unfit for use. As a building actually unused it is liable for half the usual tax under section 72 of the Act. **MUNICIPAL COUNCIL OF TANJORE v KRISHNA PILLAI (1921) 1 L R 44 Mad 354**

s 103—

See **MORTGAGE 1 L R 38 Mad 18**

s 168—

See **MUNICIPAL COUNCIL**

1 L R 38 Mad 6

Adverse possession against Municipality—Lawful encroachment meaning of—Right of Municipality to remove encroachments etc after title barred—Limitation Act (XV of 1877)—Limitation Amendment Act (VI of 1900). Adverse possession by a person for twelve years before the Limitation Amendment Act of 1900 came into force of some portion of a street vested in a Municipality is sufficient to give the person a clear title as against the Municipality.

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd*

— s 163—*contd*

Under s 168 of the District Municipalities Act the Municipal Council is not entitled to remove the projections and encroachments made by a person who has acquired full title to them and to the site on which the encroachments stand by adverse possession for the statutory period. *Basmeswara Swami v Bellary Municipal Council* I L R 38 Mad 111 = c 23 Mad I J 478 distinguished. *CHAIRMAN MUNICIPAL COUNCIL SRIRANGAM, v SUBBA PANDIT IAP* (1913) I L R 38 Mad 456

— ss 172 and 173—

See TORTS I L R 41 Mad 538

— ss 188 cl (5) and 189—*Application for license to boil paddy—Refusal of license more than thirty days after application—Boiling paddy subsequent to refusal—Charge under s 189 of the Act—Conviction if legal* Where a petitioner applied to the Chairman of a municipality for the continuance of a license for boiling paddy at a certain place during the next financial year but the license was refused more than thirty days after the receipt of the application by the Chairman and the applicant used the place for boiling paddy notwithstanding the refusal. *Held* that the petitioner was not guilty of an offence under s 189 of the District Municipalities Act as the place in question should be held to be duly licensed for the financial year for which the license was sought under s 188 cl (5) of the Act. *RE VENKATASUBBAYIA* (1916) I L R 40 Mad 589

— s 191—*No right to farm slaughtering fees—Contract of farming such fees void and unenforceable—Contract Act ss 11 and 23—Powers of Corporations to contract* Farming out by a municipality of its right to collect fees on the slaughter of animals which the municipality is entitled to levy under s 191 of Madras District Municipalities Act (IV of 1884) is unauthorized and *ultra vires*. A contract of lease which has the effect of farming out such a right is void and unenforceable under ss 11 and 23 of the Contract Act (V of 1882) as being beyond the competency of the Municipal Corporation to enter into and therefore prohibited. *Held* that any amount due to the municipality under such a contract cannot be recovered. *Decision of WALLIS J. in Corporation of Madras v Muthan Sani* (C S No 244 of 1907) 21 Mad L J 788 and *Murudamilli Illam v Pargassam Moopan* I L R 21 Mad 401 applied. *Malabury's Laws of England Vol VIII article 80: Corporations Title referred to Abdulla v Mammod* I L R 26 Mad 156 distinguished. *PER CHAMBERLAIN*. The right of farming out is not necessary to the exercise of the right of levying such fees may be naturally and easily collected by Municipal subordinates. The fact that the Corporation has power to farm out tolls negatives an implied power to farm out other kinds of fees. The fact that the Municipal Act in Code contains provisions for the farming out of slaughtering fees and other taxes less tolls is no guide to the interpretation of the Act in this respect. *Q* are Whether s 11 of the Contract Act is not exhaustive and does not deal with the competency of a corporation to contract? *MUNICIPAL COUNCIL KUMBHAKONAM v ABRAHAM SATHI* (1913) I L R 38 Mad 113

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd*

— ss 207 and 246 A—*Non-compliance with notice to provide latrines in houses—Duty of Municipality to call upon owners to provide movable receptacles or itself construct latrines before prosecution whether any* It is not obligatory on a Municipality under the Madras District Municipalities Act (IV of 1884) either to call upon a house owner to provide movable receptacles under s 217 of the Act or to construct a latrine itself before prosecuting the house owner under s 261 A for non-compliance with a notice to construct a latrine. An owner cannot be convicted of not providing a latrine in the backyard of his house when there is no backward to his house. *THE PUBLIC PROSECUTOR v NARAYANA REDDI AND OTHERS* (1918) I L R 42 Mad 57

— ss 207 264 (a) 278—*Erection of a latrine by a house owner—Nuisance to neighbours—Nuisance avoidable—Injunction—Damages whether sole remedy* The fact that a municipality governed by the Madras District Municipalities Act which is empowered to see that house owners provide latrines in their houses ordered the erection of a latrine in a certain house does not enable the house owner to erect a latrine at a place where it would be a nuisance to his neighbour. If he could erect it at any other place where it would not be a nuisance he can be restrained by an injunction to abate the nuisance. Award of damages as provided for by s 278 of the Act is not the only remedy. *RAMA IYER v MARTIA SEQUEIRA* (1919) I L R 42 Mad 706

— ss 216 to 221—*Duty of Municipality to carry night soil from houses to Municipal depots—No rights in the municipality to levy fees from house owners* A Municipality constituted under the Madras District Municipalities Act (V of 1884) has no power to levy fees from owners or occupiers of houses and buildings within the Municipality for carrying night soil and other offensive matter accumulating on their premises from inside those premises to the municipal depots wherever situated such duty being cast on the Municipality by the Act. *SOUTH INDIAN RAILWAY v MUNICIPAL COUNCIL TRICHINOPOLY* (1920) I L R 43 Mad 805

— s 279—

See RIGHT OF SUE

I L R 30 Mad 373

— s 287—*Held* that the word final in s 287 refers to proceedings before the Corporation and is intended to bar an appeal from the Standing Committee to the Commissioners but not to shut out the jurisdiction of the Courts. *VALLE ARNAL v THE CORPORATION OF MADRAS* I L R 38 Mad 41

MADRAS DISTRICT POLICE ACT (XIV OF 1879)

See UNSETTLED PALATAM

I L R 41 Mad 749

— s 40—*Threatening of—Demand by a police constable of money or customary payment in which an offence under the section* A demand by a police constable of a maulm customary payment made to obtain his favour is a threat within s 48 of the Police Act (XIV of 1879) and obtaining money by such a threat is an offence under the section. *TAK KINO EN ENOR v I L RAGH* (1917) I L R 41 Mad 485

MADRAS ESTATE LAND ACT (I OF 1908)**See LAND TENURE IN MADRAS**

Tender of patta not necessary to recover rent though accrued due prior to the Act—Limitation when begins to run in respect of claim for rent In a suit for recovery of rent time runs from the time the rent became due according to the terms of the tenancy. *Asachalam Chettiar v. Kadir Parthan* 1 L P 23 Mad 556 applied *Chinnampalam Pannampalackar v. Lakshmi Doss* 1 L J 27 Mad 241 and *Parappanappa Iyer v. Bolba Sriramulu* 1 L R 9 Mad 113 referred to. **Tender of patta is not a condition precedent to the maintainability of a suit under the Estates Land Act for the recovery of arrears of rent** though such rent may have accrued due before the Act came into force. *Perabhadra Raja v. Annamalai* 27 Mad L J 451 followed. **Even under the Rent Recovery Act (VIII of 1865) the tender of patta was not necessary to complete the landlord's right to rent but was only a condition to be fulfilled if legal proceedings had to be instituted for the enforcement of the landlord's rights. *Appa Rao v. Raimam* 1 L R 13 Mad 249 followed. *Venkata Varaswami Naidu v. Sellaiah* 9 Mad L T 231 and *Jarammal Jitmal v. Muktabai* 1 L P 14 Bom 516 distinguished. *Gopalaswamy Mudali v. Muttiah Gopalier* 7 Mad L C 312 referred to. **KAJITHAMATHA v. METTARAJU** (1912) 1 L P 37 Mad 540**

Lessee who term has expired whether a landlord under the Act—No power to distrain holding after expiry of lease The provisions of the Madras Estates Land Act (I of 1903) do not empower a person who was a lessee of an estate to take proceedings after the expiry of his lease to sell the tenant's holding for arrears of rent due for a falli covered by the period of his lease. *Forbes v. Maharaja Bahadur Singh* 1 L R 41 Cal 976 referred to. **PER SEVENGER J.**—his only remedy is to sue the tenant on his contract for rent. **PER SE JAGIS AYYAR J.**—(i) A person to whom arrears are due is a landlord notwithstanding the fact that his estate has terminated. (ii) The law does not give him a first charge on the holding or the crops thereon. (iii) He can distrain the moveable property or the trees in the holding of the defaulter. (iv) He is not entitled to attach the holding. **SUNDARAM AYYAR v. KULATHU AYYAR** (1915) 1 L R 39 Mad 1018

Arrears of rent—Transfer of interest in the estate—Suit for recovery of arrears—Revenue or Civil Court—Jurisdiction The Revenue Court alone has jurisdiction to try a suit for arrears of rent which accrued due to a landlord under the Madras Estates Land Act even though before the date of the filing of the suit plaintiff's interest in the estate had been transferred. *Forbes v. Maharaja Bahadur Singh* (1914) 1 L R 41 Cal 976 (P.C.) distinguished. **PER SADASIVA AYYAR J.**—Even a bare assignee of the arrears of rent from the owner of an estate or a part thereof is a landlord within the meaning of the Act for the purpose of pursuing the remedies of a landlord under the Act. **VENKATA LAKSHMANA CARL v. ANURUPPI** (1911) 1 L R 44 Mad 1143

Appellant obtained from respondent a lease of certain lands for 3 years at an annual rent—The latter shewed that the

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parties anticipated cultivation of the land and there was no clause forbidding sub letting. It was further stipulated that at the conclusion of the term the lands were to be dealt with according to the pleasure of the Estate authorities without obtaining any release from the lessees. After obtaining the lease the Appellants did not cultivate the lands themselves but sub leased them to cultivating tenants. On the termination of the lease the Appellants were served with a notice to quit. The Appellants contending that inasmuch as they were cultivating the lands as *rayats* when the Madras Estates Act of 1908 came into operation the contract of tenancy was entirely superseded by that statute in a suit against the Respondents for determination of a fair and equitable rent for the holding leased to them and for a decree directing the Respondents to grant to them a patta in proper terms. **Held** that the object of the Madras Estates Act 1908 was to improve the condition and confer new rights and privileges especially upon the occupying cultivators of *rayati* lands and it would be quite opposed to its policy to confer on middlemen who sub let to occupying and cultivating tenants rights and privileges at all resembling those conferred on occupying cultivators and indeed would result in depriving the latter class of the benefits intended to be conferred upon them. The words *adar* and *farmer* of rent in sub s 1 s 6 are not synonymous. They denote two classes of persons. If *adars* and *farmers* of rent are *rayats* at all they are as appears from s 40 non occupying *rayats* and cannot be converted into *rayats* with a permanent right of occupancy. **SIRISETTI BUCHAYYA v. SRI PAVAN PARTHA SARATHI APPA ROW** 26 W N 785

s 3 cl (2) (c) (d) & 5—Landholder—Grantee of a portion of meliaram in an estate a landlord—Cultivating tenant under the grantee a ryot An alienee of a part of the meliaram due from the lands which form a part of an estate's *ryoti* lands is a landlord within the meaning of s 3 cl v of the Madras Estates Land Act (I of 1903) though what he thus owns may not be an estate under the Act and the tenant holding *ryoti* land under him for purposes of agriculture is a *ryot* under the Act hence a suit to eject such a tenant can be brought only in a Revenue Court and Civil Courts have no jurisdiction. *Brundaranachandra Horisachandra Raja v. Ramayya* 26 Mad L J 600 followed. **VENKATMA v. SRI PAJA PATA ROW** (1914) 1 L R 38 Mad 1155

s 3 cl (2) (d) s 8 except—Grant of village as *iram*—Village composed of cultivated lands and waste lands—Grant of meliaram—Tenant of waste lands without occupancy right—Village an estate—Surrender by tenant—No acquisition of *kidiaram* by *namdar*—Suit in *reimment*—Jurisdiction of Civil Courts A village granted as an *iram* in A.D. 1742 was comprised at the time of the grant partly of lands under cultivation and partly of waste lands. The waste lands were subsequently given by the *namdar* for cultivation from time to time to different sets of tenants without occupancy right. The *namdar* brought the present suit in the Civil Court to eject the tenant whose period of tenancy had expired prior to the suit. The defendant contended that the Civil Court had no jurisdiction to entertain the suit

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Held that the village as a whole must be considered to be an estate within the definition of s 3 cl (2) (v) of the Estates Land Act. Surrender by a tenant is not one of the modes in which the kudivaram right can be acquired by an inamdar within the terms of the exception to s 8 of the Estates Land Act. An inamdar cannot acquire the kudivaram right by surrender from a tenant who had himself no occupancy right in the holding. Held consequently that the Civil Court had no jurisdiction to entertain the suit. *VENKATA SASTIPULU v SITARANUDU* (1914)

I L R 38 Mad 801

The provisions of the Madras Estates Land Act 1908 do not empower a person who was a lessee of an estate to take proceedings after the expiry of his lease to set the tenant's holding for arrears of rent due for a fall covered by the period of his lease. *SUNDARAM AYYAR v KULATHU AYYAR*

I L R 40 Mad 1018

s 3 (2) (c) and 8—Meaning of an *unsettled jagir* as distinguished from ordinary inams —Jurisdiction of Civil Courts. A personal grant for subsistence in no way differing from an ordinary inam is not an *unsettled jagir* within the meaning of s 3 (2) (c) of the Estates Land Act but an inam. When the inamdar subsequently to the grant acquires the kudivaram interest the case comes under the exception in s 8 of the Act and the Civil Courts have jurisdiction in ejectment. *BAM v RAMALINGA MUDALIAR* (1916)

I L R 40 Mad. 664

s 3 (2) (d) —

Tanjore Palace Estate whether an estate —Inam—Reclaimability not a test. After the annexation of the Tanjore by the British Government made an irrevocable grant in inam in 1862 to the widows of the last Raja of Tanjore of the revenue due on certain villages commonly called the Tanjore Palace Estate the kudivaram in which was vested in other persons namely the actual cultivating tenants of the village. Held by the Full Bench that the Tanjore Palace Estate was an estate within s 3 (2) (d) of the Madras Estates Land Act (I of 1908). *Semble* A grant to be an inam need not be resumable. *Sundaram Ayyar v Deva Santhara Bhat* Second Appeal No 2661 of 1913 overruled. *SUNDARAM AYYAR v RAMA GUANDRA AYYAR* (1917) I L R 40 Mad. 389

Grant in inam of an *agrazharam* by an ancient king—Presumption as to rights conveyed—*Agraharam* granted whether an estate —Right of *agrazharamdar* to sue in ejectment in Civil Court. There is no presumption in law that the grant of an inam by a Native ruler prior to British rule conveyed only the melvaram (revenue due to the State). Held accordingly that a grant of an *agrazharam* in inam made by a Reddi king of Nellore more than 400 years ago and validated under s 15 of Madras Regulation XXXI of 1802 conveyed both the melvaram and kudivaram rights. Held further that the *agrazharam* was not an estate within s 3 (2) (d) of the Madras Estates Land Act and the *agrazharamdar* was entitled to sue the tenants in ejectment in a Civil Court. *SURYANARAYANA v IYANATHA* (1918)

I L R 41 Mad 1012

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s 3 (2) (d) and 8—One of several inamdar acquiring the entire kudivaram right in an inam village—Lease of lands by such inamdar—Suit for rent in Civil Court—Jurisdiction of Civil or Revenue Court—Exception to s 8 applicability of its cl 1 or 2 of s 8—Strict construction—Necessity for. Where one of several inamdar in an inam village having acquired by gift the kudivaram right in the whole village and leased fifty cents of land out of the whole village sued to recover rent in a Civil Court on the basis of the lease. Held that the Civil Court had no jurisdiction to entertain the suit and that the plaint should be returned for presentation to a Revenue Court having jurisdiction. The expression the inamdar in the exception to s 8 of the Estates Land Act should be read in its strict sense as equivalent only to the owner of the entire interest in the inam and the exception should be treated as governing only sub s (1) and not sub s (2) of s 8 of the Act. *RAJACHARI v TRIVUNGUR DEVASTANAM* (1918)

I L R 41 Mad 724

s 3 cl (d) and s 8—Whole inam village—Minor inams there—*Sarva* inam of the temple whole village described as—Landholder meaning of in s 6 of the Act s 3 sub s (2) cl (d) of the Estates Land Act excludes from the definition of estate minor inams i.e. particular extents of lands in a particular village as contrasted with the grant of the whole village by its boundaries. A whole inam village though containing such minor inams is an estate within the meaning of cl (d) of the above section. Where a village is described as arva or rent free *agrazharam* of a deity it means that the whole village has been granted to the deity as inam. The term landholder in s 6 of the Act need not be a beneficial owner of the estate and includes a receiver appointed to manage the estate. *NARA YANASWAMI NATUDU v SUBBAMANYAM* (1915)

I L R 39 Mad 683

s 3 (2) (d) and 153—Inam village if estate—Grant whether carries melvaram only or kudivaram also—*Kudivaram* meaning of. The word *Kudivaram* literally signifying a cultivator's share in the produce of land as distinguished from the landlord's share which is sometimes designated *melvaram* is a species of tenant right or right of permanent occupancy. In a suit by an inamdar of a village holding under a grant made to his ancestor in 1748 to eject tenants who had entered in 1907 under a tenancy agreement which had expired in 1903 the District Judge held that the inam village was an estate within the definition in s 3 of the Madras Estates Land Act so that the Civil Court had no jurisdiction to entertain the suit. The decision having been affirmed by the High Court. Held by the Judicial Committee that there is no presumption of law that an inam grant of a village particularly if made to a Brahmin is *prima facie* a grant of *melvaram* right only and does not include the *kudivaram*. *Adusumilli Suryanarayana v Achula Polihanna* L R 45 I 1 209 s c 23 C W N 273 (1918) followed. Held on the evidence, that the inam grant in this case carried not the land revenue alone but the whole proprietary interest in the property. S 1-3 of the Madras Estates Land Act I of 1908 as amended by s. 8 of Act IV of 1909 had no application to the case. *UPADHARATHA VENKATA SASTRULU v DIVI SREETHARAMUDU*

24 C W N 128

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—s. 3 (2) (d) and 180.—Grant of ryot village.—*Lea et by varamdar to tena et*—Claim by tena et to rights of occupancy.—Presumption as to transfer of land.—Suits in Civil Court for ejectment.—*Estate v. Estates Land Act*—No evidence of any permanent occupancy rights.—Jurisdiction.—The appellant was the inamdar of a village consisting of both cultivated and waste lands and he held it under a grant made to his ancestor in 1749 and since confirmed and recognized by the British Government. To suit in the Civil Court for ejectment against tenants of waste lands, the defence was that the respondents had permanent rights of occupancy and that as the inam village was an estate under s. 3 sub. a. (2) cl. (5) of the Madras Estates Land Act 1909 the Civil Court had no jurisdiction to entertain the suits. *Held* that since the decision of the Lord in *S. v. S. v. Patanna (1916) 1 L P 41 Mad 1012 (P C)* which was decided subsequently to the judgment now appealed from there was no presumption of law that an inam grant of a village did not include the land varam. Each case must be considered on its own facts and in order to ascertain the effect of the grant resort must be had to the terms of the grant and to the whole circumstances so far as they could now be ascertained. *Held* having regard to the facts the terms of the grant the history of the estate and the conclusions to be drawn from the other documentary evidence in the case they were all inconsistent with the existence of any permanent occupancy rights and lead to the conclusion that the inam grant carried not the land revenue alone but the whole proprietary interest in the property. The lands in suit therefore were not an estate within the meaning of the Act and s. 180 did not apply. The Civil Court consequently had jurisdiction to entertain the suits. *Venkata Sastulu v. Seetharamudu (1920)*

I L R 43 Mad 168

—s. 2 (d) (c) and 5 and s. 180.—*Inamdar and ryot*—Suit for rent in a Petition Court.—Retention Court jurisdiction.—Landholder under s. 3 cl. (5)—*Estate*—s. 3 cl. (2) (d) and (e)—s. 180 and sch. 1 to 8.—Landholders wider than owner of an estate.—An inamdar of a portion of a village where the inam consists only of some of the lands in a village granted by a Zamindar after the permanent settlement is a landholder under s. 3 cl. (5) of the Madras Estates Land Act though the inam may not be an estate under s. 3 cl. (2) (d) and (e) of the said Act. A suit brought by such an inamdar for arrears of rent against a ryot is cognisable by a Revenue Court under the said Act. The test which is decisive on the question of jurisdiction is whether the plaintiffs are landholders under the Act. The term 'landholder' is wider than the expression 'the owner of an estate' and includes every person entitled to collect the rents of any portion of an estate by virtue of any transfer. *Appalarasu v. Sanyasi (1919)*

I L R 38 Mad. 23

—Minor inamdar.—Lands granted by zamindar after settlement in permanently settled estate.—Whether inamdar a landholder.—Whether tenants under him have occupancy rights.—Where a zamindar made post settlement inam grant of a portion of a village with both the warams on a permanent kottabadi. *Held* (1) *MAHARAJA SASTRI J.* dissenting) such minor inamdar is a

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landholder within the meaning of s. 3 cl. (5) of the Estates Land Act and the tenants have permanent rights of occupancy. *GADAGHARA DIS. BAVATI v. BURYANARAYANA IYANAR (1911)*

I L R 44 Mad 677

—s. 3 (5) 192 205—

See CIVIL PROCEDURE CODE (Act V of 1908) O XVIII r II

I L R 42 Mad 76

—s. 3 (7) and 6.—Final decree in s. 3 cl. (7) meaning of. *Held* by the Full Bench as follows—where an appeal from a decree in ejectment passed under the old law is heard after the commencement of Madras Act 1 of 1908 (Estates Land Act) the defendant being a ryot in possession of ryot land on such date he is entitled to claim a right of occupancy under s. 3 cl. (1) of the Act notwithstanding the original decree. The words

final decree in the 1st sub clause of s. 3 cl. (7) mean a decree which is not under appeal or liable to be set aside or modified on appeal. *Obiter* CHIEF JUSTICE.—It is clear that where a landlord obtains a decree in ejectment before the commencement of the Act and executes it before the commencement of the Act the ryot could not claim the benefit of the first part of s. 3. *Obiter* KRISHNA SWAMI AYYAR J.—The final decree of a competent civil court referred to in the definition of old waste in s. 3 cl. (7) is a decree obtained in a proceeding independent of that in which the question of occupancy right is dealt with under s. 3 cl. (1) or the presumption under s. 23 is made. The presumption under s. 23 applies to all suits or appeals whether pending at the date of the commencement of the Act or instituted thereafter. *KANAKAYYA v. JAYABHARATHA PADNI (1913)*

I L P 36 Mad 439

—s. 3 (7) (1) and 6 (1).—Definition of old waste.—At the time of partition moving of in a suit in 1910 by a landholder against a tenant who was holding over for ejectment and damages under s. 157 of the Estates Land Act it appeared that the land in question was not cultivated before 1901 that it was then leased to a stranger for cultivation for five years ending with June 1906 and that it was thereafter leased by the plaintiff to the defendants for three years ending with June 1909. The defendants contended that they had acquired occupancy rights under s. 3 cl. (1) of the Estates Land Act. *Held* (1) that the land was ryot's land other than old waste within s. 3 cl. (1) and (2) that the defendants had acquired occupancy rights under s. 3 cl. (1) of the Estates Land Act and were not liable to be ejected. *Held* further that the words at the time of letting in the definition of old waste in s. 3 (7) (1) refer to the creation of the tenure which is in dispute. *VENKATARAMAN v. SRI RAJAH APPA RAO BANDA DURE (1916)*

I L R 40 Mad. 529

—Suit for redemption by a landholder against ryots.—First Court's decree before the Act in favour of the landholder.—Act coming into force during appeal effect of.—Whether Estates Land Act s. 3 retrospective.—Final decree in s. 3 (1) meaning of.—Amaram tenure v. umallo.—Right of redemption when exercised.—Notice to quit.—Prescription.—No tolling by receipt of rent.—Imprecations when tenant entitled to value of.—Transfer of

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property Act (I of 1857) ss 51 and 105 (k). Appeal No 174 of 1901. If a tenant knowing that he has not a permanent occupancy right in the land in his possession makes improvements without any hope or expectation in him if ejected or encouraged by the landlord he cannot claim compensation for the value of such improvements. Even if the landlord knew that the tenant was making the improvements under a mistaken belief that he had occupancy rights in the land and merely kept quiet without interfering, there will be no estoppel against the landlord. *Thimmaiah v. Dixon* I L R 11 129 and *Beni Ram v. Kunlan Lal* I L R 26 111 191 followed. *Mahalingam Thimmal v. Pillai Chetti* 3 Mad 11 C 215 doubted. A 61 of the Transfer of Property Act will not apply to the case of a tenant as it cannot be said that he is a person believing in good faith to be entitled to the land. Neither a 104 cl (h) of Transfer of Property Act nor the Hindu Mahomedan law nor Common Law of India is applicable to a case where the tenant without removing the fixtures in the one case or the building erected by him in the other case wants to recover compensation for the improvements effected by him. [Where there has been a periodical raising of the rent due by the tenants and periodical resumption of the tenants' lands by the landlords both of which were submitted to by the tenants without any contest it may be concluded that the tenants have no occupancy rights. Lands held under *Amaram* tenure have generally been held to be resumable. So far as this Presidency is concerned it would seem to be well settled that a person who has lawfully come into possession as a tenant from year to year or a term of years cannot by setting up however notoriously during the continuance of such relation any title adverse to that of the landlord inconsistent with the legal relation between them acquire by limitation title as owner of any other title inconsistent with that under which he was let into possession. *Seshamma Shettai v. Chikaya Hegad* I L R 25 Mad 577 followed. This doctrine is of doubtful applicability in a case where the landlord has shown by an unequivocal act that he intends to exercise his option and determine the tenancy even though he may not have succeeded in doing so. *Srinivasa Ayyar v. Muthuvaras Pillai* I L R 24 Mad 216 referred to. It is also well established in this Presidency that if after the determination of the tenancy the tenant remains in possession as a trespasser for the statutory period he will by prescription acquire a right as owner of such limited estate as he might prescribe for. A receipt of rent subsequent to a notice to determine the tenancy is consistent with the case of either party on the question as to the existence of occupancy right as in any event there would be a liability to pay rent and it is therefore doubtful if such a receipt could be relied on as a waiver of the plaintiff's right to resume. Held on the facts of the present case that there was a determination of the tenancy by a reasonable notice and that there was no assertion of an adverse title for twelve years before the suit so as to entitle the defendants to claim a prescriptive title.] (The views enclosed in rectangular brackets were also stated but are no longer law as a Full Bench composed of the C J, KRISHNACHARI, ARYAN and ARYAN JJ., decided the contrary in *Kanakappa v. Janardhana* Decided I L

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I of 1908 439 on 14th November 1910. This case is now reported for the other points decided in the case which are noted below.] [Where during the pendency of an appeal filed by the defendant in a suit brought by a zamindar to eject his tenants the Madras Estates Land Act of 1908 came into force the tenants who were ordered by the decree of the first court to be ejected cannot take advantage of a 6 of the Act even if that section be assumed to be retrospective as the ryots' lands in respect of which they claimed permanent occupancy in this would be old waste as defined by s 3 cl (1) of that Act in respect of which before the passing of the Act the zamindar had obtained a final decree of a competent civil court negating the occupancy right.] The words "final decree" occurring in s 3 cl (7) mean final with reference to the court which passes the decree, a decree is none the less final for the purposes of the section because an appeal was pending when the Act came into operation. *Quære* Whether an appeal: a clearing of the suit within the meaning of the Civil Procedure Code as under the rules under the English Judicature Act so as to give retrospective effect to a statute passed after the decree of the first court and during the pendency of the appeal. *Quære* Whether a 6 of the Madras Estates Land Act 1908 is in terms retrospective. *VARADACHARI J. J. J. OF VIKRATAGIRI (1910)*

I L R 37 Mad 1

— ss 3 (7) 6 23 163 and 167—*Old waste* *ejection from*—*Onus of proving old waste on landlord*. A landholder claiming to eject a tenant under s 163 and 167 of Madras Estates Land Act (I of 1908) on the ground that he is a non-occupancy ryot of old waste is by s 23 of the Act bound to prove that the land is old waste within the meaning of s 3 cl (7) of the Act. If neither sub-cl (1) nor the latter part of sub-cl (2) of the definition of old waste would apply to the facts of the case the first part of sub-cl (2) cannot be used to prove that the land is old waste as that refers to a state of facts subsequent to the passing of the Act and as a 6 of the Act vested in the tenant in possession occupancy right from the date of the passing of the Act in all ryots' lands not being old waste. *SARAIARAJU v. VENKATARAJU (1913)* I L R 38 Mad 459

— ss 3 (7) 153 and 167—*Proviso to s 153 effect of*—*Old waste* *transfer of*—*Ejection from grounds of*. The combined effect of a 153 of the Madras Estates Land Act (I of 1908) even as added to by s 157 of Madras Act IV of 1909 and of s 157 of the Estates Land Act is that a ryot of old waste cannot be ejected on the ground of expiry of a term of lease contained in a contract entered into before the Act came into force. *ATCHAPPAIAH v. RAJAH VELUGOTI GOVINDA KRISHNACHARI DRULAYARU (1913)* I L R 38 Mad 163

— ss 3 (10) 8 165—*Private land conversion of ryots into*—*Proof*. I refer to s 165 nature of *PER WALKER C J*—S 8 of the Estates Land Act does not impose respectively an absolute prohibition of the conversion of ryots into private land not to be found in the definition or in the section specially dealing with evidence as to what is private land. Such a conversion should be proved by every clear and satisfactory evidence. The acquisition of *Ludiarani* right in certain

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lands by the landlord and his letting them out as kambattam lands on terms not giving occupancy right with a view to prevent the portion of such right is not sufficient to convert them into private lands within the meaning of the definition. *Per VESHAJEE AYYAR J.*—Land originally *ori* cannot become the private land of the landholder except in the one instance mentioned in the proviso to s 15 of the Act. The proviso is not in the nature of an exception but enacts a rule of substantive law. *Mulins v Treasurer of Surur* 4 Q B D 173 and *Maha Prasad Singh v Juma v Mohan Singh* Mad L J 457 followed. **7AMINDAR OF CHELLAPALLE v SOMAYA** (1914)

I L R 33 Mad. 341

—ss 3 (10 and 15) and 6—Sub (i) and explanation added by amending Act (Madras Act I of 1909) s 3 and s 18, proviso—Conversion of ryots into private land—Held in an earlier case *possession*. The respondents held certain lands under a *muchilika* dated 29th July 1900 given to them by the appellant by which they agreed to hold the lands described as *kambattam* or private lands until 30th April 1903 for the purpose of cultivation the document expressly providing that it should itself operate as a surrender of the lands at the end of that term. The respondents however held over after the expiration of the lease not only without the consent of the appellant but contrary to his wishes and intention and contrary also to the terms of the *muchilika* and were so holding the lands on and after 1st July 1908 when the Madras Estates Land Act (Mad Act I of 1908) came into force. In a suit by the appellant to eject the respondents and recover possession of the lands which he claimed as his private land within the meaning of Madras Act I of 1908 the defence was that they were ryots lands in which the respondents had occupancy rights under s 3 sub (i) of the Act and explanation thereto added by the amending Act (Mad Act IV of 1909). There were concurrent findings of fact by the Courts below that the lands were ryots and that the appellant had not proved that they were his private lands within the proviso of s 185 of the Act of 1900. *Held* that assuming that the respondents had not any permanent rights of occupancy in the lands in suit before the coming into force of Madras Act I of 1908 they obtained such permanent rights of occupancy by the operation of s 3 sub (i) as amended by s 3 of Madras Act IV of 1909 and the suit was rightly dismissed by the Courts in India. *Gottur Parama Gururu v Botlaiah Dandasi Paddi* 20 M L J 598 approved. *Kanalayya v Janardhana Iadhi* I L R 36 Mad 439 referred to. **YERLAGODDA MALI KARJUNA PRASAD NAYUDU v SOMAYA** (1918)

I L R 42 Mad. 400

—s 3 (10) 19 189—

See RENT

I L R 46 Mad. 7

—s 3 (11)—

See LANDLORD AND TENANT

I L R 42 Mad. 702

—ss 3 (11) 58 189 and Sch A Art 8—Suit for cost local cess village cess by an *ijaradar*—Maintainability only in Revenue Court—Exchange of *patta* and *muchilika* not necessary for recovery of rent by suit under Estates Land Act—

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Ijaradar and *Pent d frissions* of—Article 13 of schedule of the Provincial Small Cause Courts Act (IV of 1887) A suit by an *ijaradar* of a share of a village governed by the Estates Land Act (Mad Act I of 1908) for recovery of cost local cess and village cess due by a ryot is cognisable in virtue of s 189 and s 18 of the Act only by a Revenue Court and not by a Small Cause Court as all the above items sought to be recovered are by s 3 of the Act included in the term rent and an *ijaradar* is according to s 3 (a) of the Act a landlord being entitled to collect rent in virtue of a transfer from the owner. No exchange of *patta* and *muchilika* is necessary under the Estates Land Act for recovery of rent by suit the same being necessary according to s 63 only in case where the landholder wishes to disclaim or sell the ryot's moiety or his holding. It is wrong to hold that Art 13 of the schedule to the Provincial Small Cause Courts Act (IV of 1887) applies to a suit for land cess or village cess under the above circumstances. Second Appeal No 660 of 1910 (unreported) followed. **IRIPAJU CANU v SUBBARAYUDU** (1913) I L R 40 Mad 126

—s 3 (15 & 16)—*Ryot* land—*Ryot* land—*Pature* land not *ryot* land—*Rent* for *pasture* not *rent* under the Act—*ss 189 and 77 of the Act*—*Suit* for *ejiction* and *recovery* of *pasture* *rent* *cognisable* only by *Civil Courts*—Land usually fit only for *pasturing* *cattle* and not for *cultivation* is *ploughing* and *raising* *agricultural* *crops* is not *ryot* land though it may have been *old* *waste* and a *tenant* of such land is not a *ryot* and any amount agreed to be paid for *pasturing* *cattle* is not *rent* within the definition of s 3 of the Madras Estates Land Act (I of 1908) hence a suit to eject such a *tenant* from the land or to recover the amount due for *pasture* is *cognisable* only by a *Civil Court* and not by a *Revenue Court* as the jurisdiction of *Civil Courts* exists in all cases where it has not been expressly taken away. *RAYA v VENKATAGIRI v AYYAPAREDDI* (1913)

I L R 39 Mad 738

—ss 4 27 73 143—*Levy* of *fee* (*langa* *nam*) for *superintendence* of *harvest* *legality* of—*Right* of *landlord* to *enter* *land* and *make* *experimental* *harvest*—*Liability* of *tenant* to *pay* *compensation* for *loss* of *crops* by *theft* or *cattle*—*Liability* to *pay* *rent* for *fallow* *lands* in the *absence* of *custom*—*Right* of *tenant* to *obstruct* *flow* of *rain* *water* into the *landlord's* *irrigation* *channel*—*Liability* to *pay* *rent* *rate* when *water* *insufficient*—*Pecuniary* *value* of *rent* *legal* *right* to—Where the *landlord* is *entitled* to a *share* of the *produce* the *levy* of a *fee* (called *langanama*) by the *landlord* on the *tenant* for *superintending* the *harvest* in order to *protect* his *interests* is not *illegal* and it is not *opposed* to s 73 or 143 of the Estates Land Act. *Devuray v Jaghannatha Poo* (1913) Mad W A 886 and *Karri Paddi Reddy v J center of Andavale and Medur Estate* 18 Mad L T 171 followed. A *landholder* *entitled* to a *specific* *share* of the *produce* is not *entitled* to *enter* upon the *land* and *make* an *experimental* *harvest* of the *small* *portion* of the *land* with a *view* to *th* the *tenant* the *burden* of *proving* that the other *portions* *were* not *equal* to *experimental* *harvest*. *Landlord* is to *levy* a *fee* (called *Panchamati*) as for the *loss* caused to the *crop* by *th*. as *the* *loss* *not* a *crop*

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—contd

Right of landholder to reliefs under s 141—*Pengal Tenancy Act (I of 1885) s 23* S 151 of the Madras Estates Land Act gives the landholder a right to sue for any of the reliefs mentioned in cls 1 and 2 thereof only when the holding as a whole was used substantially unfit for agricultural purposes; but the acts of the riot committed on the whole or any part of the holding *Hari Mohan Jh v Surendra Narayan Singh I L R 31 Cal 715* followed *Laxmi v Arunachalam (1915)* I L R 39 Mad 673

—s 13 cl (3)—*Improvements at tenants' sole expense*—*Payment of higher rent in return for sixty years*—*Termination of a binding contract to pay at a higher rate under the Rent Recovery Act*—*Madras Estates Land Act (I of 1908) s 13*—*Siddharat and Mathur Kumar v not illegal cesses within s 143 of the Act* Held by DATTER and KUMARASWAMI ASTRIPYAR JJ (SADASIVA AYYAR J dissenting) that—(i) s 13 cl (3) (Madras Estates Land Act) does not enable a tenant to claim exemption from liability to pay a higher rate of rent for crops raised with the help of improvements made at the tenant's sole expense where the improvements had been effected before the Act came in force and where there had been a binding contract entered into between the landlord and the tenant before the passing of the Act for the payment of such enhanced rent (ii) the section applies only to contracts and improvements made after the Madras Estates Land Act came into force (iii) the right to levy increased assessments in consequence of improvements effected before the Act being a vested right in the landholder the section cannot be construed so as to operate retrospectively and to defeat the same especially when there is no indication in the section that it is to operate retrospectively and (iv) the rule embodied in s 28 of the Act applies to the increased assessment and makes it binding between the parties *Per SADASIVA AYYAR and DATTER JJ*—Where the higher rate was regularly paid for sixty years even in respect of the improvements effected at the tenants' sole expense the Courts could presume a lawful origin for a contract to pay like that under the Rent Recovery Act (Madras Act VIII of 1865) *Per SADASIVA AYYAR J*—*Saddulcar* (charge for stationery) and *Mathur Kumar* (straw rent) which were being customarily paid along with the rent for a long number of years form part of the rent and are not additional illegal cesses within s 143 of the Madras Estates Land Act *VENKATA PERUMAL RAJA v RAMUDU (1914)* I L R 39 Mad 84

—s 19—

See REV

I L R 38 Mad 7

—s 23—

See S 3

I L R 38 Mad 459

—s 26—*Suit in a Revenue Court*—*Contract between previous landholder and tenant as to rate of rent*—*Rate less than the lawful rate* whether binding on successor—*Validity of contract*—*Jurisdiction of Revenue Court to decide* A Revenue Court exercises jurisdiction under the Madras Estates Land Act is competent to decide all incidental questions the determination of which is necessary for the disposal of the main question arising in the case and in a suit filed to contest

MADRAS ESTATES LAND ACT (I OF 1908)

—contd

the right to sell a holding for arrears of rent under the Act the Revenue Court can decide on the validity of a contract between the landholder's predecessor in title and the tenant as to the rate of rent although the object on to its validity is based on grounds other than those specified in s 26 of the Act *Paya of Illapora v Serrama Chetty (1911)* Mad W 30 explained *SERUPAMA AYYANGI v SETHIAH ILLAI (1917)*

I L R 41 Mad 121

—s 27—

See S 4

I L R 40 Mad 640

—s 28—

See MADRAS ESTATES LAND ACT (I OF 1908) s 13 CL (3)

I L R 39 Mad 24

—s 40 cl (3)—*Years in meaning of*—*Swami bhojam* whether rent or cess within s 3 cl (11)—*Agreement between landlord and tenant for a consolidated grain rent enforceability of* In s 40 cl (3) (a) of the Madras Estates Land Act preceding ten years means the ten years preceding the year in which the Collector determines the amount of the commuted rent and not the ten years preceding the year in which the suit is instituted and year means the year of the kase that is the year for which the landlord is entitled either by custom or contract to claim rent and not the fiscal or the calendar year *Swami bhojam* is rent within s 3 cl (12) and is not a cess Where a fixed grain *pattam* (rent) has been agreed to the arrangement is binding on both the parties and it is not open to the tenant to reopen the same on the ground that certain illegal cesses were included therein When the Revenue Court refuses commutation an appeal lies under Sch A cl 4 of the Act only to the District Collector and not to the District Court and hence no second appeal lies to the High Court from such order of refusal *Jeetoolah Jaramanick v Jugadindro Narain Poy 22 W R 12* followed *SIVANU PANDIA THEVAR v ZAMINDAR OF URKAD (1917)*

I L R 41 Mad 109

—s 42 cl (1) (a) and (b) of (2)—*Enhancement or alteration of rent*—*Lease deed*—*Provision as to payment of rent in excess of area of lands found on measurement*—*Enhancement or alteration of rent*—*Previous order of Collector not required*—*Pengal Tenancy Act (I of 1885) ss 62 and 188* The proviso found in cl 2 of s 42 of the Madras Estates Land Act (I of 1908) which requires the order of a Collector before enhancement of rent can be allowed does not apply to the claim of a landholder who sues to recover arrears of excess *trita* due under a lease deed which contained a provision for payment of *trita* at a specified rate on the excess lands found on measurement over the areas specified in the lease deed It is only where the landlord wants to enhance the rent basing his claim on the right granted and declared by s 42 cls 1 (a) and (b) that he should obtain under cl 2 the order of the Collector for such alteration of rent before he could claim the altered rent *Dattaraj Das v L P D Broughton 3 C W N 20* and *Rama Chunder Chockraborty v Giridhar Dutt I L R 19 Cal 75* followed *MANAGER TO THE LESSEES OF THE SIVANGAIA ZAMINDARY v CHIDAMPARAM CHETTI (1913)*

I L R 33 Mad 524

MADRAS ESTATES LAND ACT (I OF 1908)—*contd*

s 46—

See S 1

28 C W N 785

Application to Receiver of an estate for conferring occupancy right validity of an application by a non occupancy ryot under s 46 of the Madras Estates Land Act for the acquisition of occupancy right in an estate can be made only to or against the owner of the estate and not to a Receiver in charge of the estate
SWAMINATHA UNAYAR v SUNDARAM UNAYAR
 I L R 44 Mad 274

s 52(3)—

See PROCEDURE

I L R 44 Mad 203

s 53—

See S 3

I L R 36 Mad 126

Distrain for a higher rent than legally due good for the amount legally due s 3 (?) of the (Madras) Estates Land Act (I of 1903) enables a Collector in a suit to set aside a distraint to the extent of the amount legally due to the landlord by the tenant under the patta tendered by the landlord. The application of the clause is not confined to the enforceability of the proper amount of rent in suits for rent only.
PAGUNATHA POW SANIB v VELLANOONJI GOUNDAW (1914)
 I L R 38 Mad 1140

ss 54 and 78, cl (2)—Tender of

patta by a landlord to his tenant at his house—Tenant refusal by—Subsequent affixture of patta to the tenant's house not to his land—Tender validity of—Methods of tender under the Act—Delivery of patta meaning of—Essentials of a valid tender under the Act Where a patta was offered by a landlord to his tenant at his house but the tenant refused to receive it and thereupon the patta was affixed to the tenant's house but not to the land in his holding. Held that there was no valid tender of patta to the tenant as required by ss 54 and 78 cl (2) of the Madras Estates Land Act (I of 1903). An offer of a patta to the ryot is not delivery to him. When once an offer of patta is made and refused the tender by delivery cannot be effected and it then becomes necessary to affix the patta to the land in the ryot's holding. If this is not done there is no valid tender of patta. Meaning of tender and deliver considered.
CHINNATHANDIAR v MICHAEL (1913)
 I L R 38 Mad 629

ss 55 and 146—Purchaser of occupancy

right—Suit for patta in a Revenue Court—Duty of Revenue Court to decide as to title of plaintiff—Plaintiff claimant of such right previously recognized by landlord as transferee—Power and duty of Court to decide in the suit—Proceedings under s 146 effect of—Non joinder of parties—Dismissal of suit—Civil Procedure Code (I of 1908) O I s 10 cl (2) The power and duty of a Revenue Court in a suit under section 55 of the Madras Estates Land Act to deal with the rights of the parties before it are not affected by the provisions of s 146 of the Act. Where a suit is instituted in a Revenue Court under section 55 of the Act by the purchaser of land from a ryot against the landlord to obtain patta the Court is bound to decide whether the plaintiff is entitled to patta or not if his title is disputed although the landlord might have previously recognized a rival claimant

MADRAS ESTATES LAND ACT (I OF 1908)—*contd*

as transferee and issued patta to him on the joint application of the transferor and the transferee. In such a suit the rival claimant: only a desirable and not a necessary party even if he were a necessary party the Court should not dismiss the suit for non joinder of such claimant but add him as a party if it thought fit to do so under Order I rule 10 clause (2) Civil Procedure Code which is made applicable to Revenue Courts by s 192 of the Act
RAMANATHAN CHETTY v ARUNACHIPAN CHETTIAR (1921)
 I L R 44 Mad 43

s 73—

See S 4

I L R 40 Mad 640

s 77—

See S 5

I L R 42 Mad 114

See S 189

I L R 39 Mad 239

Madras Local Boards Act (I of 1881) ss 3 and 4—Right of land holder to distrain property of intermediate tenure holder for cess paid Neither s 77 of the Madras Estates Land Act nor ss 73 and 74 of the Madras Local Boards Act authorizes a land holder to levy distraint against an intermediate tenure holder for recovering any portion of cess collected from the land holder.
LAKSHMINARASINIAM PANTULU v RAMACHANDRA MARDARAJA DEO (1912)
 I L R 37 Mad 319

ss 77 and 189—

See CIVIL PROCEDURE CODE 1908

s 102—

I L R 44 Mad 697

See MADRAS ESTATES LAND ACT (I OF 1908) s 3
 I L R 38 Mad 738

s 78—

See S 54

I L R 38 Mad 629

s 91—

See S 189

I L R 39 Mad 239

ss 111 and 118—Civil Procedure Code O XXI rr 90 and 92—Sale of ryot's holding for arrear of rent—Irregularity in conduct of sale—Application to Revenue Court by landholder to set aside sale—Jurisdiction of Revenue Court—Order setting aside sale—Suit by purchaser in Civil Court for declaration that order is ultra vires and void whether maintainable. When summary proceedings under ss 111 and 118 of the Madras Estates Land Act have been instituted by a landholder for recovery of rent by the sale of a ryot's holding and property has been sold the Revenue Court has no jurisdiction on an application by the landholder to set aside the sale on the ground of irregularity in the publication or conduct of the sale and if such an order is passed the purchaser can institute a suit in a Civil Court for a declaration that the order is ultra vires and void. O XXI, 160
SATTANARAYANA VARAPRASADA PAO
 I L R

s 111 et seq—Sale of

—Suit for declaration of
 in a Civil Court. A suit

MADRAS ESTATES LAND ACT (I OF 1938)

—contd

sale of a holding under s 111 *et seq* of the Madras Estates Land Act was void in consequence of the landholder's failure to supply for sale within forty five days as prescribed by s 115 of the Act is maintainable in a Civil Court *Gouse Mohideen Sahib v Muthialu Chettiar* (1914) Mad N A 55 followed *Doraimy Pillai v Muthusamy Mooppan* 1 L R 27 Mad 91 and *Zemindar of Pitya puram v Sankarappa Reddai* 1 L R 27 Mad 153 referred to s 189 of the Act commented on. (HIDAMDARAN PILLAI v MUTHAIMMAL (1914) 1 L R 38 Mad 1042

— s 125—

See S E 1 L R 42 Mad 114

ss 131 192, 205—Civil Procedure Code (Act I of 1908) s 115—Application to Deputy Collector to set aside rent sale on the thirtieth day—Deputy Collector absent on leave—Deposit made two days later—Sale set aside by Deputy Collector without notice to purchaser—Revision petitions to District Collector and Board of Revenue dismissed—Revision petition to High Court competency of—Discretion in exercise of revisional powers—Absence of notice before setting aside sale effect of—General Clauses Act (X of 1897) s 10—In application to set aside a sale held for arrears of rent was made to the Deputy Collector under s 131 of the Madras Estates Land Act and the deposit therein required tendered on the last day allowed by that section the Deputy Collector being absent on leave the petitioner was asked by the clerk to come two days later on which day the Deputy Collector received the deposit and set aside the sale without giving notice to the purchaser. The latter presented petitions to the District Collector and the Board of Revenue respectively to revise the order under s 205 of the Act the petitions being dismissed the purchaser filed a revision petition to the High Court. The respondent objected that no revision lay to the High Court and that as the sale was properly set aside the High Court should not interfere in revision. Held that the revision petition to the High Court was competent because s 192 of the Madras Estates Land Act renders s 115 of the Civil Procedure Code applicable to all suits appeals and other proceedings under the Act even though s 205 thereof gave a power of revision to the Board of Revenue and the District Collector but where the petitioner had previously applied to the revenue authorities and failed the High Court would decline to exercise its discretionary power in revision unless it was imperatively called upon to do so to prevent miscarriage of justice—that as the deposit was not made within time owing to the absence of the Deputy Collector and not the default of the petitioner it was competent to the former to receive the deposit on the next open day under general principles of law embodied in s 10 of the General Clauses Act and set aside the sale. *Shooshee Bhushan Rudro v Gound Chunder Poy* 1 L R 18 Cal 231 followed that assuming that the failure to give notice to the purchaser vitiated the whole proceedings the High Court will not exercise its revisional powers on that ground alone and that the order setting aside the sale was proper as no valid objection was or could be raised by the petitioner even when opportunity was given to him. *PANASAMI GOUNDAN v KALI GOUNDAN* (1918) 1 L R 42 Mad 310

MADRAS ESTATES LAND ACT (II OF 1903)

—contd

— s 132—

See S E 1 L R 42 Mad 114
1 L R 43 Mad 788

— s 133—

See S E 1 L R 42 Mad 114

— s 134—

See S 189 1 L R 39 Mad 239

— s 143—

See S 4 1 L R 40 Mad 610

See LANDLORD AND TENANT

1 L R 42 Mad 197

— s 146—

See S 3 1 L R 44 Mad 43

Second crop of paddy raised by ryot with landlord's consent—Landlord's right to extra rent—Usage or contract disentitling landlord to extra rent—Proof of—Burden of proof on tenant—Heir of registered pattadar—Right to be recognized as ryot—Defaulter under the Act meaning of—Mere receipt of rent from a person whether landlord bound to accept as ryot. The landlord is prima facie entitled to claim extra rent for second crop of paddy raised with the landlord's water by the tenant on his wet holding in the absence of proof of an established usage or an express or implied contract disentitling the landlord to the same the burden of proving such usage or contract being on the tenant. The landlord is bound to recognize the heir of the registered pattadar as the ryot under the Madras Estates Land Act in the place of the deceased pattadar and if a suit under the Act is instituted by a person claiming as heir to be recognized as the ryot the question whether he is the heir or not must be determined by the Court and if the heirship is established or admitted the suit must be held to be competent. Mere receipt by the landlord of the rent due upon the holding from any person cannot bind him to recognize the latter as the ryot. A defaulter in the Estates Land Act denotes only the man who is the registered pattadar or his heir or the person whom the landholder has become bound to recognize as the ryot under s 140 of the Act. *MIDNAPORE ZEMINDARY CO LTD v MUTHAFUDATAN* (1921)

1 L R 44 Mad 534

— s 151—

See S 9 1 L R 37 Mad 432

See S 11 1 L R 39 Mad 673

— s 153—

See S 3 1 L R 39 Mad 163 453
E C W N 129

See S 8 1 L R 39 Mad 843

ss 153 and 157—Suit in Revenue Court to eject non occupancy ryot of old waste on expiry of registered lease for more than five years granted before the Estates Land Act—Jurisdiction—Mere profits jurisdiction of Revenue Court to grant a suit is maintainable in a Revenue Court under ss 153 and 157 of Madras Estates Land Act to eject a non occupancy ryot of old waste on the expiry of the term of a registered lease or more than five years though granted before the commencement of the Estates Land Act. *Atchutaraju*

MADRAS ESTATES LAND ACT (I OF 1908)—*contd*

v. Rajah F. K. Krishnayachandran Iyer 1 L. R. 38 Mad. 193 not followed. A Revenue Court can award mesne profits to a person in unlawful possession of lands holding over beyond the period of their lease. *JANAKA GOMADU v. ZAMINDAR OF MIRZAPURAM* (1918) 1 L. R. 42 Mad. 315

— ss 155 and 182 (e)—*Set-off of money allowances against claim for rent* Except in the case provided for by s. 155 a tenant has no right under the Madras Estates Land Act to set off amounts due to him from the landlord against a demand for rent. *IJA OF RAMNAD v. KATA RAMA AYYAR* (1920) 1 L. R. 43 Mad. 69

— s 157—

See S 3 1 L. R. 38 Mad. 163 459

See S 8 1 L. R. 38 Mad. 843

See S 9 1 L. R. 37 Mad. 432

— s 163—

See S 8 1 L. R. 38 Mad. 843

— ss 164 to 167—*Officer preparing record of rights under—Criminal Procedure Code (Act I of 1898) s 476* not a Court within the meaning of A Revenue Officer preparing a record of rights under ss 164-167 of the Madras Estates Land Act is only discharging an executive function of Government and is not a Court within the meaning of s 476 of the Code of Criminal Procedure. *Ac HANUMANTHA PAO* (1915) 1 L. R. 39 Mad. 414

— s 185—

See S 3

See EVIDENCE 1 L. R. 36 Mad. 168

— s 189—

See S 3 1 L. R. 38 Mad. 7 126

1 L. R. 38 Mad. 33 738

1 L. R. 43 Mad. 166

— *Civil Procedure Code*

{ of 1908) s 11—*Res Judicata—Suit to enforce acceptance of patta—Decision by Revenue Court—Decision as to occupancy right or title to land claimed as part of the holding—Subsequent suit in a Civil Court for ejectment of tenant as trespasser—Decision of Revenue Court whether binding as res judicata in the suit in Civil Court* ss 189 (3) of the Madras Estates Land Act does not constitute the decisions of the Revenue Courts on an issue as to title to land or occupancy rights therein arising incidentally in suits to enforce the acceptance of pattas which are cognizable exclusively by such Courts res judicata in a subsequent suit in a Civil Court instituted by the landlord for ejectment of the tenant from such land. *APPA RAO v. GURURAO* (1920) 1 L. R. 43 Mad. 859

— s 189 and cl (12) of Part A of Schedule—*Suit to recover lands under the Act for non payment of rent non maintainability of in Civil Courts* ss 189 and cl (12) of Part A of schedule to the Madras Estates Land Act (I of 1908) preclude a Civil Court from taking cognizance of a suit by a ryot to recover possession of a holding sold under the Madras Estates Land Act for non payment of rent on the ground that the landholder had no right to sell the holding. Cl (12) is not confined to a suit to question an intended sale of the holding. *Ghouse Monden Saib v. Muthialy*

MADRAS ESTATES LAND ACT (I OF 1908)—*contd*

C. Jethar 26 Mad. L. J 36 distinguished. *RAMA KATHAN v. RAMASWAMI* (1914)

1 L. R. 39 Mad. 60

— ss 189 213, 134 BI and 77—*1st ryot was landowner—Illegal distraint—Suit for damages—Jurisdiction—Revenue Court—Malras Rent Recovery Act (I III of 1865) ss 49 and 78* A suit by the tenant of a ryotwari landowner or of any subtenant of such for damages for illegal distraint of moveable property growing crops of the produce of land or trees in the defaulter's holding is solely cognizable by the Revenue Court. *Per WALLIS C. J.*—Sub ss (2) and (3) of s 213 of the Madras Estates Land Act are in the nature of provisos and it would not be legitimate to cut down the operative portion of s 189 to which these provisos do not in terms apply merely because otherwise the provisos would be meaningless and even senseless. *West Derby Union v. Metropolitan Life Assurance Society* [1897] A. C. 617 referred to Sub ss (2) and (3) which were drafted in place of ss 49 and 78 of the Rent Recovery Act were probably retained by inadvertence after the jurisdiction of the Civil Court had been taken away by s 189 in its present form. *Obiter* Suits under s 91 of the Madras Estates Land Act are exclusively within the jurisdiction of the Civil Court. *Per SADASIVA AYYAR and SRINIVASA AYYANGAR JJ.*—Cl (2) of s 213 saves the Civil Court's jurisdiction only where the suit is not brought for the relief of pecuniary damages for proceedings taken under colour of the Act that is where it is brought for other remedies such as injunction declaration possession etc. *Per SADASIVA AYYAR J.*—The proviso forming cl (3) of s 213 takes away the jurisdiction of the Civil Court even in respect of cases claiming other redress than pecuniary damages if the redress of damages had been already claimed by the plaintiff in a suit filed before the Collector under cl (1) of s 213. *Quære* Whether the remedy by a suit in the Collector's Court to set aside a distress under s 90 can be availed of by a Government ryot's tenant whose moveables have been distrained under s 77 and whether assuming that he could do so the jurisdiction is an exclusive one in the Revenue Court. *NARAYANA SWAMY v. VENKATARAMANA* (1915)

1 L. R. 39 Mad. 239

— s 192—

See S 131 1 L. R. 42 Mad. 310

See S 150 1 L. R. 43 Mad. 69

See CIVIL PROCEDURE CODE (ACT V OF 1908)—

O XXII p. 5 1 L. R. 42 Mad. 76

O XLIII p. 1 AND S 115

1 L. R. 41 Mad. 554

— *Presentation of plaint to Head Clerk not authorized to receive—Limitation Act (IX of 1908) s 4—Court not closed if the officer on tour only and not on leave—R 11 of Civil Rules of Practice* Plaints under the Madras Estates Land Act (I of 1908) cannot be said to be validly presented if presented to the Head Clerk of the Collector unless the Collector has appointed him to receive them. A Court cannot be said to be closed within the meaning of s

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

By the Madras Irrigation Cess Act (VII of 1865) as amended by Madras Act V of 1900 s 1 when ever water is supplied or used for purposes of irrigation from any river stream channel tank or work belonging to or constructed by Government a separate cess for such water may be levied on the land so irrigated provided (*inter alia*) that where a zamindar or riyasat is by virtue of engagements with the Government entitled to irrigation free of separate charge no cess under this Act shall be imposed for water supplied to the extent of this right and no more. At the permanent settlement the Government settled in four zamindars lands contiguous to a river together with four artificial irrigation channels and sluices connecting them with the river. The zamindars did not refer to the channels or sluices. The appellants were the present holders of one of the four zamindars the sluices of one only of the channels being upon their lands. The other three zamindars had been purchased by the Government. The appellants used for irrigation water derived from the river through all four channels. The Government claimed to be entitled to levy cess under the above Act upon the appellants lands for the irrigation so far as it included crops not customary at the time of the permanent settlement. *Held* assuming but not deciding that the river belonged to the Government (i) that the settlement was an engagement with the Government within the meaning of the proviso (ii) that under the sands the zamindar in whose estate the sluices of each of the channels were situated acquired the right to take from the river for irrigation an amount of water limited by the then size of the channels and nature of the sluices but not limited by the irrigation then customary (iii) that after the water had passed into the channels the Government had no rights in respect of it save as owners of the three zamindars (iv) that the rights of the owners *inter se* in the water flowing in the channels were analogous to those of the riparian owners in a natural stream (b) that there being no evidence that more water was being taken from the river than was justified by the sands the appellants were not liable to pay cess. The law of the Madras Presidency as to rivers and streams differs in some respects from English law and it is quite possible that the former law recognises some proprietary right of the Government in water flowing in them. **KANDAKURI BALASUBRA** Row **SECRETARY OF STATE FOR INDIA (1917)**

I L R 40 Mad 886

L R 44 I A 166

Artificial Channel—

Essement—Forfeiture of derivative Estate—Engagement with the Government—Madras Act VII of 1865 and V of 1900 In 1814 a zamindar who before the permanent settlement had constructed an artificial channel through the estate now enjoyed by the respondent admitted the right of the then holder to take water therefrom for the irrigation of a village and from that date until 1907 the respondent's predecessors and the respondent exercised that right without any claim to payment. In 1833 the estate of the zamindar who had constructed the channel was forfeited to the Crown. In 1907 the Government imposed upon the respondent in respect of the village an irrigation cess under the Madras Irrigation Cess Act (VII of 1865) as amended by Madras Act V

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

of 1900. *Held* that there was to be inferred from the circumstances an engagement to the Government within the meaning of the proviso of Madras Act VII of 1865 as amended and that the respondent consequently was not liable to pay the cess. **SECRETARY OF STATE FOR INDIA: MANARAJA DE BOBELL (1910)** L R 46 I A 302

See CRANT CONSTRUCTION OF

I L R 38 Mad 424

s 1—**Article**

I L R 40 Mad 886

L R 46 I A 302

See IRRIGATION CESS ACT

I L R 40 Mad 886

Held that it was not obligatory under s 1(b) for the Collector to certify that the irrigation is beneficial and that the words "irrigation by percolation" mean not only irrigation by means of water flowing on the surface but cover cases where sub soil is taken by roots of trees. **SECRETARY OF STATE: MANARAJA SASTHRIAL** I L R 40 Mad (F B) 58

Engagements contracted by Government to supply water for wet lands free of charge—Engagements at the time of the Permanent Settlement—Subsequent engagements express or implied if included under the cession—Unauthorized acts of subordinate officers how far binding on Government—Ratification essential of communication of to the other party if necessary—When complete—Government Orders for ratifications—Indian Contract Act I (X of 1872) ss 196 to 200 and 3 to 6 In all cases of permanently settled estates where the incomes derivable from wet lands have been taken into consideration in settling the peshkash payable to Government there is an implied undertaking of the nature of an enforceable contract on the part of the Government to allow the use of Government water to such wet lands without charge and this implied undertaking amounts to an engagement within the meaning of the Act. There is a similar implied engagement as regards drains. The word engagements in s 1 of Act VII of 1865 is not qualified in any way and is not limited to the cases of engagements deductible from the circumstances under which the peshkash for quitrent in the case of an *inam* was determined at the time of the Permanent Settlement but includes all engagements between the Government and the landholder that might have been made or be deductible from the circumstances at any time after the Permanent Settlement. **PERAYILKO J—Held** (on a construction of the Government Orders and other proceedings) that no implied engagement of the latter kind or a ratification thereof by the Government was established. An express ratification by one party within the meaning of s 197 of the Indian Contract Act cannot become complete until it is communicated to the other party. Till then it is liable to revocation. This is in accordance with the principles embodied in the provisions of s 3 to 6 of the Act which deal with proposals, acceptances and revocations. An order of Government which stated that an unauthorised act of a subordinate officer should not be repudiated must be treated as an incomplete ratification before communication to

MADRAS IRRIGATION CESS ACT (VII OF 1865)
—*contd*

_____ ss 1 and 4—contd

wari settlements is by virtue of an engagement with the Government entitled to irrigation free of separate charge no cess shall under this Act be imposed for water supplied to the extent of this right and no more. *Held* that an engagement with the Government had been created within the meaning of the proviso to the Act by the transaction of the zamindari having passed to the Government and had been accepted by them as binding the parties for a period of between 80 and 90 years during which (including 40 years since the Act was passed) the respondent zamindari had been enjoyed without any question or doubt that the respondent held under a tenure which gave him the benefit of the proviso in Act VII of 1895. THE SECRETARY OF STATE FOR INDIA IN COUNCIL. MAHARAJAH OF BOBHILI (1920)

I L R 43 Mad (P C) 529

_____ 1 2

1 Ownership of bed of channel—Owner of channel bed not on it at account alone entitled to water free of cess—Engagement to supply water free of charge—You proved—Nature of engagement to be inferred from permanent settlement—Act III of 1905 s 2—Stream what is—Voluntary payment—Money paid on a decree and under Act III of 1864 not voluntary Where in a grant by Government of land no reservation is made of channel beds and nothing is proved to show that the Government must have intended to reserve them and it is shown that the grantees exercised full control over the channel it must be presumed that the bed of the channel was included in the grant The ownership of the bed will not however carry with it the right to use the water of the channel free of charge under Act III of 1865 If water from a Government channel or river is distributed through channels provided by a private person such irrigation is not free of cess S 2 of Act III of 1905 is declaratory and effect must be given to the clear declaration without confining its operation to the matter of encroachments on land The channel or river is the flowing body of water Under s 2 of Act III of 1905 where it is not shown to belong to a private person it belongs to Government although private persons may be proprietors of the bed The riparian proprietors have easement rights but they are not on that account owners of the channel and they cannot use water which belongs to Government free of cess in the absence of an engagement with Government to that effect The abstention of Government from charging water cess for a number of years and the fact that the Government and the zamindar apportioned the cost of the upkeep of the channel according to the extent of zamindari and ryotwari land under it do not raise a presumption of any such engagement The only engagement which can be inferred from the Permanent Settlement is that the peshkush being fixed with reference to the area of land then under irrigation no further charge for the use of water should be made in respect of that area The burden of proving that any of crop is exempt from water cess lies zamindar Maria Susan Mudaliyar v Secretary of State for India in Council 14 Mad Where capacity to grow a second crop is taken account in fixing the peshkush no separate

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

s 2—*contd.*

can be made for the second crop. Money paid on a demand by Government and enforceable by attachment under Act II of 1861 is not a voluntary payment. **KANDUKURI MAHALAKSHMANNA GARU v SECRETARY OF STATE FOR INDIA (1910)**

I L R 34 Mad 29.

2 *Condition necessary to entitle Government to levy water cess—Government may also source what is—Engagement nature of to be implied from title deed—Extent of water right how ascertained—Cultivation of larger area without increase of rent not liable to cess—Injunction granting of The essential conditions for the levy of water cess under Madras Act VII of 1865 are—(i) The irrigation must be effected by means of the water of a river stream tank or channel or work belonging to or constructed by Government (ii) If the water from such a source is received by indirect flow or used after storage in an intermediate reservoir the irrigation must in the opinion of the Collector (subject to the control of the Board of Revenue and Government) be beneficial to and sufficient for the requirement of the crops (iii) The charge must not be contrary to any engagement between the landholder and Government whereby the latter is entitled to irrigation free of charge. Where water from two hills—one belonging to Government and the other to a private party—combine and flow in a channel between Government and private lands and through Government and private lands alternatively and as a result are drawn for irrigation through channels owned by private parties such irrigation is effected by means of water drawn from a Government source within the meaning of s 2 of Act VII of 1865. **Proprietor v The Secretary of State for India I L R 34 Mad 295** followed. Where Government waters mingle with those of another stream the combined water must be treated as Government water and the fact that it is drawn for use through private channels is immaterial. The question whether the irrigation is beneficial and sufficient must be decided by the Collector and his decision when not impeached by the Board of Revenue or Government cannot be questioned by the Civil Courts. The only undertaking which may be implied from a grant of land by Government is an undertaking to supply water free of charge to the extent of the accustomed flow at the time of the grant. Where the quantity of the customary flow cannot be ascertained the area irrigated will be presumed to be the measure of the quantity of water used at the time of the grant. Where a larger area is irrigated subsequent to the grant it will be open to the landholder to show that the increase is not due to the use of a larger quantity of water but to a more economical use of it in which case no cess can be levied for the increased extent. **Maria Sivasudhan v The Secretary of State for India I L R 34 Mad 354** referred to. An injunction ought not to be granted when there are no sufficient data for determining whether an infringement of it has taken place. **SECRETARY OF STATE FOR INDIA v AMBALAVANA PANDARA SANKH (1910)***

I L R 34 Mad 366

3 *River belonging to Government meaning of—Madras Land Encroachment Act (III of 1905) effect of a river which after rising in certain Government hills flows through ryotwari tracts and then through a zamindar*

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

s 2—*contd.*

dar and lastly through a Government village is not a river belonging to Government within s 2 of Madras Act VII of 1865 at the place where it passes through the zamindari wherein both the banks and the bed of the river belong to the zamindar and a ryot of the zamindar taking water from the river within the limits of the zamindari for irrigation is not liable to pay water cess to Government under the Act. **Madras Act III of 1905 has not taken away pre-existing natural and easement rights of private proprietors in flowing waters of natural streams. CHINNAPPAN CHETTI v THE SECRETARY OF STATE FOR INDIA (1918)**

I L R 42 Mad 239

s 4—

Sec 1

I L R 43 Mad 529

*Levy of cess what is—Effect of levy not retrospective—Arrears in s 2 of the Act means payments which become due and remain unpaid after levy. Under Madras Act VII of 1865 Government have the right to levy at pleasure a separate cess for water. The liability to pay water cess is not incurred in each fall by the mere fact of taking Government water but only when Government indicates its intention to charge the cess. The cess must be imposed during the fall. Arrears in s 2 of the Act means payments which have become due and remain unpaid after the levy was made. An arrear under the Act presupposes an engagement to pay and the mere use of water implies no such engagement. The Government cannot by the mere act of levying water cess in a subsequent fall indicate an intention to claim rent for previous fall. **PASRI CHANDRA APPA ROW v SECRETARY OF STATE FOR INDIA (1911)***

I L R 35 Mad 187

*Water cess—Zamindar's lands—Excess area whether liable to pay water cess—Madras Land Encroachment Act (III of 1905) effect of. Where a right to take water is proved even though no express agreement on behalf of Government not to levy any charge is proved an engagement under Act VII of 1865 will be implied and no cess can be levied. **Pir Sankaran Nair v J Act III of 1905 did not take away any rights that existed at the time the Act was passed and the Government are not by reason of that Act coupled with Act VII of 1865 entitled to impose any cess upon those landholders who were before the Act not liable to pay cess for their use of the water. Kandukuri Mahalakshamma Garu v The Secretary of State for India I L R 34 Mad 295 and Venkataratnammah v Secretary of State I L R 37 Mad 356** followed. **SRI RAJAH SINGAR PAI v SECRETARY OF STATE FOR INDIA (1914)***

I L R 39 Mad 57

*Inam lands irrigated by water coming from Government source—Water cess liable to be levied on where inamdar has no option to refuse use—Phrase used for the purpose of irrigation meaning of. Certain dry inam lands were submerged by water flowing from a Government source and by reason thereof the inamdar was compelled to raise wet crops with the help of the water which he enclosed in his adjoining land out of the flood water. Held that under Madras Act VII of 1865 he was liable to pay water cess. **Madras Act VII of 1865 is not based upon any***

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd*

s 4—*contd*

theory of the ownership of the bed of a tank or water course being the foundation of a right to use the water free of charge. The fact that before irrigating the inamdar a lands the water had flowed through two fifths of a sheet of water included in the inam does not make it any the less water from a Government source. *Held* further the fact that rain water had got mixed with the flood water is no ground for getting rid of the liability. *Secretary of State for India in Council v Perumal Pillai* 1 L R 24 Mad 39 distinguished *Maria Susan Mudali v The Secretary of State for India* 14 Mad L J 350 distinguished *SECRETARY OF STATE FOR INDIA v SWAMI VARATHESWARAN* (1910)

I L R 34 Mad 21

Madras Act II 1864—

Defaulter who is—Person liable to pay cess under Act II of 1865—The amindar and not the tenant in occupation liable. Where water cess is leviable on zamindari land under the provisions of Madras Act VII of 1865, the person bound to pay such cess is the zamindar and not the tenant in occupation of such land. *Aynappan Serrai v Secretary of State* Mad N A 322 dissented from *Subramanya Chetty v Mahalingasami Sivan* 1 L R 33 Mad 41 followed. The zamindar is the proprietor and landholder within the meaning of Act II of 1864. He is the defaulter whose right and interest passes by the sale under s 39 of the Act. The security for the public revenue and for the cess which is recoverable as such revenue is the full proprietary right and not the right of the tenant. *KOTILINGA SETHU POKER ZAMINDAR OF URKAD v SAKASHANAMA IYER* (1911)

I L R 34 Mad 520

River belonging to Government meaning of—Zamindars and Rajas rights of to waters of rivers passing through their lands—Water proprietary rights in discussed—*Madras Land Encroachment Act (III of 1905)* effect of upon such rights. *Per MILLER J*—In a suit for the recovery from Government water cess illegally levied the cause of action arises on each occasion on which the cess is demanded and Art 131 of Schedule II of the Limitation Act does not apply. The High Court having held in *Kandukuri Mahala kshammamma Garu Proprietrix of Utlam v Secretary of State for India* 1 L R 34 Mad 295 on facts similar to those relied upon in the present case that the Vamsadhara river is a river belonging to Government such finding was a matter of law which should be followed until overruled by a Full Bench or a higher Court. I followed accordingly. *Per SANKARAN NAID J* Under the customary law of the country water belonged to the owner of the estate through which it passes so long as the water remained on the land subject to the claims of the proprietors below. The members of the village community and the zamindars or poligars were entitled to the water which flowed through their lands. If Government are the proprietors of the land they are the owners of the water thereon and those rivers and streams of which they own the bed and the banks belong to Government. It was the policy of the East India Company in granting the permanent sanads to recognize private proprietary rights and to divest themselves of such rights which may have been vested in them. It is against the policy and the spirit of the permanent

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd*

s 4—*contd*

settlement regulation to hold that the Government reserved to themselves any power to increase the revenue on the zamindari or to levy any assessment for the use of water. The permanent sanads granted to Rajas and chieftains did not interfere with their use of the waters of natural streams for the cultivation of all lands within the *ayacut* (i.e. the area of land that can be irrigated according to the customary methods) subject to the claims of the ryots. The new zamindars created by the East India Company were placed on the same footing as the old. Speaking generally whenever the Government contend that these zamindars are not entitled to exercise any of the rights which are capable of private ownership and that such rights are vested in the Crown it lies on the Government to prove that such zamindars were deprived of them either expressly or by necessary implication under the sanads granted under that Regulation (Regulation XXV of 1802) the new zamindars were placed on the same footing. The sanads referred to are those which were granted by Lord Clive a copy of which will be found in the earlier editions of the Standing Orders of the Board of Revenue. Under the Regulation of 1802 the Government did not enter into any engagements with the landholders to supply water. The circumstances under which the permanent sanads were granted preclude any such engagement. In the case of new zamindars created there may be cases in which the Government reserved to themselves the control of water courses. Act VII of 1865 was intended by the Legislature to refer to all rivers and streams in those ryotwari districts where no *mirasi* or any corresponding right prevailed and the words *rivers belonging to Government* do not apply to rivers running through or by zamindars. The Act was not intended to effect any change in the substantive law but to enable Government to levy a cess on account of the large expenditure incurred by Government in the construction and improvement of irrigation works. The ryotwari lands were assumed to be Government property and all rivers running through ryotwari lands were accordingly treated as belonging to Government. But it does not enable the Government to levy a water cess where the landowners use the waters of rivers in accordance with the rights they had before. The exemption clause in s 1 of the Act—Where a zamindar or inamdar by virtue of engagements with the Government is entitled to irrigation free of separate charge no cess under this Act shall be imposed for water supplied to the extent of such right and no more—does not apply to those zamindars and proprietors who themselves take and are entitled to take the water for irrigation from the rivers and streams in their zamindaris without its being supplied to them by Government. Even if the section with the exemption clause applied the engagement to be implied is one to allow the proprietors to irrigate all their lands within the *ayacut* which could be irrigated without any fee and without any charge. As Act III of 1905 does not interfere with vested right it cannot be used to interpret Act VII of 1865 to take away such rights. Therefore under Act VI of 1865 (standing unaffected by subsequent legislation) it was not competent to the Government to levy any cess for any water taken from the Vamsadhara river with

MADRAS IRRIGATION CESS ACT (VII OF 1865)—concl'd

— ss 4—concl'd

out the aid of Government works [See the end of the judgment for a summary of the conclusions] SECRETARY OF STATE v JANAKIRAMANAYYA (1912) I L R 37 Mad. 322

MADRAS LAND ENCROACHMENT ACT (MAD III OF 1895)

— ss 1 and 2—

See MADRAS IRRIGATION CESS ACT (VII OF 1865)

— ss 3 5 and 14—Penal assessment

levy of—Suit for declaration of title and recovery of penal assessment—Suit brought after six months from date of notice and levy of penal assessment—Suit barred—Limitation Where the plaintiff brought a suit against the Secretary of State for a declaration of his title to certain immovable property and for recovery of penal assessment levied from him by Government under s 5 of the Madras Act III of 1905 more than six months after the issue of notice and levy of the assessment from him Held that the suit for declaration of title as well as for recovery of penal assessment was barred under s 14 of the Madras Act III of 1905 BHASKARADU v SUBBARAYUDU (1913) I L R 38 Mad 874

— ss 5 6 7 and 14—Notice under s 7

—Levy of penal assessment—Suit for declaration—Cause of action—Limitation A notice under s 7 of the Madras Land Encroachment Act (III of 1905) was issued to the plaintiff and penal assessment was thereafter levied from him More than six months after such levy the plaintiff brought this suit for a declaration of his title to the land in question and for the refund of the assessment levied Held that the notice under s 7 of the Madras Land Encroachment Act calling on the person in occupation to show cause why he should not be proceeded against under s 5 or 6 of the Act does not give rise to a cause of action but that the suit was barred having been filed more than six months after the levy of assessment Narayana Pillai v Secretary of State 22 Mad L J 189 approved BHASKARADU v SUBBARAYUDU I L R 38 Mad 874 considered THE SECRETARY OF STATE FOR INDIA v ASSAN (1915) I L R 39 Mad 727

— ss 6 7 14—Levied in s 14 means

levy of—Levy of penal assessment—Suit for refund of penal assessment declaration of title to property and injunction—Limitation In a suit under s 14 of Madras Land Encroachment Act (III of 1905) for (a) refund of penal assessment levied from the plaintiff (b) declaration of the plaintiff's title to the property in respect of which penal assessment was levied and (c) an injunction restraining Government from interfering with the plaintiff's possession the cause of action for the refund arises not from the date of imposition of the penal assessment but from the date on which it was actually collected and the cause of action for the declaration and injunction arises not from the date when the Collector issues his order for the eviction but from the date on which some steps are taken under s 6 of the Act to evict the plaintiff Levied in s 14 means collected and not merely imposed THE SECRETARY OF STATE FOR INDIA v ASSAN I L R 39 Mad 727 explained and distinguished KESAVA

MADRAS LAND ENCROACHMENT ACT (MAD III OF 1905)—concl'd

— ss 6 7 14—concl'd

CREDIT v THE SECRETARY OF STATE FOR INDIA (1918) I L R 42 Mad 451

MADRAS LAND REVENUE ASSESSMENT ACT (MAD I OF 1876)

Partly driven to sue for separate registration not entitled to damages for refusal to render—Action for money had and received—Request when implied The alienation of a portion of an estate who is driven to a civil suit to enforce separate registry under Act I of 1876 all the parties to the alienation not consenting to the transfer is entitled to recover only the costs of such suit and not any further damages In an action to recover money paid by plaintiff for the defendant at his request a request will generally be implied where the defendant has notice of the payment being made for him and does not dissent Where the circumstances show that the owner of property which is saved by another party knew that the other party was laying out his money in the expectation of being repaid the inference of an understanding between the parties amounting in law to an implied contract will unhesitatingly be drawn FALKE v Scottish Imperial Insurance Company 34 CA D 219 referred to Where a portion of an estate is alienated and the vendor and vendee agree that the vendee should pay the vendor a certain amount as the vendee's share of *peelash* on the portion alienated which amount is in excess of the amount ascertained on separate registry to be due on such portion the vendor is interested in paying the *peelash* as he makes a profit in doing so and he can recover the amount so paid NARAYANASWAMI NAIDU v VELLANKI SREENIVASA JAGAN MADHA RAO (1909) I L R 33 Mad 189

— ss 2—Owner under meaning of—

Permanent lessee not an owner—No liability to separate registration and assessment—Proprietor or owner under Regulation (XXI) of 1802—Madras Hereditary Village Offices (Act III of 1895) Grantees holding under perpetual grants subject to payment to the zamindar (the grantor) of a small rent under the name of *jodi kattubadi* or *poruppu* are not liable to have their lands separately registered and to have separate assessment imposed upon them under the provisions of the Madras Act I of 1876 A permanent lessee is not a proprietor or owner under Regulation XXI of 1802 or the Madras Hereditary Village Offices Act (III of 1895) Venkateswara Iettiappaiah Naicker v Alagoo Moottoo Seroogaren 8 Moo I A 327 Hari Narayan Singh v Sriram Chakravarthi L R 37 I A 136 Durga Prasad Singh v Brojo Nath Bose L F 39 I A 133 and Kshetrabaro Bissoyi v Sohanapuram Hari Krishna Narudu I J R 33 Mad 341 followed Robert Fisher v The Secretary of State for India I L F 2, Mad 270 distinguished Komalammal v Raju Naicker I L R 19 Mad 308 distinguished MAHARAJA of VIZIANAGRAM v THE COLLECTOR OF VIZAGAPATAN (1914) I L R 38 Mad 1128

MADRAS LOCAL BOARDS ACT (MAD V OF 1884)

— ss 33 98 (1) and (2)—Delegation of duty to give notice of removal of obstruction to a

MADRAS LOCAL BOARDS ACT (MAD V OF 1884)—contd

ss 33, 93 (1) and (2)—contd

public road by the president of a Taluk Board to a chairman of a union *validity of*—Other person duly authorized by him as *afore*—*in s 93 (2) meaning of* S 33 of the Madras Local Boards Act (V of 1884) does not restrict the specific delegations of duty allowed to the president of a Taluk Board by other sections of the Act. The words "other person duly authorized by him as *afore*" said in s 93 cl (2) mean any person duly authorized by him in that behalf as the one mentioned in s 93 cl (1) and do not mean only the vice president of the Taluk Board. Hence a notice to remove an obstruction to a public road given by the chairman of a union to whom the president of the Taluk Board within which the union was situated delegated the power to give such notice is a legally valid notice and disobedience to the notice is an offence under the Act. PUBLIC PROSECUTOR v SANKARALINGA MOOPAN (1910) I L R 42 Mad 787

s 51—

See CHARITABLE TRUST

I L R 34 Mad 375

Taluk Board taking over management of charity not bound to keep account accessible to all persons when they take the place of trustees who are under an obligation to do so—Power of Taluk Board to transfer management—Madras Regulation VII of 1817 ss 2, 5, 7, 8, 13—Under s 51 of Act V of 1884 the Taluk Board is vested with powers of supervision and management and not with the power of appointing trustees conferred on the Board of Revenue. Where a Taluk Board under s 51 of Madras Act V of 1884 takes the place of trustees appointed by a will, which directs the trustees to keep accounts accessible to all persons such Board will not in the absence of a charge of mismanagement be under an obligation to keep such accounts. The management being transferred by a special law to a statutory body we must look to that law and not to the will to determine the duties incidental to such management. The Board is not bound to give inspection of accounts when no charge of mismanagement is made. The Taluk Board which has taken over the management under s 51 of the Act cannot appoint an independent trustee so as to divest itself of the duty of management. The power and duties of the Board of Revenue which devolve on the Taluk Board under s 51 of the Act do not include the power to appoint trustee vested in the Board under s 13 of Reg VII of 1817. NELAYATHAKSHI AMMAL v THE TALUK BOARD MAYAVARAM (1910) I L R 34 Mad 333

ss 51, 144 to 147—

See NEGOTIABLE INSTRUMENTS ACT 1881

ss 5 AND 6 I L R 43 Mad 816

ss 63 AND 73—

See MUTT HEAD OF

I L R 38 Mad 356

s 73—Mortgagee with possession who then intermediate holder—His right to recover rent A mortgagee with possession is an intermediate tenure holder within the meaning of s 73 of the Local Boards Act (V of 1884) and is entitled to recover rent by summary process. The tenant's liability to pay him is not abrogated by a contract

MADRAS LOCAL BOARDS ACT (MAD V OF 1884)—contd

s 73—contd

to which he was not a party JAGANNATHKULU v MANAGER OF NANDIGAM ESTATE (1914)

I L R 39 Mad 269

ss 73 74—

See MADRAS ESTATES LAND ACT (I OF 1908) s 77 I L R 37 Mad 319

s 95—Taluk Board—Planting of trees along a road—Statutory duty—Branches of trees overhanging plaintiff's land—Omission to remove if actionable—Non-feasance—Absence of negligence—Cause of action—English and Indian Law. Where a Taluk Board acting under s 95 of the Local Boards Act (V of 1884) planted on the sides of a road certain trees whose branches spread over the land of the plaintiff who thereupon sued for an injunction directing the Board to lop off the branches. Held that the suit was not sustainable as (i) the Taluk Board in the discharge of its statutory duties had not acted carelessly or negligently and (ii) the omission to remove the branches even if it ought to have been done is only a non-feasance for which no action at the instance of a private individual would lie. English and Indian Cases on the subject reviewed. KRISHNAMOORTHY AIYAR v THE TALUK BOARD OF MAYAVARAM (1916) I L R 42 Mad 331

s 100—Order of a Taluk Board to an owner to fill up a tank without regard to attendant circumstances—validity of. A Taluk Board passed an order under s 100 of the Madras Local Boards Act (V of 1884) asking the owner of certain tanks to fill them up on the ground that they were in an insanitary condition without taking into consideration (1) that such condition was brought about not by any act of the owner but by the Taluk Board allowing drainage water to escape into the tanks and (2) that filling up the tank was far more expensive than raising a bund all round the tanks which would have equally served the purpose. Held that the power conferred by s 100 of the Local Boards Act though a very wide power must not be exercised for ulterior purpose or in a capricious wanton and arbitrary manner and if so used can be controlled by the Civil Courts and that the order passed by the Board in this case was one that should be set aside. TALUK BOARD BANDRA v ZEMINDAR OF CHELLAPALLI (1921) I L R 44 Mad 166

MADRAS MOTOR VEHICLES ACT (MAD I OF 1907)

See TORTS I L R 41 Mad 538

MADRAS PERMANENT SETTLEMENTS

See MADRAS IRRIGATION CEAS ACT 1863

I L R 40 Mad 886

See MADRAS REGULATION XXX OF 1802

MADRAS PLANTERS LABOUR ACT (I OF 1903)

See PLANTERS LABOUR ACT (MAD)

I L R 36 Mad 467

ss 21 and 35—Breach of contract by master or labourer—Prosecution of master—Successive prosecutions and convictions if permitted under the Act—Directions by the Magistrate to com-

MADRAS PLANTERS' LABOUR ACT (I OF 1903)—cont'd**ss 21 and 3—cont'd**

plete performance.—Successive directions if permitted by the Act Under a 3 of the Madras Planters Labour Act (I of 1903) the Magistrate has power to issue successive directions to a mistry labourer to complete the performance of his contract *Re Panga Mistry I L R 36 Mad 497* dissented from Successive prosecutions can be instituted and convictions obtained against a mistry in respect of successive defaults made by him under s 21 cls (a) (b) and (c) of the Act *Unwin v Clarke L R 1 Q B 417* and *Culler v Turner 9 Q B 50* followed *Whitton v MAM MAD MAISTRY (1015)* I L R 39 Mad 889

MADRAS PORT TRUST ACT (II OF 1905)**—by law 22—**

See MADRAS CITY POLICE ACT (III OF 1889) s 75 I L R 39 Mad 886

MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1874)

See CIVIL PROCEDURE CODE 1909 s 47

I L R 41 Mad 418

ss 5 and 10 cl (2)—Service inam—

Emolument its partition of whether prohibited—Alienation validity of—Subsequent suit for ejectment—Transfer of Property Act (II of 1882) s 43—Ancestral property—Property inherited by maternal grandsons—Interest nature of The enfranchisement of a service inam under a 10 cl (2) of the Madras Proprietary Estates Village Service Act (II of 1891) does not destroy the rights of any member of a joint family who has a hereditary interest in it The alienation of a service inam is void and though it is subsequently enfranchised the alienance cannot invoke the aid of s 43 of the Transfer of Property Act in his favour *Ramaswami Naick v Azmaswami Chetty I L R 30 Mai 705* *Narahara Sahu v Siva Narathan Naidu (1913) Mai W N 415* and *Bchu Ramayya v Pharasanthi (1913) Mai W N 999* referred to Property which descends on daughter's sons from their maternal grandfather is ancestral property in which the grandsons take an interest by birth according to the Mitakshara law Cases reviewed *RAMAYYA v JAGANNADHAN (1015)* I L R 39 Mad 930

MADRAS REGULATION (XXV OF 1802)**See IMPARTIBLE ESTATE**

I L R 36 Mad 325

See MADRAS IRRIGATION LESS ACT 1865

I L R 40 Mad 886

See MADRAS LAND REVENUE ASSESSMENT ACT (I OF 1876) s 2

I L R 38 Mad 1128

See MADRAS PERMANENT SETTLEMENT**See UNSETTLED PATAKANI**

I L R 41 Mad 749

See REGULATION

17 C W N 1291

ss 3 and 4—Zamindar—Permanent Settlement—Sanad—Construction of Sanad—Right of Government to resume inam lands A sanad issued by the Government on August 24th 1802 to a zamindar in the Presidency of Madras (Arcot) stated that in consideration of the relief which the

MADRAS REGULATION (XXV OF 1802)—cont'd**ss 3 and 4—cont'd**

zamindar's finances would derive from the relinquishment of his military services and of the Government charging itself with the duty of protecting his territories the British Government has fixed your annual contribution including equivalent for military service and the established perkulush for every year at the sum of star pagodas 11 059 which said amount shall never be liable to changes under any circumstances Cl (5) reserved to the Government the revenue derived from salt and saltpetre and certain other subjects without making any mention of lakhiraj or inam lands It appeared from other documents that the assessment had been fixed on the whole zamindari irrespective of the assets derived from each particular unit of property within II Madras Regulation XXV of 1802 which was passed on July 13th 1802 provided by s 3 that in all cases of disputed assessment reference was to be had to the sanads and Labuliyats executed and by s 4 that the Government having reserved to itself certain articles of revenue including lakhiraj lands (or lands exempt from the payment of Government revenue) and of all other lands paying only favourable quit rents the permanent assessment of the land tax shall be made exclusively of the said articles now recited At the time of issue of the sanad there were in the zamindari certain religious and charitable inams and lakhiraj lands granted by the zamindar or his predecessors Held that having regard to the terms of the sanad and the circumstances in which it was issued the Government was not entitled to resume them or assess them to the public revenue Judgment of the High Court affirmed SECRETARY OF STATE FOR INDIA v RAJA OF VEYATATOGRI (1021)

I L R 44 Mad (PC) 864

s 4—Pre settlement inams—Lands held on service tenure in addition to payment of quit rent—Service to Zamindar—Service quasi public before settlements—Its discontinuance thereafter—Presumption by Government right of—Presumption—Onus of proof as to exclusion prior to Settlement—Evidence Act (I of 1872) ss 106 and 114 ill (g) Where land in a Zamindari were pre settlement inams granted on condition of rendering personal service to the zamindar and paying a favourable quit rent and the Government resumed such inams on the ground of discontinuance of such services Held that as the grant was for services purely personal to the zamindar prima facie the inams formed part of the assets of the zamindari and the zamindar and not the Government was entitled to resume Held also that where such service was rendered in addition to quit rent the proviso to s 4, Regulation XXV of 1802 has no application The onus of proving that such lands were excluded from the assets of the zamindari and that the Government had the right to resume lay on them. Per TYABJI J.—The Government having special means of knowledge as to exclusion or otherwise of the lands at the settlement from the Zamindari the burden was upon them according to s 106 of the Evidence Act and the necessary presumption against the non production of the records in their possession should be drawn against them SRI RAJA PARTHASARATHY APPA PAO BAHADUR v SECRETARY OF STATE (1913)

I L R 45 Mad 820

MADRAS REGULATION (XXXI OF 1802)

See MADRAS ESTATES LAND ACT s 3

I L R 41 Mad 1012

MADRAS REGULATION (XI OF 1816)

s 10—

Village Magistrate

—Power to sentence confinement—Village choultry—
Confinement to be only in village choultry and nowhere else—Sentence of confinement before a temple legality of Under s 10 of Madras Regulation XI of 1816 the village magistrate has power to pass sentence of confinement only in the village choultry and not in front of a temple although a public place Criminal Revision Petition 190 of 1898 I Weir 924 referred to PONTYSAWI ILLAI In re (1921)

I L R 44 Mad 113

MADRAS REGULATION (VII OF 1817)

See CHARITABLE TRUST

I L R 54 Mad 375

See MADRAS LOCAL BOARDS ACT 1884

I L R 34 Mad 333

MADRAS REGULATION (VI OF 1831)

See EMISSIONS ACT 1811 s 4

I L R 36 Mad 559

See SERVICE INAM

I L R 35 Mad 705

MADRAS REGULATION (X OF 1831)

See MADRAS RENT RECOVERY ACT

I L R 41 Mad 733

MADRAS RELIGIOUS ENDOWMENTS ACT (X OF 1883)

See CHARITABLE TRUST

I L R 34 Mad 375

MADRAS RENT RECOVERY ACT (VIII OF 1865)

See MADRAS ESTATES LAND ACT (I OF 1918) s 13 CL (3)

I L R 39 Mad 84

Tenant who is—Trans

fer puts an end to holding without notice to landlord—Tenant at the beginning of fasli is tenant for the fasli notwithstanding subsequent transfer A transfer of the holding by the tenant puts an end to the tenancy without notice to the landlord unless the tenant under certain circumstances is estopped from denying its continuance There is nothing in the Rent Recovery Act to warrant a contrary view A tenant who is a tenant at the beginning of the fasli continues to be the tenant for the fasli notwithstanding a subsequent transfer of the holding and is liable to be proceeded against under the Rent Recovery Act PAVASWAMI AYYANGAR v SHUNMUGAN PILLAI (1910)

I L R 34 Mad 179

—Implied contract by ryot to pay enhanced rent—Consideration—Zemindar refraining from raising a hopeless dispute is valid consideration—Contract Act (IX of 1872) s 2—Payment of increased rent for several years is estoppel ryot from challenging it—Auc plea not entertained by Privy Council Where the contract of tenancy between zemindar and ryot was that the ryot was to hold the lands at the uniform panya rate of 4 fanams a guli and was to remain in occupancy so long as circumstances affecting the hold

MADRAS RENT RECOVERY ACT (VIII OF 1865)—contd

ing remained unchanged otherwise than by the labour and outlay of the ryot himself and the land lord pleaded that the tenant having subsequently (by making a well or tank at his own expense) resorted to garden cultivation thenceforward agreed to pay rent at 8 as per guli and that this contract to pay enhanced rent was to be implied from the fact of the zemindar having demanded and received such rent for several years thereafter Held that the term implied contract as used in the Madras Rent Recovery Act (VIII of 1865) which governed the case was an English term of art and must be so construed That there was no consideration for the promise to pay increased rent and the implied contract was not therefore enforceable That the fact if proved of the zemindar having consented not to raise a hopeless and groundless dispute as to the right of the tenants to hold the lands at the 4 fanams rate would not be a valid consideration for the tenant's promise to pay enhanced rent That in the absence of evidence showing an implied representation by the ryot of some existing fact on the faith of which the zemindar had changed his position there was no estoppel in pais which would bind the ryot to pay the enhanced rent The Judicial Committee refused to entertain new pleas for the first time raised before it and held the Appellant to the position taken up in the lower Courts JAGAVEERA RAO v VENKATESWARA ETTAPPA v ALAWARASA ASARI (1918) 23 C W N 225

—ss 3 11—Varam rate—Pate of rent ascertaining of—Right of landlord to varam rate on wet crop raised on dry lands when no contract for the rent chargeable By agreement between the landlord and tenant a permanent money rent was fixed for dry cultivation and the agreement provided for extra charge for wet and garden crops without however stating the amount of such charge The land was subsequently cultivated with wet crop without any assistance from the landlord and the tenant took objection to the varam rate claimed by the landlord Held that the landlord had the right to claim the varam rate as there was no contract in regard to the rent payable for wet cultivation The contract having left the rate for wet cultivation undetermined was not a contract within the meaning of s 11 of the Act Where under the circumstances the landlord became entitled to varam rate under s 11 of the Rent Recovery Act his claim to such rate cannot be objected to on the ground that the rent is thereby increased and it is not necessary to obtain the sanction of the Collector In the absence of contract or survey rates the landlord is entitled to varam rate under cl 3 of the section An enquiry to determine the rate according to local usage is not necessary to enable the landlord to claim varam rates SRI RAJA BOMMADEVARA VENKATA VARASINHA NAY DU v KASARAVEVI CHINNA RAOY (1909)

I L R 23 Mad 12

—Right of landlord to enhance rent on dry land cultivated with garden crop by wells dug at tenant's cost—Auc such right in the absence of a contract supported by considerations Dry lands liable to pay a fixed rent were cultivated with garden crop by the tenant by means of wells excavated at his cost with the consent of the landlord The landlord claimed and the tenant for some years paid an enhanced rate of rent for the

MADRAS RENT RECOVERY ACT (VIII OF 1865)—contd

— s 3, 11—contd

crop so raised. In a suit by the tenant to compel the landlord to grant pattas at the usual dry rate it was contended for the landlord that a contract to pay the enhanced rate must be implied from the payment for a number of years of such rate and that such contract was supported by consideration as the landlord had consented to the digging of wells and as he had forborne from claiming the *varam* rate which he had a right to do under s 11 cl. 3 of the Rent Recovery Act. There was no evidence that rent was chargeable according to the nature of the crop raised. *Held* (i) that the word contract in s 11 cannot be construed as a mere agreement but as an enforceable contract supported by consideration (ii) that the consent of the landlord not being necessary to entitle the tenant to sink the well such consent was no legal consideration for an agreement to pay the enhanced rate (iii) that payment of a fixed rate of rent prior to the sinking of the wells was evidence of an implied contract to pay rent at that rate and in the absence of evidence to show that the rate was fixed not on the holding but on the nature of the crop and was liable to be altered with a variation in the crop raised that the existence of such a contract barred the landlord's claim to *varam* rates under s 11 cl. 3 of the Rent Recovery Act. The promise not to press such an unenforceable claim was no legal consideration. **ARUNGOBI CHETTY v. RAJA JAGAJEERA RAMA VENKATESWARA ETTAPPA MAHARAJA AYYAR** (1910)

1 L R 35 Mad 184

— s 4 5 18—

See EXECUTION OF DECREE

1 L R 40 Cal 623

— s 7—*Distrain for larger amount than is legally due not good even for the amount due*. Where after tender by landlord and refusal by the tenant of a patta providing for a larger rent than is really due the landlord distrains property of the tenant for such larger amount such distrain will not hold good even for the amount properly claimable. **VENKATA NARASIMHA NAIDU BHADUR v. SAGGA S MAYA** (1911) 1 L R 35 Mad 129

— s 9—*Tender of Pattas on produce sharing system—Allegation by tenants that money system prevailed—Prevalence of money rent for series of years—Alleged express contract to make prevailing rate permanent—Implied contract presumption of—Evidence in considering usage prevailing—Demand of cases for determination of proper rate when no contract exists*. The appellant a zamindar brought suits against the respondents the tenants in a village on his estate under s 9 of the Madras Rent Recovery Act (Madras Act VIII of 1865) to enforce pattas tendered by him and the execution of corresponding *muchulkas*. The pattas tendered were under the *Asara* or produce sharing system which the respondents denied was in force in their village money rate as they alleged being the proper form of rent. It appeared that in 1899 (1855) different rates of rent prevailed in the village some being higher than Rs 5 and others lower than that in that year a uniform rate of Rs per acre was introduced by mutual agreement between the appellant and respondents and leases were exchanged on that basis for a term of 6 years. The respondents alleged that the appellant at that

MADRAS RENT RECOVERY ACT (VIII OF 1865)—contd

— s 9—contd

time expressly agreed that the rate of Rs should be permanent. The High Court did not uphold the express agreement but found there was an implied contract to be inferred from the fact that rents at the same rate were paid and received for four years after the expiration of the term fixed by the leases of 1299 the presumption being that such rate of rent should continue the same in perpetuity. *Held* by the Judicial Committee that there was along side of the express contract embodied in the leases exchanged between the parties no proof of any such collateral implied agreement relating to fixity of rent. Any understanding of the kind was denied by the appellant and no credible explanation was given by the respondents why it existed such an important arrangement was not reduced to writing. *Held* agreeing with the High Court that it was not open to Courts to imply from the mere circumstance that the rent had been paid in money for a series of years an agreement to pay money rent their Lordships saw no reason why the fact that money rent had prevailed in a particular locality for a considerable number of years might not form an element in the consideration of usage. The real question between the parties not having been decided namely whether the pattas tendered by the appellant were such as he was entitled to impose on the respondents a question which it having been found that there was no express or implied contract must be decided in accordance with the rules contained in cl. (iii) of s 11 of Act VIII of 1865 which dealt with the mode of determining the rate when no contract exists their Lordships remanded the cases to the proper Court in India to determine under the provisions the rates the appellant was entitled to receive. **VARADACHARI APPA ROW v. CHENNAI VENKATA NARASIMHA** (1910)

1 L R 33 Mad 177

— s 9 and 10—

See LIMITATION ACT 1908 SCH II Art 110 1 L R 36 Mad 438

— s 11—

See s 3 1 L R 43 Mad 1074
See PATTAS

1 L R 36 Mad 4

— *Payment of enhanced rent—Implied contract—Absence of consideration*. The Madras Rent Recovery Act 1865 s 11 among rules to be observed in the decision of suits regarding rates of rent provides all contracts for rent express or implied shall be enforced. A tenant of dry lands sank a well at his own cost and there after cultivated the land with garden crops. Prior to the sinking of the well the tenant had always paid a uniform rent on a dry basis subsequently the landlord claimed and the tenant for some years paid an enhanced rent namely at the garden crop rate. In a suit by the tenant to obtain pattas at the usual dry rate. *Held* that there was an implied contract to pay rent at the dry rate and that there was no consideration to support an implied contract to pay at the enhanced rate further that to construe the original contract as a contract to pay at the dry rate only so long as the land remained dry having the subsequent rent to

MADRAS RENT RECOVERY ACT (VIII OF 1863)—contd**s 11—contd**

depend upon the produce would be repugnant to the Act JAGAVEKKA IAMA ETYAPPA v ARIMU GAM CHETTI (1918) L R 45 I A 195

ss III 35 39 and 40—

See LIMITATION ACT (I of 1908) s 29
I L R 38 Mad 837

s 49—8—

See MADRAS ESTATES LAND ACT (I OF 1908) 13 CL (3)
I L R 39 Mad 239

s 69—

See SPECIAL OR SECOND APPEAL
I L R 37 Mad 443

MADRAS REVENUE RECOVERY ACT (MAD II OF 1864)

ss 1 42—Sale for arrears of water-cess due under Madras Act II of 1864—Discharge of encumbrances Under s 42 of Madras Act II of 1864 (Revenue Recovery Act) a sale for arrears of water cess due under Madras Act II of 1864 conveys a title to the purchaser free of encumbrances water cess being included in the term public revenue as per s 1 of Madras Act II of 1864 Cases relating to sales for arrears of income tax and abkari revenue have no bearing on this question VELLAPPAYAL AMBALAM v HARTFILLIAN PILLAI (1911) I L R 37 Mad 49

ss 2 5 42—Provisions of s 42 not confined to land on which the arrears become due—Land mortgaged by defaulter does not cease to be his property Land belonging to the defaulter does not become mortgaged by him, ceases to be his property within the meaning of s 5 of Act II of 1864 there is nothing in s 2 or 5 to restrict the land that may be sold thereunder to the land in which the arrears of revenue have accrued When therefore land belonging to the defaulter is sold for arrears accruing due on their lands belonging to him the sale under s 42 of the Act is free of all encumbrances SECRETARY OF STATE FOR INDIA v RASIRATI BUN KARAYYA (1910) I L R 34 Mad 493

ss II to 5 28—Defaulter who is—Registered proprietor is defaulter in respect of arrears accrued before registry The Madras Revenue Recovery Act lays the obligation to pay the revenue including all the arrears on every land holder irrespective of the time when he becomes the holder and if he does not do so he becomes a defaulter A person on being registered as the holder becomes a defaulter in respect of arrears accrued before the registry as if he were the registered owner when the arrears fell due KOTA SUBBAYA KUPPA GARU v THE SECRETARY OF STATE FOR INDIA (1912) I L R 35 Mad 555

ss 3 35—Defaulter who is—Defaulter means registered possessor—Contract Act s 69 Where one person is the real owner of a share in land and another is the registered proprietor of the whole the latter and not the former is the defaulter within the meaning of the Revenue Recovery Act and where the latter is mortgagee of a share of the land not owned by the former has paid the arrears of revenue due on the whole land and the former has paid the revenue of his share he cannot being himself the defaulter,

MADRAS REVENUE RECOVERY ACT (MAD II OF 1864)—contd**ss 3 35—contd**

recover the amount from the former under s 35 of the Revenue Recovery Act The latter cannot recover under s 69 of the Contract Act as the former is not bound by law to pay the money which the latter has paid SUNDARAMIA CHETTI v MAHALINGABAI BIVAN (1905)

I L R 53 Mad 41

ss 32 and 42—

See NEXT HEAD OF

I L R 88 Mad 856

ss 37(A) 38 and 50—Sale for arrears of revenue—Limitation—Material irregularity—Dismissal by Deputy Collector and Collector—Confirmation of sale whether final—Application to Board of Revenue—Power of general supervision of Board of Revenue—Power to direct Collector to cancel sale—Cancellation by Collector—Validity of—Title of purchaser whether affected—Suit by purchaser for possession—Limitation—Material irregularity—Proof of substantial loss—Madras Regulation I II of 1863 and III of 1864 The plaintiff purchased the suit lands in a revenue auction sale held under the Madras Revenue Recovery Act (II of 1864) A petition to set aside the sale under s 14 (A) of the Act was filed by the defaulter before the Deputy Collector and was dismissed another petition under s 38 (1) of the Act was also dismissed by the Deputy Collector who confirmed the sale the District Collector also confirmed the sale the first defendant then filed a petition before the Board of Revenue to set aside the sale The Board of Revenue in the exercise of their powers of general supervision directed the Collector to cancel the sale which was accordingly cancelled by him The plaintiff thereupon instituted this suit to recover possession of the suit lands more than six months after the order cancelling the sale The first defendant pleaded that the sale was validly cancelled by the Collector that the suit was barred by limitation under s 69 of Act II of 1864 and that the sale should have been set aside on account of material irregularity Held that when a Collector is empowered by a statute to pass a certain order it is not open to the Board of Revenue having only general powers of supervision over him to direct him to pass a special order contrary to that he had already passed that the order cancelling the sale though purporting to be passed by the Collector was really the order of the Board of Revenue who had no power under Act II of 1864 to pass such an order that after an order under s 38 (3) was issued by the Deputy Collector and confirmed by the Collector it became final under that section and neither of them had power under the Act to pass any further order that the suit was not barred by limitation s 69 of Act II of 1864 was not applicable for the reason that the order complained of was passed wholly without jurisdiction and not under any power conferred by the Act and that on the merits the sale should not have been set aside as no substantial loss was proved to be due to the irregularity SUNDARAM AYYAN GARU v RAMASWAMI AYYANAR (1914)

I L R 41 Mad 95

s 59—

See LIMITATION I L R 33 Mad

MADRAS REVENUE RECOVERY ACT (MAD IV OF 1861)—contd

s 59—contd

See MULT HEAD OF

I L R 38 Mad 358

Sale of a minor's ryotwari land holder's lands for arrears of revenue validity of—Madras Regulation (V of 1831) s 2—Wrong entry of minor's mother as pattadar instead of minor effect of—Suit to set aside revenue sale more than six months after sale whether barred by limitation On the death of a ryotwari landholder the Revenue authorities erroneously registered his widow as the pattadar instead of the plaintiff his minor adopted son Default in payment of revenue having occurred the lands were sold for arrears of revenue during plaintiff's minority and he then sued to set aside the revenue sale and recover the lands within twelve years of the sale but more than six months after attaining majority Held by the Full Bench (a) that s 2 of Madras Regulation V of 1831 which prohibits the sale for arrears of revenue of minor's properties applies to all lands of minors whether permanently settled or only ryotwari whether the lands be considerable or so small as not to be taken charge of by the Court of Wards (b) that the sale being ultra vires the special period of limitation of six months prescribed by s 59 of the Madras Revenue Recovery Act (II of 1861) did not apply to the suit and (c) that the fact that the Revenue authorities mistakenly registered the plaintiff's adoptive mother as pattadar did not in any way affect him *Arishna v Melam Peruma I L R 10 Mad 41* considered *Subramania Chetty v Mahalingam Sivan I L R 33 Mad 41* distinguished *Secretary of State v Ashtamurthi I L R 13 Mad 89* followed *Swami NATHA AYYAR v GOVINDASAWAMI PADAYACHI (1918)*

I L R 41 Mad 733

MADRAS SURVEY AND BOUNDARIES ACT (MAD IV OF 1897)

s 11—Decision of Survey Officer on dispute as to boundary not set aside on appeal or by suit within one year effect of—Continued possession of unsuccessful party effect of A decision of a Survey Officer passed under s 11 of the Madras Survey and Boundaries Act (IV of 1897) on a dispute arising between two parties as to the boundary of a certain property is final and conclusive as to the rights of the parties if not set aside either on appeal or by a suit brought within one year and it is none the less so because the unsuccessful party who was in possession on the date of the order was not subsequently ousted from possession *Krishnamma v Achayya I L R 2 Mad 306* distinguished *MUTHULANDI POOSARI v SETHURAM AIYAR (1918)*

I L R 42 Mad 425

s 12—Land with shifting boundaries—Damages—Lease—Lessee's rights of Where the boundaries of land to be leased are of a shifting character the prospective lessee is entitled to rely upon the area stated in the lease and to be put into possession of an area which approximates to that which is mentioned in the lease *Raja Durga Prasad Singh v Rajendra Narayan Bagchi 10 C L J 70* applied Where the lessor is unable to put the lessee into possession of the area stipulated in the lease he is liable to compensate the lessee by way of damages Where the alteration to the land takes place after the lessee has been

MADRAS SURVEY AND BOUNDARIES ACT (MAD IV OF 1897)—contd

s 12—contd

put into possession the rule would be different *PERUMARAZU VENKIAH v THE SECRETARY OF STATE FOR INDIA (1910)*

I L R 34 Mad 108

s 12 and 13—Decision of a Survey officer—Finality of decision—Decision whether final for all or for what purposes—Effect of word final in s 12 sub s (3) The effect of s 12 sub s (3) of the Survey and Boundaries Act is to make the orders of a Survey officer in cases falling under that section final for the purposes of the survey but it does not go so far as to preclude the land owners altogether from afterwards disputing its correctness in a Court of Law unless there was a dispute before the Survey officer and the order is one to which s 13 of the Act applies *Muthulandi Poosari v Sethuram Aiyar (1919) I L R 41 Mad 425* (F.B.) explained *CHITRA VENKATRAYUDH v RAMANJAN (1921)*

I L R 44 Mad 34

MADRAS TOWNS NUISANCES ACT (MAD III OF 1889)

Held that a Public Place was one where the Public go whether they have a right to do so or not It is sufficient to constitute a place a public one even if only a section of the general public goes there In this case the compound of a Hindu Temple known as *EMPEROR'S MUSA*

I L R 40 Mad 557

s 3 (10)—Gaming and public place meaning of The accused in this case held for stakes a game called Ring in an open space in the compound of a Hindu temple In convicting the accused under s 3 (10) of the Madras Towns Nuisance Act (III of 1889) on the grounds that the place was a public place and the game was a game within the meaning of the above section as it was played for stakes Held (a) Gaming generally and in s 3 (10) means playing for stakes (b) a public place is one where the public go whether they have a right to or not it is sufficient to constitute a place a public one even if only a section of the general public such as Hindus have a right to go to it and (c) the character of the game as one of skill or chance is not material under the section *Hari Singh v Jadu Aandan Singh I L R 31 Cal 512* followed *HERO LAKSHMI v Mrs. A (1916)*

I L R 40 Mad 556

s 4 and 7—

See CRIMINAL PROCEDURE CODE s 517

I L R 41 Mad 644

MADRAS UNIVERSITY

Regulation 64—

See SPECIFIC RELIEF ACT (I OF 1877)

s 45 I L R 40 Mad 125

MADRAS VILLAGE COURTS ACT (I OF 1889)

s 2A—Order of Deputy Collector debarring one from appearing as wali for parties in village Courts ultra vires—Specific Relief Act (I of 1877) s 42—Suits for declaration of invalidity of order maintainability of Under s 24 of the Madras Village Courts Act (I of 1889) any person holding a vakalatnama from a party may appear and plead in a village court and there is no provi

MADRAS VILLAGE COURTS ACT (I OF 1889)

—contd

s 24—contd

sion in the Act for debarring any one from this privilege. The power of removing su pending and dismissing village munsifs conferred on Divisional officers does not include the power of debarring a person from acting as vakil for a party in village courts. A suit for a declaration that an order debarring one from acting as vakil for another in village courts is void is maintainable though it may not be covered by s 42 of the Specific Relief Act (I of 1874). **RAMACHANDRA RAO v SECRETARY OF STATE FOR INDIA (1913)**

I L R 89 Mad 808

MADRAS WATER CESS ACT (VII OF 1865)

Where a right to take water is proved even though no express agreement on behalf of Government not to levy a charge is proved an engagement under Act VII of 1865 will be implied and no cess can be levied. **SRI RAJAH SETHUPATHI RAJU v SECRETARY OF STATE**

I L R 39 Mad 67

MAFI

not rent—

See **BENGAL TENANCY ACT 1885** s 153

I Pat L J 504

MAGISTRATESee **CRIMINAL PROCEDURE CODE—**

S 520 I L R 35 Bom 253

See **JURISDICTION OF CRIMINAL COURT**See **JURISDICTION OF MAGISTRATES**

—acting in two capacities—

See **JURISDICTION OF MAGISTRATE**

I L R 37 Cal 221

—an executive officer—

See **PRESS ACT (I of 1910)** s 3 (1) pro

viso I L R 89 Mad 1164

—compelling attendance of witness—

See **DISPUTE CONCERNING LAND**

I L R 38 Cal 24

—deciding question whether he has jurisdiction—

See **INACTICE**

I L R 37 Bom 144

—duty of—

See **ATTACHMENT** I L R 40 Cal 105See **COMMITMENT** I L R 42 Cal 608See **COMPROMISE** I L R 45 Cal 816See **SURETY** I L R 43 Cal 1024

—inquiry by—

See **CRIMINAL PROCEDURE CODE (ACT V**

OF 1898) s 209 I L R 35 Bom 163

—in insolvency—

See **PRESIDENCY TOWNS INSOLVENCY ACT**

(III OF 1909) s 17 103 AND 101

I L P 35 Bom 63

—Jurisdiction of—

See **COSTS** I L R 47 Cal 974See **CRIMINAL PROCEDURE CODE** s 183

I L R 41 Bom 667

See **DISPUTE CONCERNING LAND**

I L R 40 Cal 982

MAGISTRATE—contd

—Jurisdiction of—contd

See **HABEAS CORPUS**

I L R 39 Cal 164

See **RAILWAYS ACT (IX OF 1890)** ss

126 (a) 130 I L R 43 Bom 588

—power and duties of—

See **CRIMINAL PROCEDURE CODE—**

s 206 I L R 37 All 355

s 144 I L R 37 All 654

See **MAGISTRATE (POWER OF)**See **SEARCH WARRANT**

I L R 47 Cal 164 597

—offering bribe to—

See **DETENTION OF AN ABSENTMENT**

I L R 48 Cal 607

—on tour—

See **SECURITY FOR GOOD BEHAVIOUR**

I L R 41 Cal 806

—order of forfeiture passed by—

See **RIGHT OF SUIT**

I L R 40 Bom 200

—Power of—

See **SEARCH WARRANT**

I L R 47 Cal 597

I CHANGE IN BENCH OF DURING TRIAL.

Magistrate convicting was has not heard at the evidence—Criminal Procedure Code (Act V of 1898) s 530 Where the trial of the accused was commenced before a Bench of four Magistrates who heard part of the evidence and continued before the same four Magistrates and another who had joined as the fifth and all the five Magistrates deliver judgment convicting the accused. Held that the conviction was vitiated and that there must be a retrial. Re SUBRAMANIAM ATTAR (1913)

I L R 38 Mad 304

II JURISDICTION OF

1. *Criminal Procedure Code (Act V of 1898) ss 100 552—Jurisdiction of first class Magistrate upon an application under s 552 of the Code to issue a search warrant under s 100 on a fresh complaint of facts alleging wrongful confinement—Warrant under s 100 drawn upon a printed form used under s 93 with the necessary alterations—Presumption that such alterations were made—Destruction of original warrant by the accused—Peristance to execution of such warrant and assault on the police—Penal Code (Act XLV of 1860) ss 147 and 339 Where on an application made under s 552 of the Criminal Procedure Code to a Magistrate of the first class he examined the applicant on oath recorded a statement of facts alleging wrongful detention of his wife and directed the issue of a search warrant under s 100. Held that he had jurisdiction to do so. A search warrant under s 100 of the Code drawn up in the absence of a printed form of warrant there under on a printed form used under s 93 with the necessary alterations is not illegal. Bisu Halder v Probhat Chunder Chuckerbutty 6 C L J 127 di. tingushed Where the original warrant was in such a case not*

MAGISTRATE—contd

produced at the trial owing to its destruction by the accused at the time of its execution *Held* that it must be taken that it contained the substance of s 100 and that the necessary alterations were made **GORA MIAN v. ABDUL MARY (1911)**

I L R 39 Cal 403

2 ————— *Duty Magistrate in charge of the office of the District Magistrate at headquarters—Subordination of the Sub Divisional Magistrate to such Deputy Magistrate—Power of latter after taking cognizance and examining the complainant on oath to direct a local investigation by the former—Irregularity effect of—Power of the same to dismiss the complaint and order the prosecution of the complainant on evidence taken at the investigation and on the report of the Sub Divisional Officer—Criminal Procedure Code (Act V of 1895) ss 12 202 204 476 and 579 (f) A Sub divisional Magistrate is not under s 203 of the Criminal Procedure Code subordinate to a Deputy Magistrate appointed to act in the district without definition of the local limits of his jurisdiction who was in charge of the office of the District Magistrate at headquarters during the latter's absence on tour in each Deputy Magistrate cannot therefore after taking cognizance of an offence committed in the sub division and examining the complainant on oath direct a local investigation by the Sub Divisional Magistrate nor can he thereafter dismiss the complaint and order the prosecution of the complainant under s 476 of the Code on such report and the evidence taken at the investigation Section 579 (f) does not in the circumstances confer jurisdiction on the Deputy Magistrate to make such orders of dismissal and prosecution but vests the Sub Divisional Magistrate with some of the case and the latter alone can inquire into it and pass final orders **HEMU HOSSAIN v. EMILOR (1912)***

I L R 39 Cal 1041

3 ————— *Where a complaint was filed by a Sub Inspector of Police before the Sub Divisional Magistrate of an offence under s 399 of the Penal Code and the facts disclosed also an offence under s 1 (b) of the Explosive Substances Act (V of 1909) of which the Magistrate could not then take cognizance for want of the consent of Government under s 7 and a complaint was subsequently filed by the Superintendent of Police with such consent before the Additional District Magistrate *Held* that the latter had jurisdiction to take cognizance of the offence and that the initiation and continuation of the proceedings by him were lawful notwithstanding that he had not withdrawn the original case to his own file *Held* also that in any case having regard to ss 523 to 531 of the Criminal Procedure Code unless it appeared that the proceedings wrongly held in fact occasioned a failure of justice they could not be set aside and that s 30 requires opinions of assessors to be given orally **LALIT CHANDRA CROWDHURY v. EMILOR***

I L R 39 Cal 119

III POWERS OF

District Magistrate power of to can a bond for keeping the peace or for good behaviour—Order directing prosecution for a forged receipt receipt is a proceeding before a Sub Divisional Magistrate for keeping the peace and for abatement the receipt—Judicial proceeding—

MAGISTRATE—contd

*Criminal Procedure Code (Act V of 1895) ss 4 (m) 195 476 Section 195 of the Criminal Procedure Code gives the District Magistrate the power to cancel a bond for keeping the peace for reasons which appear to him sufficient but not the right to hear an appeal from an order in a proceeding under s 107 passed by a subordinate Magistrate A District Magistrate has no jurisdiction under s 476 of the Code to direct a prosecution for dishonestly using a forged document and for abatement in respect of rent receipts filed before a subordinate Magistrate in a case under s 107 of the Code which has been disposed of by him under s 127 the proceeding under which is not a judicial proceeding **DATANATH TRAKUR v. EMILOR (1909)***

I L R 37 Cal 72

4 ————— *Magistrate may on taking cognizance of a complaint issue either a summons under s 94 or a search warrant under s 96 of the Criminal Procedure Code but is not competent to pass an order directing the police to take possession of account books forming the subject of the charge If the Magistrate after first having examined the complainant under s 200 is not satisfied that process should issue he can under s 202 either hold an inquiry and take evidence himself or direct a local investigation by a subordinate officer After ordering a police investigation he may if dissatisfied with the materials personally make a further inquiry and take evidence or direct a further local investigation but not an inquiry and report by another Magistrate If he thinks it proper to send the case to a Magistrate for inquiry other than a local investigation he should transfer it under s 192 to the latter for disposal and not for a report Where the complainant made no specific allegations of facts in the complaint but stated in his examination on investigation under s 202 that when the jadda books were first opened the title pages contained the name of his son as a partner and that he later discovered that a substitution of names had been made showing the name of his father in law as a partner and the statements in the complaint and such examination were not consistent as to the names originally entered and he was contradicted by his only witness in several particulars and his story was not supported by the original deed of partnership or the payment of the contributions it was held that the proceedings must be quashed as the materials before the Magistrate disclosed no offence **Criminal Revision No 833 of 1910 against the order of D Swinhoe Officiating Chief Presidency Magistrate of Calcutta dated June 7 1910 Jagat Chandra Mukundar v. Queen Empress (1) Chota Lal Das v. Anant Pershad Misser (2) and Chandi Pershad v. Abdur Rahman (3) referred to Semble A title page in an account book containing the names of the partners and the amount of the capital contributed by each is signed by them as a valuable security within s 30 of the Penal Code **HARI CHARAN GORAI v. GIRISH CHANDRA SADHUKHAN*****

I L R 35 Cal 69

IV TRANSFER OF

*Inquiry—Continuance of inquiry by another Magistrate without the revocation of the *substantia de novo*—Criminal Procedure Code Act (V of 1895) ss 145 30 S 30 of the Criminal Procedure Code applies to an inquiry*

MAGISTRATE—contd

under s 11: Where a Magistrate who has commenced such an inquiry is transferred and the District Magistrate has made over the case to another Magistrate the latter has power under s 70 of the Code, to proceed with it with out examining the witnesses *de novo* **ANL SUFFIAN v EMPEROR** (1910) **I L R 37 Cal 812**

MAHA BRAHMINS

See CIVIL PROCEDURE CODE (1908) s 60
I L R 41 All 636

See TRANSFER OF PROPERTY ACT (IX OF 1855) s 53 **I L R 39 All 196**

Agreement as to distribution of offerings—Construction of agreement
The members of a family of Maha Brahmans entered into an agreement amongst themselves whereby certain members of the family were to take the offerings made on certain days of the month and the other members of the family the offerings made on the other days *Held* by **BANNERJI and LYALL JJ** (RICHARDS C J dissenting) that the effect of such an agreement was that if an offering was made to a member of the family on a day which belonged to the other branch he was bound to account for it to the branch to which the day belonged *Per* **RICHARDS C J**—Such an agreement as above described would not prevent a person who wished to do so from making a special individual gift to a member of the family even on a day which was appropriated by the agreement to the other branch **DOORJA PRASAD v BUDREE G N W P H C 189 191 and Oochi v Ujjai I L R 20 All 931** referred to **SOYA DEVI v FAKIR CHAND** (1913) **I L R 35 All 412**

Right of to receive alms apart from the possession of specific property—Suit for declaration and injunction—Cause of action—Article 1 of 1877 (Specific Relief Act) s 12 and 15
Certain Maha Brahman all going that the collection of alms by them at a particular spot on the banks of the Ganges had been interrupted with by the defendants who were Gangapitras sued the Gangapitras claiming first a declaration of their right to receive offerings at the particular place named and secondly an injunction restraining the defendants from interfering with their so doing *Held* that as the giving of such offerings was a purely voluntary act and the receipt thereof was not claimed in virtue of the possession by the plaintiffs of any temple or other holy place to which people were in the habit of resorting the plaintiffs had no cause of action which would support their suit **BANSI v HAN HAIYA** **I L R 43 All 159**

MAHAD

See HINDU LAW—MITAKSHARA
I L R 40 Bom 621

MAHAL

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) s 3 (d)
I L R 38 All 231

MAHANT

S AGRA TENANCY ACT (II OF 1901) s 11 et seq **I L R 35 All 474**

MAHANT—contd**See HINDU LAW—ENDOWMENT**

I L R 37 All 298
I L R 43 Cal 707

Held that a Mahant is entitled to grant a lease of Math Land in the ordinary course of management **MAHANT JAI KRISHNA LAL v BUKHAL GORE**

8 Pat L J 639

MAHAP WATAN LAND

See BOMBAY LAND REVENUE JURISDICTION ACT (X OF 1876) s 4 (a)

I L R 43 Bom 277

See HEREDITARY OFFICERS ACT (BOM ACT III OF 1841) s 10 AND 13

I L R 35 Bom 146

MAHOMEDAN

See LIMITATION ACT (IX OF 1908) SECTION 1 ACT 127 **I L R 41 Bom 588**

Ahmadis and Khadianis—Disputes right of to worship in a mosque used by orthodox Muhammadans—whether disbelievers are entitled to choose their own Imam
The sect known as Ahmadis or Khadianis are Muhammadans notwithstanding their pronounced dissent on several important matters from the orthodox Muhammadan faith. The Khadianis are entitled to enter a mosque if they please and to offer up prayers with the regular congregation behind the recognized Imam but they are not entitled to pray at a separate congregation behind an Imam of their own in a mosque which has always been used by orthodox Muhammadans **HAKIM KHALIL AHMAD v MALIK ISRAFI** **2 Pat L J 108**

MAHOMEDAN FAMILY

See DECREE **I L R 43 Bom 412**

See LIMITATION ACT (IX OF 1908) s 6 7 AND 13 141

I L R 43 Bom 487

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MAHOMEDAN LAW—ACKNOWLEDGMENT OF SONSHIP

See MAHOMEDAN LAW—LEGITIMACY

Acknowledgment of legitimate sonship—Inference of acknowledgment A Mahomedan cannot legally acknowledge as his son a person who is shown to be the son of another man. The acknowledgment must be not merely of sonship but of legitimate sonship but the fact that the acknowledgment was of legitimacy as well as of sonship may be inferred from circumstances justifying that inference. *USMANIYA v VALI MAHOMED* (1915) I L R 40 Bom 28

Acknowledgment as son what is necessary to its validity—Valid acknowledgment operates as declaration of legitimacy and not as legitimization—Presumption of fact rebuttable by proof of impossibility of marriage or no marriage—Concurrent findings of fact In Mahomedan law the acknowledgment by one person of another as his legitimate son is of no avail in the face of a finding that there was no marriage. In Mahomedan law such an acknowledgment is a declaration of legitimacy and not a legitimization—a declaration which though it cannot be withdrawn may be contradicted. *SYED HABIBUR RAHMAN CHOWDHURY v SYED ALTAU ALI CHOWDHURY*

28 W N 81

Acknowledgment by a father of a son by a female slave legitimises the boy in the absence of direct proof that no marriage had taken place. The law requires to declare a man a bastard except on the clearest evidence *IBRAHIM ALI KHAN v MIST MUHARAK BFGAM*

I L P I Lah 229

MAHOMEDAN LAW—ADOPTION

S c CUSTOM I L R 39 Calc 418

Adoption by a convert from Hinduism—Custom of adoption—Burden of proof The Mahomedan Law does not recognize adoption. Hence where a Hindu is converted to Mahomedanism the presumption is that as a

MAHOMEDAN LAW—ADOPTION—*contd*

necessary consequence of conversion the law of adoption recognized by Hindu Law has been abandoned by him. He who alleges that the usage and law in question had been retained must prove it. *BAI MACHIBAI v BAI MIRBAI* (1911)

I L R 35 Bom 284

MAHOMEDAN LAW—ALIENATION

*See MAHOMEDAN LAW—GUARDIAN**See MAHOMEDAN LAW—MINOR**See MAHOMEDAN LAW—MARRIAGE*

I L R 45 Calc 878

Minor—Right to sell minor's property—Necessity—Bond fide purchaser without notice By a deed of conveyance dated 19th January 1904 one V purported to convey on behalf of herself and her minor son the plaintiff certain immovable property to the defendant for the consideration of ₹7000. On the same day A passed an indemnity bond in favour of the defendant indemnifying him against the claim of the plaintiff. The plaintiff sued to have the said deed of conveyance declared void and for a declaration that the plaintiff was entitled to the whole of the property purported to be conveyed. Held that the plaintiff was entitled to succeed on the grounds (i) there was absolutely no evidence that the sale was in any way necessary for the maintenance of the minor (ii) the purchaser was not a bond fide purchaser without notice of the plaintiff's rights. The purchaser of an estate who takes with notice of a breach of trust is in the same position as the vendor who committed the breach of trust. *FAKIRUDIN v ABDUL HOSSEN* (1910)

I L R 35 Bom 217

Guardian—Construction of will—Alienation of property of minor by his brothers acting as executors of will and guardians of minor—Sale not binding on minor—Right of suit to redeem mortgage—Limitation Act (XV of 1877) Schedule II Articles 41 and 144 A Mahomedan testator by his will left all his property to his four grandsons (brothers) but did not expressly appoint any executors of his will or guardians of such of his grand children as might be minors at his death nor was there in the will any intention to entrust the administration of the property to any particular individuals. The testator died in 1887 and on the 15th of June 1899 the three elder grandson on their own behalf and purporting to act also as the guardians of the fourth grandson the respondent (plaintiff) then a minor sold some of the property to the appellant (defendant). The appellant was a mortgagee of two villages on the estate under two mortgages executed by the testator on the 2nd of December 1880 and the 7th of August 1886 for ten years and seven years respectively and the effect of the sale had been to pay off the later mortgage on the smaller village and other debts by selling the larger village to the mortgagee. The respondent attained his majority in 1892 or 1893 and treating the sale of the 15th of June 1899 as nullity and the mortgage as still subsisting he tendered to the appellant the amount of mortgage money necessary to redeem the larger village and on the appellant refusing to accept it brought a suit for redemption on the 14th of September 1905. Held that the elder brothers were not authorized either by the will or by the Mahomedan Law to act as guardians of the minor and that he was entitled on

MAHOMEDAN LAW—ALIENATION—contd

attaining his majority to treat the transaction of the 11th of June 1892 as being void as against him. *Hill* also held that the position of the appellant did not become adverse to the respondent until the expiry of the term of the mortgage of 1892, namely the 2nd of December 1899, and therefore the suit was not barred by the 12 years period provided by Article 144 of Schedule II of the Limitation Act (XX of 1877). Article 44 Schedule II of the same Act was not applicable as the sale was made not by a guardian but by an unauthorized person. *MATA DIXIT v. ANAND* (1912) I L R 34 All 213

Per sale by one of several heirs of a deceased Mahomedan in possession of the estate for discharging a debt binding on the estate not binding on co-heirs or creditors of the deceased. When one of the co-heirs of a deceased Mahomedan in possession of the whole or part of the estate of the deceased sells property in his possession forming part of the estate for discharging the debts of the deceased such sale is not binding on the other co-heirs or creditors of the deceased. *Pathummal v. Fattil mmachali* I L R 26 Mad 734 overruled. *Hassan Ali v. Mehdi Hussain* I L R 1 All 533 (1902) sented from Quere. Whether a decree against one of the heirs of a deceased Mahomedan binds the others. *ABDUL MAJEED v. KRISHNAMACHARIAR* (1916) I L R 40 Mad 243

Unlawful alienation of endowed property by mutawalli of mosque—All mahajid a daily worshipper may sue for declaration that alienation void without special damage—Representative suit is lie under Civil Procedure Code (Act V of 1908) O 1 r 8—S 9 of the Code or s 14 of Act XV of 1863 is bars suit. A suit brought by two worshippers of a mosque for themselves and as representing other worshippers in the locality for a declaration that a permanent lease granted by the mutawalli is void and inoperative is maintainable the requirements of O 1 r 8 having been complied with by the plaintiffs. No special damage need be alleged or proved for the maintainability of such a suit since worshippers living in the vicinity of a mosque have rights as daily worshippers to it over and above those possessed by the Mahomedan public and have a more direct interest in its maintenance and in the proper administration of the properties endowed for its benefit. s 14 of Act XV of 1863 contemplates a suit instituted primarily against the Trustee, Manager or Superintendent of a mosque, temple or religious establishment or the members of any committee appointed under that Act and the only relief that can be asked for in such a suit is a decree directing the specific performance of any act by such Trustee, Manager etc., a decree for damages and costs against them and a decree directing their removal. A suit under s 9 of the Civil Procedure Code is primarily a suit against a Trustee and can only be instituted either on the ground that there has been a breach of trust or that direction of the Court is necessary for the administration of the trust. In the present case the mere fact that the Trustee was a defendant in the suit did not attract the application of s 9 of the Civil Procedure Code. Hence no relief was claimed against him nor was the Court asked to give any direction for the administration of the trust. *ASHRAF ALI v. MAHOMMAD ALPOJOMIA* (1918) 23 C W N 115

MAHOMEDAN LAW—BIGAMY

Effect of nolo facere of husband after marriage and conversion to Islam during the period of iddat—Second marriage of the wife with another man during such period—Held void—Hendal Cole (Act VII of 1860) s 494 and 444. Under the Mahomedan Law the marriage of a man who subsequently embraces Christianity becomes *ipso facto* void notwithstanding his conversion to Islam during the period of iddat and the wife in contracting a second marriage during such period does not commit bigamy under s 494 of the Penal Code. *Per HOLMEWOOD J.*—A second marriage contracted by the wife during the period of her iddat is not void by reason of its taking place during the life of the first husband but by reason of a special doctrine of the Mahomedan Law with which the Penal Code has nothing to do. Where the parties have acted in good faith or what they believe to be a sound interpretation of a very difficult point of Mahomedan Law even though they are mistaken the consequences cannot be visited upon them in a Criminal Court in a trial for bigamy. *ABDUL GHANI v. AZIZUL HOQ* (1911) I L R 39 Cal 409

MAHOMEDAN LAW—CONVERSION

See JURISDICTION

I L R 35 Bom 264

See MAHOMEDAN LAW—BIGAMY

I L R 39 Cal 409

Marriage—Conversion of wife to Christianity—Dissolution of marriage—Suit for restitution of conjugal rights. Under the Mahomedan Law a wife's conversion from Islam to Christianity effects a complete dissolution of marriage with her Mahomedan husband. The fact of such a conversion is therefore a bar to a suit by the husband for restitution of conjugal rights. *Zuburdut Khan v. His wife* I L R 11 C R p 30 and *Imamudin v. Hassan Bhai* (1906) 309 followed. *AMIN BHU v. SAMAN* (1910) I L R 33 All 90

MAHOMEDAN LAW—CUSTOM

See CUSTOM

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I L R 41 Bom 181

Exclusion of daughters—

See CUSTOM

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See MAHOMEDAN LAW—PRE-EMPTION

*Customs of Combaratore district—Right of succession—Exclusion of females—Custom—Pre-emption of rule of Hindu Law—Application of Custom standard of—Females excluded from the Combaratore district who are Hindu converts to Mahomedanism in a custom prevails under which they retain the rule of Hindu Law which excludes females from the right of succession. Mirabai v. Vellayana I L R 1 All 463 and *Kundawli v. Kalantari* Mad J 156 referred to. It is open to them to abandon the custom and follow the ordinary rule of Mahomedan Law. *Rajasthan Singh v. Pampoo Surt* Moooomdar I L R 1 Cal 186 referred to. *Per SRINIVASA AYYANGAR J.*—Custom in its legal sense means a rule except*

MAHOMEDAN LAW—CUSTOM—*contd*

tional to the general rule of law. In India in many cases it is impossible to say that any particular usage which is pleaded is in derogation of a general law consequently the inquiry in many cases is as to what is the law and not what is the usage at variance with law. Nature of custom and standard of proof thereof required in England and in India compared. *Hirbai v Gorhai* 12 Bom H C R 291 *Raichan v Perachi* 1 I R 15 Mad 281 *Kunhi Raman v Kunhi Parvathi* (1910) Mad H A 64. and *Fanindra Deb v Rajeswar Das* L 1 12 I A 72 referred to. *SHAIKH v MUHAMMAD* (1915)

I L R 39 Mad 664

Proof of custom in derogation of if permissible—Standard of proof—Onus—Lubhai Mahomedans of Coimbatore—Custom excluding females from succession. The parties to the litigation were Lubhai Mahomedans of the Sunni sect residing in the District of Coimbatore in the Madras Presidency, the question was whether succession to the estate of a deceased member of the sect was governed by Mahomedan Law or by a rule of descent excluding females. *Held* that in view of s 10 of the Madras Civil Courts Act III of 1873 *prima facie* all questions of succession amongst the parties who were Mahomedans were to be decided according to Mahomedan Law but it is now well established that in India a custom at variance even with the rules of Mahomedan Law governing the succession in a particular community of Mahomedans may be proved. The onus of proof is on the party alleging the custom. The custom should be ancient and invariable and established to be so by clear and unambiguous evidence. *Ramalakshmi Ammal v Sivananatha Perumal Sethuram* (4) and *Abdul Hussein Khan v Bibi Sona Dero* (3) referred to. *Held* that the evidence fell short of the standard proof requisite to establish a custom. (3) L R 40 I A 10 s c I L P 45 Cal 460 22 C W N 353 (1917) (4) 14 M I A 570 (1872) *MOMAMED ISRAHIM ROWTHEN v SHAIKH ISRAHIM*

22 C W N 793

MAHOMEDAN LAW—DIVORCE

Hanafi Law—Divorce—Talak need not be addressed directly to the wife to constitute a valid divorce. According to the Hanafi Law it is not necessary that the Talak or words of repudiation should be addressed directly to the wife to constitute a valid divorce. The expressions mentioned in the Hedaya as constituting express divorce are not exhaustive but merely illustrative of the different forms in which the Talak may be pronounced. The incidents of marriage and divorce under the Muhammadan Law fully discussed. *Fur and Hossein v Jani Bibi* 1 I L R 4 Cal 588 doubted. *ASHA BIBI v KADIR ISRAHIM ROWTHEN* (1909)

I L R 33 Mad 22

Sunnis sec—Divorce—Evidence—Burden of proof. No special form of formula is prescribed for a divorce under the Hanafi law. All that the law requires is to see that the words of divorce pronounced by a husband should show a clear intention on his part to dissolve the contract of marriage. Where the wife deposes that a divorce was effected in their presence it is for the party alleging the con-

MAHOMEDAN LAW—DIVORCE—*contd*

trary to prove by cross-examination that the words used by the husband when pronouncing the divorce were insufficient and incomplete to support a valid divorce. *WAHID KHAN v ZAINAB BIBI* (1914)

I L R 36 All 458

Kabinnamah—Condition that husband should live with wife in wife's father's house as khandamad and for divorce upon breach of talak. A condition in a *kabinnamah* that the husband shall live with the wife in her father's house and that if he broke this condition she would be entitled to divorce him is invalid under the Mahomedan Law and her claim for deferred dower following upon such a divorce must fail. *IMAN ALI IATWARI v ARFATUNNESSA* (1913)

18 C W N 693

Divorce—Revocation

Validity of the bedai form of divorce. *Held* that it is not every kind of divorce which is revocable according to the Mahomedan Law but only those made in certain forms. The *bedai* form of divorce is a perfectly legal form and is irrevocable. *In re Abdul Ali Ismail* 1 I L R 7 Bom 180 followed. *AMIR UD DIN v KHATUN BIBI* (1917)

I L R 39 All 371

Post nuptial agreement by husband not to take another wife and delegation to wife of power of divorce on breach—Validity—Breach of agreement followed by husband's suit for restitution of conjugal rights—Divorce given after suit by wife if valid. A post nuptial delegation of the power of divorce is valid under Mahomedan Law. Where by a *kabinnamah* executed after the marriage the husband undertook not to take a second wife without the wife's permission and delegated to her the power of giving three *talaks* in cases of violation of the said amongst other condition whenever she chose and afterwards having taken a second wife without the first wife's permission used the latter for restitution of conjugal rights whereupon she gave herself the three divorces according to Mahomedan Law. *Held* that the authority to divorce was validity given and exercised and the suit must fail. *SANUDDIN v LATIFUNNESSA BIBI* (1918) I L R 46 Cal 141

22 C W N 924

Talaknama—Registration of the deed—Neither Ka nor wife present at the time of the execution of the deed—Deed not immediately communicated to wife—If wife's knowledge of the deed within a reasonable time—Validity of Talaknama. A Mahomedan executed a *talaknama* (deed of divorce) in the presence of witnesses and got it duly registered under the Indian Registration Act 1908. Neither the Kazi nor the wife was present at the time the deed was executed. The deed was not immediately communicated to the wife but it came to her knowledge within a reasonable time. *Held* that the *talaknama* was valid according to Mahomedan law. *RAJASAHIB RASULHAHIB In re* (1919)

I L R 44 Bom 44

Marriage—Suit for dissolution—False charge of adultery made by the husband a ground for dissolution of marriage. A Mahomedan wife is entitled to bring a suit for divorce and obtain a decree for dissolution of marriage on the ground that her husband has falsely charged her with adultery. *Jann v Beparee* 3 W R 58 doubted. *ZAFAR HUSAIN v UMMAIAT UR RAHMAN* (1919)

I L R 41 All 278

MAHOMEDAN LAW—DIVORCE—*concl'd*

Divorce by writing—Pregnancy followed by miscarriage—Divorce in khula form—Date on which period of iddat commences—Circumstances by which iddat may be terminated earlier. A Mahomedan husband executed and registered a deed of divorce in favour of the wife and a few days later saw her pronounced the legal formulas made over the document to her and went away. Subsequently she went through ceremonies of marriage with two persons one after the other the marriage with the Plaintiff taking place last. In a suit for restitution of conjugal rights by the Plaintiff on the allegation that the first marriage after the divorce took place within the period of iddat and as such was void the defence set up was that the period of iddat commenced on the date of the execution of the document and expired before the first marriage after the divorce took place that the lady was pregnant at the time of the divorce and miscarried and this had the effect of terminating the period of iddat and that the divorce was in khula form. *Held* that the divorce took effect from the date of the writing and not from the date of its receipt by the wife unless there were words in the instrument showing a different intention. *MOHAM VALLA v. BABU BIBI*.

26 C W N 251

Divorce for consideration—Khulanama—Whether invalidated by non payment of consideration. The plaintiff sued her husband the defendant for a declaration that she had been divorced by him and was no longer his wife. It was found that the defendant made a written deed of divorce (khulanama) in consideration of Rs 150 which amount had however not been paid to him and the document had not been delivered to the wife. The first Court found that the non payment of the Rs 150 did not invalidate the divorce. On appeal the District Judge held that the transaction was a mere promise to divorce if his wife paid him Rs 150. *Held* that it must be presumed that prior to the writing of the deed the wife offered and the husband accepted Rs 150 as compensation for the release of his marital rights the deed (khulanama) was then written securing to the husband the stipulated consideration but it did not constitute a divorce if assumed it and was founded upon it. Consequently there was a complete and irrevocable divorce which was not invalidated by the non payment of the consideration. *Moor kee Baidul Raleem v. Lateef ul Ann 1188 (8 Moo I A 319 396 P C)* followed. *Mulla v. Muhammadan Law 5th Edition page 179 Wilson's Digest of Anglo Muhammadan Law 3rd Edition page 144 Articles 69 and 70 and page 143 Article 143 and Tyabji's Principles of Muhammadan Law page 144 paragraph 143 referred to.* *MUSAMMAT SADDAT v. FAIZ BAKI SH*.

I L P 1 Lah 402

MAHOMEDAN LAW—DOWER

See HEDA BIL-EWAZ 24 C W N 926

See MAHOMEDAN LAW—GIFT

I L H 42 Calc 261

See MAHOMEDAN LAW—MARRIAGE.

I L P 32 All 477

See MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS

I L R 1 Lah 597

MAHOMEDAN LAW—DOWER—*concl'd*

See MAHOMEDAN LAW—WIDOW

See SUCCESSION CERTIFICATE ACT (VII OF 1889)—

SS 2 AND 4 I L R 33 All 327

S 4 I L R 43 All 341 493

SS 4 AND 7 I L R 32 All 335

1 ———— *Durham value of—Dower.* The money value of ten dirhams in India is something between three and four rupees. *Sughra Bibi v. Uda Bibi I L R 2 All 573* referred to. *ASMA BIBI v. ABDUL SAMAD KHAN (1909)* I L R 32 All 167

2 ———— *Jurisdiction—Marriage—Dower—Act No XVIII of 1876 (Oudh Laws Act).* *Held* that the mere fact that a marriage was celebrated in Lucknow the parties being afterwards domiciled in the province of Agra was not sufficient to authorize a Court in the province of Agra to apply to a suit brought by the wife against the heirs of her deceased husband for recovery of her dower the provisions of the Oudh Laws Act 1876. *Zakeri Begum v. Sakina Begum I L R 19 Calc 639* followed. *RUKIA BEGUM v. MUHAMMAD NAZIM (1910)* I L R 32 All 477

3 ———— *Prompt dower—Payment of—Restitution of conjugal right—Consummation of marriage—Suit for prompt dower not premature before consummation.* Under Mahomedan Law the Court may hold that the whole of the dower is exigible in cases where no specific amounts of the dower has been declared exigible and there has been no evidence of what is customary. *Faima v. Sadrudin 2 Bom H C P 291* followed. *Prompt dower (ie muajjal) is payable immediately on the marriage taking place and it must be paid on demand.* It is only by payment of the prompt dower that the husband is entitled to consummate the marriage or enforce his conjugal rights. Therefore the right to restitution so far from being a condition precedent to the prompt dower arises only after the dower has been paid. *Ranee Ahe joorunnis v. Pante Pycesunissa 13 W R 371* followed. *MUSSEERHAN SARDARKHAN v. GULAB KHANMUT (1911)* I L R 35 Bom 358

4 ———— *Liability of widow in possession to account for profits—Dower—Interest.* *Held* by the Full Bench that a Mahomedan widow who has been put in possession by her husband of his estate in lieu of her dower debt is entitled when called upon by her husband's heirs other than herself to account for rents and profits received by her during the time of her possession to claim interest at the rate payable upon her dower debt. The liability of the heirs of the husband not being personal the heir who sues the widow for possession of his share is only liable to pay the proportionate part of the dower debt. *Asdul Iymin v. Maghulan I I P 30 All 315* *Sooma Khatoon v. Ataffoo nua Khatoun 2 Hay 210* *Woomatool Fatima Begum v. Meer un nisa Khanum 9 W R 318* *Bakrudin v. Ammatul Fatima 3 C L P 511* *Mu Jan v. Bibyan 5 B L P 500* and *Claudhrs Wa Ahmad v. Musammat Maina Bibi F A No 65 of 1901* decided 3rd July 1906 referred to. *HAIRA BIBI v. UBAIDA BIBI (1910)* I L R 33 All 182

5 ———— *Presumption—Sums—Dower—No determination at marriage whether dower is to be prompt or deferred—Civil Procedure Code 1905 O II r 2—Effect.* In the case

MAHOMEDAN LAW—DOWER—contd

of Mahomedans of the Sunni persuasion where it is not settled at the time of the marriage whether the wife's dower is to be prompt or deferred part will be prompt and part deferred the proportion referable to each category being regulated by custom or in the absence of custom by the status of the parties and the amount of the dower settled. *Fulan v Ma har Husain I L R 1 All 483* and *Taufi ur nisa v Ghulam Kamba I L R 1 All 501* followed. A suit therefore brought by the wife during the lifetime of her husband for the recovery of the prompt portion of her dower will be no bar to a subsequent suit for the recovery of the deferred portion. *UNAD BEGAM v MUHAMMADI BEGAM (1910)*

I L R 33 All 291

8 ——— Agreement between husband and wife as to satisfaction of wife's dower—Construction of document—*Mortgage*—*Mahabat* A Mahomedan made over to his wife to whom a dower of Rs 125,000 was due certain property. In the deed of transfer it was stipulated (i) that the wife was to take possession of the property in lieu of her dower and enjoy the usufruct (ii) that the property was to revert to the husband if the wife predeceased him the dower debt being deemed to have been discharged (iii) that if the husband predeceased the wife the property was to become hers absolutely. Held that the transaction was neither a mortgage by conditional sale nor a *mahabat* but the wife obtained a right to enjoy the usufruct during her husband's lifetime with the possibility of the interest developing into full ownership if the husband predeceased her. *MUDANAH UN NISSA v MANSAH HASAN KHAN (1911)*

I L R 33 All 421

7 ——— Compromise—Suit for dower—Family arrangement—Transfer of expectancy—Transfer of Property Act (I) of 1882 s 6 (a) A Mahomedan wife brought a suit for dower against her husband which resulted in a compromise the terms being that the wife was given possession of some property in lieu of her dower and the husband retained possession of some other property for life which life interest in case of urgent necessity he was authorized to sell or hypothecate and it was agreed that on the death of the wife the persons who should be the heirs of both would be the owners of the properties. The wife predeceased her husband who then transferred certain properties in his own right and as heir of his wife. Held that the compromise was in the nature of a family settlement under which the husband was not competent to dispose of more than the life interest in certain property therein named. The relinquishment by the husband of his right to succeed as heir to his wife was not obnoxious to the prohibition contained in s 6 (a) of the Transfer of Property Act 1882. *Musammal Hurmat ul nissa Begam v Allahdia Khan 17 W R 108* *Situms ud din Glulam Hussein v Abdul Husain Kalim ud din I L R 31 Bom 165* *Kennel v Mard v Kunkh Moidin I L R 19 Mad 176* and *Pam Virunjun Singh v Prayag Singh I L R 8 Cal 138* referred to. *NASIR UL-HAQ v FAIZAT UL PAHAN (1911)*

I L R 33 All 457

8 ——— Right of widow to retain husband's property until dower debt is paid—*Possession* Under the Mahomedan Law when a widow is in possession of the undivided property of her deceased husband such

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possession having been obtained lawfully and without force or fraud and her dower or any part of it is due and unpaid she is entitled as against the other heirs of her husband to retain such possession until her dower debt is paid. The possession need not necessarily be possession obtained by an agreement with her husband or his heirs. *Bibi Tasliman v Bibi Tasliman 17 C L J 581* and *Amanat un nissa v Bashir un nissa I L R 17 All 77* cited from *BAHER JAH BEWA v ANSARUDDIN (1911)*

I L R 38 Cal 475

9 ——— Dower—Right of widow to remain in possession of her husband's property in lieu of dower The right of a Mahomedan widow to whom dower is due and who has got into possession of property of her husband in lieu thereof to remain in possession until her dower is paid may perhaps be descendible to her heirs but no right to possession is descendible in a case where the widow herself never got possession at all. *Ali Balh's v Allahdad Khan I L R 32 All 551* and *Bebee Bachun v Sheikh Hamid Hossein 14 Moo I A 377* referred to. *TAMBUK NISSA BIBI v NAWAB HASAN (1912)*

I L R 36 All 558

10 ——— Marriage—Dower widow's claim for charge on estate left by husband—Widow in possession of estate if can obtain a decree for dower without placing Court in possession of assets—Proper procedure administration suit Under the Mahomedan Law when a widow is in possession of the undistributed property of her deceased husband and her dower or any part of it is due and unpaid she is entitled as against the other heirs of her husband to retain such possession until her dower debt is paid provided that her possession was obtained lawfully and without force or fraud. The widow in such a case may be required to account for the profits received by her but she would be entitled to have set off against the sum received by her the income she might have made from her dower money if it had been paid to her immediately on the death of her husband. The claim for dower is a debt due from the entire estate of the deceased and ranks equally and rateably with the claims of other creditors. Consequently the share taken by the widow by right of inheritance is liable proportionately for the satisfaction of her dower debt in the same way as the shares taken by the other heirs and the liability of each heir is limited to the extent of the assets in his or her hands. Where the widow has obtained and retained possession of the entire estate she has no cause of action for a money decree against the other heirs. In such a case if the widow desires to have the question of her dower settled the proper course for her to follow is to institute an administration suit in which the property can be placed in the hands of the Court the amount of her claim if disputed investigated and appropriate directions given for the satisfaction of her claim. In the case of the assets or otherwise. In a case in which the widow is in possession of no portion of the estate she may sue the persons in possession to enforce her claim obtain a decree for the entire amount and realise the sum due out of the assets in their hands. In a case where the widow is in possession of a portion of the estate and the other heirs have possession of the remainder she can seek to recover her dower by way of

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an administration suit or by a suit against the other heirs provided she offers to surrender possession of the property in her hands. If she adopts the latter alternative the litigation really assumes the character of an administration suit. *SHARFAT BAHADUR v. SULTAN BEGUM* (1914)

19 C W N 562

11 ——— *Fight to retain property in lieu of dower—Heritable right* The right which a Mahomedan widow having a claim to dower acquires on obtaining possession of her husband's property is a heritable right. It is a substantial right and if she wrongfully dispossessed she can maintain a suit to recover possession. *MAJIDULAH BANUWAN v. BISHAHAR JAIN* (1915) I L R 40 Com 34

12 ——— *Interest on unpaid dower—Claim for by widow allowed to take possession of her husband's estate to satisfy her dower debt—Liability of widow in possession to account for profits of estate—Recognition by Mahomedan Law of equitable principles in such a case* Where a Mahomedan widow was allowed to take possession of her husband's estate in order to satisfy her dower debt with the income of it and there was no agreement express or implied that she should not be entitled to claim any sum in excess of her actual dower. Held that on equitable considerations she was entitled to some reasonable compensation not only for the labour and responsibility imposed on her for the proper preservation and management of the estate but also for bearing to insist on her strict legal rights to exact payment of her dower on the death of her husband and such compensation for forbearance to enforce a money payment was best calculated on the basis of an equitable rate of interest. That appeared to be consistent with Mahomedan Law (see the Chapter on the Duties (*Adab*) of the *Razi*) in the principal works on that law which clearly showed that the rules of equity and equitable considerations commonly recognised in the courts of Chancery in England are not foreign to the Musalman system but are in fact often referred to and invoked in the adjudication of cases. The decision in *Boomalool Fatima Begum v. Meerunmunnis Khanum* 9 B P 318 that it would be inequitable to make the widow account for the profits except on the terms of allowing her reasonable interest of the dower debt was approved. In suits brought by the other heirs against the widow for the taking of accounts for a decree to the plaintiffs of their respective shares in case the dower debt was shown to have been discharged and for a decree for any sum received by the defendant in excess of her dower the defendant set up a claim for interest on the unpaid dower debt and it being found that a portion of it remained unpaid interest at six per cent per annum was allowed on that amount. *HAFIZA BIBI v. ZUBAIDA BIBI* (1916)

I L M 38 All 581

13 ——— *Widow in possession of husband's property in lieu of her dower—Suit by heirs of husband dismissed on non payment by the plaintiff of the dower then found to be due—Alienation of property by widow and subsequent suit for its recovery by the heirs—Free judgments—Nature of widow's possession* A Mahomedan widow being in possession of her husband's property in lieu of her dower debt some of the

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husband's heirs sued for possession of a portion of the property and obtained a decree conditional on their paying the defendant a certain sum which was then found to be due to her in respect of her dower debt. The sum then adjudged to be due was not paid and the suit was in consequence dismissed. After this suit had been decided the widow alienated the property in question by means of two separate deeds of gift but she did not turn for her right to payment of her dower debt. Some years subsequently to the making of these gifts certain of the heirs of the husband who had been parties to the former suit instituted a fresh suit for the recovery of the same property or part of it against the widow and her donees professing their readiness to pay if it were held to be necessary whatever portion of the widow's dower debt might then remain outstanding. Held (1) that the second suit was not barred by the principle of *res judicata* and (2) that inasmuch as the widow had relinquished possession of her husband's property and had thereby given up her lien the plaintiffs although they might ultimately be liable for payment of a proportionate share of the dower debt were not bound to discharge that liability as a condition precedent to their getting possession of the property which the widow was not lawfully entitled to alienate. The legal position of a Mahomedan widow in lawful possession of her husband's property in lieu of her dower debt discussed. *MARFA BIBI v. WASI AHMAD* (1919)

I L R 41 All 58

14 ——— *Dower—Widow in lawful possession of her husband's property—Right of widow to retain possession of her husband's heirs till dower is satisfied—Necessity for consent of or agreement with her husband or his heirs—Sale by widow for payment of dower—Validity of sale—Right of vendee to retain possession until dower is satisfied* A Muhammadan widow whose dower remains unpaid is entitled to remain in possession of the properties of her husband which he obtained lawfully without force or fraud but without the consent of or any agreement with the husband or his heirs as to the payment of her dower nor can such properties be divided among the heirs until the dower debt has been satisfied. *HAFIZA BIBI v. ZUBAIDA BIBI* (1916) I L P 55 All 581 (P C) discussed. Though the sale by such widow to satisfy the dower debt is not binding on the other heirs of her husband the vendee is entitled to retain possession of the property sold to him against the other heirs until the dower debt is satisfied. *LEGU DEE v. SURU MOORTHY SAHEB* (1920) I L P 43 Mad (FB) 214

15 ——— *Relinquishment by a Mahomedan woman of 15—whether valid—Indian Majority Act (IX of 1875)—act in the matter of dower meaning of—Indian Contract Act s 11* A relinquishment of her right to dower by a Mahomedan woman who is a minor under the Indian Majority Act is invalid under the Indian Contract Act (IX of 1875). To relinquish dower is not to act in the matter of dower within s 2 of the Indian Majority Act. *ALI DHANJAN BIBI v. MUHAMMAD FATHI UDDIN* (1917)

I L P 41 Mad 1026

16 ——— *Sunnis—No determination of marriage whether dower is to be prompt—Ordained—Presumption amongst Sunni Muslims—where there is no express agreement as to*

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how much of the wife's dower is to be prompt it is to be presumed that a reasonable proportion thereof will be prompt. A proportion of 7½ per cent is certainly reasonable. *Umda Begum v. Muhammad Begum* 1 L R 38 All 991 followed. *Mirza Bedar Bukht Muhammad Ali Bahadur v. Mirza Khurram Bukht Isha Ali Khan Bahadur* 19 N R 315 distinguished. *MUHAMMAD SUBHAN ULLAH v. SAGHIR UY NISSA* (1919)

I L R 41 All 562

17 ——— *Sunnis—Prompt dower—payment of—Marriage of a pregnant woman but pregnancy not known to husband—Consummation of marriage—Husband turning away wife on her pregnancy coming to his knowledge—Divorce not given—Wife's right to claim dower.* At the time of her marriage the plaintiff a Sunni Mahomedan woman, was pregnant but her pregnancy was not known to her husband (defendant). The marriage was duly consummated. Within five months of the marriage the plaintiff gave birth to a fully developed child whereupon the defendant turned her out of his house but did not divorce her. The plaintiff having sued to recover her prompt dower from the defendant—*Held* that the defendant was liable on the suit by the plaintiff for her prompt dower since the concealment of pregnancy by the plaintiff at the time of her marriage did not render the marriage invalid. *Per MACLEOD C J.* Where concealment of pregnancy is not by itself a ground for cancelling the marriage the husband has remedy by divorce. *KUTLACUNJI v. ABDUL KADIR* (1920)

I L R 45 Bom 181

18 ——— *Reinquisition of dower during the funeral ceremony—Of the husband's validity.* Where a Mahomedan lady when overwhelmed with grief at the death of her husband orally reinquished her right to dower on the suggestion of her mother and sister—*Held* that under the circumstances of the case there was no exercise of free and deliberate judgment and the reinquisition made was invalid. *Surannees v. Khanum v. Khayy Mahomed Sakroo* (1919) 1 L R 47 Cal 47

I L R 47 Cal 537

19 ——— *Interest when may be decreed on dower—appellant's Burden.* In every appeal it is incumbent upon the appellant to show some reason why the judgment appealed from should be disturbed. In decreeing a widow's suit for dower against the heirs of the deceased husband the committee allowed 6 per cent not strictly as interest but as a means of preventing her position being adversely prejudiced by the unsuccesful controversy raised by the heirs as to her rights. *MUHAMMAD FAKRUNISSA v. MOULVI IZARIS SADIK* 25 C W N 867

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See MAHOMEDAN LAW—MUTUWALI

See MAHOMEDAN LAW—WAKF

1 ——— *Mortgage—Wakf—Mortgage of wakf property by Mutuwalli for necessity of urgent character whether valid—Effect of obtaining permission of Cadi after the mortgaging—Loan by a trustee at a high rate of interest.* Under the Mahomedan Law mortgage of wakf property by the mutuwalli in case where necessity is established is valid even if the permission of the Cadi is obtained subsequent to the mortgage. Where therefore a Court found that a mortgage by a mutuwalli of

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wakf properties was for urgent necessity and that the mortgage was proper if the mortgage is valid in law inasmuch as it might be taken to have been retrospectively approved by the Court. A loan by a trustee of endowed property at the rate of interest at 12 per cent per annum with quarterly rests could not be considered beneficial to the endowment although the principal sum itself might have been urgently raised for the protection of the endowment and in such a case the Court is justified in allowing interest at a reduced rate. *MIRAJ CHAND ADDA v. GOLAM HOSSEIN* (1900)

I L R 37 Cal 179

2 ——— *Mutuwalli suit for office of—Wakf—Direction of founder Court's power to disregard—Surrender of the office of Mutuwalli and appointment of a successor by a person who is not a general trustee—Effect of Limitation Act (XV of 1877) Sec II Art 190.* In appointing a mutuwalli a Court will not disregard the directions of the founder except for the manifest benefit of the endowment. *In re Ten pest J R 1 Ch App 485* 14 L T 685 referred to. A created a wakf on the 22nd April 1904 by the *naqshamah* he appointed himself the first mutuwalli and also gave directions as to the appointment of his successor. The deed further provided that after the death of the founder his widow would remain in possession of the endowed property and the mutuwalli would act under her order. During the lifetime of the founder the person who was nominated as the successor or in the office of mutuwalli died subsequently on the founder's death in 1868 his widow obtained certificate and undertook the performance of the duties of mutuwalli and continued to do so till the 29th of January 1877 when she executed a *tauhidnamah* by virtue of which she surrendered the office of mutuwalli and appointed a third party as her successor in that office who accordingly took possession of the endowed properties. Upon a suit by the plaintiff as one of the representatives of the founder for declaration of his rights as mutuwalli and for recovery of possession of the endowed properties—*Held* that inasmuch as the widow of the founder was in no sense a general trustee and that she had no authority express or implied to modify in any way the terms of the trust deed nor she had the authority to renounce the office and appoint a successor or her acts were illegal under the Mahomedan Law and that Art 120 of Sec II of the Limitation Act applied to the case and the plaintiff's suit was barred by limitation. *KUTLACUNJI v. ABDUL KADIR M. MUSTAFA* (1909)

I L R 37 Cal 263

3 ——— *Declaration of wakf suit for—Right of Muhammadan entitled to sue such property to sue for a declaration that property is wakf.* The plaintiff Mahomedan resident in the city of Kanauj sued for a declaration that a certain idgah and the land adjoining it situated in a village in pargana Kanauj was wakf property. *Held* that as Muhammadans who had a right to sue the idgah they were entitled to sue and that no special permission was required to enable them to do so. *Zafarab Ali v. Dattatray Singh* 1 L R 5 All 497 and *Jawaira v. Akbar Hussain* 1 I P 7 All 178 followed. *Wand Ali Shah v. Deewan Iltat Beg* 1 I P 8 All 171 distinguished. *MUHAMMAD ALAM v. AKBAR HUSSAIN* (1910)

I L R 32 All 631

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4 ——— Subject of wakf—Wakf—Right to recover money under a decree cannot be made the subject of Wakf—Right to recover money under a decree cannot be made the subject of wakf in the absence of a custom authorising such appropriation *Iulson Bilce v Giam Ho ein Cassira Ariff* 10 C L J 449 494 referred to and followed. *Kilecola Sahib v Nuseerdeen Sahib* I L R 18 Jai 201 209 referred to **KADIR IMRAN FOWTHER v MAHOMED RAHIMADULLA FOWTHER** (1909) I L R 33 Mad 118

5 ——— Sale of wakf property—Sanction to sell Jurisdiction—Practice—Trusts Act (XVIII of 1866) s 3—Trusts and Mortgage Powers Act (XVIII of 1867) s 45—Cases to which English law is applicable—On an application made by the mutawalis to a wakf for sanction to sell wakf property—Held that there being no statute authorising such an application such sanction could only be obtained by means of a suit. In the matter of *Moo at nne v Libee* I L R 36 Cal 21 not followed. Although a Judge of the High Court exercises the functions of a *kalā* when administering Mahomedan law the procedure to be adopted is to be regulated by the Code of Civil Procedure and the Rules and Orders of the High Court. *Shama Churn Roy v Abdul Karber* 3 C W J 158 and *Nemai Chand Aditya v Goolam Hussein* I L R 31 Cal 179 referred to. Such an application does not come within the purview of Acts XXVII and XXVIII of 1866 these Acts govern only such trusts as are in the form of an English trust and are constituted by persons of purely English domicile or persons governed by the Indian Succession Act. In *re Halandas Narrandas* I L R Bom 154 and *In re Naimoney Dey Sarkar* I L R 32 Cal 143 not followed. In *re HALIMA KHATUN* (1910) I L R 37 Cal 870

6 ——— Agreement by Hindu to dedicate property for maintenance of mosque—Mahomedan Law—Voluntary Agreement interfering with work of Peshcar—An agreement by a Hindu to dedicate property for maintenance of a mosque is not enforceable according to Mahomedan Law. **FLEUR PAHAMAN v ANATH BANOUL PAL** (1911) 16 C V N 114

7 ——— Khanga attached to Darga—Religious institution—Right of management—Exclusion of females—Revolving usage—Usage as indication of the direction of the founder—The right of management of a religious institution such as a Khanga attached to Dargahs is to be decided according to the prevailing usage that usage being taken as indication of the direction of the founder. Even in cases where appointments have been regularly made by the last holders an inquiry into the usage governing such appointments has been considered relevant. *Shah Giam Rahimtulla Sahib v Mahomed Akbar Sahib* 3 Mad H C 63. *Sajad Abdulla Edrus v Sajad Za N Sajad Ha v Ldrn* I L R 13 Bom 505. *Sajad Muhammad v Fatt Muhammad* I L R O I 14 referred to. **ISMAILMIA v WABADANI BELGAN** (1911) I L R 36 Bom 308

8 ——— Endowment—Wakf by dedication or user—Graveyard land used as a reservation of ancient origin of shrine and burial place—Punjab Land Revenue Act (XII of 188) s 41—Entry scanner shi in record of rights at settlement. In this case the

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Judicial Committee (affirming the decision of the Chief Court of the Punjab) held on the evidence that the land in suit (known as the Mai Pak Daman graveyard) which had been used from time immemorial by the Mahomedan community of Bul tan for the purpose of burying their dead formed part of a graveyard set apart for the Mahomedan community and that by user if not by dedication the land was wakf. In the record of rights of the last settlement an area of land which comprised the land in suit was entered as in the possession of Mahomedan and was described as *labristan* or *ghair mutakin labristan* (graveyard or unculturable land forming portion of a graveyard) and in the ownership column the name of the defendant (now represented by the Court of Wards) was entered as owner. Their Lordships said: It would seem that he was properly entered as owner being trustee and custodian of the shrine of the saint Mai Pak Danan and being or claiming to be the recognised head of the Mahomedan community in Multan and held that under s 44 of the Punjab Land Revenue Act (XII of 1887) the entry not having been disproved must be presumed to be correct. **COURT OF WARDS v ILAH BAKSHI** (1912) I L R 40 Cal 207

9 ——— Public Mosque—Right of management—Civil Procedure Code 1882 s 539—Suit for appointment of Trustees and for settlement of a scheme of management—Community composed of Sunnis—Mahomedans from various districts and places—Trust deed giving managements exclusively to Rhanderias—Discretion of Kalā under Mahomedan Law—Discretion of Court—Obligation to adhere to intentions of founder and objects of Trust—Right to vary details of management in accordance with changing conditions and circumstances—This appeal which arose out of a suit brought under s 539 of the Civil Procedure Code 1882 for the appointment of Trustees and the settlement of a scheme of management related to the Sunni Jumma Masjid at Lanoon which was admittedly a public mosque dedicated to the performance of religious worship by all Sunnis Mahomedans without restriction as to place of origin. The land on which the mosque was built had been granted by the Government on trust for that purpose in 1860 and it was together with other land adjoining purchased in 1871 from the Government by five members of the Sunni Mahomedan community who by a deed of trust in March 1872 dedicated it and the mosque erected thereon for the purpose of divine worship by all Sunnis Mahomedans and vested the control and management of the mosque solely in Phanderias (Sunnis Mahomedan from Phander near Sirat) held that the transaction which took place in 1871 and 1872 in no way affected the origin and then existing trust and that the trust deed did not create a new dedication but the trustees maintained as before a public mosque dedicated to the performance of worship by all Sunnis Mahomedans as originally founded. With respect to the public religious trust as distinguished from a private trust the discretion under the Mahomedan Law of the Kazi (a discretion now exercised by the Civil Court) was very wide for though he could not depart from the intentions of the founder made in the founder as to the objects of the benefaction yet as regards its management which must be governed by circumstance he



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had complete discretion his primary duty being to consider the interests of the general body of the public for whose benefit the trust is created. In his judicial discretion he might vary any rule of management which he finds either not practicable or not in the best interests of the institution. *Held* therefore that in settling a scheme of management the question was not one involving the determination of conflicting rights but the consideration of the best method for fully and effectively carrying out the purposes of the trust. S 539 vested a very wide discretion in the Court and in giving effect to its provisions and appointing new trustees and settling a scheme the Court was entitled to take into consideration not merely the wishes of the founder so far as they can be ascertained but also the past history of the institution and the way in which the management has been carried on heretofore in conjunction with other existing conditions that might have grown up since its foundation. The Court also had the power of giving any directions and laying down any rules which might facilitate the work of management and if necessary the appointment of trustees in the future. *Held* also that on the facts and in the circumstances of this case the Rhandaria section of the worshippers all other conditions being equal were preferentially entitled to the management of the mosque. *Ibrahim Esamiz v Abdool Karrim Peermamode* [1905] A C 596 L R 30 I A 151 distinguished. The case was accordingly remitted to the Chief Court to form a scheme by which the appointment of future trustees should be entrusted to a committee of the worshippers the composition of which should be in the discretion of the Court with due regard to local needs and conditions subject to the provision that so long as circumstances do not vary a majority of such Committee should be Phanderias and that in settling the scheme the Court should lay down rules for the guidance of the committee in the discharge of any supervisory functions that it may be necessary to confide to them and for filling up vacancies on their body subject to its control. **MAHOMED ISMAIL ARIFF v AHMED MOOLLA DAWOOD** (1910) I L R 43 Cal 1085

10 ————— **Wakfnama executed by purdasha lady—Charge of fraud undue influence and inability to understand document—Onus—Concurrent findings on issues of fact—Substantial dedication to charity—*Held*—That the wakfnama in question should be upheld as there was a substantial dedication of property to charitable and religious purposes and no legal objection to the dedication had been established. On the question whether the wakfnama was obtained by fraud and undue influence and the executant a purdasha lady understood the document. *Held*—That the onus of proof having been properly placed there were concurrent findings on issues of fact which it was impossible for the Appellants to displace. **SYED AMATUL LATIFA BIBI v DRWAZ ABDUL ALIM KHAN** 24 C W V 491**

11 ————— **Mortgage—Transfer—Possession—Limitation—Trust—Trustee alienates his share of endowment property—Suit by mutawalli to recover mortgage of wakfs property mortgaged by former mortgagee—*Held*—Act (IX of 1905) Art 131—Transfer from A to B with date of transfer or date of possession—Transfer in Art 131—Act of B not a gift—*Held*—*See* Art 131 transfer**

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of trust property—Title of purdasha for value and with notice—Registration of endowment to notice—Mutawalli position of—Legal owner of property dedicated to public charitable purposes—Discretion of District Judge as to appointment of mutawallis from among strangers—Wakf principle of—Test whether deed is valid as wakf or is illusory—Gift substantially to charity—Property settled partly for benefit of members of the family—Transfer of Property Act (IX of 1899) s 41 *Held* (HUBA J dubitante) that the date of transfer contemplated in Article 131 of the Limitation Act 1905 is the date on which property or title was transferred and not the date on which transfer is followed by possession. *Alimnary Singh v Jagabandhu Roy* I L R 23 Cal 536 *Ram Kanan Ghosh v Hari Narayan Singh Deo* 2 C L J 640 *Bhargava Lal v Muhammad Mulla* I I R 20 All 489 *Masarikraman Ettan Thiruvaram* 4 Ann I L J 23 Mad 471 and *Mulla Veetil Sethi Kuttu v Kunhi Pathumma* I L F 40 Mad 1040 per *Wallis C J* and *Coutts Trotter J* followed. *Ramchandra Lalal Rajadhisra v Mohidin* I L F 23 Bom 614 dissentient from *Dattatraya v Dattatraya Krihna Sirde* I I R 27 Bom 363 *Malik v Fairchand* I L R 27 Bom 225 and *Husain Khanam v Husain Khan* I L F 29 All 471 distinguished. *Bakhtawar Perani v Husain Khanum* I L R 36 All 195 L R 41 I A 84 referred to. Where the position of the trustee is that of a mere manager under a duty constituted trust it is immaterial under the present law whether the transferee takes with notice or without notice of the trust. Under the older Acts of Limitation the transferee with notice was not protected by the twelve years rule. *Raddanath Das v Elliott* 6 B L R 50 14 Moo I A 14 and *Lutejan v Begu Jan* 3 Moo I A 500 referred to. Where the transferee is a mere manager he is not the ostensible owner nor has the transferee anything corresponding to the English legal estate to set over against the prior equity of the beneficial owner. *Varadn Behl Sam v Luckpathy Royce Lallah* 5 W R 120 and *Golud Das v Eastern Mortgage and Agency Co* I I R 33 Cal 410 referred to. A mutawalli of a wakf estate is not the ostensible owner of the estate. He is a mere manager and in the case of public charitable endowment the legal ownership of the property dedicated is in the Divine Being or in the charity created in his name. Registration in a public registry office affords protection to intending purchasers and minimizes the hardship of transfers without notice. The appointment of a mutawalli of a public trust where the intention of the founder of the trust is not capable of execution is entirely within the discretion of the District Judge at law. *Mahomed Ismail Ariff v Ahmed Moolla Dawood* I L F 43 Cal 1085 I R 40 I A 127 followed. Where property is dedicated in substance to charitable uses a valid wakf is created and the mere fact that the founder reserved to himself during his own lifetime an absolute discretion over the disposal of the income but depriving himself of the power to dispose of the corpus—without leaving such discretion to his successors—does not make the endowment invalid. *Mujibunnisa v Abdur Rahim* I L R 23 All 273 L F 28 I A 10 *Jamanandan Chettiar v Vasa Lemas Mookayar* I L R 40 Mad 116 L R 41 I A 21 *Mahomed Ihsanull Choudhry v Amarchand* I undu I L R

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17 C 10 498 L P 17 I 4 28 and *Mu hurool Huq v Puhary Dularry Mohapatra* 13 W R 235 followed *Per SHAMS UL HUDA J* The onus to prove that a suit by a *mutualis* to recover possession of *wali* property is within time : on the plaintiff it is for him to show that mortgage was not followed by possession *NARAY DAS AROPA v HAJI ABDUR RAHIM* (19-0) I L R 47 Cal 866

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See CIVIL PROCEDURE CODE 185 ss 13 and 44 I L R 35 Bom 297

See LIS PENDENS I L R 41 All 531

See MAHOMEDAN LAW—WAFQ

See TRANSFER OF PROPERTY ACT (IV OF 1892) ss 123 129

I L R 38 All 212

1 ——— Offerings at a shrine—Gift of a fixed share of offering made at a shrine—Possession of subject of gift Held that a gift of the right to receive a certain share of the offerings which might be made at a particular shrine was a valid gift and not repugnant to the doctrines of the Mahomedan Law *Amul Nissa Begum v Mir Nurudin Husain Khan I I R 27 Bom 499* distinguished *AMMAD UDDIN v ILAKI BAKSHI* (1912) I L R 34 All 465

2 ——— Hanafi Law—Gift—Construction of document—Condition in derogation of the grant invalid A deed of gift of certain property provided as follows — My son Naki Khan will remain owner (*malik*) of the remaining two thirds and of the said two thirds Naki Khan will remain full and absolute owner of one third (*malik kamil kalai*) and he shall have the powers of an owner with respect to it and Naki Khan will be owner (*malik*) of the other third also and his name shall be entered in the khewat but the income of it is given for the maintenance of my minor grand son Muhammad Shafi Khan on of Muhyim mad Taqi Khan deceased Accorded to law Naki Khan is guardian of Shafi Khan he must give the income of that one third for the maintenance of the minor and Naki Khan will not have the power of transfer over that one third during the life of the minor Held on a construction of the deed that the condition against alienation was invalid but the condition as to the payment of one third of the income to Muhammad Shafi Khan was valid and attached to the property in the hands of a transferee who was found to have notice thereof *Nasab Umyad Ally Khan v Muhammad Mohimdee Beg in 11 Moo I A 517* followed LALI JAN v MUHAMMAD SHAFI KHAN (1912) I L R 34 All 478

3 ——— Possession—Gift validity of—Transfer of possession to an unnee or —Possession of donor necessary to valid gift To make a valid gift under Mahomedan Law the donee should be put in possession But where the donee is a minor at the time of the gift and the donor renounces in possession of the property as guardian of the donee on his behalf the gift would be valid under Mahomedan Law unless the subject matter of a gift is in the possession of a trustee or agent of the donor who is custody regarded in law as the custody of the donor The owner of a property if not in possession cannot make a valid gift of it

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or rather a gift made by him will not pass the ownership of the property to the donee until the donee takes possession by the donor consent *FATIR NINAF MUHAMMAD POWTHER v KANDASA WAMA KULATHU VANDAN* (1911) I L R 86 Mad 120

4 ——— Mushaa—Gift—Share in *eman dars prop rtj*—Gift by some co sharers to the others —Possession delivery of if necessary—Gift to adult and minor jointly—Gift by mother to minor son —Delivery of possession if necessary *Hiba bil mushaa* (gift of undivided joint property) is not void but only invalid and possession remedies the defect When persons own a property jointly any sharer may make a gift of his share in that property to any other sharer without the formality of delivery of possession There is no inherent illegality in a joint gift to an adult and a minor When the interest of the two are sufficiently specified so that there can be no apprehension of any confusion or dispute the gift is unobjectionable Where one of the co sharers of a zemindari property simultaneously made over their undivided share to the remaining co sharer the doctrine of *mushaa* did not apply In the case of a gift by a parent who is the *de facto* guardian of a minor to such minor a formal delivery of possession is not necessary *JABEDANE SIBBI v NATIBAL ISLAM MOLLA* (1910) 15 C W N 328

5 ——— Gift—Mushaa Where the defendant made a gift of a four anna share in a *talami raiyati* holding to the plaintiff his nephew by marriage and admitted him to joint possession with him self and recognised the plaintiff as being in such possession for 14 years Held that he could not be allowed to say that there had been no valid gift The doctrine of *mushaa* is not applicable to such a case *Ibrahim Goolim Ariff v Saiboo I I R 35 Cal 1* *Imnabai v Hajuralas I L R 13 Bom 359* *Jivan Paksh v Imtia Begam I L R 2 All 93* *Mulammad Nisla Ahmad v Zula fan I I R 11 All 460* referred to *ABDUL AZIZ v IATEH MAHMOED HAZI* (1911) I L R 38 Cal 518

6 ——— Gift to a Mopla—Governed by Mahomedan Law on marriage not void on his wife's death or divorce—No reverter to donor Under the Mahomedan Law a girl when married passes over to her husband's family and there is no obligation on the members of her natural family to maintain her after her marriage even if she is divorced So in the absence of any usage among Moplas governed by Mahomedan Law a gift made to the husband of a Mopla girl does not become void and does not revert to the members of her natural family when the girl dies or is divorced The rule is otherwise among people governed by *Marumakkattaram Law Mariom v Abdulla* [Second Appeal No 1746 of 1895 (unreported)] referred to *PAKICH v KUNA CHA* (1913) I L R 36 Mad 325

7 ——— Shias—Gift—Marz ul ma'at—In case of more than one year's duration Under the Shia law a gift made in *marz ul ma'at* holds good to the extent of only one third of the donor's estate in spite of delivery of possession prior to his death Under the Shia law if a person dies of a disease of more than one year's duration such disease is not considered a death illness But there is this condition attached to it that if the illness increases to such an extent as to

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had complete discretion his primary duty being to consider the interests of the general body of the public for whose benefit the trust is created. In his judicial discretion he might vary any rule of management which he finds either not practicable or not in the best interest of the institution. *Held* therefore that in settling a scheme of management the question was not one involving the determination of conflicting rights but the consideration of the best method for fully and effectually carrying out the purposes of the trust. S 539 vested a very wide discretion in the Court and in giving effect to its provisions and appointing new trustees and settling a scheme the Court was entitled to take into consideration not merely the wishes of the founder so far as they can be ascertained but also the past history of the institution and the way in which the management has been carried on heretofore in conjunction with other existing conditions that might have grown up since its foundation. The Court also had the power of giving any directions and laying down any rules which might facilitate the work of management and if necessary the appointment of trustees in the future. *Held* also that on the fact and in the circumstances of this case the Phundia section of the worshippers all other conditions being equal were preferentially entitled to the management of the mosque. *Ibrahim Damsel v. Abdul Kariem Piermar* (1905) 4 C 526 L R 55 I A 151 distinguished. The case was accordingly remitted to the Chief Court to form a scheme by which the appointment of future trustees should be entrusted to a committee of the worshippers the composition of which should be in the discretion of the Court with due regard to local needs and conditions subject to the provision that so long as circumstances do not vary a majority of such Committee should be Hindus and that in settling the scheme the Court should lay down rules for the guidance of the committee in the discharge of any supervisory functions that it may be necessary to confide to them and for filling up vacancies on their body subject to its control. *MAHOMED ISMAIL AFIFF v. MOOLLA DAWOOD* (1916) I L R 43 Cal 1085

10 ——— **Wakfnama executed by parda nashin lady**—Charge of fraud undue influence and inability to understand document—Onus—Concurrent findings on issues of fact—Substantial dedication to charity. *Held*—That the wakfnama in question should be upheld as there was a substantial dedication of property to charitable and religious purposes and no legal objection to the dedication had been established. On the question whether the wakfnama was obtained by fraud and undue influence and the contentant a parda nashin lady understood the document. *Held*—That the onus of proof having been properly placed there were concurrent findings on issues of fact which it was impossible for the Appellants to displace. *SHED AZIZUL FATMA BIBI v. DR. KAM ABDUL ALAM SAHEB* 24 N P N 494

11 ——— **Mortgage—Transfer—Possession—Limitation—Trust—Trustee's intentions by mouth of property**—Suit by mortgagor to recover possession of property mortgaged by former owner. *Held*—That on facts (1905) 113 I L R 131 I A 177 followed. Where the intention of the mortgagor in transferring the property was to create a mortgage and not a sale, the mortgagee's possession is not barred by limitation. *See* Art 131

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of trust property—Title of purchasers for value and with notice—Pegistration of instrument to notice—Mutawalli position—Legal owner of property dedicated to public charitable purpose—Discretion of District Judge as to appointment of mutawallis from among strangers—Wakf principle of—Tei whether deed is valid as wakf or is illusory—Gift substantially to charity—Property vested partly for benefit of members of the family—Transfer of Property Act (IV of 1882) s 11. *Held* (Hindu J. dubi- tate) that the date of transfer contemplated in Article 131 of the Limitation Act 1908 is the date on which property or title was transferred and not the date on which transfer is followed by possession. *Alimohy Singh v. Jagabandhu Roy I L R 23 Cal 536 Ram Kanas Ghosh v. Hari Narayan Singh Dec 2 C I J 540 Behari Lal v. Muhammad Yullahi I L R 20 All 48 Manikraman Eltan Thunburam v. Ammu I L R 24 Mad 471 and Mulla Yellu Seeti Jothi v. Kunhu Pathamma I L R 40 Mad 1040 per Wallis C J and Conitts Trotter J followed. *Ramchandra Lalal Pajadhiksha v. Mohidin I L R 23 Bom 614* dissented from. *Dattagiri v. Dattatraya Krishna Sunde I I R 27 Bom 383 Valsu v. Palrechand I L R 23 Bom 25 and Husan Khanam v. Husan Khan I L R 29 All 471* distinguished. *Balkrishna Beem v. Husein Khan I L R 36 All 190 L P 41 I 1 84* referred to. Where the possession of the trustee is that of a mere manager under a duty constituted trust it is immaterial under the present law whether the transferee takes with notice or without notice of the trust. Under the older Acts of Limitation the transferee with notice was not protected by the twelve years rule. *Radhanath Das v. Elliott 6 B L R 550 14 Moo I A 14 and Lutefant v. Begu Jan 9 Moo I A 303* referred to. Where the transferee is a mere manager he is not the ostensible owner nor has the transferee anything corresponding to the English legal estate to set over against the prior equity of the beneficial owner. *Jarden Seth Sam v. Lakshmy Rowee Lallah 6 W R 120 and Gopal Das v. Eastern Mortgage and Agency Co I I R 33 Cal 410* referred to. A mutawalli of a wakf estate is not the ostensible owner of the estate. He is a mere manager and in the case of public charitable endowment the legal ownership of the property dedicated is in the Divine Being or in the charity created in his name. Pegistration in a public registry office affords protection to intending purchasers and minimizes the hardship of transfers without notice. The appointment of a mutawalli of a public trust where the intention of the founder of the trust is not capable of execution is entirely within the discretion of the District Judge at Azam Mahomed I mail Affir v. I mail Moolla Dawood I L P 43 Cal 1085 I L R 13 I A 177 followed. Where property is dedicated in substance to charitable uses a valid wakf is created and the mere fact that the founder reserved to himself during his own lifetime an absolute discretion over the disposal of the income but depriving himself of the power to dispose of the corpus—without leaving such discretion to his successors—does not make the endowment invalid. *Mujibunnisa v. Abder Rahim I L R 23 All 233 L P 28 I A 10 Pamavandan Chettiar v. Vasa Leman Varachar I L R 40 Mad 116 L R 44 I 42 Mahomed Akhsanulla Choudhry v. Amarchand I undu I L R**

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17 Cae 498 L P 1, 1 25 and *Muhammad Hujar Puhay Ditaru Mcapallur* 13 W R 35 followed *Per SIAMS v. HUDA*. The onus to prove that a suit by a muhrath to recover possession of *waqf* property is within time is on the plaintiff it is for him to show that mortgaze was not followed by possession. *NABIN DAS AROPA v. HAJI ABDUL RAHIM* (190)

I L R 47 Cal 888

MAHOMEDAN LAW—GIFT

See CIVIL PROCEDURE CODE 1882 ss 13 and 44 I L R 35 Bom 29

See LIS PENDENS I L R 41 All 531

See MAHOMEDAN LAW—WAQF

See TRANSFER OF PROPERTY ACT (11 OF 1882) ss 193 129

I L R 38 All 212

1 ——— Offerings at a shrine—Gift of a fixed share of offerings made at a shrine—Possession of subject of gift Held that a gift of the right to receive a certain share of the offerings which might be made at a particular shrine was a valid gift and not repugnant to the doctrines of the Mahomedan Law. *Amul v. B. Gum v. Mir Nurudin Husain Khan* I L R 3 Bom 459 distinguished *AMMAD UDDIN v. ILAMI PARSAN* (1912)

I L R 34 All 465

2 ——— Hanafi law—Gift—Construction of document—Condition in derogation of the grant invalid A deed of gift of certain property provided as follows—My son Naki Khan will remain owner (*malik*) of the remaining two thirds and of the said two thirds Naki Khan will remain full and absolute owner of one third (*malik kamil kalam*) and he shall have the powers of an owner with respect to it and Naki Khan will be owner (*malik*) of the other third also and his name will be entered in the *khawat* but the income of it is given for the maintenance of my minor grandson Muhammad Shafi Khan son of Muhammad Taqi Khan deceased According to law Naki Khan is guardian of Shafi Khan he must give the income of that one third for the maintenance of the minor and Naki Khan will not have the power of transfer over that one third during the life of the minor Held on a construction of the deed that the condition against alienation was invalid but the condition as to the payment of one third of the income to Muhammad Shafi Khan was valid and attached to the property in the hands of a trustee who was found to have notice thereof. *Nawal Uzzud Ali Khan v. Musammat Mohimdee Begum* 11 Moo I A 517 followed *I ALI JAM v. MUHAMMAD SHAFI KHAN* (1912)

I L R 34 All 478

3 ——— Possession—Gift validity of—Transfer of possession when unnecessary—Possession of donor necessary to valid gift To make a valid gift under Mahomedan Law the donee should be put in possession But where the donee is a minor at the time of the gift and the donor remains in possession of the property as guardian of the donee on his behalf the gift would be valid under Mahomedan Law unless the subject matter of a gift is the possession of a trustee or a rent of the donor who is entitled to regard in law as the custody of the donor The owner of a property if not in possession cannot make a valid gift of it

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or rather a gift made by him will not pass to the owner hip of the property to the donee until the donee takes possession by the donor's consent. *FATMA NISAR MUHAMMAD LOWTHI v. KANDAS WAMU KUTATHU VANDAN* (1911)

I L R 55 Mad 120

4 ——— Mushaa—Gift—Share in common property—Gift by some co-sharers to the others—Possession delivery of necessary—Gift to adult and minor jointly—Gift by mother to minor son—Delivery of possession if necessary *Hafizul Mushaa* (gift of undivided joint property) is not void but only invalid and possession remedies the defect When per one own a property jointly by any sharer may make a gift of his share in that property to any other sharer without the formality of a delivery of possession There is no inherent illegality in a joint gift to an adult and a minor When the interest of the two are sufficiently specified so that there can be no apprehension of any confusion or dispute the gift is unobjectionable Where some of the co-sharers of a remainder property simultaneously made over their undivided share to the remaining co-sharers the doctrine of *mushaa* did not apply In the case of a gift by a parent who is the *de facto* guardian of a minor to such minor a formal delivery of possession is not necessary. *JAFIDAN TASA JIPI v. NAZIBAL ISLAM MOLLA* (1910) 15 O W N 328

5 ——— Gift—Mushaa

Where the defendant made a gift of a four annas share in a *hauz raiyati* holding to the plaintiff his nephew by marriage and admitted him to joint possession with him self and recognised the plaintiff as being in such possession for 14 years Held that he could not be allowed to say that there had been no valid gift The doctrine of *mushaa* is not applicable to such a case. *Ibrahim Goolam Ariff v. Saiboo* I L R 35 Cal 1 *Emnabai v. Hingralai* I L R 13 Bom 359 *Jivan Baksh v. Jmilia Begam* I L R 2 All 93 *Muhammad Nymia Almad v. Zubaida Jan* I L R 11 All 460 referred to *ABDUL AZIZ v. FATEH MAHOMED HAZI* (1911)

I L R 38 Cal 518

6 ——— Gift to a Mopla—Govern I by Mahomedan Law on his marriage not void on his wife's death or divorce—No reverter to donor Under the Mahomedan Law a girl when married passes over to her husband's family and there is no obligation on the members of her natural family to maintain her after her marriage even if she is divorced So in the absence of any usage among Moplas governed by Mahomedan Law a gift made to the husband of a Mopla girl does not become void and does not revert to the members of her natural family when the girl dies or is divorced The rule is otherwise among people governed by Marumakkattavam Law. *Mariyam v. Abdulla* [Second Appeal] No 146 of 1892 (unreported) referred to *PAKICH v. KACHA CHA* (1913)

I L R 55 Mad 320

7 ——— Shias—Gift—Marriage of husband—In case of more than one wife duration Under the Shia law a gift made in marriage is good to the extent of only one third of the donor's estate in spite of delivery of possession after his death Under the Shia law if a gift of a share of more than one wife is made such share is not considered But there is this condition attached to such

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cause or another supervenes which cause an apprehension of death in the mind of the donor the increase or the new disease is a death illness. The nature of the gift does not change even if the donor had intended prior to death to transfer the property to the donee. **KHURSHED HUSAIN v. FAIZABAD HUSAIN (1914)** 1 L R 36 All 283

8 ——— **Revocation—Substantial alteration of subject matter—Partition** Held that a Revenue Court partition of villages the subject of a deed of gift does not amount to such a substantial alteration of the subject matter in the hands of the donee as would under the Mahomedan law render the gift irrevocable by the donor. **MAQBUT HUSAIN v. GHAFUR UN NISSA (1914)** 1 L R 36 All 353

9 ——— **In lieu of dower—Nature of such gift** The provision of the Mahomedan Law applicable to gifts made by persons labouring under a fatal disease do not apply to a gift made in lieu of a dower debt which is really of the nature of a sale. **GHULAM VUJAJA v. HURMAT 1 L R 2 All 854** followed. **IBRAHIM v. KARIM DAFHAK 13 O W 160** and **BIBI JANDI v. HARATH SAIB 21 Mad L J 908** referred to. **ISAHAQ CHOWDHURY v. ABDUL KASIM BIRI (1914)** 1 L R 42 Cal 361

10 ——— **Registration—Of gift, Mahomedan** *in lieu of dower with delivery of possession* Under s 129 of the Transfer of Property Act the registration of a deed of gift in accordance with s 123 cannot make up for the want of delivery of possession required by the rules of Mahomedan Law. **FORIM BUKH MANDAL v. SHAJAD AHMAD CHAUDHURY (1914)** 19 C W N 1311

11 ——— **By deed of trust—Oudh Laws Act (XVII of 1876) —Meaning of gifts—Delivery and acceptance of subject of gift not proved—Transfer of Property Act (IV of 1882)—Trusts Act—(II of 1882) Oudh Land Revenue Act (XVIII of 1876) s 61 et seq—Legitimacy proof of—Admission—Enforcement by Judge of documents admitted in evidence—Civil Procedure Code 1877 and 1882 s 141 1908 O VIII r 4—Undue prolongation of litigation—Cross examination of witnesses** In s 3 of the Oudh Laws Act (XVII of 1876) which indicates the cases in which among Mahomedans the Mahomedan Law is to be applied the word gifts includes a gift made to a beneficiary through a trustee. A Mahomedan made a settlement the parties to which were himself to the first part his wife of the second part and his wife and her father of the third part (the trustees) which after settling that 8,000 was due by the settlor to his wife for the balance of her dower and that it had been agreed between the parties that the settlement should be in full satisfaction of the dower debt witnessed that for the consideration stated the settlor granted certain properties to the trustees upon trust to pay the net incomes of the properties to his wife for her life and after her death upon trust for all the children of the settlor and his wife living at the time of his decease. The deed was never executed by the wife and there was no evidence independent of the deed to show that any agreement was ever entered into between the settlor and his wife that she would accept the provision made for her in the settlement in satisfaction of her charge of the unpaid balance of her dower and she never elected in her life time to take the

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benefits conferred on her by the deed in lieu of it. Held that the conveyance to the trustee was a purely voluntary gift and was void by Mahomedan Law unless accompanied by a delivery of possession such as the subject of the gift was susceptible of. Subsequent election could not be held to be a substitute for the original consideration. **Claydon v. Mehdi Hasan v. Muhammad Hasan 1 L R 23 All 439 449** 1 P 33 1 A 68 76 and **Khayat v. Roushan Jahan 1 L R 2 Cal 184** 1 J 3 1 A 90 followed. The rule of law laid down by those authorities was not altered or qualified by the combined provisions of the Transfer of Property Act (IV of 1882) and the Indian Trusts Act (II of 1882) so as to make registration a substitute for delivery of possession. Both of those Acts were passed long before the first of those authorities was decided. In a suit to enforce a mortgage executed by the widow of the settlor of property dealt with by the settlement. Held that during the life of the donor the evidence did not show that anything was done by him which amounted to delivery of possession of the properties nor was anything done by the trustees or the wife alone amounting to proof of the acceptance of the gift or of an election to take under the deed. All her conduct and actions were entirely inconsistent with any such intention on her part. The trustees never entered under and by virtue of the trust deed into the receipt of the rent or income of the property comprised in the mortgage and consequently there was no satisfactory proof that the possession of that portion of the property the subject of the gift was ever delivered by the settlor to the trustees. That being so the gift according to the Mahomedan Law was void and the mortgage sued upon was therefore a valid and binding instrument and a good security. The statements made in documents signed by the wife she must be taken to have known the purport and effect of it being a part of the administrative duties or a quasi-judicial character imposed by the Oudh Land Revenue Act (XVII of 1876) upon the public officials before whom the documents came to see that she as a *pardanashin* lady had that knowledge and the maxim *Omnia pro unumfur recte* is applicable. On a question as to the legitimacy of one of the settlor's sons. Held on the evidence that he was the legitimate son of the settlor and was acknowledged by him to be so as the son of a *nika* marriage. The Mahomedan Law as to acknowledgment laid down in **Muhammed Allahabad Khan v. Muhammed Ismail Khan 1 L R 10 All 289** and **Muhammed Ali Khan v. Lall Begum 1 L R 8 Cal 477** 1 R 9 1 A 8 and that as to evidence of repute from statement made in document by a member of the family in **Anjuman Ara Begum v. Adil Ali Khan—Oudh Cases 110** and **Baqar Ali Khan v. Anjuman Ara Begum 1 L R 9 All 286** 1 P 30 1 A 95 followed. Their Lordships commented upon the long duration of this litigation remarking that such delays were due creditable to any judicial system and there was no reason to think that they were due to a large extent avoidable. Also upon the undue prolongation of the cross-examination of witnesses by breaking it up into detached portions than which no better system could be devised to expose either to the risk of being tampered with and to promote the fabrication of false evidence. A *preliminary* judge could

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endorse with his own hand a statement that a document proved or admitted in evidence was proved again or admitted by the person against whom it was used as laid down in s 141 of the Civil Procedure Codes of 1877 and 1885 and practically re-enacted in O XIII r 4 in the rules and orders passed under the Civil Procedure Code 1908. With a view of insisting on the observance of the wholesome provisions of the Statutes their Lordships will in order to prevent injustice be obliged in future on the hearing of Indian appeal to refuse to read or permit to be used any document not endorsed in the manner required. **SADIK HUSSAIN KHAN v. HASMATH ALI KHAN (1916)**

I L R 38 All 627

12 ———— **Deed a gift with a condition attached—Obligation in the nature of trust—Construction of document** A Mahomedan woman made a deed of gift in favour of three persons Mirza Yazar Beg, Imatij Begum and Chaggaan Bibi in the following terms: The lands have been given to you three as gift. All my rights of ownership are transferred to you. The revenue or management of the lands should be made by one of you three namely Yazar Beg and after paying Government dues Rs 40 should be paid out of the residue of the income annually to the Imatij Begum and the remainder should be divided equally between Mirza Yazar Beg and Chaggaan Bibi. Mirza Yazar Beg should have revenue and give income according to their share to the two. They have no right of claiming division of the lands from Mirza Beg but only a right of claiming income every year. A suit was brought by Imatij Begum to enforce her right under the deed of gift. The second defendant transferee of Mirza Beg a interest in the property contended that the deed of gift in so far as it conferred benefit on the two women mentioned therein was void and that he was absolutely entitled. **Held** that the gift was good and complete under the Mahomedan Law and the deed could be supported in favour of the plaintiff. **TAVAKALBHAI v. IMATIJ BEGUM (1916)**

I L R 41 Bom 572

13 ———— **Gift made during his last illness by a son to his mother—Was ulmaut—Application of doctrine** On a question of the application of the doctrine of *was ulmaut* to a disposition of property made by a Mahomedan during his last illness if the transaction is a sale the doctrine would not apply at all if the transaction is a waqf it would be valid to the extent of on third while if it is a gift it would not be valid at all. In the case before the Court the particular transaction was held on the facts to be really a gift to one of the heirs (the mother of the donor) and therefore invalid although in form it purported to be a sale. **TAZIL AHMAD v. FAHIM BIBI (1917)**

I L R 40 All 38

14 ———— **Heba bil wa—Transfer of Property Act (II of 1885) s 11** The ordinary rule applicable to gift applies to the Mahomedan Law like any other system of law and a gift under a *Heba bil wa* is not invalidated by an invalid condition being attached to it. **MAHABUBUL A BIBI v. HO SEYEDDIN NAZIR (1918)**

22 C W N 512

15 ———— **Heba bil wa—Valid without passing of consideration**—A Mahomedan executed a *Heba bil wa* in favour of a

MAHOMEDAN LAW—GIFT—contd

son or daughter of his predecessor son. In a suit for enforcing the gift no evidence was adduced about the passing of any consideration. **Held** that if the document failed as a *Heba bil wa* it could take effect as a simple gift (*Heba*) if it satisfied the conditions of a deed of gift. **SIR ALADDIN HALDEY v. ISMA HALDEY**

25 C W N 835

16 ———— **Perpetual Property—Held** that non tangible property can be given by any appropriate method of transfer other than actual delivery of possession. **SAYEED NAHAR BIBI v. MOHAMMAD NAHAR AHMAD**

25 C W N 310

17 ———— **Gift by mortgagee of property in the possession of mortgagee—Held** Where a Mahomedan mortgaged some lands to a third person putting the mortgagee in possession and while the mortgage was in possession A made an oral gift to Defendant No 1 and immediately after got Defendant No 1's name recorded in the Settlement Record and put him also in physical possession of one of the properties namely the homestead. **Held** that the gift was valid in law. In order to properly appreciate the judicial idea of gift as conceived by Mahomedan jurists it is to be borne in mind that gift is considered a class of contracts but as it is a voluntary contract without consideration it is not enforceable unless accompanied by possession in which case the devolution or transfer of right to the property becomes complete. By possession in connection with the law of gift meant such possession as the nature of the subject of the gift is capable of. **Choudhri Mehd Hasan v. Mohamed Hasan L R 331 A 63 s c 10 C W N 766 (1906)** relied on as possession through a tenant may be constructive possession capable of being delivered so as to validate a gift of such property so property in the possession of the mortgagee would likewise be considered to be in the constructive possession of the mortgagor as in both cases some kind of right to property is left in the owner. The right of equity of redemption and such similar rights are termed incorporeal rights may in view of the exigencies and necessities of modern conditions and conceptions of legal rights of property be subject of a valid gift the mode of delivery of possession varying according to the nature of the right conveyed. **TARA PROBYN v. SHAADI BIBI**

25 C W N 761

18 ———— **Gift—Donor in possession of half of gifted land—Delivery of possession to donee—Offer half mortgaged and possession not actually delivered to donee—Gift of the latter valid under Mahomedan law** A Mahomedan male who owned his lands made a gift of them to the plaintiff's father. At the date of the gift he had possession of only two-thirds and a moiety of the third land. He immediately put in possession of the donee. Thereafter the lenders had been mortgaged to the defendant who retained their possession under the mortgage. In a suit by the plaintiff the defendants contended that the gift of the mortgaged land was invalid not having been perfected by delivery of possession. **Held** overruling the contention that the deed of gift must be looked at as a whole and that only the gift of the equity or redemption coupled with the completed gift of the remaining land.



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was a valid gift in law CHANDSABER KA HUM
SABER v CANGABAI I L R 45 Bom 1296

MAHOMEDAN LAW—GUARDIAN

See CIVIL PROCEDURE CODE 1908
O XXIV BP 4 5 AND 10

I L R 41 AH 473
See GUARDIANSHIP AND WARDSHIP ACT (VIII
of 1890) = 2 12 and 21

I L R 39 Mad 608

See MAHOMEDAN LAW—MARRIAGE

I L R 45 Cal 878

See MAHOMEDAN LAW—MINOR

See MORTGAGE

1 ———— *Guardian powers of—Agreement not to divide spes successions validity of—Agreement for management effect of on outstanding lamom interest* A Mahomedan father with children some of whom were minors executed a settlement whereby he gave B one of his adult children the right of managing all his properties during his B's lifetime. The deed also provided that there was to be no division of A's properties during the lifetime of B. The deed was signed by all the adult children and by A on his own behalf and as guardian of his minor children. One of the properties mentioned in the deed was outstanding on lamom at the date of the deed. After A's death C one of his adult children who had signed the deed redeemed the lamom B sued to recover possession of the property on the ground that under the deed he was entitled to the exclusive management thereof for his life. Held that C was entitled to redeem the lamom and that B had only a right to sue for partition of the property. Although agreements between co-owners not to divide for a reasonable time are valid such agreements are not valid when they relate to mere spes successions. The property outstanding on lamom at the date of the deed was then a mere spes successions and the agreement was invalid in respect of such property. The agreement was not binding on the minor sons of A. Under the Mahomedan Law the acts of a guardian will bind the ward only when urgent necessity or clear benefit to the ward are shown. THORNTON KOTILAN ALIYUSMA v KUNHAM JAD (1910)

I L R 34 Mad 527

2 ———— *Guardians and Wards Act (VIII of 1890) s 9 and 39—Application for appointment as guardian of minor girl—Q absolutions for applicant* Held that the husband of a minor girl's sister is not under the Mahomedan Law entitled to be appointed a guardian of the person or property of the minor. Held also that the Guardians and Wards Act 1890 contemplates that an applicant for guardianship should reside within the jurisdiction of the Court to which he makes the application. ASGHAR ALI v AMINA BEGAM (1914)

I L R 35 All 282

3 ———— *Shia sect—Guardian and minor—Right to guardianship of female minor* According to the Mahomedan Law applicable to the Shia sect the right to the guardianship of a female minor rests primarily with the mother and in the event of her death with the father and only on the death of either of them the right passes to the maternal and paternal and other ascendants. BAKI v LAL SAADAT HUSAI (1914)

I L R 36 All 466

MAHOMEDAN LAW—GUARDIAN—*contd*

4 ———— *Guardianship—Mahomedan infant—Mahomedan Law—Maternal uncle if a proper guardian—Sister's husband if qualified—Prohibited degrees of relationship—Adverse interest—Guardians and Wards Act (VIII of 1890)* Under the Mahomedan Law no male has a right to the custody of a female child unless he is a Mahram that is one who stands to her within the prohibited degrees of relationship and cannot under any circumstances marry her. A maternal uncle may be appointed as a guardian to a Mahomedan minor girl. When the girl was married to a person below her station in life the Court ordered a governess to be appointed to stay with her until puberty the husband not to have access to her meanwhile so that the girl might have liberty to repudiate the marriage if she liked just on the attainment of puberty. RUKUNESSA BIBI v the matter of (1913)

18 C W N 853

5 ———— *Under Mahomedan Law the general rule is that the dealings of a de facto guardian with the minor's property do not ipso facto bind the minor* AYDERMAI KUTTI v SYED ALI

I L R 37 Mad 514

6 ———— *Power of mother a de facto guardian of minor to enter into agreement to refer dispute as to immoveable property to the arbitration of arbitrators so as to bind the minor* The mother as the de facto guardian of minors is not competent under the Mahomedan Law to enter on their behalf into an agreement to refer to arbitration any dispute even where there is no de jure guardian of the minors such agreement being one which will necessarily if acted upon involve dealings with the immoveable properties of the minor. Imambandi v Mutanadi I L R 45 Cal 878 L R 45 A 70 referred to. MOH SUDHAN AHMED v K AHMED (1920)

I L R 47 Cal 713

7 ———— *A mother has no authority as de facto guardian to alienate property of her infant children and they can contest it within 12 years of attaining majority* LALOO KAPTAIR & OTHERS v JAGAT CHANDRA SARTI & OTHERS

11 C W N 258

MAHOMEDAN LAW—HUSBAND AND WIFE

See CONTRACT ACT (IX of 1872) s 25

I L R 37 Bom 280

8 ———— *Shias—Dispute between husband and wife as to usufruct—Arbitration—Award transferring property of husband to wife—Further conveyance unnecessary* A Mahomedan husband and wife of the Shia persuasion referred a dispute relating to the wife's dower to an arbitrator who under a registered award transferred the absolute ownership of the husband's property in presents to the wife reserved possession of it to the husband for life with control over the income and provided that in the event of the wife predeceasing her husband he should continue in possession for life while in the event of the husband dying before the wife she should be owner and the heirs of the husband could not interfere. Mutation of names followed in favour of the wife who executed a mukhtarnama in favour of her husband for the management of the property conveyed to her under the award. Held that the award was sufficient to transfer the ownership of the property covered by it in presents to the wife and no

MAHOMEDAN LAW—HUSBAND AND WIFE—*contd*

conveyance need have been executed *Pam Bah v Moylini Alawani I I P 6 All 966* followed *Quare* Whether an award is governed by Mahomedan Law *MURAVI TALIB HUSAIN v INAYATI JAN (1911) I L R 33 All 683*

MAHOMEDAN LAW—INHERITANCE

—*Family custom at variance with the law if may be proved—Bengal N W P and Assam Civil Courts Act (XII of 1887) s 3* Where in a suit by a Mahomedan lady against her brothers for recovery of her share in their father's property the defendants having set up the plea that according to family custom female descendant could not inherit in the presence of male descendants the Courts in India refused to admit evidence in support of the alleged custom on the ground that evidence of custom at variance with the ordinary rules of Mahomedan Law was inadmissible in regard to matters mentioned in s 37 of the Bengal N W P and Assam Civil Courts Act *Held* reversing the Courts below that evidence with respect to the issue as to family custom should be admitted *ISMAIL KHAN v SKEOMUKH RAY (1919) 17 C W N 97*

—*Contingent right to inheritance* *Contingent right to inheritance of whether prohibited* A transfer or renunciation of a contingent right of inheritance is prohibited under Mahomedan Law *Musammatt Kharum Jan v Musammatt Jan Bee Bee (1927) 4 S D A 210* followed *Kunhi Vamod v Kunhi Vaidin I I R 19 Mad 176* considered *Musammatt Hurremt Ool Nissa Begam v Allahdia Khan Hayee Hidayat 17 W P (PC) 198* explained *ASA BREVET KARUPPAN CHETTY (1917) I L R 41 Mad 365*

MAHOMEDAN LAW—JOINT PROPERTY

See LIMITATION ACT 1908 ART 13 AND 144 I L R 44 Bom 943

—*Joint business of two brothers—Death of one of them—Suit by survivor and sons of the deceased—Properties purchased out of profits of joint business—Money collected by survivor—Suit by heirs of the deceased for their share—Nature of suit—Limitation Act (IX of 1908) Arts 106 107 and 110—Joint family property if exists in Mahomedan Law—Exclusion proof of necessity* Two Mahomedan brothers carried on a joint business and one of them died nineteen years before suit leaving three sons and three daughters. Some properties were purchased out of the profits of the joint business in the name of the surviving brothers the latter subsequently carried on several other businesses along with two of the sons of the deceased brother and with a stranger who died more than three years before suit. The heirs of the deceased brother brought the present suit against the surviving brother and others to recover their share of the properties acquired out of the profits derived from the several businesses and their share of the money collected in the same. *Held* that the suit was one for an account and a share of the profit of a dissolved partnership and was barred under Art 106 of the Limitation Act (IX of 1908). Under the Mahomedan Law there is no such thing as joint family property. If the members of a Mahomedan family succeed to property on the death of a relation each of them takes a share of each

MAHOMEDAN LAW—JOINT PROPERTY——*contd*

item of the property and a suit by such a member for a share is governed by Art 13 and not Art 127 of the Limitation Act *Abdul Kader v Ikhama I L R 16 Mad 61* distinguished *Mohr Deen Bee v Syed Vali Sahib (1910) I L R 38 Mad 1099*

MAHOMEDAN LAW—LEGITIMACY

See MAHOMEDAN LAW—ACKNOWLEDGMENT I L R 40 Bom 28

See MAHOMEDAN LAW—GIFT

I L R 38 All 627

—*Acknowledgment of child as son—Illegitimate son—Zina—Son by adulterous intercourse cannot be legitimated Under Mahomedan Law* a person can acknowledge a child as a son when there is no proof of the latter's legitimate or illegitimate birth and his paternity is unknown in the sense that no specific person is shown to have been his father. It is not permissible to acknowledge a child born of incest, fornication, adultery or incest. *Muhammad Mahdad Khan v Mustafa I I R 19 All 959* followed *MADANSAHEB v RAJAB SAHEB (1909) I L R 34 Bom 111*

—*Acknowledgment—Status of son born of a concubine—Admission in document—Conduct—Intention to legitimize—Presumption of marriage* Where a child is proved to be illegitimate by reason of the marriage of his parents being disproved such a child cannot be rendered legitimate by any acknowledgment or recognition of legitimacy. Where an acknowledgment is alleged it may be shown that there was no acknowledgment either in fact or law that is that there was never an acknowledgment at all. Put an acknowledgment once made and proved cannot be rebutted. It cannot even be repudiated by the man who made it. There is no valid acknowledgment where it has been proved that there was a legal bar to the marriage of the acknowledged and the woman whose son the claimant of the legitimacy is said to be. Where there is no valid acknowledgment in the sense of an intention to confer legitimacy then the onus lies on the plaintiff who claims legitimacy to prove the marriage. On the other hand if acknowledgment is valid then the onus lies on the defendants denying the legitimacy to disprove not only marriage but also emulgence of marriage. If the marriage is proved there is no need to have recourse to the acknowledgment. If a marriage or an emulgence of marriage is disproved so as to establish that the plaintiff's use of *ma* then the alleged acknowledgment is not valid. If on the evidence the marriage and legitimacy are left in doubt then a valid acknowledgment is conclusive. *Ikhlaful doul I I R 1 v Hyter Hossein 11 Moo 1 1 91 Muhammad Mahdad Khan v Muhammad Ismail Khan I I P 10 All 39* *Muhammad Ali Khan v Lall Lejun I L R 1 S Cal 47* *Dhan Loh v Loken Deb I L R 1 Cal 501* *Mir a Siddik Hussain Khan v Hashim Ali Khan I L R 38 All 67* *I C W 1 10* *Atunna Sa v Karimu Sa I L R 2 Cal 130* *Lagaat Ali Karim Sa I L R 15 All 396* *Sadakat Hossein v Malomet Yusuf I L R 10 Cal 663* referred to *HABIBI PANDAN CHOWDHURY v ALTAF ALI CHOWDHURY (1918) I L R 46 Cal 259*

MAHOMEDAN LAW—LEGITIMACY—contd

Acknowledgment & Presumption—Proof of illegitimacy—Concurrent findings Under Mahomedan law no tatement made by a man that another is owed to be illegitimate is his son can make that other legitimate. If an acknowledgment is of legitimate sonship and that relation is possible in fact and law it gives rise to a rebuttable presumption that there was a marriage between the parents. Where a trial Judge gives his judgment upon a finding of fact and two of three Judges constituting the Appellate Court agree with the finding and conclusion the third Judge arriving at the same result upon a different finding of fact there are concurrent findings to which the rule of practice of the Board applies. **HABIBUR RAHMAN CHOWDHURY v. ALTAUF ALI CHOWDHURY (1911)**

I L R 48 Cal 836

Acknowledgment by father of a son & a female slave—Want of proof that no marriage had taken place between the parents The only question before this Court was whether or not the defendant S. K. was the legitimate son of one M. H. K. by Muhammadan Law. The facts found were that the mother of S. K. was a female or female slave purchased by the father of M. H. K. the marriage between her and M. H. K. was therefore improbable and not proved by the evidence. M. H. K. had however in March 1904 made an acknowledgment before the District Judge of Barisal to the effect that he had a son not by his real wife but by a female slave with whom he had gone through a ceremony of marriage and he asserted that on failure of issue from his real wife the issue of the aforesaid female slave would be entitled to succeed him. It had been admitted by the plaintiff that S. K. was the child of M. H. K. by the female slave. Held that the acknowledgment so made invited the son with a legitimate status with all the consequences which that imports and this could be disproved only by positive proof that no marriage took place between the parents and as there was no such proof S. K. was entitled to succeed to his father. **M. H. K. Sadik Husain Khan v. Ha him Ali Khan (I L R 38 All 60, 651) (P C)** followed. **Muhammud Alahadad Khan v. Muhammad Ismail Khan (I L R 10 All 32)** and **Wil on a Digest of Muhammadan Law** par 170 referred to. **BERNARD ALI KHAN v. MUHAMMAD ALI BAKAR BEGUM**

I L R 1 Lah 229

MAHOMEDAN LAW—MAINTENANCE

See MAHOMEDAN LAW—CITY

I L R 88 M.L.J. 383

Case's Memo—Minor son right of to sue father for maintenance—Extent of maintenance & property granted where the custody of the minor child is with the father Maintenance is to be charged on property belonging to the father from his father's Cutchi. Minor son can claim no direct interest in his father's property. The plaintiff a minor under the age of seven years sued his father for maintenance and prayed that such maintenance should be a charge on the defendant's share in certain property left by the defendant's father. The plaintiff was the defendant's son by a wife divorced at the date of the suit. The parties were Cutchi. **Ben on.** Held that the right to sue the father must be determined

MAHOMEDAN LAW—MAINTENANCE—contd

by Mahomedan Law and that under Mahomedan Law a minor son was entitled to sue his father for maintenance even though the father was not entitled to claim the custody of the child and such custody was withheld from him. Held however that such maintenance should amount only to bare subsistence for the son and not to maintenance according to the condition in life of the father. Such maintenance could not be made a charge on the property left by the defendant's father as the parties being Cutchi Memons were governed by Mahomedan Law except with regard to inheritance and succession. **MAHOMED JUSAN v. HAJI ADI (1911)** I L R 37 Bom 71

Shafi School—Maintenance arrears of—Whether recoverable in the absence of a decree or agreement to pay According to the Shafi School of Mahomedan Law maintenance is a debt and the wife is entitled to recover from her husband arrears of maintenance though there be no decree of Court or mutual agreement in respect of such maintenance. The distinction in this respect between Shafi and Hanafi school pointed out. **Mahomedan Law Texts examined.** **MALANED HAJI v. BALINBI (1917)**

I L R 41 Mad. 211

MAHOMEDAN LAW—MARRIAGE

See MARRIAGE

Whether suit lies for breach of Contract of—

See CONTRACT

I L R 42 Bom 499

Restraint on marriage of a girl sui juris—

See CUSTOM—MARRIAGE

I L R 1 Lah 574

Whether Conversion to Islam dissolves marriage with a Chamar—

See PENAL CODE s 401

I L R 1 Lah 440

Dower—Marriage—Act 15 of 1860 (Oudh Laws Act) Held that the mere fact that a marriage was celebrated in Lucknow the parties being afterwards domiciled in the province of Agra was not sufficient to authorize a court in the province of Agra to apply to a suit brought by the wife against the heirs of her deceased husband for recovery of her dower the provisions of the Oudh Laws Act 15 of 1860. **Za ker Begum v. Salina Begum I L R 19 Cal 659 followed. **PATELA BEAM v. MUHAMMAD KAZIM (1910)****

I L R 32 All 477

2 Allowance to bride—Agreement by father in law of bride to pay annuity to her in consideration of her marrying to his son—Kharch-i-pandan—Pin money—Gift to sue of persons not party to agreement—Agreement on behalf of minors—Refusal to live with husband—Second tional agreement to pay allowance In accordance with an arrangement made between the defendant and the father of the plaintiff (then a minor) on the occasion and in consideration of her marriage with the defendant's son (also a minor) the defendant executed a document whereby he agreed to continue to pay the sum of Rs. 500 a month in perpetuity to the plaintiff for her pardan (bedel nut) expenses etc.

MAHOMEDAN LAW—MARRIAGE—contd

from the date of the marriage &c from the date of her reception and rule the payment of the allowance a charge on certain immovable property specified in the agreement. The plaintiff's reception into her husband's house took place in 1863. The husband and wife lived together till 1896 when owing to differences she left her husband's home and resided elsewhere when the defendant stopped the payments. In a suit to recover arrears of the allowance *Held* (affirming the decision of the High Court) that the plaintiff though not a party to the agreement was entitled in equity to enforce her claim. *The Allah Adin on 1 B C S 333* It was held in an action of assumpsit and decided on a rule of common law inapplicable to the circumstances of the present case in which the agreement was orally charged immovable property with the payment of the allowance and the plaintiff was the only person beneficially entitled under it. In India and among Mohammedans among whom marriages were contracted for minors by parents and guardians serious injustice might be occasioned if the common law doctrine were applied to agreements or arrangements entered into in connection with such contracts. *Held* also that the allowance for *Mahr* & *pindar* though having some analogy in its nature to the English pin money stood on a different legal footing arising from difference in social institutions. It was a personal allowance to the wife over the application of which the husband had little or no control nor were there obligations attached to it as was the case with pin money in England. On the terms of the agreement here the payment of the allowance was unconditional and under the circumstances the fact that the plaintiff had left her husband's house and refused to live with him did not bar her from recovering it. *KHWAJA MUHAMMAD KHALIL HUSAIN BEGUM* (1910)

I L R 32 All 410

Presumption of marriage—

Absence of direct evidence of marriage—*Legal conclusion—Effect of such a presumption if alleged to be having been a prostitute when brought to alleged husband's house—Knowledge of woman as to fact—Marriages of girls in respectable men.* In this case the appellant's success depended on his proving his status as the legitimate son of his parents. *Held* by the Judicial Committee (upholding the decision of the Judicial Commissioners Court) that there was no evidence of marriage between them and the presumption of marriage which might have arisen from their prolonged cohabitation did not apply because the mother bore she was brought to the father's house was admittedly a prostitute. Instances of alleged acknowledgment by the father of the mother as his wife said the fact that two of the appellant's sisters who were in the same case as to their legitimacy as he was were married to respectable men with due formalities were held under the circumstances in sufficient to affect the question favourably for the appellant. *GHAZANFAR ALI KHAN v. KHANZ LALIMA* (1910)

I L R 32 All 315

Marriage not performed

through vakils—*Requisites—Proposal and acceptance.* In the case of a marriage amongst Mahomedan adults not performed through vakils it is essential that words of proposal and acceptance must be uttered by the contracting parties in each

MAHOMEDAN LAW—MARRIAGE—contd

other's presence and hearing and in the presence of two male or one male and two female witnesses who must be male and adult Mohammedans and the whole transaction must be completed at one meeting. *SABABI BIBI v. KANARUDIN SARTAR* (1911)

15 C W N 991

5 ——— Minor ward—Guardian for marriage necessity of consent of Court—*Functions of Court in such case—Procedure to be followed by the guardian for marriage of Mahomedan infant—Guardian and Wards Act (VIII of 1890) s 4 (2) (a) & 26 (1) sub s (1) cl (d) 42 sub s (1) cl (a)—Practice—Order of District Judge not applicable.* In the case of Mahomedans the words disposal in marriage cannot be treated as included in the general words such other matters as the law to which the word is subject requires occurring in s 4 of the Guardians and Wards Act. In the absence of express statutory provision to this effect it cannot reasonably be held that the Mahomedan Law on the subject of guardianship in marriage has been abrogated by implication by s 24 of the Guardians and Wards Act. Where the District Judge of Birbhum in the matter of the disposal in marriage of a Mahomedan female minor in respect of whose person and property guardians had been appointed by him proceeded to select a suitable husband for the minor from the preliminary list of possible candidates prepared by his Hindu Nazir (the guardian of the property) in opposition to the selection of the guardian of the person (her mother) and of the guardian for marriage (her father's step brother) both of whom had initiated the proceedings *Held* that the proceedings before the District Judge had been throughout irregular. It was not the function of the District Judge to act as match maker. But a ward of Court could not marry without the consent of the Court. *Eyre v. Shaftesbury 2 P Wms 104 Jeffreys v. Janes* (last cited) *Lynn Ch 141 Tomes v. Elers 1 D C 83 Subd dra Koer v. Dajadhar Goswami* *L C L R J 137* followed. *Fai Didi v. Vot Karson 1 F R 27* Bora 109 disapproved. *Held* further (after laying down the proper procedure to be followed in cases of this description) that the choice had to be made in the first instance by the guardian for marriage and if on the materials before the District Judge he was satisfied that the marriage was not unsuitable he was to sanction it. *Held* also that the order of the District Judge was not open to appeal as s 47 cl (a) of the Guardians and Wards Act read with s 43 sub s (1) and ss 24 25 and 26 did not cover the case. *MAHJAN BIBI v. DISTRICT JUDGE BIRBHUM* (1914)

I L R 42 Cal 351

Shahs—Muta and nikah marriage different consequences—Proof of marriage

—*Cohabitation—Declaration by the man—Oppreciation of evidence in Trial and Appellate Courts when neither has seen the other—Circumstances of such cases call for special scrutiny—Examination of evidence by Judge of Commission—Deference to expert testimony—The right of a man to be married—Licence for a man only for plaintiff and for the balance for defendant.* A muta marriage is according to the law which prevails among Shahs a temporary marriage its duration being fixed by agreement between the parties. It does not confer on the wife any right or claim to her husband's property but children

MAHOMEDAN LAW—MARRIAGE—contd

conceived while it exists are legitimate and capable of inheriting from their father. A *nikah* marriage is a religious ceremony and confers on the woman the full status of wife and children born after it are legitimate. The term of a *mula* marriage may from time to time be extended by agreement. Where it was alleged by the plaintiff who claimed to be the only legitimate child and sole heir of M a Shiah Mahomedan that her (the plaintiff's) father M and mother A had lived together as man and wife for many years but that they were married in *nikah* from only 1½ years before her birth and it was urged in defence that she was illegitimate and that if she was legitimate so were two other daughters of M and A born before the plaintiff and that in the latter case plaintiff could recover one third only of the inheritance the claim of her sisters being time barred and in evidence the plaintiff tendered a deed of dower executed by the father at the time he was alleged to have contracted the *nikah* marriage in which however M had expressly declared that he had contracted *mula* with A in the beginning but now for reasons stated in the deed had married her in *nikah* form and examined witnesses who deposed to the marriage ceremony taking place on the same date and the Subordinate Judge (who however had not seen the witnesses examined) disbelieved the witnesses and held the deed to be a forgery but on appeal the High Court having before it additional evidence of considerable importance held that the deed was genuine and that the *nikah* marriage had been performed as deposed to by the witnesses. Held by the Judicial Committee after a careful consideration of the evidence that they ought not to reverse the High Court's findings, though they thought there were good reasons why both the deed itself and the evidence of the witnesses in question ought to be looked upon with suspicion and scrutinised with great care. The Judges of the High Court who came to these findings had necessarily a large experience in matters of this nature and the Subordinate Judge had no more opportunity than they of seeing and observing the demeanour of the witnesses and they on the other hand had evidence before them which was not before the Subordinate Judge. Held also on the evidence that if the deed were treated as valid and the plaintiff's witnesses as reliable there was considerable evidence that cohabitation of M and A commenced in a *mula* marriage and that in the absence of evidence to the contrary such marriage must be taken to have subsisted throughout the period which covered the conception and birth of plaintiff's sisters. That their claim as such being statute barred the expiration of the period of limitation would secure for the benefit of the defendant and not for the benefit of the plaintiff. *SHOHIBAT SYED v. JAFRI BIBI* (1914)

19 C W N 225

7 ——— Marriage of a woman's natural son with her foster daughter—If valid. The prohibition of Mahomedan Law to the marriage of a woman's natural son with her foster daughter is absolute and not conditional upon the birth of a son and the suckling of the other occurring within a limited period. The principle of *filio in utero* is not in law a *bona fide* marriage which is not in law to be held as such.

MAHOMEDAN LAW—MARRIAGE—contd

Padma Mohun v. Hardai Bibi I J R 22 Mad 328 followed *JAYAB ALI MIA v. NA ANADIN* (1915) 19 C W N 897

8 ——— Marriage with a wife's sister during the continuance of first marriage—Whether invalid or wholly void—Legitimacy of the issue of such marriage. Under the Mahomedan Law the marriage with a wife's sister during the subsistence of the first marriage is only *faisd* (invalid) and not *batal* (void). The issue of such marriage is legitimate and can inherit. *IZHARUSSA KHATOON v. KARIMUDDIN KHATOON* I L R 25 Cal 130 dissented from *JAFRI v. MOWLA KHAN* (1917) I L R 41 Bom 485

9 ——— Marriage of girl of below the age of 15 after death of her parents—Uncle or grandmother is entitled to consent—Proof that she had attained puberty and consent to marriage in the absence of guardian's consent essential—Burden of proof—Legal evidence—Hearsay evidence objection to admission of—Hearsay statements recorded by Commissioner if should be allowed to be read in Court. According to Mahomedan Law a girl becomes a major on the happening of either of two events first the completion of her fifteenth year and second on her attainment of a state of puberty at an earlier period. The burden of proving that a girl has in either of these ways reached her majority rests upon those who allege it and rely upon it. And this must be done by legal evidence. The evil consequence of the admission of hearsay evidence is not merely that it prolongs litigation and increases its cost but that it may unconsciously be regarded by judicial minds as corroboration of some piece of evidence legally admissible and thereby obtain for the latter quite undue weight and significance. The reading of undoubtedly hearsay evidence recorded by a Commissioner who is not empowered to rule out evidence on the ground of inadmissibility disapproved. *ATEKA BEGUM v. IBAHIM PASHID* (1916) 21 C W N 345

10 ——— Validity of Marriage—Guardianship of minor—Power of mother as de facto guardian to alienate her minor children's interests in immovable property so as to bind the infants—Absence of entries in account books as evidence against validity of marriage where regular payments to other wives or shown by other entries—Production at first hearing of suit of documentary evidence relied on by parties—Civil Procedure Code 1908 O XIII r 1—Practice of Indian Courts in citing decisions of Foreign Courts. A wealthy Mahomedan died leaving widows two admittedly his lawful wives and children by each of them and a third one Z who claimed to be his married wife but the validity of whose marriage was disputed. She had two minor children and by a deed of 10th June 1906 without having been legally appointed their guardian she purported to transfer the shares of both herself and her children in the property of the deceased to the plaintiffs who used for a declaration of the title and status of their vendor and for a decree for possession of the shares covered by the deed of sale. As to the validity of the marriage of Z entries in the books of account of the deceased tendered in evidence by the contesting defendants (the sharers other than Z and her children) showed regular payments to the admittedly lawful wives but the books contained no entries of payments to

MAHOMEDAN LAW—MARRIAGE—*cond*

Z They were not admitted in evidence by the lower Court *Held* by the Judicial Committee (who held the books of account admissible) that there was clear evidence of a reliable character regarding the acknowledgment by the deceased of the children of *Z* as his legitimate issue which gave rise to a legal presumption of her marriage and that such presumption was not displaced by the mere inferences the contesting defendants sought to draw from the absence of entries in her favour in the account books. The marriage was therefore valid under the decision in *Malatola Bidee v Haleemcozaman* 10 G. L. P. 100 and *Z* and her children were entitled to their shares in the inheritance. *Held* also that *Z* had no power to deal with the minors' shares as she had done and that only her own shares passed under the deed of sale. By Mahomedan Law the mother is entitled only to the custody of the person of her minor child up to a certain age according to the sex of the child. But she is not the natural guardian the father alone or if he be dead his executor (under the Sunni law) is the legal guardian. *Mala Din v Ahmed Ali* 1 L. P. 34 Ali 213 L. R. 39 I. A. 49 referred to and discussed. On a review of the provisions and principles of the Mahomedan Law on the question of how far and under what circumstances a mother's dealings with the property of her minor child are binding on the infant. *Held* that one who has charge of the person or property of a minor without being his legal guardian and who may therefore be conveniently called a *de facto* guardian has no power to convey to another any right or interest in immovable property which the transferee can enforce against the infant nor can such transferee if let into possession of the property under such unauthorised transfer resist an action in ejectment on behalf of the infant as a trespasser. It follows that being himself without title he cannot seek to recover property in the possession of another equally without title. *Ayderman Kulti v Syed Ali* 1 L. P. 37 Mad 514 referred to and commented on. O XIII r 1 of the Civil Procedure Code 1908 requires the parties or their pleaders to produce at the first hearing of the suit all the documentary evidence of every description in their possession or power on which they intend to rely. But it does not exclude the discretion of the Court to receive any such documentary evidence at any subsequent stage. Their Lordships of the Judicial Committee deprecated the practice in some of the Indian Courts referring largely to decisions of Foreign Courts to which Indian practitioners could not be expected to have access which were often based on consideration and conditions totally differing from those applicable to or prevailing in India and are only likely to confuse the administration of justice. *IMAMRAHIM v MUTSADDI* (1919) 1 L. R. 45 Cal 878

MAHOMEDAN LAW—MINOR

See MAHOMEDAN LAW—ALIMENTATION
GUARDIAN—MARRIAGE

Minor—De facto guardian's powers over minor's property—Sale by mother for expenses of minors' education—marriage or for the discharge of proper family debts not binding. Under the Mahomedan Law the general rule is that the dealings of a *de facto* guardian of a minor with the minor's properties do not *ipso facto* bind the minor. The rule is however

MAHOMEDAN LAW—MINOR—*cond*

subject to exceptions. In cases of urgent and imperative necessity or where the transaction from its nature must necessarily be beneficial to the minor a *de facto* guardian can alienate the property of the minor whether moveable or immovable. According to Mahomedan Law sale of a minor's property by an unauthorized guardian even if it was not made for a valid cause is neither void nor voidable in the ordinary sense of the terms but is regarded as *mangus* or dependent that is in a state of suspense its validity or invalidity being determined by the minor adopting or not adopting after he has attained majority though the effect of his decision will relate back to the date of inception of the transaction. A person who chooses to buy a minor's property from a person who has no power to deal with it however *bona fide* his action may have been cannot invoke any principles of justice and good conscience to support the transaction itself though such considerations may be a good ground for the Court refusing to give relief to the minor except on condition of his restituting whatever benefit he has derived from the transaction. A sale by a mother of the minor's property for finding money for the marriage expenses of the minor's sisters or for the discharge of family debts and for other family purposes is not binding on the minor. *AYDERMAN KULTI v SYED ALI* (1912) 1 L. R. 37 Mad 514

Sale of minor's property by mother. The mother of a Mahomedan minor is not the natural guardian of the minor and if she is not his authorised guardian a sale of the minor's property by her not shown to be for his benefit or advantage is void.

1 Pat L J 188

Right to call minor's property—Necessity—Bona fide purchaser without notice. By a deed of conveyance dated 19th January 1901 one purported to convey on behalf of herself and her minor son the plaintiff certain immovable property to the defendant for the consideration of Rs 7000. On the same day *N* passed an indemnity bond in favour of the defendant indemnifying him against the claim of the plaintiff. The plaintiff sued to have the said deed of conveyance declared void and for the declaration that the plaintiff was entitled to the whole of the property to be conveyed. *Held* that the plaintiff was entitled to succeed on the grounds that (1) there was absolutely no evidence that the sale was in any way necessary for the maintenance of the minor (2) the purchaser was not a *bona fide* purchaser without notice of the plaintiff's rights. The purchaser of an estate who takes with notice of a breach of trust is in the same position as the vendor who committed the breach of trust. *LAKHBUDDIN v ABDUL HUSSAIN*

1 L. R. 35 Bom 217

MAHOMEDAN LAW—MUTAWALLI

See MAHOMEDAN LAW—ENDOWMENT—WAKF

Mutawallihip of property annexed to a mosque—Right to succeed by principle of hereditary—Proof and validity of such right. *Held* on the facts of the case that the plaintiff who claimed to be the mutawalli of the plaintiff mosque by right of hereditary had not established by clear proof that that was the method of succession to the office and that he was there

MAHOMEDAN LAW—MUTAWALLI—contd

fore the lawful mutawalli. *Held* also as a valid appointment of a mutawalli could be made only in one of three modes viz (a) by the original author of the waqf or by some person expressly authorized by him or (b) by the executor of the author or (c) lastly by the Court any person claiming to be a mutawalli by hereditary must show by strict proof of precedents that that mode of appointment was one which must be necessarily deemed to have been sanctioned by the author of the trust. It is frequently provided that each mutawalli should have the power to appoint his successor where there has been a long established practice for the mutawallis to nominate his successor it is assumed (unless the contrary is proved) that power to do so was given by the founder of the waqf. But where from past practice it is sought to be established that the mutawalliship is to devolve hereditarily there must be something from which a rule of hereditary succession sufficiently precise or definite may be deduced and the mere fact that for some time prior to 1874 three persons from the family of the plaintiff were successively mutawallis does not show that mutawalliship devolved by hereditary in the absence of proof that they were not appointed or nominated by somebody. *Sayad Abdula Edrus v Sayad Zain Sayad Hasan Edrus I L R 13 Bom 555 562* referred to. *Per SADA SYA ATYAR J*. Hereditary as a principle of succession to any office is highly objectionable. *PHAT NABI v HAZI MUSA SAHIB* (1913).

I L R 38 Mad. 491

Mortgage of the office of a mutawalli of valid and enforceable in law—Such office is alienable at all. One Ahadali a priest of Peer Sahab mortgaged his right in the office to three persons and subsequently one of the mortgagees brought a suit against Ahadali a minor son to enforce the mortgage by sale of the mortgaged turn of worship. The latter too brought a suit for getting the mortgage set aside. *Held* that the office of a priest in such cases is not alienable and therefore the mortgage cannot be enforced. *SAHED BUKSH v GOLAK NABI KRANDEAR* (1918).

22 W N 996

MAHOMEDAN LAW—PRE EMPTION

See PRE EMPTION

In Bulshar district—

See PRE EMPTION I L R 44 Bom 887

Sale by Mahomedan to Hindu—

See PRE EMPTION I L R 45 Bom 1056

Shafi sharik—Shafi i khalit—

Shafi i yar—Effect of perfect partition. When a mahal has been perfectly partitioned no right of pre-emption under the Mahomedan Law subsists in favour of the owner of one of the new mahals in respect of the other new mahal or any portion of it on the ground of vicinage alone. *Mahadeo Singh v Mussamat Ze nun v nussa II W P 169 Sheikh Mahomed Hossein v Shaw Mohan Ali III L R 41 and Abdul Rahim Khan v Kharg Singh I L R 15 All 101* referred to. Nor will the fact that a village chaupal has remained undivided give the owner of either of the new mahals a right of pre-emption against the owner of the other as a *shafi i khalit*. *Rahab Singh v Tahal Mus v 10 W R 314 and Sheikh Karim D Khan v Kamr ud-deen Ahmad 6 W P H C 377* distinguished. *Abdul Rahim Khan v Kharg*

MAHOMEDAN LAW—PRE EMPTION—contd

Singh I L R 11 All 101 and Lalla Purag Dutt v Shaukh Bunde Hossein 15 W P 225 referred to. But a right of pre-emption as *shafi i sharik* may subsist in relation to villages in large estates equally with houses gardens and small plots of ground. *Sheikh Mahomed Hossein v Shaw Mohan Ali 6 B L R 41 and Shaukh Karim Bulsh v Kamr ud-deen Ahmad 6 W P H C 377* referred to. *MUNA LAL v HAJIRA JAN* (1910) I L R 33 All 28

2 ———— Hindus in Bihar—Pre-emption—Customary right—Right of pre-emption—Co-sharers—Assertion of right of pre-emption—Delay in making—Power to perform ceremonies of assertion—Manager appointed by Court of Wards of estate of disqualified proprietor' under the Court of Wards Act (Ben Act IX of 1879)—Powers and duties of manager under section 40 of Act—Bans of right of pre-emption among co-sharers in undivided mahal—Sanction of Court of Wards—The Mahomedan Law of pre-emption has long been judicially recognised as existing among the Hindus in Bihar to which the district of Champaran appertains. *Fakir Raut v Emambakh B L R Sup Vol 35 W R F D 143* followed. In a suit for pre-emption in respect of certain undivided shares in a number of villages comprised in a mahal the estate of the plaintiff was in charge of the Court of Wards as that of a disqualified proprietor under Bengal Act IX of 1879 s 40 of which provides that the manager shall manage the property diligently and faithfully for the benefit of the proprietor and shall in every case act to the best of his judgment for the ward's interest as if the property were his own. *Held* that the manager appointed by the Court of Wards was independently of the provisions of section of the Court of Wards Act competent on behalf of the plaintiff to perform the preliminaries essential to the assertion of the right to pre-emption though if in that case the validity of his action depended on the sanction of the Court of Wards their Lordships were of opinion that s 40 gave him full authority to act as he had done and in that view the adoption of his acts by the Court of Wards became unnecessary. A mahal is a unit of property and though all the villages of which it consists may be separately assessed for revenue purposes and each of the sharers may not have an interest in them all the sharers are all co-sharers in the whole mahal and jointly liable for the Government revenue. Each co-sharer therefore has a right of pre-emption against the other in respect of any part of the mahal sold by any of them to a stranger. After partition by the Revenue authorities each share so partitioned becomes a unit of property. *JADU LAL SARKI v JANKI KOER* (1912) I L R 33 Cal 915

3 ———— Survival of the action to executors and administrators on the pre-emptor's death—Personal action—Probate and Administration Act (V of 1881) s 89—Action personalis moritur cum persona. The right of pre-emption under Mahomedan Law does not abate at the pre-emptor's death but survives to his executors and administrators under s 89 of the Probate and Administration Act (V of 1881). *SYAD JAUUL HUSSAN v SITARAM BHAI* (1911) I L R 36 Bom 144

4 ———— Shafi, right of—Delay in assertion—Waters—Right of pre-emption accrual of—General law to govern the incident of sale in apply

MAHOMEDAN LAW—PRE-EMPTION—contd

ing the law of pre-emption and not the pure *Mahomedan Law* *Per CARNDUFF J* The right of *shafa* cannot arise until there has been a sale to a third party for the right of *shafa* recognised by the Mahomedan Law is not the right of pre-emption known to the Roman Law that is to say the right arising out of an obligation on the part of an intending vendor to sell preferentially to the obligor if he offers as good conditions as any intended vendee but rather the obligation attached to a particular status which binds the purchaser from the person obliged to hand over the subject matter to the other party to the obligation on receiving the price paid by him for it The right accrues only when the property has passed from the original owner to a purchaser The general law which is paramount and has superseded the Mahomedan Law should govern the incident of sale in applying the law of pre-emption. *Per RICHARDSON J* Where possession is not given and the price is not paid till registration the right of pre-emption arises upon registration and not before *Jadu Lal Sahu v Janaki Kori* 1 L R 30 Calc 575 referred to *Begum v Muhammad Yakub* 1 L R 16 All 344 *Ladun v Bhayro Ram* 8 W R 255 *Vajm un nissa v Ayub Ali Khan* 1 L R 22 All 343 *Ojessonwa Begam v Rustam Ali* (1864) W R 219 *Torul Komhar v Mussarut Achhee* 18 W R 401 *Kooldeep v Ram Deen Singh* 24 W R 193 *Sheo Tahul v Ramkoor* (1864) W R 411 *Brojo Kishore v Kirtee Chunder* 15 W R 247 *Jehanyir v Lala Bhikari* 6 B L R 42 note *Kanhai Lal v Kalla Prasad* 1 L R 27 All 670 discussed *BUDHAI SARDAR v SOVAULLAR MIRDHA* (1914)

1 L R 41 Calc 943

5 ———— *Hindus—Adoption of pre-emption as usage—Burden of proof—Ancient and invariable custom—Pre-emption a personal right not descendible to heirs—A custom cannot be proved by the admission of parties or their counsel* In litigation between Hindus where one party alleges the adoption of a whole branch of the Mahomedan Law such as that of pre-emption and the other party repudiates the application of the foreign law it lies very heavily on the party alleging to prove that that law has been adopted as a usage and could be proved to have been so adopted by proof of ancient and invariable custom Such a party must stand or fall by the strict Mahomedan Law of pre-emption Generally speaking the right of pre-emption is a personal right which under the Mahomedan Law would not descend to heirs *Per MACLEOD J* A custom must be proved by evidence in the first instance and once it is proved the Courts are entitled to recognize its existence A custom cannot be proved by the admission of the parties or their counsel before the Court *DARTABHAI MOTIRAM v CHUNILAL KESHORDAS* (1913)

1 L R 38 Bom 183

6 ———— *Sale—Demands—Assignment in lieu of dower debt* If at the time of *talab* a *maucasi* but the pre-emptor has an opportunity of involving witnesses in the presence of the seller or the purchaser or on the premises to attest the immediate demand it would suffice for both the demands and there would be no necessity for the second demand. *Yundo Prasad Thakur v Gopal Thakur* 1 L R 10 Calc 1008 referred to *HdL* further that when property is sold by a husband to his wife in lieu of dower a suit for pre-emption can be maintained by a person entitled to a preferential

MAHOMEDAN LAW—PRE-EMPTION—contd.

right to purchase that property *Fida Ali v Muza ffar Ali* 1 L R 5 All 65 followed *NATIRU v SHAHI* (1915)

1 L R 37 All 522

7 ———— *Question of law at what stage of case can be raised—Decree of nature—When Court should give notice of events happening after institution of suit* A person who seeks the assistance of a Court with a view to enforce a right of pre-emption is bound to establish that the right existed at the date of the sale at the date of the institution of the suit and also at the date of the decree of the primary Court *Ram Gopal v Piar Lal* 1 L R 1 All 441 and *Tafazzil Husain v Than Singh* 1 L R 32 All 567 followed When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy it is not only competent but expedient in the interests of justice to entertain the plea *Connecticut Fire Insurance Co v Kavanagh* (1899) A C 413 followed Ordinarily the decree in a suit should accord with the rights of the parties as they stand at the date of its institution But where it is shown that the original relief claimed has by reason of subsequent change of circumstances become inappropriate or that it is necessary to have the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties it is incumbent upon a Court of justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made *Ras Charan Mandal v Bano Nath Mandal* 90 C L J 107 referred to *NUBI MIAN v AMRICA SINGH* (1918)

1 L P 44 Calc 47

8 ———— *Kolaba District—A co-sharer selling his share to a Hindu purchaser—Applicability of the law of pre-emption by agreement of parties—Observance of the formalities of Talab, Mowca-bat and Talab—Ishlal before the completion of sale whether premature—Right of an administrator to continue the suit on the death of the pre-emptor pendente lite—Probate and Administration Act (V of 1911) s 89* S a Mahomedan owner of an undivided one-fourth share in certain Inam villages in Kolaba District entered into an agreement with the defendants on the 14th October 1908 for the sale of his share for P 30,000 the terms of the agreement being that if the owner of the three-fourths share (i.e. the plaintiff) was willing to purchase S's share and if S agreed to the purchase he should immediately return the amount received from the defendants On the same day a notice was accordingly served on the plaintiff by S asking him if he was anxious to pre-empt the quarter share On receipt of this notice the plaintiff on the 14th October performed the *Talab* & *Mowca-bat* On the 14th October the plaintiff through his attorneys wrote a letter to S declaring his intention to exercise the right of pre-emption and at the same time performed *Talab* & *Ishlal* The copies of S's notice and plaintiff's solicitor's reply of the 14th October were duly forwarded to the defendants and whilst the correspondence between S and the plaintiff was going on the former received the full amount of the purchase money from the defendants and executed a sale deed in their favour The plaintiff thereupon sued to recover the share by right of pre-emption. The defendants con-

MAHOMEDAN LAW—PRE-EMPTION—could

tended *inter alia* that the right of pre-emption could not be exercised against them as they were Hindus, that the property over which it was claimed was not a small one that the law of pre-emption was not made applicable to Kolaba District that the *talabs* performed before the completion of the sale were premature. On these facts *Held* (i) that the defendants were bound to comply with the plaintiff's demand for a transfer of the quarter share in the villages to him since it was clear from the contract and the subsequent correspondence that the defendants agreed with the vendor that the law of pre-emption applying between the vendor and his co-sharer should be applicable to the defendant's purchase (ii) that the action of the plaintiff in performing the *talabs* was not premature as the intention of the parties as to the date when the bargain was to be considered as concluded was the date of the contract itself (iii) that there was no limit to the size of the property of which pre-emption might be claimed by a co-sharer though there was a limit in the case of those who based their claim on vicinage. A question being raised as to whether on the death of a pre-emptor *pendente lite* a suit can be proceeded with by his administrator under s. 89 of the Probate and Administration Act 1831 *Held* that the suit could be proceeded with by the administrator as the relief sought namely conveyance of a share could be enjoyed by a personal representative after the death of the pre-emptor inasmuch as it added the property in suit to the estate of the deceased. **SITARAM BHADRAO v. SAYAD SIFAJUL** (1917) I L F 41 Bom 630

9 — Sale disguised as a lease—In order to defeat pre-emption—Device not permissible under the Mahomedan Law. In a suit for pre-emption whether the right is claimed under the Mahomedan Law or by virtue of a custom of pre-emption it is the duty of the Court if the question is raised to consider and decide whether the transaction in respect of which the claim is brought is or is not in substance a sale though it may be disguised in some other form as for instance in that of a lease. There is no rule of Mahomedan Law which renders it permissible for a transaction of sale to be framed as a lease so as to avoid claims for pre-emption. **MUHAMMAD HAZ KHAN v. MUHAMMAD IDRIS KHAN** (1919) I L R 40 All 322

10 — Though the Hindustan Surat have adopted the Mahomedan Law of pre-emption by a long established custom with regard to houses it is an open question whether they have adopted the law with regard to agricultural land. **JAGJIVAN HARIBHAI v. KALIDAS MULJI** I L R 45 Bom 604

MAHOMEDAN LAW—RELIGIOUS OFFICE

See MAHOMEDAN LAW—MUTAWALLI

*Astar—Mutanur—Permissions office—Competency of women to hold or assist in such office—Right to perform *fatwa*—Rule of Mahomedan Law.* A religious office can be held by a woman under the Mahomedan Law unless the care duties of a religious nature attached to the office which she cannot perform in person or by deputy and the burial of establishing that a woman is precluded from holding a particular office is on those who plead the exclusion. Though there is no general rule of Mahomedan Law prohibit-

MAHOMEDAN LAW—RELIGIOUS OFFICE—contd

ing a woman from holding a religious office prohibition may arise by local usage or custom. **Imam Bee v. Molla Khasim Sahib** (1916) 5 L W 296 followed. **Salco Banco v. Aga Mahomed Jaffer Birdanum** I L F 31 Cal 178 referred to. *Held* (on the facts of the case) that a woman was competent to succeed to the office of Head Mijver of the suit Astar. **MUTAWALLI BEGAN SAHIB v. MIR MAHAPALLI SHAHIB** (1918) I L F 41 Mad 1033

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS

Suit for restitution of conjugal rights—Defence to suit—Cruciality. In a suit by a Mahomedan husband against his wife for restitution of conjugal rights it was found on issues remitted by the High Court that there was no very satisfactory evidence of actual physical cruelty but that the parties were on the worst possible terms and the reasonable presumption was that the suit was brought for the purpose of getting possession of the defendant's property. There had been a good deal of ill-treatment short of physical cruelty and the court was of opinion that by a return to her husband a custody of the defendant's health and safety would be endangered. In the circumstances the High Court refused to interfere with the decree of the Court below dismissing the suit. **Armour v. Armour** I A L J 318 referred to. **HANID HUSSAIN v. KUTRA BEGAN** (1916) I L R 40 All 332

Suit by husband for restitution of conjugal rights where he had entered into agreement that his wife should live permanently in the house of her parents—payment of dower—discretion of Court. The plaintiff sued his wife for restitution of conjugal rights and for an injunction against her parents and friends who were alleged to prevent her from living with him. On their marriage the plaintiff had agreed to the dower being fixed at Rs 500 without specifying what part of it was prompt or deferred and also that the girl should live for the whole of her life with her parents. Defendants pleaded that in the face of those agreements plaintiff was not entitled to restitution of conjugal rights till he had paid the dower of Rs 500 and could not claim that his wife should live with him at his house and not at her parents'. The first Court decreed plaintiff's suit and the Lower Appellate Court upheld the decree of the first Court with the condition that plaintiff before applying for execution shall pay 1/5th part of the dower fixed at Rs 100. The defendants appealed to this Court. It was found as a fact that the wife did live with her husband for a time at his residence and there gave birth to a child. *Held* that the agreement that the wife should live with her parents was not legal and could not be utilized to defeat the husband's claim for restitution of conjugal rights and that in any case the wife by living with her husband for a time away from her parents' house had waived the right if any, acquired under the agreement. **Imam Ali Patwari v. Asfahanne sa** (18 Cal W A 623) followed. **Hamid un Nisa Bibi v. Zohr ul Din** (I L R 17 Cal 670) referred to also. **Ameer Ali v. Muhammad Law** Volume II 1917 Edition pages 369 and 48-50. **Tyabji v. Muhammad Law** II Edition (1919) page 109 disapproved. *Held also*

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS—*contd*

that the Lower Appellate Court in its discretionary power having fixed the part of the dower to be paid by plaintiff this Court was not prepared to hold that it had not exercised its discretion properly. *Muhammad Fatima Bili v. Nur Muhammad* I L R 11 Lah 597

Direction by Court that conjugal rights should be exercised at the residence of the wife's parents is invalid. A Mahomedan husband executed a *kabilnama* in which the wife was given the right to leave her husband's house in case of ill treatment. There was ill treatment by the husband and the wife went to her parents' house. The husband sued for restitution and got a decree with a direction that such rights must be exercised in the house of the wife's parents. *Held* that the *kabilnama* was good but the condition of the decree bad. *SABED KHAN v. BRATUNESSA Baji* 25 C W N 588

MAHOMEDAN LAW—SALE

See MAHOMEDAN LAW—ALIENATION

Whether complete without Registration—

See TRANSFER OF PROPERTY ACT 1882
s 54 I Pa' L J 174

Sale of minors property by widow valid. The mother of a Muhammadan minor is not the natural guardian of the minor and if she is not his authorised guardian either a sale of the minor's property by her not shown to be for his benefit or advantage is void. *SHAIKH PALA ALI v. SHAIKH WAZIR ALI* I Pat L J 188

MAHOMEDAN LAW—SUCCESSION

See CUSTOM I L R 39 All 574

I L R 45 Cal 450

See KHOSLA I L R 38 Bom 449

See KUNJUPURA STATE OF

I L R 39 Cal 711

See SUCCESSION CERTIFICATE ACT (VII OF 1889) ss 4 AND 7

I L R 32 All 235

Heirs holding as tenants in common—*Suit by a heir to recover his share—*

See LIMITATION ACT (IX OF 1908) Sec 1 ARTS 193 AND 144

I L R 45 Bom 519

Heir entitled to bring a suit to account and administration not bound to file a suit for partition—

See ADMINISTRATION SUIT

I L R 45 Bom 75

Succession by a Christian to the sons of a convert to Islam—

See ACT XIX OF 1850

I L R 1 Lah 376

Exclusion of female heirs—*Custom excluding females from succession in Oudh—Limitation—Relinquishment—Stopped.* If a Mahomedan of Oudh died leaving two widows B and I and his mother his estate passed first to his mother

MAHOMEDA I LAW—SUCCESSION—*contd*

and on her death to his widows in equal shares. After B's death on 24th January 1889 I retained possession of the whole estate until her death in 1894. When mutation was effected in favour of the sons of the brothers of B and I a sister of B instituted two suits for recovery of her share. In the first suit the Subordinate Judge held that the succession was governed by the Mahomedan Law and that the custom of excluding female heirs was not proved and decreed the suit. The Judicial Commissioners affirmed their findings. *Held* that the concurrent findings of fact were fatal to the appeal. The second suit was instituted on 11th February 1903. The dispute related to the estate left by the plaintiff's brother Mularah who died on 7th February 1891 including in that estate the property he had inherited from B and his father. *Held* that limitation began to run against the plaintiff at once from the death of I and that therefore the suit was not barred. *Held* further that the plaintiff had not relinquished her claim nor was she estopped from presenting it. *MUHAMMAD HAMID v. MUHAMMAD INTICHA FATIMA* (1909) 14 C W N 59

Acquisitio per actum. Acquisition by member of family if to be presumed as acquired out of joint family funds—*Appel.* Two sons of a deceased Mahomedan and his widow inherited 4000 Rs. 4000 Rs. and 1200 Rs. respectively of his properties. The properties were however partitioned between them later on in equal halves by an arbitration award to which the widow was no party. The award specifically stating that the properties dealt with were the whole properties which were subject to division and that nothing more fell to be divided and provision being made for the grant by the sons of a maintenance allowance in money to the widow. After the death of the widow whom one of the sons predeceased Plaintiff the surviving son *inter alia* claimed his share in certain items of property which were excluded from the award and which had been acquired in the name of his deceased brother after their father's death as the property of his father and the widow's share in certain other items of property dealt with by the award and divided half and half between the brothers by the award as the widow's heir. *Held*—That the succession of a Mahomedan being an individual succession there is no presumption in the case of a Mahomedan such as exists in the case of a Hindu joint family that property purchased in the name of a member of the family was purchased out of joint undivided property. That *prima facie* therefore the property bought in the name of the deceased brother was bought with his money and the statement in the award established that it was. That the Plaintiff was estopped by his own proceeding in the arbitration wherein he received his full half of the properties belonging to his father upon the footing of the exclusion of the mother from claiming a share therein through his mother. *MUHAMMAD WALI KHAN v. MUHAMMAD MOHTA DUT KHAN* 24 C W N 321

Where one of the co-heirs of a deceased Mahomedan in possession of the whole or part of the estate of the deceased sells property in his possession forming part of the estate for discharge of debts of the deceased which sale is not binding on the other co-heirs or creditors of the deceased. *ABDUL MAJEED v. KHEIR HANMACHARIAR*

I L R. 40 Mad. 243

MAHOMEDAN LAW—TRUST

1 ————— Revocation of trust—*Wakf-Gift—Essential elements for validity—Power of revocation—General principles—Tested remainder*
 In 1902 a Shia Mahomedan by deed conveyed certain immovable property to himself and other trustees for him, self for life and after his death for the payment of annuities to his widow and daughter and the balance to certain charities. Further clauses provided that on the death of his widow her annuity was to go to certain other charities and that on the death of his daughter a lump sum was to be given to her son. A further provision reserved power to the settlor at any time to revoke all or any of the above trusts. In 1908 he revoked the trust and executed a mortgage of the property. In 1909 he died and receivers of his estate were appointed. His daughter then filed a suit for a declaration *inter alia* that the revocation and subsequent mortgage were invalid and that the original trusts subsisted. *Held* that the conveyance in 1902 was invalid. Looked at from the standpoint of the Mahomedan law giver a private trust would be no more than a private gift *inter vivos* through the medium of the third party and therefore subject to all the conditions of a valid gift but *quære* whether private trusts were known to Mahomedan law. *Enano Begum v. Mir Abed Ali I L R 32 Bom 110* discussed and distinguished. *JAMABAI v. R D SETHAJI* (1910) 1 L R 34 Bom 604

2 ————— Khoja Mahomedans—Settlement—Settlor himself trustee—No delivery of possession—Son born after Settlement—Power of Settlor to revoke settlement—Settlor's intention not carried out owing to Settlor's death—Power of Court in aid defective execution—Suit by after-born son to set aside settlement—Limitation Act (IX of 1905) s. 10—Pursuing trust back to Settlor—Adverse possession—Difference between estoppel and res judicata—Validity of *Wakf* contained in deed containing other gifts—Local usage cannot override Mahomedan Law—Pregnation—Vis Major—By an Indenture of settlement dated 7th January 1886 J P a Khoja Mahomedan purported to convey certain immovable properties to trustees for the benefit of his family. The trusts were in effect for J P for life and after his death subject to certain rights of residence and maintenance to pay the net income of the trust properties to N M for his life and in the event (which subsequently occurred) of the death of N M without leaving male issue to divide the trust funds into ten equal parts to be held in favour of certain donees, four tenths being given to himself. The Indenture also reserved to the settlor power to revoke or vary any of the trusts contained therein. There was no surrender of the property in fact to anyone except J P himself in his character as trustee for himself. The donor however opened an account in his books of the property as trust property. On the 26th October 1911 a record on the plaintiff was born to J P in response to J P being desirous of providing for the dependants and to vary the terms of the deed of the 7th of January 1886 and to re settle the same so that his two sons should share equally. A draft deed of declaration of new trusts was accordingly prepared by J P's attorneys and on the 24th of July 1911 was finally settled and approved by J P. An engrossment was thereupon made and duly stamped but on taking the engrossment to J P for his execution on July 20th it was found that owing to an error of the engros-

MAHOMEDAN LAW—TRUST—contd

single several pages of it were missing. Another engrossment was prepared forthwith but on the same day before the new engrossment was ready J P died. The plaintiff thereupon brought a suit to have it declared whether or not the deed of 1886 was a valid deed and prayed that the defective execution of the second deed might be aided by the Court and the provisions of the said second deed declared to be valid. *Held* (i) That the plaintiff was not time barred as against the trustees from bringing the action. (ii) That however retracted the gift was in form to J P it was in effect a gift absolute to him for life and that entirely irrespective of the power of revocation. (iii) That all the gifts in the trust settlement made contingent upon N M dying without issue were bad. (iv) That that portion of the instrument which purported to create a *wakf* in respect of four tenths of the settled property was bad and void. (v) That the gift was bad for want of contemporaneous delivery of possession. (vi) That this was a case if ever there was a case in which the Courts might act upon those principles which have always guided the Court of Equity in England and aid defective execution of a power defective not through any fault on the part of the person intending to execute it but by reason of an act of God and that the unsigned deed ought to be effectuated by the Court to the extent of making it binding on the conscience of the trustees *Per Curiam*. It is only in the event of the trusts or some of them being bad that the question of limitation can arise. For if a trust deed in its entirety is good then of course effect must be given to it irrespective of any question of lapse of time. Where what purports to be a trust deed turns out to have been entirely void and therefore not to have passed the legal estate the position of those who took possession believing themselves to be trustees but not in law real trustees necessarily assumes the character of possession by trespass and is therefore from its inception on in law adverse against all the world. Where however the trust-deed in itself is good and valid to the extent of passing the legal estate but the trusts declared are in themselves wholly or partially bad then there is a resultant trust to the author of the trust and the possession of the trustees whatever they might think of it and however they might intend to use it for the purpose of carrying out the bad trusts could not in law be adverse to the cestui *à trust* that is to say the grantor. Widely different is the case of trustees who obtain the legal estate from the author of the trusts to apply the beneficial uses to specified objects which may or may not be good. For then from the beginning there is always a relation between the author of the trusts and the trustees in whom his confidence has been reposed and there is always the legal possibility of a *lex* of another relation coming into existence between them where owing to the failure of the declared trusts there is a resultant trust back to the grantor who from that moment becomes in law the cestui *à trust* of the trustees. Where it was the intention that there should be an ultimate trust in favour of the grantor it is usual to express that on the face of the deed. A deed so framed as upon its very face to provide for the springing back of the trust fund or a part of it in certain events to the author of the trust does create what in all cases an express and resultant trust. The current of authority seems to have set steadily against the extension of section 10 of the Limitation Act to all

MAHOMEDAN LAW—TRUST—*contd*

cases of resultant implied or constructive trust. Where the ultimate resultant trust which is to spring back to the settlor is consistent with the discharge of the declared trust then it may by local use of language be said to be expressed on the face of the deed but when the extinction or failure of all the intended trusts is a condition precedent to the resultant trusts coming into being then the latter are clearly a true resultant trust and is not expressed and never can be expressed on the face of the deed. The answer to the question—What is the true position when declared trusts failed and there is a resultant trust over to the settlor or his heirs—is to be found in the very elementary proposition that the possession of the trustee is always that of *cestui que trust* and therefore however he may think or wish to be holding as trustee for trust which have failed in the eye of the law he is really holding when the trusts failed as trustee for the settlor. Then the position is simply this so long as he retains and professes to retain the character of a good and legal trustee he is holding the legal estate as stakeholder for two claimants the intended beneficiaries of the declared trusts which have failed and the resultant trustee that is the settlor. And no length of possession by a trustee can be adverse to his *cestui que trust* as soon as that legal person is discovered and ascertained. So long as a trustee occupies the position of a trustee as soon as declared trusts failed and there is a resultant trust in favour of the settlor the trustee's possession is essentially that of his *cestui que trust* and can only be changed into adverse possession by a conscious and deliberate act that is to say that he must repudiate all intention of holding for the resultant *cestui que trust* and he must assert his intention of continuing to apply the trust fund to uses which the Court has declared or which are known to him to have failed. Then his possession might become adverse to his legal *cestui que trust* and if that person did not take steps within twelve years he might not be able to avail himself under the Indian authorities of the provision of section 10 of the Limitation Act. Estoppel and *res judicata* are entirely distinct. *Res judicata* precludes a man averring the same thing twice over in successive litigations while estoppel prevents him saying one thing at one time and the opposite at another. It is consistent with the Mahomedan Law that a Mahomedan may devote his property in *waqf* and yet reserve to him self and his descendants in a very indefinite manner the usufruct of property. *Jaira Bai v R D Sethna I L R 34 Bom 604* considered. The power of revocation is inherent in the donor of every gift so that expressing it as is usually done by English draftsmen in the voluntary settlements is merely surplusage and so far from invalidating the gift as a whole would necessarily be implied in it were it not expressed. Under the Mahomedan Law where a gift is conditioned by a power restricting alienation the gift is absolute and the condition is void. A gift to the donor him self for his life and then over to others could not be reconciled with any recognised principle of the Mahomedan Law of gift and must necessarily therefore so far as the remotest donees are concerned be had *ab initio*. *Jaira Bai v R D Sethna I L R 34 Bom 604* followed. A vested remainder in the strict sense of the English words and a *fortiori* a contingent remainder could not possibly by any stretch of ingenuity be made the subject of a valid Mahomedan gift in *cr vires* consistently with the

MAHOMEDAN LAW—TRUST—*contd*

requirements of the Mahomedan Law on that head and for this very simple reason that no man can give possession *in praesenti* of that which may never come into possession at all. It is of the essence of a Mahomedan gift *inter vivos* that the donor should divest him self of the actual possession of the thing given and transfer it to the donee and if the donee does not take physical possession of it at the time of making the gift then till he does the gift is revocable. There is no authority to be found anywhere in the Mahomedan Law books then selves for the proposition that a man giving *inter vivos* may give an estate first to himself and then to A for life and then to B absolutely. It is undoubtedly a rule of the Mahomedan Law that where a donor makes a gift and accepts in exchange something whether that something be independent of or part of the original gift then the rest of the gift is irrevocable. No gift *in futuro* can be made by a Mahomedan *inter vivos* in order to validate such a gift there must be an actual delivery of seisin to the donee there must be a transfer of possession and that transfer of possession must be from the donor to the donee. While the Mahomedan Law insists that a gift to private persons should be free of all *pious* and religious purposes this does not necessarily prohibit the making of the gift to *waqf* which may be contained in a deed which makes other gifts at the same time to private persons. It appears to be the Mahomedan Law that a donor may give his property in *waqf* that is to say appropriate and dedicate the *corpus* to the service of God while reserving for him self a life interest in the usufruct. But as in the case of gifts to private individuals the Mahomedan Law never contemplated and will not allow a merely contingent gift in *waqf*. This necessarily flows from the juristic conception of a *waqf* which is the immediate appropriation and consecration of specified property to the service of God and the reservation of the donor's life interest in that property does not in any way clash with that conception for the *corpus* is there and then definitely and finally appropriated to its intended purpose. But it is plain otherwise while the gift is conditioned upon the happening of some future uncertain event. There can in such circumstances be no appropriation synchronizing with the declaration because should the future events happen it is neither the donor's intention then nor after the happening of that event that the property ever should be appropriated to the service of God. It would be passing the limits of the application of the maxim *Lex et contractum vincunt legem* if it were ought to be shown that the *Mahojirs* are allowed by local usage to override the Mahomedan Law which prohibits any Moslem from disposing of more than one third of his property by will (CAVALIER JAFARHATIR SIK CHURCHMAN LERAMIN (1911)).

I L R 34 Bom 214

MAHOMEDAN LAW—WAQF

See CIVIL PROCEDURE CODE 190, s 92
(1) I L R 35 AJ 98

See MAHOMEDAN LAW—ENDOWMENT

See MAHOMEDAN LAW—MUTAWALLI

See MAHOMEDAN LAW—WILL

I L R 43 ALL 508

MAHOMEDAN LAW—WAKF—contd

See MUSSALMAN WAKF VALIDATING ACT
(VI OF 1913) s 3

I L R 39 Bom 563

See RELIGIOUS ENDOWMENT

6 Pat L J 218

See WAKF

1 ——— Valid wakf—Charitable object—Expenses of *fatwa* of execution—Burning lamps in mosque—Salary of *Hafiz* Held by BANERJI J (STANLEY C J dubitante) that a wakf by which a substantial portion of the income of the endowed property was appropriated for (i) expenses of the annual *fatwa* of the wakf of her husband and members of her family (ii) the annual expenses of burning lamps in a mosque and (iii) the salary of *Hafiz* and readers of the Quran was a valid wakf and that there was a substantial dedication of the property to religious or charitable purposes. *Mahomed Ak. annulla Choudhri v Amar Chand Kundu* I L R 17 Cal 498 *Luchmitpat v Amir Alim* I L R 9 Cal 176 *Phul Chand v Akbar Yar Khan* I L R 19 All 211 and *Biba Jan v Asaf Hussain* 6 All L J 110 I L R 31 All 136 referred to. *Alaidoola Sahib v Nu-er-uddeen* I L R 18 Mad 201 and *Fahar ud-din Shah v Kiyasat ullah* 7 All L J 1095 doubted. Per STANLEY C J—The general dedication of villages in the name of God is not sufficient to render the wakf valid in respect of so much of the property as has been dedicated expressly for specific objects which are not proper objects of wakf *fatwa* ceremonies and the reading of the Quran in private do not seem to be such objects. *Mazhar Hussain Khan v Abdul Hadi Khan* (1911)

I L R 33 All 400

2 ——— Performance of *fatwa* when a valid object of wakf—Wakf when illusory—Rule to be adopted when one of the purposes of the wakf fails—Provision for heirs invalid as a wakf—Validity of direction to accumulate in a wakf—The performance of *fatwa* (distribution of alms to the poor accompanied with prayers for the welfare of the souls of deceased persons) which so far as it involves the expenditure of any money, consists in feeding the poor is a valid object of wakf. A gift for the benefit of a man's own family or descendants will not be valid as a wakf and a gift really for such a purpose though ostensibly one for valid charitable purposes will be bad as only an illusory wakf. It can be no objection to the validity of a wakf that some provision is made for the donor's family, provided such provisions are not inconsistent with the gift being one substantially for charity. If however such provisions in a deed purporting to be by way of wakf exhausts the bulk of the income or are to last for an indefinite period the wakf will be bad as illusory. The fact that the donor did so direct the proportions in which the income should be divided between the charities and his heirs who were appointed trustees will not raise the presumption that he intended the heirs to take the whole. It must be presumed that he intended the charities and his heirs to benefit equally. Where a donor mentions several purposes as objects of charity, and one of such purposes fails then if a general intention can be gathered of dedicating the property to charity, the entire property will be devoted to the lawful objects if any mentioned in the deed and in the absence of any such to the poor whether or not

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any definite portion of the income has been set apart for the purpose which fails. A gift by way of wakf partly for valid charitable purposes and partly for the donor's heirs will not be void because the latter is not a legal purpose of a wakf. The wakf will be valid and the whole income will be devoted for the valid purposes. A provision for accumulation which will ensure solely for the benefit of charitable purposes will not be bad as offending the law of perpetuities. *RAMANADHAM CHETTIAR v VADA LEVYAI MARAKAYAR* (1910)

I L R 34 Mad 12

See I O T

I L R 40 Mad 118

3 ——— Sunni schools—Injunction between co owners—Mahomedan burial grounds joint interests in. The Court will refuse to a co owner an injunction to prevent the carrying out of a necessary work by another co owner upon property held in common. According to the accepted view of the Sunni schools which comprise the followers both of Imam Abu Hanifa and Imam Shafei it is in the very conception of wakf which is the name for a grant by which mosques and similar institutions are dedicated that all proprietary rights of men should be extinguished in the property so dedicated. *KUTTALAH v MAMMANA RAYUTHAN* (1912)

I L R 35 Mad 681

4 ——— Subsequent failure of title of wakf—Right of mutawalli to sue on indemnity bond executed in favour of wakf as purchaser—Right of plaintiff to shift basis of claim during suit—Practice. A purchased a village the vendors giving him an indemnity bond in case he should be dispossessed. A then made a wakf of the property purchased naming himself as mutawalli and after him his son. A lost the property as the result of a suit and subsequently (A meanwhile having died) M sued as mutawalli to enforce the terms of the indemnity bond. Held that the wakf was invalid and that M could not be permitted to change the character of the suit by claiming as one of the heirs of A. Per CHAMBERLAIN J—Even if the wakf was valid the mutawalli was not entitled to maintain the suit in the absence of a transfer to him as such of the vendee's rights under the indemnity bond. *MAMMUD DIN v BALLABH DAS* (1912)

I L R 35 All 618

4 (a) ——— Right to worship in mosques—Every Mahomedan who has a right to use a mosque for purposes of devotion is entitled to exercise such right without hindrance and can bring a suit against anyone who interferes but if he brings it in his personal capacity and not on behalf of the community the decision will be binding only as between plaintiff and defendant. *RASCHANDRA v ALI MAHOMED*

I L R 25 All 197

5 ——— Dedications subject to annuities—Payable to the Members of the settlor's family—Where a *waqfnama* provided that about two-third of the income of the property were to be paid as allowances to the wife and children of the settlor and only about a third was to be spent for religious and charitable purposes and it was further provided that the allowances to the wife and children would have to be reduced in the event of the income of the estate being reduced but there was no provision that the amount to be spent for religious and charitable purposes was

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to be reduced for any reason though the amount might be increased with the increase of the income of the estate. *Held* that the wakf was valid under the Mahomedan Law. **GHANI MIA v ADAM PATARI (1913)** 17 C W N 1018

6 ——— **Shia S c'—Wakf—Mar-ul-maut** —Validity of wakf made in mar-ul-maut. Under the Shia law a wakf made in death illness is valid only to the extent of one third if not ascertained to be the heirs even if possession has been delivered by the make of the wakf. **Asar Hussain v Fazeel Hussain 8 All L J 1154 approved Ali Husein v Fazal Husein Khan (1914)** I L P 36 All 431

7 ——— **Constitution of by deed of trust—Objects charitable and religious—Validity of wakf** Where with the object of dedicating a house to the service of the Imams Hasan and Hussain and for other religious purposes the settler had conveyed the house to his grand daughter and his grand son on trust for the proper observance of the objects mentioned in the deed — *Held* that there was a valid wakf. **Delroos Danoo Begum v Ashgar Ali Khan 10 B L F 167 discussed. Phil Chand v Ablar Yar Khan I L P 19 All 211 Biba Jan v Aalo Hussain I L P 31 All 130 Maabar Hussain Khan v Abdul Hadi Khan I L R 33 All 400 referred to PAM CHAIRMAN LAW : FATIMA BEGAM (1915)** I L R 42 Calc 933

8 ——— **Dedication for expenses of mosque—And maintenance of family members how far valid** Where a person belonging to the Hanafi School of Mahomedan Law made a wakf whereby he provided for the payment of expenses of and in connection with a mosque and for regular monthly maintenance of the members of his family. *Held* that the dedication in connection with the mosque was valid but not so the provision for the payment of maintenance to members of the family. **RAHMUNNISSA BIBI v SHAHEH MANIK JAN (1914)** 19 C W N 76

9 ——— **Res judicata—Decision in previous suit between same individuals but brought by plaintiff in another capacity—Decision of High Court on legal grounds declaring a wakf invalid conclusive in later suit even when not strictly res judicata** Where in a suit by a creditor or representative of the wife of the original owner of property which the latter had made wakf before his death it was declared by the High Court on appeal on legal grounds that the wakf was invalid. *Held* that this adjudication by the High Court of the invalidity of the wakf was binding between the parties to a subsequent suit brought against the same defendant by the same plaintiff but suing now as the heir of the owner's daughter. **MOHAMED BUKTI MAJUMDAR v DEWAN AJAY RAJA (1915)** 19 C W N 987

10 ——— **Founder herself mutawalli if may renounce office—And appoint another—Right of next in order of succession under original wakf to sue if arises immediately or on death of predecessor—Limitation—A mutawalli cannot renounce his office except in the presence of the founder of the wakf, but whether the founder is herself the mutawalli a renunciation by her to herself would be valid and the appointment by her of another mutawalli would be valid at least during her lifetime and limitation would not begin**

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running against the person next entitled to succeed to the office under the original endowment until her death. **ABDUL AFOON MIA v HAJI KHUND KAR ALTAF HOSAIN (1916)** 20 C W N 605

11 ——— **Died providing for charitable purposes and also for support of grantors family—And descendants—Test whether deed is valid as a wakf or whether wakf is illusory—Property substantially given to charities the surplus to support family—Mus almaras Wakf I L R 17 Cal 498 L R 17 I A 23 Abdul Faal Mahomed Isahak v Rasimja Dhur Choudhury I L R 22 Calc 619 I L R 2 I 1 70 and Majumdar v Abdul Rahim I L R 23 All 232 L J 23 I A 10 23 referred to** To determine whether any particular case answers the test all the circumstances existing at the date of the deed must be taken into consideration such as the financial position of the grantor the amount of the property the nature and the needs of the charity their probable or possible expansion the priority of their claim upon the settled fund and such like. It does not follow because the share of the income going to the family which may be a dwindling sum is for a time larger than that going to the charities that the effect of the deed is to give the property in substance to the family and that it is therefore invalid as a wakf. In the present case the sum devoted to the charities was not large though for the present it was abundant for their needs but having regard to all the circumstances of the case the dominating purpose and intention of the grantors in executing the deed was to provide adequately for those charities. That was their main and paramount object. The secondary and subsidiary object was to secure for their family and descendants any surplus that might remain after the needs of the charities had been satisfied. As the gift for the charities was perpetual it was necessary and right that the provision for sustaining any possible residue should also be perpetual. The provisions of the deed carry out these objects and in their Lordships' opinion the effect of the instrument is not to give the trust property in substance to the family of the grantors but to give it substantially to the charitable purposes named in it. The deed therefore was within the authorities a good and valid deed of wakf. **RAMANANDAN CHETTIAR v VAYA LEVVAI MAPAKAYAR (1916)** I L R 40 Mad 116

12 ——— **Muta wakf—Jurisdiction of Court to appoint guardian in respect of wakf property—Guardians and Wards Act (111 of 1890)** A Mahomedan died leaving two sons and a daughter all minors and having also constituted a wakf of a partly public private character under which one of his mutawallis. *Held* that it was D that Judge to appoint a partly death to be the

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the duties of the *mutawalli* pending either the coming of age of the minors or the institution of a regular suit by some persons interested in the endowment to contest the arrangement made by him **ERAZ AHMAD : KHANU BEGAM (1916)**
I L R 39 All 288

12 ——— Validity of—Determining test—Annuity to destitute illegitimate daughter of founder's husband of charitable gift Where under a waqf a certain portion of the property was to go for objects religious and charitable but the main object was the benefit of the daughter of the settler and her successors Held that in the circumstances of the case the dominating purpose and intention of the grantor which is the true test in such cases was not to provide for charities That although the deed might not be wholly good it was competent for the Court to declare the charitable trusts constituted by the document to form a valid charge on the property That the annuity to an illegitimate daughter of the founder's husband who was destitute and unprovided was a charitable gift **KARIMUNESSA CHOWDHURI : EKINA BANOO (1917)**
22 C W N 566

15 ——— Appointment of mutawalli by *tauhlatnamah*—Testamentary character and validity of—Mahomedan Endowments Committee at Chittagong—Statutory body—Regulation XIX of 1810—Religious Endowments Act (XX of 1883) s 7—Doctrine of *marz ul mauit* Where A mutawalli of a mosque executed a *tauhlatnamah* a few months prior to his death in favour of B appointing him as his successor—Held that the Mahomedan Endowments Committee at Chittagong was a statutory body and its recognition of a person as the true and rightful mutawalli was authoritative *Semle* that according to Mahomedan Law a *tauhlatnamah* was capable of being construed as a document of a testamentary character speaking as from the moment of death also that when a person had a right or power under the law to appoint a successor and if he freely executed a *tauhlatnamah* as a testamentary document while he was of sound mind its validity could not be questioned **SAYED MUHAMMAD v FATTEH MUHAMMAD I L R 22 Cal 324 I R 20 I A 4 Sayad Abdulla Edrus v Sayad Zain Sayad Hasan Edrus I L R 13 Bom 555 referred to SULTAN AHMAD : ABDUL QANI (1918)**
I L P 46 Cal 13

16 ——— Illusory dedication—Muslims—Wakf Validating Act (VI of 1913) preamble and ss 3 and 4—Act not retrospective The Muslim Wakf Validating Act 1913 is not retrospective in its operation. If therefore a wakf purporting to be created before coming into operation of that Act is to be held valid it must conform to the law as established by the decisions of the Privy Council prior to the said Act that is to say the owner of the property the subject of the wakf must divest himself of it and appropriate it to religious or charitable purposes there must be a substantial dedication to religious or charitable purposes at some time or another there must be a substantial and not merely a colourable dedication of the property the religious or charitable purpose must not be so unsubstantial or illusory as to give to the settlement merely a colour of piety the real object being the aggrandisement of the settler's family **JAHANNUMA v HILAL v SHAHIL MAJID Jan 12 C W N 46 Mahomed Bulth**

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MAYMUDAR v DEWAN AJMAN REJA I L R 43 Cal 158 and AMIR BIBI v AZI BIBI I L R 39 Bom 563 referred to NAIM UL HAQ v MUHAMMAD SUBHAN ULLAH (1918) I L R 41 All 1

17 ——— Office of mutawalli devolving upon an entire family—Division of the wakf property amongst the family—Right of some members of the family to sue for the setting aside of the transactions of other members relating to the wakf property By the terms of a wakf constituted in 1846 the original mutawallis were two nephews of the wakif the sons of his brother Thereafter the office of mutawalli was to descend to the family of the brother generation after generation without a break and without any separation for ever In course of time it happened that the office of mutawalli devolved on three brothers who for their own purposes divided the wakf property amongst themselves One of these brothers entered into various transactions relating to portions of the wakf property which were inconsistent with his position as mutawalli and there after attempted to resign office in favour of his sons The sons then endeavoured to get the transaction entered into by their father set aside but failed Subsequently three of the sons of the third brother their father having died meanwhile brought the present suit to set aside the transactions referred to above Held that as on their father's death the office of mutawalli devolved upon the plaintiffs jointly with their uncle they were entitled to bring the suit **ALI MUQTADA KHAN : ABDUL HAMID KHAN (1919)**

I L R 41 All 412

18 ——— Shia sect—Wakf created by trust deed—Ownership in property not divested from date of execution of deed Held that a trust deed executed by a Mahomedan of the Shia sect and his wife which purported to create a wakf but did not divest the executors in present of their ownership or power of alienation in respect of the property therein dealt with could not operate to create a valid wakf **ALI RAZA v SANTWAL DAS (1918)**
I L R 41 All 34

19 ——— Illusory dedication—Where it was conceded that the annual value of property dedicated by way of wakf was about a thousand rupees but it appeared that the expenditure needed to carry out the stated charitable and religious purposes would amount to only a small fraction of the annual income and were in fact so insignificant or so remote as to be illusory Held applying the test laid down in *Munibunnessa v Abdul Rahim I L R 23 All 233 a c 5 C W N 177* that the document was not a valid wakf **MAKRAM ALI KHAN v NIZARAT ALI (1919)**
23 C W N 803

20 ——— Lease by mutawalli—Sanction of Judge (Ka) how obtainable—Civil Procedure Code (Act I of 1908) s 90 S 92 of the Code of Civil Procedure evidently relates to suits claiming any of the reliefs specified in sub s (1) thereof An application by a mutawalli for sanction to grant a lease is not a suit under sub s (1) of s 92 The application for sanction should be made to the District Judge if the property is situated in the mofussil or to the Judge on the Original Side of the High Court if it is within a Presidency Town It is not necessary to bring a suit for obtaining such sanction it will be granted upon

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a proper application being made by the *mutwalli*. Any application made by the *mutwalli* will of course be enquired into by the District Judge before sanctioning a lease as *Ka* : *FAKRUZZAMMA BEGUM v. DISTRICT JUDGE OF 21 LARGANAS (1920)* I L R 47 Cal 592

21 ———— *Illusory—Chief object of wakf to make provision in perpetuity for the family—Wakf how far valid—Court whether concluded from taking notice of illegality of wakf when illegality not disclosed in pleading* In a suit for recovery of the office of *mutwalli* and for possession of the properties covered by a wakf the Plaintiffs proved that the first Plaintiff might be declared to be the *mutwalli* appointed in accordance with the long-established custom and usage of the family and in conformity with the provisions of the deed of wakf or if in the opinion of the Court the first Plaintiff had not been validly appointed *mutwalli* the Court might issue orders for the nomination and election of the *mutwalli* by the members of the family and thereafter appoint the person so nominated. The Defendant denied the claim and alleged that he had been duly nominated and appointed *mutwalli* by his father. The Subordinate Judge dismissed the suit holding that the Defendant had been validly appointed *mutwalli* and that the alleged election of the first Plaintiff had no legal effect. On appeal it was pointed out that the gift to charity was illusory and the chief object of the wakf was to create a settlement in perpetuity for the aggrandisement of the family. It was urged on behalf of the Appellant that as in the Court below the parties had proceeded on the assumed basis that the wakf was good and valid this Court was not competent to determine whether this assumption was or was not well founded. *Held*—That the Court was in no way bound by the assumption made by the parties as to the legality of the wakf in question and could not be invited by either of them to adjudicate upon their claim in relation thereto. Wakf of this character had been pronounced invalid by the highest judicial tribunal as contrary to public policy. If the illegality of a transaction is brought to the notice of the Court the Court will not assist the person who invokes its aid even though the Defendant has not pleaded the illegality and does not wish to raise the objection. *Connolly v. Consumers Cordage Co. 2 Beauchamp P C 49* 89 I T 317 (1903) *Scott v. Brown [1897] 2 Q B 774* *Jedge v. Royal Exchange Corporation [1900] 2 Q B 214* *Poyal Exchange Assurance Corporation v. Sjoeforskring [1902] 2 K B 384* *Thomas v. Day [1905] 21 T L R 272* and *Luckett v. Wood [1908] 21 T L R 617* referred to. *NAWABZADA KHANJAH ATIKULLA : NAWAB KHANJAH HABIBULLA* 24 C W N 306

22 ———— *Sunnis—Wakf—Deliver of possession essential*. According to the Mahomedan Law of the Hanafi school it is essential to the validity of a wakf that the wakf should actually give himself of the property to be made wakf. *Muhammad Ali ud din Ahmad v. The Local Government [1915] 1 L R 15 All 301* followed. *MUHAMMAD YUNUS : MUHAMMAD ISHAQ KHAN* I L R 43 All 487

23 ———— *Whether a wakf can cancel the dedication subsequently—And whether a house can be dedicated for purposes of prayer—*

MAHOMEDAN LAW—WAKF—contd.

Contingent dedication—wakf made exclusively for use of a particular sect—whether valid One Chittu a member of a peculiar sect of Muhannadans called *Al* : *Quran* or *Chakrala* purchased a house and on 23rd May 1903 executed a *wagfnama* by way of a will and declared the property wakf for the use of his sect and appointed himself as its *mutwalli*. The wakf was to be acted upon after his life time and after his death *mutwallis* were to be elected to manage the wakf. On 10th March 1905 he executed another document in which he made the wakf more complete and having given up his *mutwalliship* placed the property in possession of certain persons who were appointed *mutwallis*. In the first *wagfnama* there was a direction that a mosque should be erected to carry out the objects of the wakf but he consecrated the house itself for the purpose of prayers and the recitation of the Quran. The newly appointed *mutwallis* failed to obtain a site for the building of a mosque and so they appointed Chittu again as *mutwalli* of the wakf in the hope that by his influence a site might be secured. When Chittu came into the possession of the wakf property he apparently changed his mind and began to deal with the property as his own. He made transfers and leases and gifted part of the house to his wife. Thereon the other *mutwallis* removed him from the *mutwalliship* and he accepted his dismissal on 3rd June 1909. In November 1911 he died and his legal heirs took possession of a portion of the wakf property. The *mutwallis* then instituted the present suit against the heirs for a declaration that the property being wakf the defendants had no right to any portion of it. *Held* that the second *wagfnama* followed by possession being given to the *mutwallis* created a valid and binding wakf in the life time of Chittu which could not be invalidated by Chittu's subsequent acts. *Held* also that on a proper construction of both the *wagfnamas* it was not a condition of the dedication that a mosque should be built the house itself having been constituted as a wakf property in the wakf's life time and having been used as a house of prayer by the followers of the sect ever since. It could not therefore be said that the wakf never came into existence or that it was a contingent one dependent on the fulfilment of the condition of building a mosque. *Held* further that according to Mahomedan Law any place which is dedicated for the purposes of prayer may validly be treated as a mosque and it is not necessary that the building should have a minaret. *Held* lastly that the fact that Chittu in both *wagfnamas* expressed a wish that only the *Al* : *Quran* should perform their prayers in the house could not invalidate the wakf which was made according to the rules of Mahomedan Law and the house must be treated as having become the property of God. Where a wakf has been validly made exclusively for the use of a particular sect the wakf is good and the condition attached to it is void. *Ala Ullah v. Asim Ullah (1 L R 15 All 444) (1901)* *F B Fer Edge C J* referred to. *Abdus Sultan v. Kuran Ali (1 I L R 30 Cal 901)* *Fatra Eili v. The Adreacat General of Pombay (1 I L R 6 Bom 47)* *Mahomed Pu tam Ali Khan v. Muhammad Mustaq Husain (35 Indian Cases 715)* and *Kuttayan v. Mamunna Rautan (18 Indian Cases 195)* discussed. *MATLA BAKH H R ALAM UD DIN* I L R 1 Lah 317

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MAHOMEDAN LAW—WAKF—*contd*

24 ——— Sanction to a will—*Jurisdiction*
Islamic On an application made by the
 Muawalla to a will for sanction to sell wakf
 property *Her* that there being no statute
 authorising such an application such sanction
 could only be obtained by means of a suit *In re*
HAFIZA KHATUN

I L R 37 Cal 870

25 ——— *Muslims* *Islamic*
 1st (11 of 1913)—*Continuation for support*
 and maintenance of family—*How far valid*—*Wakf*
 —*If wakf property be mortgaged at the time of*
disposition with the wakf estate—*Whether valid*
in case of possession with the wakf estate
 —*Wakf affects estate of the property*—*Whether*
valid in case of possession with the wakf estate
 —*Question when one of fact*
only and when one of law and fact In a will although
 provision is made for the maintenance and support
 of the family children and descendants of the
 mortgagor if the ultimate benefit is reserved for the
 poor and for other purposes recognised by the
 Mahomedan law as religious pious or charitable
 purposes of a permanent character then the validity
 of the provisions of the will for the maintenance
 and support of the family children and descendants
 of the mortgagor is not affected by the fact that
 the property mortgaged was under a mortgage
 at the time of execution of the endowment and that
 provision was made in the will for the discharge
 thereof It does not render the endowment invalid
 under the Mahomedan law According to the
 Calcutta High Court a valid will is created by
 declaration of endowment by the owner and
 delivery of possession is not essential Where the
 mortgagor had appointed himself as the first mutawalli
 no formal delivery of possession from himself was
 a prerequisite to the validity of the will and
 even if transmutation of possession was necessary
 no formal delivery was essential A Muslim who
 is in *Mar ul maat* or death illness cannot make a
 valid disposition of more than one third of his
 property after payment of funeral expenses and
 debts and if he purports to make a will in such
 illness unless his heirs consent the will will affect
 only one third of his estate and will be invalid in
 respect of the excess notwithstanding that possession
 of the entire property dedicated has been
 delivered to the person nominated *Mutawalli* In
 order to establish the existence of death illness
 there must be at least three conditions with regard
 to the illness which has caused death (a) proximate
 danger of death so that there is a preponderance
 of apprehension of death (b) there must be some
 degree of subjective apprehension of death in the
 mind of the sick person and (c) there must be
 some external indicia such as inability to attend
 to ordinary vocations Whether or not a parti-
 cular illness constitutes *Mar ul maat* is primarily
 a question of fact but may sometimes be a mixed
 question of law and fact for instance where the
 question arises whether the facts found as to the
 physical condition of the deceased at the date of
 the execution of the deed constitute the essential
 elements of *Mar ul maat* as formulated by Maho-
 medan jurists *Bibi Jivvira KHATUN v. MOH-*
AMED FAKIRULLA

26 C W N 749

MAHOMEDAN LAW—WIDOW

See MAHOMEDAN LAW—DOWER

—*Share property—widows power of*

alienation—

See WASTE

I L R 44 Bom 727

MAHOMEDAN LAW—WIDOW—*contd*

Claim to dower—*Rights of*
widow in possession—*lies of dower*—*Proof of*
consent of husband or heirs not necessary A Maho-
 medan widow to whom dower is due who enters
 into possession of her husband's property on his
 death is entitled to hold the estate against the other
 heirs until her claim to dower is satisfied subject
 to her liability to account for the profits which she
 may receive while so in possession It is not neces-
 sary for her to show that the deceased husband or
 his heirs consented to her getting into possession
Amir ul un nissa v. Bashir ul nissa I I P 17
All—disented from *Musamat Be'ce* *Barhwa*
v. Sheikh Hamid Hossain 11 Moo I 4 317
Amir ul un nissa v. Mowaloon nissa 11 Moo I 1
 11 and *Imam Begum v. Muhammad Karim ulah*
 I I P 16 (11) referred to *IMAM ALI*
KHAN v. A GHANI PETAM (1910)

I L P 32 All 563

Power—*Right of*
widow to remain in possession of property of her
husband—*Such right heritable* The right of a
 Mahomedan widow who has entered into pos-
 session of her husband's property peacefully and
 without fraud in lieu of her dower debt is a heri-
 table right and her heirs are entitled to remain in
 possession until the debt is satisfied *Ali ulah*
Khan v. Ahmad Ali Khan I I R 7 All 333
 followed *Imam ul nissa v. Bashir ul nissa* I
 L I 17 All—doubted *Musamat Be'ce*
Barhwa v. Sheikh Hamid Hossain 11 Moo
 I 4 317 *Mahomed ul Usud ulah Khan v.*
Musamat Ghaziera Beebe 1 Agr 100 *Mu-*
samat Kammur ul nissa Begum v. Mahomed
Hussain 1 Agr 37 *Musamat Halid ul nissa*
v. Musamat Shulratun 6 B L R 54 *Ahmad*
Hossain v. Musamat Khodeja 10 W P C R
 369 *Gyud Paganet Hossain v. Dooli Chand* L R
 5 I 4 211 *Ali Muhammad Khan v. Ali ulah*
Khan I L P 6 All 50 *Ayuba Begum v. Na'ir*
Ahmad Ali Weekly Notes (1890) 115 *Hadi Ali v.*
Abbar 11 I L P 20 All 26° and *Munassar* *Ali*
Khan v. Iarabi I L R 29 All 640 referred to
ALI BAKSH v. ALLAHABAD KHAN (1910)

I L P 32 All 551

In possession of husband's pro-
 perty in lieu of dower—*Rights of widow*—
Transfer by widow—*What acquired by transferee*—
Limitation—Act No IX of 1908 (Indian Limitation
Act) *See* I art 134 Where a Muhammadan
 widow is in possession of property belonging to
 her deceased husband in lieu of dower it is
 competent to her to sell it without necessarily
 selling her right to receive her dower Such a
 transfer conveys to the transferee the right to
 remain in possession during the widow's life time
 or until the widow's dower or the proportionate
 part thereof corresponding to the property transfer-
 red is satisfied *Mohammad Hussain v. Bashiran*
 12 A L J 1141 distinguished *Musamat*
Kammur ul nissa Begum v. Mahomed Hus-
ain 1 W P H C Rep 1866 237 and *Ali Baksh*
v. Allahabad Khan I L P 32 All 551 referred
 to *ABDULLA v. SHAMS UL HAQ*

I L R 43 All 127

—*Share taken by as sole heir*—
 Where a Mahomedan dies leaving a widow as
 his sole heir the widow will take one fourth of
 her share and the remaining 3/4 by the Government
 the surplus 1/4 does not escheat to the Government

I L R 44 Bom 949

MAHOMEDAN LAW—WILL.

See PROBATE. 15 C W N 185

See WILL. I L R 43 Bom 641

Request to a Mahomedan—Effect of—

See PROBATE IN OVERTURE ACT 190

s 16. I L R 42 All 593

1. — Probate—Will admissibility of in evidence without probate—Probate and Administration Act (1 of 1851) s 4—Succession Act (1 of 1865) s 187—Hindu Wills Act (1 of 1860) s 2 here is no provision of law rendering it obligatory in the case of a Mahomedan will to take out probate. After due proof a Mahomedan will is admissible in evidence notwithstanding that grant of probate has not been obtained. *Fatma v Shait Ali* 1 L R 7 Bom 766 not followed. *Shait Ali v Shait Ali* 1 L R 8 Bom 741 followed. *Kheramoney Das v Durgamoney Das* 1 L R 4 Cal 400 Administrator General v Premal Mullick 1 L R 10 Cal 119. *Sarat Chandra Banerjee v Bhupendra Nath Banerjee* 1 L R 2 Cal 103. *Bhogwanth Dharaj v Behardas Harjandas* 1 L R 6 Bom 73 and *Surbomungala Dabee v Mohandranath Nath* 1 L R 4 Cal 508 referred to. *SAEYIA BIBEE MAHOMED* (1894 1910) I L R 37 Cal 879

2. — Legacy—Limitation Act (1 of 1887) Art 123—Suit to recover legacy—Legacy not as entailed by executor—Probate and Administration Act (1 of 1881) s 112—Shah's Will—Bequest for Gadi ul khum feast—Fattiah dinners—Lahid tequei—Cyprus Article 123 of the Second Schedule of the Limitation Act 1877 applies to a suit where the substantial claim is to recover a legacy even though not assented to by the executor and whether or not the suit involves the administration of the whole estate. A Shah Mahomed directed his executors by his will to spend a portion of the income of his property upon the following charitable or religious objects: (i) The Gadi ul khum feast at Mecca (ii) The Gadi feast at Rahmanpura in Surat and (iii) A Fattiah dinner on the testator's and his wife's account. The Gadi feasts were to celebrate the appointment of Ali as successor of the Prophet. Held that the first two bequests were valid but the validity of the third bequest was doubtful. *Kaleoolo Sahib v Nusser udeen Sahib* 1 L R 18 Mad 901. *Zoolaka Bibi v Zynul Abedin* 6 Bom L R 1058 and *Bida Jan v Kalb Hussain* 1 L R 31 All 106 followed. Where the testator has indicated a general charitable intention in the bequest made by him and if the bequests fail, the Court can devote the property to religious or charitable purposes according to the Cyprus doctrine. *SALETHAI ABDUL KADER v DAI SAPIANU* (1911) I L R 36 Bom 111

3. — Bhagdari property—Will in favour of widow and daughter—Suit by a residuary heir of the testator for a declaration that the will was invalid—Bhagdari custom—Testamentary capacity of the owner—Rule of Mahomedan Law to be applied—Validity of the will. A Mahomedan Bhagdar made a will by which he purported to dispose of his entire property including Bhagdari property in favour of his widow and daughter. The plaintiff who was the residuary heir of the testator never consented to this form of the will. He therefore sued for a declaration that the will was invalid under Mahomedan Law so far as the Bhag property was concerned and that he was entitled to succeed to it after the death of

MAHOMEDAN LAW—WILL—contd

the widow under the Bhagdari custom. The question being raised as to what was the rule which regulated the testator's power to make the will. Held that the rule of Mahomedan Law was the only law which could be applied and according to it the will was invalid. The plaintiff was therefore the presumptive reversioner under the Bhagdari custom. *AHMAD AHMAD & BAI DINI* (1916) I L R 41 Bom 377

3(a) — Mother as de facto Guardian—If competent to alienate property of infant children—Intend of infant wife and child to set aside—Suit for recovery of property—Limitation Act (IX of 1881) s 17—A Mahomedan died leaving his widow and infant children. He had debts and to satisfy the decree obtained by one of the creditors against some of the heirs the widow acting on her own behalf and on behalf of her minor children sold a certain property and made over delivery of possession. The other creditors took no steps to enforce their debts by suits. The children on attaining majority sued jointly with the widow to recover possession of the property on declaration of title. Held that as laid down by the Judicial Committee of the Privy Council in *Imambandi v Mutuuddi* 1 L R 40 J A 73 s 1 L R 45 Cal 378 23 C W N 10 (1918) a mother has not power under the Mahomedan law to alienate or charge immovable property as de facto guardian of her infant children. If such an alienation is made it is not necessary for the infants to have it set aside within three years after attainment of majority under Art 44 of the schedule to the Limitation Act because the alienation must be deemed to have been effected not by a guardian but by a wholly unauthorized person. The infant whose property has thus been alienated is consequently entitled to institute a suit for recovery of possession within twelve years from the date of sale or within three years from the attainment of majority whichever may be the later date. That the decree for possession in favour of the plaintiffs should be conditional on repayment of a proportionate share of the ancestral debts which were payable out of the assets left by the original debtor and each heir with the exception of the widow who was competent to sell her own share and could not subsequently ignore her act was liable to satisfy the debt to the extent of the assets in his share. That the suit must fail so far as the plaintiff who attained majority more than three years before the sale having taken place fourteen years before. *LALOO HARIKAR v JAGAT CHANDRA SANA*

25 C W N 258

4. — Bequest's to heirs and to strangers—Civil Procedure Code (1908) O XXXI r 4—Legal representative—Alienation of suit in giving effect to the will of a Mahomedan which contains bequests to heirs and also to strangers the principle to be followed is that the bequests to the heirs will be invalid unless in each case they are as entailed by the other heirs but the bequests to the strangers will be valid to the extent of one third of the testator's property. Held also that an application to bring upon the record as representative of a deceased defendant a person who is not in fact such representative will be of

MAHOMEDAN LAW—WILL—*concl'd*

no avail to save the running of limitation in favour of the person who really is the legal representative
MUHAMMAD JUMAID v. AULIA BIBI

I L R 42 All 497

5 ——— Construction of document. A Muhammadan lady by her will devised certain property to her two brothers enjoining them to all the same and with the proceeds erect a mosque. The will however provided further that if the devisees preferred to keep the property themselves they could do so if they devoted the value of the property (given in the will at Rs 2500) to the construction of a mosque. Held on a construction of the will that the waqf created thereby was a waqf of the value of the property and not of the property itself and would not render the property exempt from sale in execution of a decree against the devisees. **MUHAMMAD ISMAIL v. MUHAMMAD ISHAQ**

I L R 43 All 508

6 ——— Will in favour of minor son with gift over in case of his death—effect of consent of minor's sisters—family arrangement. One M A S on 15th December 1907 made a will and died on 30th December 1907 leaving two daughters **Muhammad S B** and **Uul B** and an infant son **W A S**. By the will M A S devised all his property to his son **W A S** and he declared that in the event of his death his nephew **H A S** who was married to his daughter **Muhammad Uul B** should succeed to the entire estate. Both the daughters attested the will in token of their consent and they also expressed their assent to the will subsequent to the death of M A S. On the 10th April 1910 the son died and **Muhammad S B** then sued for her share in the property. Held that the will though originally invalid under Muhammadan law was validated by the daughters' assent to the will subsequent to the death of M A S and their infant brother **W A S** consequently took a vested and absolute interest in the estate devised to him by his father. Held also that the bequest over after the son's death in favour of **H A S** the testator's nephew was repugnant to Muhammadan law and could not be given effect to. **Abdul Karim Khan v. Abdul Qayum Khan** (I L R 28 All 312) followed. Held further that the consent of the daughters to the will was not given as a family arrangement and plaintiff was not estopped from claiming her share. **Muhammad Nuras Bibi v. Gulam Hussain Shah** (20 P L R 1901) and **Muhammad Umar Ali v. Amman Ali** (251 I L R 1911) distinguished. **NASIR ALI SHAH v. Muhammad SUMRA BIVI**

I L R 1 Lah 302.

MAHOMEDAN LAW—WORSHIP

Wahf—Right of Mahomedans to worship in mosques—Suit by individual Mahomedans whose right is infringed—Civil Procedure Code 1908 O I r 8. Every Mahomedan who has a right to use a mosque for purposes of devotion is entitled to exercise such right without hindrance and is competent to maintain a suit against anyone who interferes with its exercise but if he brings his suit in his personal capacity and not on behalf of the whole Mahomedan community the decision will be binding only as between the plaintiff and the defendant and cannot be taken advantage of by or be binding on the Mahomedan community in general. **Jawahar v. Altor Hussain** I L R

MAHOMEDAN LAW—WORSHIP—*cont'd*

7 All 178 and **Da ondhay v. Muhammad Abu Nasar I I I 33 All 660** followed. **PAN CHANDRA v. ALI MUHAMMAD** (1913)

I L R 33 All 197

MAHOMEDANS

Held that the sects known as Ahmadis or Khadims are Mahomedans. **HAKIM KHAN L. AHMAD v. MALIK JAFAR**

2 Pat L J 108

See LIMITATION ACT (IX of 1908) Sec 1

Art 127 I L R 41 Bom 583

MAHARATTA BRAHMI

See HINDU LAW—INHERITANCE.

I L R 43 Cal 30

MAIDEY'S PROPERTY

See HINDU LAW—SUCCESSION

I L R 38 Mad. 45

MAIDEN'S STRIDHAN

See HINDU LAW—SUCCESSION

I L R 39 Cal 319

MAINTENANCE

See CIVIL PROCEDURE CODE 1908—

s 60 I L R 43 All 617

O II R. 5 I L R 35 Bom 120

O XXI R. 4 s 14 and 15

2 Pat L J 55

See CRIMINAL PROCEDURE CODE (1898)

s 463 I L R 37 Mad 585

4 Pat L J 189

I L R 38 Mad. 472

I L R 43 Bom 585

See CUSTOM

I L R 2 Lah 243

See DIVORCE ACT (IV of 1869) s 37

I L R 30 Bom 182

See HINDU LAW—ADOPTION

I L R 39 Bom 528

See HINDU LAW—MAINTENANCE.

See HINDU LAW—WIDOW

I L R 36 Bom 383

I L R 39 Mad. 658

See MAHOMEDAN LAW—MAINTENANCE.

See MALABAR LAW

I L R 36 Mad 593

I L R 38 Mad. 79

See PARSIS

I L R 38 Bom 615

See PROVINCIAL SMALL CAUSE COURTS

ACT (IX of 1887) Sch II Art 41

I L R 40 All 135

See TALUKDAR RIGHTS OF

I L R 32 All 92

See TRANSFER OF PROPERTY ACT (IV of 1882) s 52

I L R 37 Bom 621

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—appears of—

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I L R 36 Bom 131

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MAINTENANCE—contd.

— charge of—

See CIVIL PROCEDURE CODE (ACT V of 1908) s 16 (d)

I L R 40 Bom 337

— decree for against a soldier—

See ARMY ACT (44 & 45 Vic c 58) s 14 & 190

I L R 43 Bom 368

— future including allowances right to—

See CIVIL PROCEDURE CODE (ACT V of 1908) s 60 (1) I L R 40 Mad 302

— Marumakkathayam law of—

See MALABAR LAW

I L R 36 Mad 593

— of child—

See CRIMINAL PROCEDURE CODE (ACT V of 1898) s 48^a

I L R 30 Mad 957

— of daughter—

See WILL I L R 38 Calc 327

— of junior members—

See HINDU LAW—MAINTENANCE

I L R 30 Mad 398

— of members other than the senior male in a tarwad—

See MALABAR LAW

I L R 39 Mad 317

— on gift by widow to daughter—

See HINDU LAW—PEYERHOVER

I L R 44 Bom 255

— right to—

See MALABAR LAW I L R 38 Mad 79

— right to get from husband's estate—

See HINDU LAW—MAINTENANCE

I L R 38 Mad 163

— separate—

See ALIYASANTANA LAW

I L R 30 Mad 203

— separate living member when entitled to—

See MALABAR LAW

I L R 36 Mad 591

— suit for—

See CIVIL PROCEDURE CODE (ACT V of 1908) s 16 (d) I L R 40 Bom 337

See PROVINCIAL SMALL CAUSE COURTS (ACT IV of 1887) Sch II Art 38

I L R 40 All 52

1 ——— Hindu widow—Hindu Law—Maintenance allowed by will of husband to wife—Unchastity of wife after husband's death—Maintenance not affected—Unchastity—Starving maintenance—A Hindu widow was entitled to maintenance at the rate of Rs 24 a year under her husband's will. After the husband's death the widow led for some time an unchaste life and gave birth to a child but since then she remained chaste. She sued to recover maintenance allowed to her under her husband's will. It was contended in reply that the plaintiff on account of the unchaste life which she had led for some time after her husband's

MAINTENANCE—contd

death had forfeited her right even to bare or starving maintenance. Held negating the contentions that though the annuity was granted by the will as maintenance that word could not be understood as imposing any condition or restriction so as to cut down or extinguish the right to Rs 24 a year given by the will. The rule that the will of a Hindu must be construed with due regard to Hindu habits and notions applies only where there is ambiguity. Caution must be used in applying that rule and it must be adopted only where a suggested construction of doubtful language leads to manifest absurdity or hardship. The general rule to be gathered from the texts is that a Hindu wife cannot be absolutely abandoned by her husband. If she is living an unchaste life he is bound to keep her in the house under restraint and provide her with food and raiment just sufficient to support life. She is not entitled to any other right. If however she repents returns to purity and performs expiatory rights she becomes entitled to all conjugal and social rights. In a case of adultery with a man of a lower caste in which case after expiation she can claim no more than bare maintenance and residence. *Monamma v Timannabhat* I L R 1 Bom 559 *Valu v Ganga* I L R 7 Bom 84 and *Vishnu Shamshog v Manjamma* I L R 9 Bom 108 discussed. *PAKSHI v MALADEVI* (1908) I L R 11 Bom 278

2 ——— Illegitimate son—Right of off spring of illegitimate son of a married woman to maintenance from the joint family property of the survivors of the putative father—Criminal intercourse effect of on right to maintenance. The offspring of the intercourse of a man with his concubine who was a married woman is entitled to maintenance against the surviving members of the joint Hindu family to which the father belonged and who have taken his share by survivorship. *Cheruturya Pun Murdun Syn v Sohul Purkulad Syn* 7 Moo I A 18 followed and *Muthuswamy Jagatara Yellappa Naicker v Venkataswara Yellaya* 12 Moo I A 203 followed. There is no distinction between the right of the illegitimate son of an unmarried woman to maintenance out of the estate of the putative father and that of the offspring of an adulterous intercourse. *Venkatachella Chetty v Parvatham* 8 Mad H C 134 143 followed. *Varavamuthudayan v Singaratelu* I L R 1 Mad 306 followed. *Kuppa v Singaratelu* I L R 8 Mad 320 followed. *Pahi v Govinda Valad Teja* I L R 1 Bom 97 followed. The offspring of a criminal intercourse should not be deprived of maintenance on the ground of the criminal origin of its being. *Vedana Jaga Mudaliar v Vedammal* I L R 2nd Mad 951 distinguished. *SUBRAMANIAM MUDALIAR v VELU* (1910)

I L R 34 Mad 86

3 ——— Future maintenance—Widow's right to transferable property—Right not one falling within s 6 Transfer of Property Act—Validity of transaction not governed conclusively by Act Civil Procedure Code s 276—Contract Act (IX of 1871) s 16—Undue influence. A right to future maintenance is not an interest in property restricted in its enjoyment to the owner personally within the meaning of paragraph (4) of s 6 of the Transfer of Property Act neither is it property the enabling that the transfer of such an interest by

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD 1 OF 1900)— —contd

§ 5 & 6—contd

Decree for ejectment—
Value for improvement ascertained and specified in the decree—Improvements effected subsequent to decree not ascertained—Application for execution by ejectment whether maintainable Where a landlord in Malabar obtained a decree for ejectment of his tenant on payment by him of an ascertained amount for compensation for value of improvements applied for execution of the decree by ejectment of the tenant after depositing into Court the amount specified in the decree for value of improvements held that the landlord was entitled to an order in execution for ejectment of the tenant from all the lands specified in the decree even though the value of improvements effected by the tenant on some of the lands subsequent to the decree had not been ascertained under s 6 (3) of the Malabar Compensation for Tenants Improvements Act SANKARAN VAMBADRIPAD V SANKARAN NAIR (1911) 1 L R 44 Mad 980

§ 5 & 6 to 19—Contract to claim compensation according to custom no special contract within the meaning of s 19—Tenant can claim higher rates under Act in spite of contract before Act preserving a lesser rate Where under a contract entered into in 1886 the tenant has agreed to accept compensation for improvements according to local custom such undertaking by the tenant is not a special contract within the meaning of s 19 of Madras Act I of 1900 which will debar the tenant from claiming under s 5 compensation as provided in s 6 18 Kerala Varma V Alia Rajah V Panam 3 Mal 1 J 51 referred to s 19 of Act I of 1900 deals only with contracts limiting the right to make improvements and claim compensation A mere contract regulating the rates of compensation whether before or after the 1st day of January 1886 is not touched by s 19 Where there is such a contract the tenant if the contract rates are lower than the rates provided in the Act can claim the latter rates under s 5 and if the contract rates are higher he can claim such rates notwithstanding s 6 of the Act KUNHIKOT SREEMANA A VIKRAMAN V CHUNDAYIL VANTA PATTAR (1910) 1 L R 34 Mad 61

§ 5 and 19—Compensation rate of for tenant's improvement—Compensation amount of methods of fixing—Contract made before 1st January 1886—No express reference to tenants right to make improvements—Contract less favourable to tenant than s 5 and 6 of the Act—Contract not binding—s 5 and 6 applicable? Where a contract entered into between a landlord and a tenant in Malabar before the 1st January 1886 regulated the rates of compensation claimable by the tenant for improvements or provided for the methods of fixing the amount of compensation due to him but did not expressly refer to the tenant's right to make improvements Held (by the Full Bench) that the contract is not binding on the tenant if it is less favourable to him than s 5 and 6 of the Malabar Compensation for Tenants Improvements Act (1 of 1900) and that the tenant is entitled to claim compensation according to the provisions of the Act Held also that there is no inconsistency between the judgment in Pandurupuril Kunhiyore v Voth Kani Kanan 1 L R 32 Mad 1 and the judgments in A. H. Sreemana

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD 1 OF 1900)— —contd

§ 5 and 19—contd

Vikraman v Madathil Anant 1 All 1 J 1 J 34 Mad 61 and Parasamma v Mothoram 2 Mad 1 J 2 J and that the two latter mentioned cases were rightly decided KUCHI LALIA V ANDRAN MAY (1913) 1 L R 38 Mad 589

§ 5 & 6 to 18 and 19—Right to compensation—Contract to the contrary made before 1886 effect of—Distinction between restriction of right to make improvements and of right to the value of improvements—Validity of each restriction Under the provisions of the Malabar Tenants Improvements Act (Madras Act I of 1900) a tenant is entitled to the full value of his improvements according to the rates provided in s 5 to 18 s 19 does not cut down his right under s 5 and 6 to the value of his improvements according to the rates prescribed in the Act even where a contract was entered into before 1st January 1886 limiting his right with respect to the amount of compensation claimable by him Accordingly a restrictive provision in a document limiting the amount of compensation cannot be enforced. But contracts made prior to January 1886 limiting the right to make improvements are not affected by s 19 and are valid A. H. Sreemana v Kuchil Sreemana Vithman v Chundayil Madathil Anant Patter 1 J P 34 Mad 61 followed Held on a construction of the following provision in a landlord's lease of 1881 If I make chasmayams (or buildings) thereon exceeding Rs 25 in value I shall only remove and take them at the time of surrender and I shall not demand the value of improvements therefor that the meaning of the clause was not to restrict the landlord from building but to restrict his right to the amount of compensation if he built Rs 25 if he is content to take it regard being had to the amount of any right on the landlord to require the tenant to remove any building worth more than Rs 25 Per CURRIE The provision for removing is merely a recognition of the right which a landlord has always possessed to remove any improvements made by him Arqammar v Islami Sahib 21 Mad 1 J 591 referred to PARU VIKRAMA V KUNHIRANDAN (1913) 1 L R 36 Mad 410

§ 7—Stipulation in lease to receive compensation at ordinary rate does not exclude operation of the Act—Rate of compensation claimable is that prevailing when compensation is paid The terms of a lease executed before the passing of Madras Act I of 1887 provided that the tenant at the time of surrender should receive compensation for fruit trees at the customary rate Before the surrender Madras Act I of 1887 was passed and provided a rate of compensation for fruit trees In a suit by the tenant to recover compensation under the lease Held that the stipulation aforesaid did not exclude the operation of the Act there being no such special contract as is contemplated by s 7 of the Act and that compensation must be paid at the rate provided by the Act KERALA VARMA VALLA V ONDAN RAMUNNI (1891) 1 L R 33 Mad 218

§ 19—

See REGISTRATION ACT 1908 s 90

1 L R 43 Mad 65

Claim subsequent to

Act—Contract before the Act fixing rate of compensation

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD I OF 1900)—contd

s 19—contd

Enforceability of contracts entered into between a Malabar tenant and his landlord before the 1st January 1880 according to which compensation is payable at certain rates therein specified are valid and binding whether the rates are more or less favourable to either party than the rates prescribed by the Malabar Compensation for Tenants Improvements Act (Madras Act I of 1900) and when the question of the rate of compensation comes up for determination at a date after the introduction of the Act it is not open to either party to the contract to elect to have the rates fixed according to the Act in preference to the rates mentioned in the contract. *Ko hilot Sree nana Vickraman v Modathil Ananta Potter I L R 31 Mad 61 Paru Amma v Kunhikandan I L R 36 Mad 410 and Kochu Raba v Abdurahman I L R 38 Mad 589 overruled PALARATTA ATYOTI v KALAPPA KURUP (1916)*

I L R 40 Mad 594

*Lease—Stipulation for payment of fee in respect of trees cut down. A stipulation in a Malabar lease for the payment of *tuksanam* (customary fee) to the landlord in respect of trees cut down is not necessarily contrary to the provisions of s 19 of the Malabar Compensation for Tenants Improvements Act (Madras Act I of 1900). It is a question of fact to be determined in each case whether the cutting down of trees is an improvement or not and whether the fee stipulated is reasonable or so unreasonable as to be prohibitive of the cutting down of trees at all.* *Semle A* customary fee of eight annas per tree is not unreasonable. *Lasudevan Nambudripad v Iaha Channu Achari I L R 24 Mad 17* considered *RAJA of COCHIN v KUTUNNI NAIR (1916)* I L R 40 Mad 603

Compensation for tenants improvements—Contracts made after Act more favourable to tenant than the Act—Contract or Act enforceable—Value whether at the time of eviction or at date of contract payable. S 19 of the Malabar Compensation for Tenants Improvements Act does not prevent the tenant from claiming compensation under a contract made after passing of the Act if it is more favourable to him than the Act. The value of improvements payable to a tenant is their value at the time of eviction. *Kerala Varnah Vala Raja v Rimmun (1923) 3 M I J 11 (F B)* followed *ANNAI v ANNAI v RAMAN NAIR (1910)*

I L R 43 Mad 772

MALABAR LAW

See MAPPILLAS IN NORTH MALABAR

I L R 38 Mad 1052

See MARI MANKATTAYAM LAW

I L R 34 Mad 387

I L R 35 Mad 648

See MORTGAGE

I L R 37 Mad 420

Acquisition by manager of branch tarwad of the whole tarwad—Property acquired by anandavara to be deemed property of the tarwad in the absence of evidence to show self-acquisition. The rule of Hindu Law that if nothing appears in the case except that a member of a joint

MALABAR LAW—contd

family is in possession of property the burden of proving self-acquisition lies on such person applies to property in the possession of an anand ravan of a Malabar tarwad. Where such anand ravan is also the manager of a branch tarwad and was in possession of funds belonging to such branch the presumption will be that such property belongs to the branch. *MARI VEETIL CHATHU NAIR v MARI VEETIL MULAMPAROL SEKARA NAIR (1909)* I L R 33 Mad 250

Karamkari tenure in South Malabar—Alienation by tenure holder effect of alien in the absence of clause for re-entry. A holder of land on Karamkari or Karamkari tenure in South Malabar has only a heritable or permanent right of cultivation but not a right of alienation which event puts an end to the tenure and he is entitled to the reversion is entitled to possession thereupon even in the absence of an express provision for re-entry. *Moore v Malabar Law and Custom* page 304 referred to *Parameshwari v Vittalappa Shandaga I L R 26 Mad 157* and *Varapal Singh v Kalyan Das I L R 25 All 400* distinguished. *Other A karamkari holder in North Malabar has no heritable right at all.* *ACHUTHA MENON v SANKARA NAIR (1913)* I L R 36 Mad 380

Want of harmony among some members—Separate living of one—When entitled to separate maintenance. A junior member of a Malabar tarwad leaving the tarwad house on the ground that he or she does not feel quite comfortable there or is not able to live there in complete harmony with others so as to ensure happiness is not entitled to separate maintenance if he or she was responsible for the discomfort complained of. When a junior member will be entitled to separate maintenance considered *KUPPOTI v ANANT (1913)*

I L R 36 Mad 591

Maintenance—Wife living in her husband's house leaving tarwad house—Right to maintenance from her tarwad. According to Marumakkathayam law a wife living with her husband in her husband's house is entitled to maintenance from her tarwad in the absence of any waiver to claim the same as leaving the tarwad house to live with her husband is a justifiable or proper purpose. *Maraude v Panikkar 22 Mad L J 99* followed *Taravali v Karaman I L R 6 Mad 341* referred to *Obiter*. The Marumakkathayam law of maintenance is the same as the Aliyathana law prevailing in South Canara. *MUTHU ANNA v GOPALAN (1917)* I L R 36 Mad 593

Females self-acquisition descent of to her own heirs and not to tarwad—Tarwad meaning of. The self-acquisitions of a female member of a Marumakkathayam tarwad do not lapse on her death to her tarwad, but descend to her tarwad which will be her issue if she has any and in the absence of the issue will be her mother and her descendants. *Taravathi defined* *Chandana Nair v Sankaran Nair I L R 39 Mad 351* distinguished *Umaranga v Appadurai Palar I L R 31 Mad 38* overruled *KRISHNA v RAMODARAN (1912)*

I L R 38 Mad 48

Suit against managing member of tarwad—Tarwad properly in suit for maintenance.

MALABAR LAW—contd

*ance—Gift by husband to wife—Mentor of children—Interest taken by wife and her children—Right of husband to—Custody of child of gift—A member of a tavazhi is entitled to sue the managing member of the tavazhi for his maintenance if maintenance is refused by such managing member where the karnavan of the tavazhi is unable to maintain him the member out of tavazhi property. It is immaterial whether the member of the tavazhi seeking maintenance has private means sufficient to provide for him an adequate maintenance without necessity of recourse to the tavazhi property. *Idrakka v. property* is held by the members of the tavazhi to which he belongs with the ordinary incidents of tavazhi property. *Per ANDRA RAHIM J.*—In view apart from the fact whether there is sufficient property of the tavazhi to which a member of a tavazhi can look for maintenance he has a right to demand an allowance in the nature of maintenance from the tavazhi property if maintenance is not a mere subsistence allowance. It should be based on the value of the tavazhi property the position of the members and not confined to what is just sufficient to satisfy the needs of the members. A member of a tavazhi is entitled to an allowance for maintenance both from the tavazhi and tavazhi properties. Where a deed of gift in favour of a woman is clearly expressed to be to her and her children there is no argument for construing it as conferring on the donee an absolute title to the property given where the donee is the wife of the donor and a member of a Marumakkattayam tavazhi. It makes no difference that the karnavan of the tavazhi joined in the gift. In estimating the amount of the income of the tavazhi property out of which maintenance is payable the interest payable upon debts binding on the tavazhi should be deducted but not interest on debts contracted after the period for which maintenance is claimed. *NAKU AMMA v. RAQHAYA MEYON (1919)* I L R 38 Mad 79*

*Male sues her leaving tavazhi for her to her wife—Right of such member to separate maintenance—Special claim for settlement on a higher footing than one for maintenance. A male member of a Malabar tavazhi leaving the tavazhi house for the purpose of living with his wife is entitled to separate maintenance from the tavazhi. A claim to *menchuaru* is on the same footing as a claim to maintenance. *GOVINDAN NAIR v. KUNJU NAIR (1911)* I L R 42 Mad 656*

*Figure of a member of a tavazhi to separate maintenance—Female member arriving under Malabar Marriage Act (II of 1896)—Act which bars a claim for maintenance from a tavazhi. The right of every member of a Malabar tavazhi to be maintained out of the tavazhi property is based on his or her right as a co-proprietor in the same and a female member of the tavazhi is not deprived of such right by reason of her marriage under the provisions of the Malabar Marriage Act (II of 1896). *AMMANI AMMA v. LADMANABHA MEON (1911)* I L R 41 Mad 1075*

Claim by an arandrayan for services of merchandise—For his wife and his wife's ability. An arandrayan of a Malabar tavazhi is not entitled to claim maintenance from his tavazhi for his wife who belongs to another tavazhi and much less is he entitled to claim for her any pocket money for

MALABAR LAW—contd

meeting expenses other than maintenance. *Per RAJU v. KARNAN I L R 11 Mad 311* referred to and explained. An arandrayan is entitled to a decree from his tavazhi for arrears of his merchandise which in his hands on the same footing as arrears of maintenance. *KUNJANNAH v. KUNJI KUTTI I L R 11 Mad 233* *Idrakka v. Kunkil Flom Idrak v. Kunkil Flom Idrak I L R 11 Mad 233* and *CORRIAN NAIR v. KUNJU NAIR 35 W L R 11* followed. *RAJU v. KARNAN v. THAMERANNI (1919)* I L R 42 Mad 769

*Family of a member—No liability of sons to pay the father's debts. A Namudra family differs in many respects from an ordinary joint Hindu family on account of the impartiality of its property and its close resemblance to a Hindu family. The rule of Hindu Law which imposes the duty on a son to pay his father's personal debts whether legal or immoral is not applicable to Namudras and the mere fact that there are no other members in the Namudra family does not affect the principle. *Idrakka v. Madhavan I L R 10 Mad 3* and *CORRIAN NAIR v. KUNJU NAIR I L R 11 Mad 233* followed. *Kunkil Flom Idrak v. Kunkil Flom Idrak I L R 11 Mad 233* considered. *Idrakka v. Kunkil Flom Idrak I L R 11 Mad 233* distinguished. *KUNJANNAH v. KUNJI KUTTI I L R 11 Mad 233**

*Partition—Tavazhi—Division by tavazhi—Right of minor members to upset partition—Division per stirpes at not per capita—Father sues for ground—Authority in favour of division per stirpes or per capita—Tavazhi range of members of a Malabar tavazhi who are minors when a partition was made with the consent of all the adult members at the time cannot upset the partition on the ground that the division was per stirpes and not per capita. *Idrakka v. Kunkil Flom Idrak I L R 11 Mad 233* and *Idrakka v. Kunkil Flom Idrak I L R 11 Mad 233* referred to. *Idrakka v. Kunkil Flom Idrak I L R 11 Mad 233* referred to. *Idrakka v. Kunkil Flom Idrak I L R 11 Mad 233**

*Trade carried on by karnavan of a Mappila tavazhi—Dissuade by the karnavan in the trade whether binding on other members. Trade is not one of the ordinary pursuits of a Malabar tavazhi and carrying on trade is not within the ordinary scope of authority of a Malabar karnavan. Hence in the absence of evidence that a trade carried on by a karnavan has been the trade of the tavazhi as a whole or that the members of the tavazhi or at least the adult member thereof consented to the trade being carried on by the karnavan the other members of the tavazhi are not bound by the liabilities incurred by the karnavan in connection with the trade. This rule applies even in the case of a Vapirilla tavazhi where all the male members habitually follow trade as their ordinary avocation. *ABDULREHMAN KUTTI NAIR v. HUSSAIN KUNJI NAIR (1919)* I L R 42 Mad 761*

Gift—Pre-emption—Incident of land and property—Right of management in the senior male—Share of other member—Right to partition—Alienation of members' share—Its effect on sale execution. When properties are given by a person to his wife and children

MALABAR LAW—contd

or children alone following the Marumakkattayam law the presumption is that the donees take the property with the incidents of tarwad property and the right of management of the properties forming the subject of the gift is vested in the senior male member amongst the donees. Persons subsequently born in or the tarazhi are entitled to be maintained but not to claim partition. Any one member of a tarwad or a tarazhi cannot alienate his share nor can it be attached and sold in execution of a personal decree against any of the members. *See* SRINIVASA AYYANGAR J.—It is not the giving of the properties by a person to his wife and children that constitutes the tarwad but if properties are given to a wife and children following the Marumakkattayam law they as tarazhi hold those properties with the incidents of tarwad property and the right of management of the properties is vested in the senior male member of the tarazhi. *Kurlacha Umma v Kullu Mammi Hayer* I L P 16 Mad 291 followed *CRAEKEA KANNAN v KUTHE IOKKAR* (1913) I L R 39 Mad 317

Gift by a husband to his wife and her children by him—Donees whether exclusively entitled as a branch tarazhi—Rights of her children vs another husband—Rights of tarwad to such property—Adverse possession by branch tarazhi against tarwad—Under the Malabar Law a separate branch of a tarazhi can be established consisting of a woman and her children by one husband to the exclusion of her children by another husband. *Dictum of SADASIYA AYYAR J in Chakkra Kannan v Kunhi Pakker* I L P 39 Mad 31, followed. Where a husband gives property to his wife and his children there is no presumption that he intended to benefit her children by a former or subsequent husband in the absence of any expression of such intention. Where the suit property was acquired in the name of a woman and her son by a second husband out of the income of properties given by the latter to her and her children by him and it appeared that they had dealt with the properties for forty years exclusively although there were members of the tarwad senior to them and a suit was instituted by the karnavan of the whole tarwad to redeem the properties as belonging to the entire tarwad. *Held* that the properties belonged in law to the branch of the tarazhi of the woman and her children by her second husband and that the branch tarazhi had also acquired title to the suit properties by adverse possession against the tarwad of which the plaintiff was the present karnavan. *IMBICHI BEERU UMMA v RAMAN NAIR* (1919) I L R 42 Mad 869

Karnavan—Junior members—Kanom—Fidemption suit for—Suit by junior members whether sustainable—Transfer of Property Act (II of 1882) s 91—Interest to redeem—Only under very special circumstances can junior members of a Malabar tarwad following the Marumakkattayam law maintain a suit for the redemption of a kanom granted by their karnavan. *SOORI MATHEWAS* (1909) I L R 43 Mad 293

Karnavan—Lease for year before expiry of a prior lease—No necessity of justification for such lease—Expiry of prior lease when grantor was karnavan effect of on subsequent lease—Lease whether valid or binding on

MALABAR LAW—contd

succeeding karnavan Where a karnavan granted a lease to take effect on the expiry of a prior lease whose term was to expire four years later and it was found that there was no necessity or justification for granting the subsequent lease four years prior to the expiry of the term of the prior lease. *Held* that the subsequent lease was not valid or binding on the succeeding karnavan even though the prior lease expired when the grantor continued to be the karnavan. *KUNHAM MADU KUTHEVARI* (1920) I L R 43 Mad 715

Karnavan removal of from office—Senior arandavan—Exclusion from succession to office of karnavan—Power of Court to declare senior arandavan unfit to succeed to office—Grounds of exclusion—A Court can for good cause remove a karnavan and declare the senior arandavan to be unfit to succeed to the vacant office. *Kunhan v Sankara* (1891) I L R 11 Mad 78 followed *Chundan Nambiar v Kunhi Paman Nambiar* (1918) I L P 41 Mad 577 (S B) referred to dictum of SADASIYA AYYAR J in *Cheria Pangi Achan v Unnalachan* (1917) 37 M L J 333 dissented from *NEELAYYA KUDRE v ACHU HENGU* (19-0)

I L P 43 Mad 319

Karnavan of tarazhi making a gift—Gift not questioned even by the last surviving member of the tarazhi—No right of attaladakkam hers to question gift—An attaladakkam her succeeds only to such of the properties of a tarazhi as have not been disposed of by its last members. He cannot therefore question an alienation made by the karnavan of the tarazhi when the other members had not by any unequivocal act called it into question during their lifetime. *THAYIAL MAMMAD v PURAYIL MAMMAD* (1921) I L R 44 Mad 140

Right of other members to remove such karnavan by suit for misconduct—Held by the Full Bench that a person appointed as karnavan of a tarazhi by an agreement (karni) of the members of the tarazhi is liable to be removed for gross misconduct by a suit at the instance of the other members. *Cheria Pangi Achan v Unnalachan* (1911) Mad W N 155 explained *CHINDAV NAMBIAI v KUNHI PAMAN NAMBIAI* (1918)

I L R 41 Mad 577

Kanom—Lease or mortgage—Deed of taraga construction of—Attestation of deed necessary for—Transfer of Property Act s 89 and 90—Anomalous mortgage—Civil Procedure Code (I of 1908) O 1 r 9—Non-judicial of parts—Decree against parts on appeal—A kanom is an anomalous mortgage falling under s 98 of the Transfer of Property Act with certain well known incidents attached to it under the customary law of Malabar and a kanom deed to be valid must be attested as a mortgage deed under s 59 of the Act. The fact that the document is described as a taraga or royal grant or that the kanom amount is exceedingly insignificant does not alter the nature of the transaction. *KANVA KUDRE v SANKARA NAYMA RAJAN* (19-1)

I L R 44 Mad 841

Conversion of a member of Marumakkattayam tarwad to Marumakkattayam—Right of convert to partition of tarwad property—Removal of a member of Marumakkattayam tarwad does not prevent his conversion to

MALABAR LAW—*concl'd*

Muhammadanism acquire right to a partition of the tarwad property *Observation of Wilson J in Munir v Gupta & Jam Kutton Poy (189) 1 I L J 19 Calc 59 (F B) at 291 followed in Krichchikan v Lydia Arucanden (1919) 11 W N 26 and Abraham v Abraham (1963) 9 M I A 195 explained LATHUMA & LAMAR NAMBIAR (1921) 1 I L R 44 Mad (F B) 891*

Tarwad—Karnavan becoming a stani—Succeeding Karnavan incapable of business management—Karnav v tinj management in stani—Renewal of an old deed by Karnavan validity of Per SESHAGIRI AYYAR J (NAPIER J dubitante)—An arrangement among the members of a Malabar tarwad by which a previous Karnavan who had become a stani was given certain specific powers of management in respect of the tarwad without any express power to obtain renewals of mortgages in favour of the tarwad does not deprive the actual Karnavan however incapable he may be of the power of renewing usufructuary mortgages in favour of the tarwad The renewal being binding on the members of the tarwad they cannot set up adverse possession but must submit to a redemption by the mortgagor The relation to the tarwad of a member who had become a stani discussed Chappan Nayor v Asen Kutti 1 I L J 12 Mad 219 doubted KRISHNA KIDAYU v RAMAN (1915) 1 I L R 39 Mad 918

Taraga Lease for reclamation and improvement by a stanomdar for twelve years with a clause for renewal for another twelve years validity of A taraga lease in Malabar given for reclaiming and improving lands contained the following clause by the lessee— I shall well improve this pambra and plant etc when the improvements have survived the period of decay and the coconut trees begin to bear their first fruits I shall take a taraga after fixing the rent in accordance with the local custom on an inspection of kuhikanoma Held that the clause entitling the lessee to a renewal of the lease for twelve years from the expiry of the first term of twelve years at an enhanced rent to be determined in accordance with it Copalan Nayor v Kunjan Menon (1907) 1 I L R 39 Mad 300 distinguished A stanomdar is entitled to grant a lease so as to last beyond his life time and to bind his successors provided the lease is beneficial to the estate KUTTIYAL & UMMAHMA (1921)

1 I L R 44 Mad 509

MALABAR MARRIAGE ACT (IV OF 1896)

See MALABAR LAW 1 I L R 41 Mad 1075

**MALABAR TENANTS IMPROVEMENTS ACT
MAD I OF 1900**

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT

MALE HEIRS

failure of—
See JAIGIR 1 I L R 46 Calc 683

MALE MEMBERS

rights of—
See GHATWALI TENURE

MALICE 1 I L R 46 Calc 362

See LIBEL 1 I L R 37 Calc 768
1 I L R 48 Calc 304

MALICE—*cont'd*

See MARRIAGE CONTRACT OF
1 I L R 39 Bom 682

absence of—
See SECRETARY OF STATE FOR INDIA
1 I L R 39 Ind 781

charge of—
See TRESPASS—SEARCH FOR ARMS
1 I L R 30 Calc 653

MALICIOUS ARREST

See IMITATION 1 I L P 40 Calc 598

MALICIOUS PROSECUTION

See BENGAL TENANCY ACT 1880 s 64
1 Pat L J 149

See CRIMINAL PROCEDURE CODE s 107
1 I L R 41 All 503
1 I L R 43 All 402

See DAMAGES SUIT FOR
14 C W N 86

See INJUNCTION 1 I L R 42 Calc 550

statement of appeal regarding—
See CIVIL PROCEDURE CODE s 411
23

1 I L R 44 Mad. 828

1 — Cause of action—Complaint laid but no process issued Where in a suit for malicious prosecution it was averred that a complaint had been laid by the defendant before a Magistrate who thereupon sent the case to the police for enquiry and report but there was no averment that the Magistrate had ever issued process—Held that the plaint disclosed no cause of action *Laties v Jie Queen L R 14 Q B D 648 followed Clarke v Postan 6 C & P 43 and Ahmedbhai v Framji, Edulji 1 I L R 28 Bom 296 not followed Thorpe v Pritchard (1897) 1 Q B 159 referred to DEL OZARIO & GULAB CHAND ARUNDJEE (1910) 1 I L R 37 Calc 358*

2 — Complaint laid but no process issued—Action on the case—Cause of action—Criminal Procedure Code (Act V of 1898) ss 202 203—Defamation—Privilege Where a complaint had been laid before a Magistrate by the defendant against the plaintiff for criminal breach of trust and the Magistrate had referred the matter to the Police under s 202 of the Criminal Procedure Code for enquiry and report and finally dismissed the complaint under s 203 of the Criminal Procedure Code without issuing process—Held that the prosecution had not commenced and no suit for malicious prosecution was maintainable *Laties v The Queen L R 14 Q B D 618 and Clarke v Postan 6 C & P 493 referred to Nor would there lie any action on the case analogous to malicious prosecution Held further that the complaint even if defamatory was absolutely privileged GOLAP JAY & BHOLANATH KHETTRY (1911) 1 I L R 38 Calc 680*

3 — What is to be proved—Onus on plaintiff—What amounts to malice—R cases near or what amounts to malice In a suit for damages for malicious prosecution it is not on the defendant to show that there was reasonable and probable cause but on the plaintiff to prove its absence All that the defendant has to be satisfied about is that there is reasonable

MALICIOUS PROSECUTION—contd

and probable cause for the charge is reasonable grounds for believing that the plaintiff is guilty of the offence and not reasonable grounds for coming to the conclusion that the Court would convict him of it. Careless on the part of the defendant in deciding whether there was reasonable and probable cause would not amount to malice and both malice and absence of reasonable and probable cause have to be proved. If a man is reckless whether the charge be true or false that might amount to malice but not recklessness in coming to the conclusion that there was reasonable and probable cause. What would amount to reasonable and probable cause is a question of fact. **VIDYANADIER v KRISHNA SWAMI LYER** (1913) 1 L R 36 Mad 375

3 (a) ————— Where complaint was made in the Police Court against the Plaintiff for criminal breach of trust and the Magistrate referred the matter to the Police for enquiry under s 202 of the Criminal Procedure Code and after such enquiry refused to issue process. Held that a suit for malicious prosecution would not lie as unless process is issued the person complained against cannot be regarded as an accused person. **GOLAP JANI v BHOLA NATH BHETRY** 15 C W N 917

4 ————— *Suit for damages for—Onus—Plaintiff if must prove innocence—Judgment of discharge by Criminal Court if conclusive* The plaintiff in a suit for damages for malicious prosecution has amongst other matters to prove his innocence if only to establish that the prosecution was commenced maliciously and without reasonable and probable cause. The finding in the criminal case acquitting or discharging him is not conclusive on the matter. **PER BOWEN L J in Abrah v North Eastern Railway Co** 11 Q B D 440 455 approved. **Gunesb Dutt Singh v Magisteram Choudry** 17 H R 280 Corra v Peria (1905) 1 App Cas 643 referred to. **MUCHI OSTA v BORSMILL MARWATI** (1912) 13 W N 434

5 ————— *Definition of offence—Criminal Procedure Code prevention of offence—provision for—Malicious proceeding under such provisions if sufficient basis for suit—Prosecution meaning of* It is not that an action for damages for malicious prosecution lies only when the original proceeding was a prosecution in the sense in which the term is used in the Code of Criminal Procedure it is not essential that the original proceeding should have been of such a nature as to render the person against whom it was taken liable to be arrested, fined or imprisoned. Where there has been a deliberate abuse of the process of the Criminal Court and salutary provisions framed by the Legislature to secure the prevention of offence have been utilized maliciously and without reasonable and probable cause for the harassment of the plaintiff who has thereby suffered damage in reputation and property an action for malicious prosecution or malicious abuse of judicial process is maintainable. **PER MOOREHEAD J**—An action for maliciously putting the law in motion lies in all cases where there is concurrence of the following elements: (i) the commencement or continuance of a criminal proceeding (ii) its legal causation by the present defendant against the plaintiff who was injured

MALICIOUS PROSECUTION—contd

ant in the original proceeding (iii) its bona fide termination in favour of the present plaintiff (iv) the absence of probable cause for such proceeding (v) the presence of malice therein (vi) damage conforming to legal standards resulting to the plaintiff. **Abrah v N E Ry Co** 11 App Cas 247 Cor v Enchell Scottish and Australian Bank [1905] 1 App Cas 168 referred to. Any enforcement of the criminal law through Courts of Justice concerning a matter which will subject the accused to prosecution without regard to the technical form in which the charge has been preferred and irrespective of the grade of the criminal offence is a sufficient proceeding upon which an action for malicious prosecution may be based. **Elst v Smith** 2 Chitty 304 24 P R 39 Leiah v Webb 3 Esp 161 referred to. **PER BEACH CROFT J**—If a person sets the criminal law in motion it is no defence for him to say that the law took a direction which he did not anticipate and did not desire. The responsibility of the person begins with the presenting of the complaint but it does not end there and is not limited to the prayer contained in it. **CROWLEY v L O PELLER** (1912) 17 C W N 554

6 ————— *Prosecution what amounts to—Magistrate sending only notice but not summons or warrant and dismissing complaint no prosecution—Criminal Procedure Code (Act 1 of 1898) s 90* Where on receiving a complaint of an offence of defamation a Magistrate issued only a notice but not a summons or a warrant to the accused which notice simply informed him that a preliminary enquiry would be held at a certain time in the matter of the complaint preferred by the complainant and the complaint was dismissed under s 202 Criminal Procedure Code after hearing counsel for both parties. Held that there was no prosecution of any offence by the complainant so as to give room for any suit for malicious prosecution. **LEEL v Chhab Choud Arvind** 1 P 3 Cal 461 1 Jan v Fiddall Atterly 1 J J 45 (alt 450) followed. Sending such notice and the hearing thereon are not authorized by the Criminal Procedure Code. Prosecution commences with the issue of process (summons or warrant) after the complaint has been entertained by the Magistrate and that the prior proceedings constitute at most an attempt by the complainant to prosecute the accused. **SHRI BHEEPAI SHARMA v RATNAVELL MUDALI** (1912) 1 L R 37 Mad 161

7 ————— *Suit for damages—Prosecution what it means and when commences—Accused attended at judicial enquiry upon notice given by the prosecution on failure of prosecution* The action for damages for malicious prosecution is not a creature of any statute. To determine whether such an action lies the term 'prosecution' should not be interpreted in the restricted sense in which it is used in the Code of Criminal Procedure. A proceeding maliciously taken against a person to compel him to furnish surety to keep the peace may be made the foundation of a suit for damages for malicious prosecution. A prosecution exists when a criminal charge is made before a judicial officer or tribunal and an accused person who male or is active in the matter in the making or prosecuting of such a charge is directed to prosecute it. If a person maliciously and without reasonable and probable cause sets the

MALIKANA—contd

—Presumption of jagir by Government—Permanent settlement of specific mouzaks—Malikana allowance is liable to alteration Jagir Meherullah Khan was granted by Emperor Alamgir out of an estate belonging to the appellant's predecessors who thereupon became entitled to an allowance by way of compensation known as *dastur* or *malikana*. The East India Company on acquiring the Dewani made enquiries regarding the amount of the *malikana* due on account of this and other jagirs and by parwanas fixed the *malikana* due on this jagir at Rs 736 odd calculating it at 10 per cent of the proceeds for the year 1778. Held on construction of the parwanas that what was fixed was the amount and not a percentage varying from year to year with the proceeds. That the Government on resuming the jagir became liable to pay this *malikana* but when subsequently it caused Mouzah Sahu one of the mouzahs comprised in the jagir to be permanently settled it incurred no liability to pay an additional sum as *malikana* due in respect of the mouzah. That the fact that a specified sum of Rs 482 was entered as *malikana* in an account attached to the settlement did not show that the *malikana* as fixed previously was thereby altered but that it was merely one of the items to be taken into account in fixing the annual jumma to be paid by the person with whom the settlement was made. **PANESHWAR SINGH v THE SECRETARY OF STATE FOR INDIA (1911)**

15 W N 1029

—Interest in immovable property—Money charged on immovable property—Limitation Act (XIV of 1859) s 1 (IX of 1871) Art 130 Sch. II—Right not exercised for more than 12 years before Act IX of 1871 came into operation—Right barred Under Act XIV of 1859 *malikana* was an interest in immovable property and governed by Act XIV of 1859 s 17 and would be barred if there had been no enjoyment of the *malikana* for a period of 12 years. *Bhoole Singh v Veemoo Behoi* L R 418 G 1 and *Chander Roy Choudhary v Ram Chunder Choudhary* 19 W R 91 and *Hira d Shoo v Oeru* 31 W R 102 followed. Where there was the right to *malikana* was established by decree of Court in 1855 but the right was not enjoyed for more than 12 years before Act IX of 1871 came into force the right was extinguished under Act XIV of 1859 and could not be revived by any subsequent statute of limitation. *Chhagan Lal v Bapubhai* I L R 3 Bom 63 distinguished. **MAHESHWARI PRO HAD SINGH v BAIJ NATH HAZARI (1912)**

19 C W N 410

—When the *malikana* dars of 10 is odd here of a certain village used the proprietors and remaining *malikana*dars for recovery of arrears of their share it was held following the analogy of s 148 A of the Bengal Tenancy Act 1886 that the plaintiffs were entitled to a decree giving them a charge on the land and that the suit was governed by the 12 years rule of limitation. **MAHARAJA BIR RAMPSHAR SINGH v CHAUDHARI SURAJ NATH JHA**

6 Pat L J 35

MALIK QABIZ

See HINDU LAW—WILL

I L R 55 All 44b

MAMLATDAR

See CIVIL PROCEDURE CODE (ACT V OF 1908)—

ss 3 115 L R 37 Bom 114

s 115 I L R 44 Bom 595

O XI R 89 I L R 44 Bom 50

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 19(1)(c)

I L P 39 Bom 310

See REVENUE JURISDICTION ACT (BOM ACT V OF 1876) ss 4(c) 5 AND 6

I L R 37 Bom 540

MAMLATDARS COURTS ACT (BOM ACT II OF 1906)

See BOMBAY MAMLATDARS COURTS ACT

See LIMITATION ACT (IX OF 1908) ART 47

I L R 45 Bom 1135

—s 19 23 (1) (2)—Civil Procedure Code (Act V of 1908) s 115—Petitionary suit—Decree of the Mamlatdar dismissing the suit—Application to the Collector—Revision—Non interference with legal and regular finding of fact—Entry in Revenue Record A Collector acting under s 23 of the Mamlatdars Courts Act (Bom Act II of 1906) is not authorized to interfere with the finding of fact of the mamlatdar in a promissory suit the findings being on their face legal and regular and arrived after a consideration of the evidence on record. The provisions of cl (2) of s 23 of the Act which empower the Collector to interfere by way of revision when he considers any proceeding final or order in a suit to be improper must be harmonized with the provision in cl (1) that there shall be no appeal from any order passed by a Mamlatdar. *Semble* The word improper in cl (1) of s 23 of the Mamlatdars Courts Act (Bom Act II of 1906) has no different meaning from the word irregular occurring in the provision irregularity in s 115 of the Civil Procedure Code (Act V of 1908). The entry of a person as owner or occupier in the books of Revenue Authorities is not in itself conclusive evidence either of title or possession. *Fatma khatun Sahel v Darya Sahel* 10 Bom II (187 189) and *Bhagoo v Bapji* I L P 13 Bom 75 referred to. **KASHI RAM MALHOTRA v PARAPAM (1911)**

I L R 35 Bom 457

s 23—

—Powers to revise—Collector's powers to revise—The powers can be exercised by Assistant Collector in charge of the district—Land Revenue Code (Bom Act V of 1886) s 10 An Assistant Collector who is placed in charge of portions of a district under section 10 of the Bombay Land Revenue Code (Bom Act V of 1886) has the power to exercise all the powers conferred upon the Collector by section 23 of the Bombay Mamlatdar's Courts Act (Bom Act II of 1906). **I L R 35 Bom 123**

I L P 36 Bom 123

—Suits—Order—Appeal—District District Collector—Suits—Under section 23 of the Mamlatdars Courts Act (Bom Act II of 1906) the Collector or the District District Collector or any officer with the revenue administration of a taluka has no jurisdiction to exercise the powers of an appellate

MAMLATDARS' COURTS ACT (BOM ACT II OF 1906)—contd

s 28—contd

Court against any order passed by a Mamlatdar under the Mamlatdars Courts Act (Bom Act II of 1906) *HASANI RASTI* (1913)

I L R 37 Bom 595

*Possessory Suit—District Deputy Collector a authority to revise—Bombay General Clauses Act (Bom Act I of 1904) s 3—The term Collector does not include District Deputy Collector—Land Revenue Code (Bom Act I of 1879) s 10 The term Collector in s 23 of the Mamlatdars Courts Act (Bom Act II of 1906) does not include District Deputy Collector in view of the express definition of the term in s 3 of the Bombay General Clauses Act (Bom Act I of 1904) A District Deputy Collector has therefore no authority to pass any order under the Mamlatdars Courts Act (Bom Act II of 1906) *Keshav Jaram I I R 36 Bom 123* dissenting from *Sonu Jambardas ARJUN WALAD BARKU* (1913)*

I L R 39 Bom 552

MANAGEMENT

See CHURCH I L R 79 Mad 1058

right of—

See CHURCH I L R 36 Mad 418

See MAHOMEDAN LAW—DOWRY

I L R 43 Calc 1085

scheme of—

See TRUST I L R 41 Calc 19

transfer of—

See TRUSTEES OF A TEMPLE

I L R 59 Mad 456

MANAGER

See HINDU LAW—JOINT FAMILY

See HINDU LAW—MANAGER

See HINDU LAW—MINOR

I L R 84 Bom 72

See IDOL I L R 36 Bom 135

See MAHOMEDAN LAW—DOWRY

I L R 36 Bom 308

alienation by—

See HINDU LAW—ALIENATION

I L R 35 Mad 177

in a joint Hindu family—

See LIMITATION ACT 1908 s 7 SCH I

ART 44 I L R 38 Bom 94

Employment of workmen in a textile factory after prescribed hours—

See FACTORIES ACT (VII OF 1911) ss 29

AND 41 I L R 45 Bom 220

liability of—

See COSTS I L R 43 Calc 190

Liability of for mesne profits—

See HINDU LAW—JOINT FAMILY

I L R 44 Bom 179

of a temple—

See HINDU LAW I L R 44 Bom 466

MANAGER—contd

payment by of on behalf of minor member of Hindu joint family—

See LIMITATION ACT (VI OF 18) s 20

I L R 37 Calc 401

suit for account against—

See LIMITATION ACT (VI OF 1908) SCH I

ART 62 AND 63

I L R 45 Bom 313

MANAGER AND DIRECTOR OF NEWSPAPER COMPANY

liability of—

See CONTRACT OF COURT

I L R 45 Calc 169

MANAGER UNDER COURT OF WARDS

See MAHOMEDAN LAW—FURTHER

I L R 39 Calc 915

MANAGING AGENT

See MORTGAGE I L R 39 Calc 810

MANAGING MEMBER

See HINDU LAW—DOWRY

I L R 84 Mad 656

See HINDU LAW—JOINT FAMILY

I L R 45 Calc 733

contract by—

See SPECIFIC RELIEF ACT (I OF 1874)

s 1 I L R 37 Mad 387

MANDADARI TEVURE

Land held under it not transferable—Occupancy holding Held that land held under what is known in Gorakhpur chiefly as a mandadari tenure is nothing more than an occupancy holding and is not therefore transferable Such land cannot therefore be sold in execution of a decree upon a mortgage thereof *KEDAR NATH BASONDHAN NAIPAL SINGH* (1911) I L R 34 All 155

MANDAMUS

See MUNICIPAL ELECTION

I L R 39 Calc 598

See LEADERSHIP EXAMINATION

I L R 40 Calc 588

See MADRAS CITY MUNICIPAL ACT (III OF 1904) I L R 38 Mad 41

See UNIVERSITY LEADERSHIP

I L R 41 Calc 518

Action for—

See MUNICIPAL CORPORATION

I L R 40 Calc 836

Specific Relief Act (I of 1887) ss 45 46—Mandamus writ of on the Board of Revenue—Want of necessary party—Other legal remedy being available whether the Court will interfere A mandamus will never be granted to enforce the general law of the land which may be enforced by action A having obtained a decree for recovery of possession of an estate against an infant under the Court of Wards and the Collector of the District representing that Court applied during the pendency of an appeal by the defendants to the High Court to the Members of the Board of Revenue

MANDAMUS—contd

for making the Court of Wards that the estate might be released in his favour. This application having been rejected, he obtained a Rule from the Original Side of the High Court under s 43 of the Specific Relief Act calling upon the Members of the Board only to show cause why they should not forthwith release the estate. The Rule was not served upon the infant, who's interest would be affected if the Rule were made absolute. Held that inasmuch as the petitioner had failed to comply with rule 483 of the Rules of the High Court Original Side by not serving the Rule upon the infant and that inasmuch as he had an adequate legal remedy by way of execution of the decree obtained by him, the Rule was liable to be discharged and the petitioner could not get any relief under s 46 of the Act. Held further that unless the Court was satisfied that the doing of or forbearing from an act was consonant to right and justice and such doing and forbearing was under any law for the time being in force clearly incumbent on the person against whom the order was sought, no *mandamus* ought to be granted and that title to property would not be tried in *mandamus* proceedings and the writ would not issue when it was necessary to try or decide complicated or extended questions of fact. *Kesho Prasad Singh v The Board of Revenue* (1911) I L R 38 Calc 553

MANDATORY INJUNCTION

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIV r 2

I L R 38 Bom 361

See FOOTINGS I L R 38 Calc 687

See INJUNCTION I L R 46 Calc 103

MANPAN

— dispute as to—

See CIVIL PROCEDURE CODE (ACT V OF 1908) SCH II s 20

I L R 37 Bom 442

MANUFACTURE SALE OR POSSESSION

See EXCISEABLE ARTICLES

I L R 39 Calc 1053

MANU KYAY

— Book X IT 5 14—

See PURNIESE LAW

I L R 44 Calc 379

MAPPILLAS OF NORTH MALABAR

— Law applicable—Question of fact—Custom requires of a valid—Judicial notice—Reasonableness or legal—Question of law—Custom derogating from the Mahomedan law—Madras Civil Courts Act (III of 1853) s 16 The law applicable to the parties to a suit is the law which the parties as a matter of fact by their customs and usages have adopted, not the law which the Courts by a consideration of the historical circumstances relating to the parties or of their religious books or otherwise consider to be the law that they ought to have adopted. If that law being sufficiently certain and not opposed to public policy is of such a nature that the Courts can give effect to it then the principles underlying s 16 of the Madras Civil Courts Act require that they should give effect to it.

MAPPILLAS OF NORTH MALABAR—contd

Jammja v Diuar I L R 23 Ill 10 *Muhammad Ismail Khan v Lala Sheomukh Rai* 17 C W N 97 and *Hirbai v Sonabai Per O C* 110 referred to. The question whether the particular parties are governed by the Marumakkattayam or the Mahomedan law is one of fact. *George v Davies* [1911] 9 A B 445 *Assar v Pathumma* I L R 22 Mad 494 and *Kunhimbi Umma v Kandy Moithin* I L R 27 Mad 77 referred to. A custom to hold good in law must be not unreasonable and must apply to matters which the written law has left undetermined and the majority at least of any given class of persons must look upon it as binding and it must be established by a series of well known concordant and on the whole continuous instances. The question whether an alleged rule of conduct can be enforced at all or whether it is uncertain or opposed to public policy or unreasonable one of law and may be considered irrespective of the question whether the custom actually exists. *Moulty v Halliday* [1898] 1 Q B 795 followed. S 16 of the Madras Civil Courts Act discussed. *KUNHAMBI v KALANTHAR* (1914) I L R 38 Mad 1052

MARFADARI RECEIPT

See ITAM I L R 47 Calc 979

MARINE INSURANCE

See INSURANCE 16 H W N 931
I L R 36 Eom 484

MARITIME NECESSARIES

See AFFRECHT SHIP I L R 42 Calc 85

MARK BY ILLITERATE EXECUTANT

See MARKSMAN

MARKET

See U P LAND REVENUE ACT (III OF 1901) s 86

I L R 32 All 193

MARKET FRANCHISE

Contract—Procuring breach of contract—Justification—Picketing with intimidation and force of actionable—Ejectment Court discretion of in considering evidence. In Bengal there appears to be no such thing as a market franchise or a right to hold a market conferred by grant from the Crown nor can such right be acquired by prescription. The right to hold a market is treated as incident to the ownership of land and a proprietor may set up a market in proximity to his new bazaar market without infringing the existing one. *Two ut al eum non laeta*. The proprietor of the old market has no monopoly or privilege which is entitled to protection and no immunity from competition. He has no remedy at law merely because his profits are diminished. *Talla I Adaj v Lera Sundari Jc* I L R 1 Calc 55 *Narda Kumar Sirdar v Emjor JJ C B* 11 6 12 v *Mard n a Law v 141* and *Hammeron v Earl of Lyart* (1916) 14 C 1 referred to. Where illegal means in the nature of intimidation and physical compulsion are employed by the agents of the owner of the new market to dissuade traders from attending the old market the owner of the old market is entitled to a civil re-



MARKET FRANCHISE—*contd*

medy by way of a suit for damages. A Court of Appeal should be slow to differ from the Trial Court on the credibility and veracity of witnesses but where the trial Judge has approached the evidence from a wrong standpoint or has applied to that evidence wrong standards of probability or improbability it is not merely a question of credibility of witnesses and the Appeal Court is not obliged to accept the estimate of the trial Judge. According to the doctrine of the common law apart from violence, mere bo setting or watching may by itself be actionable in trade disputes. *Irish v Irish Medical Association (1919) 11 D 414 Carrick v Taylor Cro Jac 567 2 L J 455 and Tardien v McGauley 1 Irace 210 3 I R 659* ribed on. Where however there is a dispute between two rival market owners in London and the question is whether such a rival owner is justified in inducing people by means of persuasion to attend his market or shop and to dissuade people from attending the market or shop of the rival owner it is doubtful whether the abovementioned doctrine of the common law applies. *Haji CHANIRA FOI CHAU DHURI v KRISHNA CHANDRA SANA SADDAR (1910) 1 L R 47 Cal 10-9*

MARKETABLE TITLE

See SIZING PERFORMANCE

1 L P 30 Com 110

proof of—

See VENDOR AND PURCHASER

1 L R 41 Bom 300

MARKET VALUE

See LAND ACQUISITION

1 L R 41 Cal 967

See LAND ACQUISITION ACT s 23

14 C W N 134

1 L R 38 Cal 967

MARKSMAN

See TRANSFER OF PROPERTY ACT (IV of 1899) s 59

1 L R 41 Bom 384

by— execution of a promissory note

See NEGOTIABLE INSTRUMENTS ACT (XVI of 1881) s 27

1 L R 40 M.L.A 1171

MARRIAGE

See BREACH OF CONTRACT OF MARRIAGE

1 L R 41 Bom 137

See BURMESE LAW

1 L R 39 Cal 492

See CHRISTIAN MARRIAGE ACT (XV of 1872) ss 368

1 L R 40 All 393

See CIVIL COURTS ACT s 16

1 L R 33 Mad 342

See CONTRACT ACT 18 s 23

1 L R 43 All 650

See DAMAGES

1 L R 41 Bom 17

See DIVORCE ACT (IV of 1869)

ss 14 1 L R 41 Bom 26

s 57 1 L R 34 All 203

1 L R 38 Mad 452

See GUARDIAN WARD ACT 1890 ss 12 43 AND 47

1 L R 44 Bom 690

MARRIAGE—*contd*

See HINDU LAW 1 L R 38 Cal 700

1 L R 34 Mad 277

See HINDU LAW—ALIENATION

1 L R 32 All 575

See HINDU LAW—MARRIAGE

See HINDU LAW—WILL

1 L R 37 Bom 18

See MAHOMEDAN LAW—BIGAMY

1 L R 39 Cal 409

See MAHOMEDAN LAW—MARRIAGE

See MARRIAGE WITH WIFE'S SISTER

See PENAL CODE (ACT XIV of 1860)

s 498 1 L R 34 All 589

1 L R 42 All 401

See RESTITUTION OF CONJUGAL RIGHTS

1 L R 41 Bom 454

Asura form—

See TRUSTS ACT (II of 1882) s. 88.

1 L R 43 Bom 173

Breach of contract of—

See CONTRACT

dissolution of—

See PENAL CIVIL COURTS ACT (XIV of 1860) s 1

1 L R 39 Bom 136

See DIVORCE ACT (IV of 1869) ss 3

16 37 44 1 L R 40 Bom 109

evidence and recognition of—

See HINDU LAW—MARRIAGE

1 L R 38 Cal 700

of coparcener—

See HINDU LAW—PARTITION

1 L R 39 Mad 587

presumption as to form of—

See HINDU LAW—INHERITANCE

1 L P 34 Bom 553

presumption of from acknowledgment—

See MAHOMEDAN LAW—LEGITIMACY

1 L R 36 Cal 259

presumption of by—continuous cohabitation—

See HINDU LAW 1 L R 2 Lah 207

Right of Hindu mother to select a bridegroom for her daughter—

See GUARDIANSHIP 1 L P 1 Lah 146

validity of—

See MAHOMEDAN LAW—MARRIAGE

1 L R 45 Cal 878

Marriage of a Sunni Mahomedan with a pregnant woman—Concealment of pregnancy not rendering marriage invalid—

See MAHOMEDAN LAW

1 L R 45 Bom 151

Requisites to validity of Parsi marriage—

See PARSIS MARRIAGE AND DIVORCE ACT (XV of 1865) ss 3 6 8 AND 9 TO 14

1 L P 45 Bom 140

MARRIAGE—contd

marriage contract entered into by
Mahomedans whether binding—

See MAHOMEDAN LAW

I L R 1 Lab 597

Breach of Contract of—Procurement of—Parent or guardian procuring breach maliciously or by false representation liable An action is maintainable against a person for inducing a party to break a contract of marriage entered into by such party. A parent or guardian inducing a child or ward to break such a contract is liable when such parent or guardian does so maliciously or by false representations. Although malice is not the gist of the action in such case it may if alleged and proved displace the protection or privilege which arises from the relation between the party procuring the breaking of the contract and the party breaking it. *JENNIE FAIRY COLQUHOUN v FANNY SMITHER* (1909)

I L R 33 B ad 417

Restitution of conjugal Rights—Under the Mahomedan Law a wife's conversion from Islam to Christianity effects a complete dissolution of marriage with her Mahomedan husband. The fact of such conversion is therefore a bar to a suit by the husband for restitution. *AMIN BEG v SARFAY*

I L R 33 All 90

Contract to pay money to a mother for giving her daughter in marriage—Public policy—Hindu Law—Contract Act (IX of 1872) s 23 A contract whereby a guardian whether natural or appointed agrees to dispose of his ward in marriage for his own personal pecuniary gain is not enforceable in a Court of law. *Dhadas Idwar v Ful Chand Chagan* I L R 9 Bom 658. *Venkata Krishnayya v Lakshmi Narayana* I L R 39 Mad 185. *Jam Chand Sen v Rudanto Sen* I L R 10 Cal 1061 (the opinion expressed by Garth C J.) followed. *Juggeswar Chuckerbutty v Pundlicore Chuckerbutty* 14 W R 105. *Pante Lalun Moon v Dass v Robin Molon Singh* 25 W P 3. *Bakshi Das v Nandu Das* I C L J 261 965 distinguished. *Varanathan v Samina* than I L R 17 Mad 81 dis. entered from. The rule rests on the broad and general principle that where any one is in a fiduciary position with respect to a person and is bound to exercise skill care and judgment for the benefit of that person he must not take a reward from some other person for the exercise of his powers in some particular way whether the course taken is in fact beneficial or the reverse to the person whose interest he is bound to protect. Where a Hindu mother sought to recover a sum of money which the defendant had agreed to pay to her in consideration of her consenting to give her daughter in marriage to his son—Held that the suit was not maintainable the agreement being opposed to public policy. *BALDEO DAS AGARWALLA v MOHAWALLA PITSAD* (1911)

15 C W N 44

Legitimacy—Children of—Presumption of law in favour of legal marriage For may be rebutted—In the absence of fact to the contrary presumption of law may be rebutted. When it is proved that two persons have lived together for many years as husband and wife and their child has always been recognised as legitimate the presumption of law is that they were lawfully married. The presumption can be repelled only by conclusive evidence and is not

MARRIAGE—contd

displaced merely because the direct evidence of marriage which took place many years ago is not satisfactory. *It is v Piers* 2 H L C 331. *Morris v Davies* 5 Cl & Fin 163 and *Mouy Lal v Chandrabati Kumari* I L P 39 Cde 700 referred to. Where the lower Appellate Court reversed the finding of the trial Judge in favour of legitimacy without reference to the above principle and upon a mere balance of probabilities its finding was set aside on second Appeal as being contrary to law. *BEVIN BEHARY DAS BAIRAGI v ATUL KRISHNA DAS BAIRAGI* (1911)

17 C W N 494

Procuring breach of contract of—Conspiracy—Cause of action—Malice an essential ingredient—Test The first plaintiff betrothed his son the second plaintiff to one J. Subsequently J's father married her to the first defendant. Thereupon the plaintiffs brought this action against the first defendant and his sisters the second and third defendants to recover damages alleging that they (the defendants) had plotted and conspired together wrongfully to procure the breach of the first contract of marriage. The conspiracy alleged was not proved at the trial nor was it proved that the first defendant knew at the time of his marriage with J of her previous betrothal to the second plaintiff. *Hild* (1) that the suit was not maintainable (ii) that no legal right inhering in the plaintiff had been violated since according to Hindu law by which the parties were governed a father was entitled to break off his daughter's engagement should a more suitable bridegroom be available. In an action of conspiracy to procure a breach of contract malice is an essential ingredient of the cause of action. *Rule in Lumley v Gye* 22 L J Q B 463 considered and its universal applicability doubted. *KRISHNAIA SWAMI v NARAYANAN* (1914)

I L P 9 Bom 682

Interference in marriage—Vaishnava The Petitioner applied for letters of administration to the estate of the deceased. He was after the death of her husband married to him in *Kanti* form. *Hild*—That marriage by *Kantidol* (exchange of friends) among Vaishnavas is valid and the petitioner was entitled to letters of administration. *PRANOD BEHARY ADRIKARI v SHASHI BHUSHAN BHUT*

24 C W N 958

MARRIAGE PROKAGE AGREEMENT

See CONTRACT ACT (IX of 1872) ss 23
(c) I L R 41 Mad 18

MARRIAGE CUSTOM

See CUSTOM 20 C W N 468
See JEWISH LAW I L R 40 Cal 266

MARRIAGE EXPENSES

— of male members—
See HINDU LAW—JURISPRUDENCE
I L R 40 P ad 23

MARRIAGE "LITTLE" FRY

See JEWISH LAW I L R 39 Cal 705

MARRIAGE WITH WIFE'S SISTER

See BUENISE LAW—MARRIAGE
I L P 20 Cal 492

MARRIED WOMAN

See ABDUCTION I L R 45 Cal 641

See PENAL CODE (ACT XLV OF 1860)
s 498 I L R 36 All 1**MARRIED WOMEN'S PROPERTY ACT (III OF 1874)**

See CIVIL PROCEDURE CODE (ACT V OF 1909) s 60 I L R 37 Bom 471

See LIFE INSURANCE
I L R 35 Mad 182

— s 2 4 6—*Hindu effecting a policy of life insurance for benefit of wife and children—Policy money if available for his debts on death—Statute application of leading to anomaly—Interpretation* A policy of life insurance effected by a Hindu for the benefit of his wife and children is not governed by the provisions of s 6 of the Married Women's Property Act of 1874 *Per* RICHARDSON J Although s 6 of the Act expressly provides that nothing in the Act applies to any married woman who at the time of her marriage professed the Hindu amongst other religions or whose husband at the time of such marriage professed that religion and does not expressly exempt their children from the operation of the Act the intention of the Legislature taking the Act as a whole is to exclude the children also from the benefits of s 6 of the Act If the words of an Act are so plain that no other construction is reasonably possible, the anomaly must be accepted and effect must be given to the language which the Legislature has chosen to employ But if the language is of doubtful import the most reasonable construction of which it is fairly capable ought to be adopted *Held per* CURRIE that the money due under the policy in question formed part of the estate of the assured and was available for payment of his debts after his death *ESHANI DAS v GOPAL CHANDRA DEY* (1914)

18 C W N 1335

— s 6—*Applicability to Hindus—Insurance—Policy for the benefit of wife and children if creates a trust—Policy amount payable to the executors administrators and assigns of the assured—Right of beneficiary to enforce—Presumption of advancement* Where a Hindu male effected a policy of insurance on his own life expressed on the face of it to be for the benefit of his wife or his wife and children or any of them but payable to his executors administrators and assigns and died leaving a daughter *Held* by the Full Bench that s 6 of the Married Women's Property Act (III of 1874) applied to the case and by virtue thereof a trust was created in favour of the daughter in regard to the policy amount against which the creditors of the assured have no right to proceed *Oriental Government Security Life Assurance Limited v Vanteddu Ammaraju* I L R 35 Mad 162 overruled *Per* WHITE C J (SANKARAN NAIR J concurring) Ss 4 5 6 7 8 and 9 of Act III of 1874 do not apply where either of the spouses at the time of the marriage professed the Hindu religion The primary object of s 6 is to enable a man (though a Hindu male) to make provision for his wife and children by insuring his life for their benefit without executing a separate deed of trust though the result may be that a Hindu woman derives a benefit thereby *Per* WHITE C J S 6 does not affect the law of contract or the law of trust as regard the persons entitled to enforce the

MARRIED WOMEN'S PROPERTY ACT (III OF 1874)—contd

— s 6—contd

contract under the policy The person entitled to enforce the rights of the beneficiary is the trustee if a trustee has been appointed and if no special trustee has been appointed the Official Trustee to whom the money is payable and not the daughter the beneficiary *Held* also that the daughter was not entitled to enforce her claim against the insurance company or as against a creditor as (i) the company was under a contractual obligation to pay the amount to the executor or administrator of the assured and (ii) the presumption of advancement of a daughter was rebutted by the words

for the benefit of his wife and children the policy not being one for the benefit of such of the children as are daughters *Per* TRAYNOR J The daughter's right under the insurance policies is affected by s 6 of Act III of 1874 and the operation of s 6 is not prevented by s 2 For the daughter is not a married woman within the meaning of ss 2 and 6 though she may be married as the expression married woman cannot refer to any woman other than one who is married to the assured *BALAMBA v KRISHNAIA* (1913)

I L R 27 Mad 483

MARSHALLING

See MORTGAGE I L R 35 Bom 395

See TRANSFER OF PROPERTY ACT 1882
s 60 I L R 42 All 336**MARTIAL LAW—**

— Trial of Offences by Commissions—

See GOVERNOR GENERAL IN COUNCIL
I L R 1 Lah 326**MARTIAL LAW ORDINANCES (I AND IV OF 1919)**See GOVERNOR GENERAL IN COUNCIL
I L R 1 Lah 326

See CRIMINAL LAW I L R 1 Lah 114

— Government of India Act of 1915 s 65 cls (2) and (3) as 72 and 84—Ordinance issued by Governor General if void as affecting the unwritten law and constitution of the United Kingdom etc—Ordinance contravening s 65 (3) as to British-born subject if void altogether—Government of India Act of 1916 s 2 Sub s (2) to s 6 of the Government of India Act 1915 does not prevent the Indian Government from passing a law which may modify or affect a rule of the constitution or of the common law upon the observation of which some person may conceive or allege that his allegiance depends It refers only to laws which directly affect the allegiance of the subject to the Crown as by a transfer or qualification of the allegiance or a modification of the obligations thereby imposed *In re Ameer Khan* 6 B L R 399 459 (1870) *The Queen v Burah* I R 3 A C 889 907 s c L P 5 I A 178 I L R 4 Cal 172 (1878) and *Besant v The Advocate General of Madras* L R 46 I A 176 191 s c 23 C N N 896 (1919) referred to Ordinance IV of 1910 if it was repugnant to s 6 (3) of the Government of India Act so far as British born subjects were concerned was under s 2 of the Government of India Act of 1916 void to the extent of that repugnancy but not otherwise *BUGGA v KING EMPEROR* (P C) 24 C W N 650

MARUMAKKATTAYAM LAW

See MALABAR LAW

Tarwad = the heir to the property of a deceased member subject to the liability to discharge debts of deceased—Devolution of property acquired by or for benefit of *Tarwad*—Survivorship—Property acquired by a *dividual member* devolution of Co parcenary exists among the members of an undivided Malabar *Tarwad* Where therefore one of the members dies the *Tarwad* is the heir to the property of deceased subject to the liability to discharge the debts of the deceased member *Pyrappan Nambar v Kukulurup I L R 4 Mad 150* referred to Where property is acquired for the benefit of the *Tavazhi* the incidents of such property will depend on the constitution of the *Tavazhi* If the *Tavazhi* forms a distinct branch from the main *Tarwad* with separate properties and has its own *karnavan* it will in law form a *Tarwad* and the incident of *Tarwad* property will attach to it None of the members will have an alienable interest in such property and it cannot be attached in execution of a decree against any of the members *Kanath Pathen Ittut Tarwad v Varajan I L R 28 Mad 182 189* referred to If however the members of the *Tavazhi* have not separated from the main branch by taking their share of *Tarwad* property or renouncing their interest therein the mere acquisition of such property will not make them a separate *Tarwad* and the *karnavan* of the main *Tarwad* will retain all his right and obligations towards them The property will be the separate property of the *Tavazhi* and not *Tarwad* property and the incident of impartibility which attaches to *Tarwad* property will not attach to it The interest of each member will be the same as in an ordinary Hindu family and will be liable to be attached and sold If however any member dies without his interest being alienated in his lifetime his interest lapses to the other members and it cannot be sold *Ayutachumma v Kuttimammi Hoy v I L R 6 Mad 201* referred to If property is acquired solely for the benefit of two members of a *Tavazhi* they must be treated as tenants in common They cannot be treated as a separate branch and on the death of one the share will pass to the heir of the deceased which according to the preponderance of authority will be the *Tarwad* The principle of joint tenancy is unknown to Hindu Law except in the case of the members of an undivided Hindu family *Joyeswar Varain Dio v Pamchendra Dutt I L R 33 Cal 60* referred to *UNMAHQA v ARPADORA PATTER (1910)*

I L R 31 Mad 387

*Gift to a woman and her children enures for their benefit with the incidents of *tarwad* property—Members subsequently born acquire an interest by birth—*karnavan* power of to alienate—Right of one member of *tarwad* to erect buildings on *tarwad* property—Compensation claim to for demolition of building—Malabar Tenants Improvement Act s 5 Gift to a woman governed by the *Marumakkattayam* law and her children enures in favour of the donee and her children with the incidents of *tarwad* property As members of a *tarwad* acquire an interest in the *tarwad* property by birth children born subsequent to the gift will acquire an interest in such property A *karnavan* cannot make an alienation for such a long period as sixty years in the absence of special necessity or special benefit Such an*

MARUMAKKATTAYAM LAW—contd

alienation cannot be held good for a portion of the term i.e., the usual period of twelve years as it will have the effect of creating a new contract between the parties Although in the case of ordinary co parcenaries the Courts will not order the demolition of buildings erected by one co parcenary in joint property unless some substantial injury is shown the case will be different in the case of *tarwad* property The members of the *tarwad* have not like the members of an ordinary co parcenary the right of compulsory partition and it would not be fair or equitable to compel the *karnavan* to purchase the building erected by a junior member or to deprive the *karnavan* of possession of part of the property for ever The junior members cannot therefore on general principles resist recovery or demolition of the building A lessee whose lease is disputed and who is put on inquiry as to the real title of the lessor before constructing buildings on the land leased cannot after constructing buildings on a wrong view of the lessor's title claim on eviction compensation for the buildings as a *bona fide* tenant under s 6 of the Malabar Tenants Improvements Act *KALLIANT AMMA v GOVINDA MENON (1912)*
I L R 35 Mad 648

MARZ UL MAUT

See MAHOMEDAN LAW—GIFT

I L R 36 All 289

I L R 40 All 238

See MAHOMEDAN LAW—WAKF

I L R 36 All 431

I L R 46 Cal 13

MASTER

See MASTER AND SERVANT

— authority of—

See REVISOR I L R 43 Cal 903

MASTER AND SERVANT

See ADULTERATION

I L R 30 Cal 682

See BENGAL MOTOR CAR AND CYCLE ACT

s 3 I L R 38 Cal 415

See COMPANY I L R 38 Mad 891

See OPIUM ACT (I OF 1878) ss 5 9

I L R 34 All 319

See PENAL CODE s 3 U

15 C W N 414

See SCHOOL MASTER

I L R 44 Cal 917

See TORT I L R 43 Bom 103

See DISMISSAL FOR MISCONDUCT

I L R 33 Mad 126

See TRUST I L R 41 Cal 11

See WORKMEN & BREACH OF CONTRACT

ACT (XIII OF 1890) ss 2 AND 3

I L R 41 All 390

— ground for dismissing an Editor—

See COMPANY I L R 38 Mad 991

Ganya—*Illegal possession of *ganya* by servant acting on his own behalf and beyond the scope of his employment—Liability of the master for the act of the servant—Bengal*

MASTER AND SERVANT—contd

Exec Act (Peng I of 1999) ss 16 (a) and 16
To support a conviction under s 16 of the Pengal
Exec Act it is necessary to show not only that
a servant was in the employ of the master but
also that he was acting within the scope of his
employment and for the benefit of the latter.
Where a servant whose duty was to remain at
his master's shop and to conduct the business
there was found travelling to another place with
gunja in his possession in contravention of s 46
(a) of the Act. *Held* that the master could not
be convicted under s 46 as his servant acted
beyond the scope of his employment and for his
own private purpose. *Suffer Ali Khan v Golam*
Hyder Khan 6 B L Cr 60 referred to Emperor
v Haji Shawk Mahomed Shustari 1 I P 37 Bom
10 distinguished UTTAM CHAND v EMPLOYER
(1911) 1 I R 39 Calc 244

— *Clerk engaged on a*
monthly salary—Infringement of employment
without consent of master—Clerk not entitled to
salary for broken portion of month in which he
left his service. Held that an office clerk engaged
on a monthly salary is not entitled to any salary
for the broken portion of a month in the course
of which he leaves his service without the consent
of his employer. *Judgany v Hungerford Market*
Company 3 A L L 171 Dinnick Ichara v Seve
nooks 1 I P 13 Cal 80 and Jamsi Manor v
Little 10 Bom H C 1 57 referred to RALLI
BROTHERS v AMBICA PRASAD (1912)
1 I R 35 All 132

MATADARS ACT (BOM VI OF 1887)

— s 9 and 10— *Heir next in succe*
sion—Succession to Matadar property—Success
ion not confined to the limits of Matadar family
—Heir to be ascertained by reference to the personal
law governing the parties. One R the representa
tive Matadar who inherited his Mata from his
mother's side having died disputes arose as to
the succession to the Matadar property between
B who was the daughter of a maternal cousin of
A and D who was the grand nephew of P. Held
that D was the preferential heir to B as in order
to ascertain the heir of a deceased Matadar the
Court was not confined to the limits of the Matadar
family and should have in the first instance re
ference to the personal law which governed the
parties. DAYA KUCSAL v Bai Bhilani (1915)
1 I R 39 Bom 478

MATERIAL IRREGULARITY

See REVIEW 14 C W N 244

MATERIAL PREJUDICE

See PREVIOUS 1 I R 47 Calc 438

MATERNAL UNCLE

See HINDU LAW—SUCCESSION
1 I R 43 Calc 1

MATE'S RECEIPTS

See CONTRACT 1 I R 41 Calc 670

MATH

See HINDU LAW—ENDOWMENT
1 I R 46 I A 204
See LIMITATION 1 I R 37 Calc 885
See MURDER

MATHIRI MAGUVU AND S/DALWAR

See MADRAS ESTATES LAND ACT (I OF
1905) s 13 CL (a)
1 I R 39 Mad 84

MATRIMONIAL CAUSES ACT 1857 (20 & 21 VICT C 85)

— s 28—

See DIVORCE 1 I R 45 Calc 525

MATWALI

See MAHOMEDAN LAW—WAKI
1 I R 47 Calc 592

MATNIS

See ACTIO PERSONALIS MORITUR CUM
PERSONA 1 I R 35 Bom 12

— *'a man cannot take advantage of*
his own fraud'

See HINDU LAW—WIDOW
1 I R 41 Bom 93

— *"generalia specialibus non derogant"*

See SPECIFIC MOVABLE PROPERTY
1 I R 39 Mad 1

— *Ut res magis valeat quam pereat'*

See LANDLORD AND TENANT
1 I R 46 Calc 458

MAYUKHA

See DAUGHTERS INHERITANCE OF
1 I R 34 Bom 510

See HINDU LAW—INHERITANCE
1 I R 33 Bom 553

See HINDU LAW—PARTITION
1 I R 36 Bom 379

See HINDU LAW—STRIDHAN
1 I R 36 Bom 424

See HINDU LAW—SUCCESSION
1 I R 34 Bom 385
1 I R 39 Bom 87

MEASURE OF DAMAGES

See DAMAGES

MEASUREMENT OF LAND

See BENGAL TENANCY ACT s 91
14 C W N 231

— *Excess area—Bengal*
Tenancy Act (VIII of 1885) s 52 (6) as amended
by Beng Act I of 1907 s 13 The words at
the time the measurement on which the claim
is based was made in s 52 (6) of the Bengal
Tenancy Act do not refer to the measurement
upon which the excess area is found out before
the institution of the suit. The section merely
provides that if the landlord proves that at the
time the measurement on which the claim is based
was made there existed a practice of settlement
being made after measurement of the land asse
ed with rent it may be presumed that the area
specified in the jatta kabulyat or counterfoil
rent receipt was entered in it after measurement
though the landlord is not able to prove that as
a matter of fact the lands in the particular case
were settled after measurement. Uma Singh v
Rai Tarini Prasad Bahadur 19 C L J 451
referred to: KHAJEN HABIBULLAH v UMED ALI
(1919) 1 I R 47 Calc 266

MEASUREMENT OF LAND—contd

Bengal Tenancy Act
(VIII of 1885) s 52 (6) The expression at the time the measurement on which the claim is based was made in s 52 (6) of the Bengal Tenancy Act refers to the measurement upon which the area in excess or defect as the case may be is found out before the institution of the suit it does not refer to the measurement made at the time of the original settlement or the last preceding adjustment of rent *Khajeh Habibullah v Umed Ali* I L R 47 Calc 266 dissenting from *NILMANI KAR v SATI PRASAD GARGA* (1900)

I L R 48 Calc 556

MEASURE OF FIGHT

See EASEMENT I L P 39 Calc 69
I L R 42 Calc 46

MEDICAL WORKS

reference to—

See LIMITATION I L R 40 Calc 898

MEDICINAL PREPARATION

See EXCUSABLE ARTICLE
I L R 40 Calc 82

MEHR

See CONSTRUCTION OF DOCUMENT
I L R 41 Bom 5

MELVARAM

grant of—

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 I L R 38 Mad 891

MELVARAMDAR

receiver of—

See LIMITATION ACT (I OF 1908) s 22
I L R 38 Mad 837

right of to trees—

See LANDLORD AND TENANT
I L R 38 Mad 155

MEMBER

See STOCK EXCHANGE
I L R 47 Calc 623

MEMONS

See SUCCESSION I L R 43 I A 35

See WILL I L R 43 Bom 641

Halai Memons and Bombay Memons—Hindu law governs Halai Memons of Kathiawar in matters of succession and inheritance—Culom—Domicile—Change of domicile of origin—Value of judgments of a foreign Court for proving a custom peculiar to a community—Indian Evidence Act (I of 1872) s 13—Value of evidence of tradition given by leading men of the community—A Halai Memon a native of Porbander in Kathiawar died intestate at Bombay leaving him surviving a widow the second defendant one son the first defendant and two married daughters one of whom had since died the survivor being the plaintiff. The estate of the deceased consisted of five immovable properties in Bombay a share in a business in Bombay and a house and land at Porbander. The plaintiff claimed to be entitled as a daughter to 7/32 of the estate as her share on the footing that the deceased as a Bombay Memon was

MEMONS—contd

governed by the Mahomedan law of succession and she was supported in her contention by the representatives of the deceased daughter. The first defendant contended that Hindu law applied and that under that law he was entitled to the whole estate subject to the maintenance of the deceased widow. The second defendant supported the first defendant though as widow of the deceased she would have been entitled under Mahomedan law to 4/32 of the estate. The Court of first instance decreed the plaintiff's suit holding that though the deceased belonged to a family of Halai Memons who had settled in Porbander the Halai Memons settling in Porbander did not as regards succession and inheritance retain Hindu law at the time of their conversion nor had they adopted Hindu law by immemorial custom. The first defendant appealed—*Held* reversing the decree of the lower Court (i) that the plaintiff was not entitled to any share in the estate of her deceased father as he was governed by Hindu law and not by Mahomedan law in matters of succession and inheritance (ii) that the evidence established that the Memons of Kathiawar of whatever group or sect followed the Hindu rule of succession and this conclusion was supported by Porbander Memons particularly by a large number of instances in which widow and daughters had been excluded from succession sons had divided the property with their father in his lifetime or equally with each other after his death and the right of predeceased brother's sons to share with their uncles had been repeatedly recognised all these results being incidental to the Hindu and not to the Mahomedan system. *Per SCOTT C J*—There is no principle recognised by the law administered in this country upon which a Hindu or Mahomedan's possessions may be distributed partly by one law and partly by another according to the locality of the possession. They must all fall under either the law of the religion or the customary law of the community. There is no *lex loci* for the purpose of distribution. Permanent residence in Bombay does not necessarily import the Mahomedan law of succession for one whose ancestors were converted from Hinduism. Severance from the domicile of origin and permanent residence in Bombay would in the case of persons falling within the purview of the Indian Succession Act effect change of domicile and with it a change of law e.g. from French to Anglo-Indian or Portuguese to Anglo-Indian but it would not change the law of succession for Hindus or Mahomedans. *Kojaks and Memons case (1841) PIERCE D C 110* *Has Bays v Das Santol* I L R 10 Bom 53 *Abdurrahim Haji I mail Hanifi v Heli mobas* L P 43 I A 55 and *Abdul Hussein Ali v L's Sona Dero* L P 45 I A 10 referred to. *MAHOMED HAJI ABU v KHATERJI* (1915)

I L R 43 Bom 647

MEMORANDUM OF AGREEMENT

See STAMP ACT (II OF 1899) s 5
I L R 38 Mad 349

MEMORANDUM OF APPEAL

See APPEAL

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 107 149 II VII R. 11
CL (c) I L P 33 Bom 41

MEMORANDUM OF APPEAL—contd

BY 116 151 O ALI R 23
I L P 42 Bom 363
Se COURT FEE I L P 39 Calc 996
Se REFUND OF COURT FEE
I L R 40 Calc 365

— order turning—

See CIVIL PROCEDURE CODE (1908) O
ALI R 1 I L P 40 All 659

MEMORANDUM OF ASSOCIATION

See COMPANIES ACT, 1892 s 40 41
I L R 40 Cal 1

MENACE TO PERSON AND PROPERTY

See SECURITY FOR GOOD BEHAVIOUR.
I L R 46 Calc 215

MERCHANDISE MARKS ACT (IV OF 1859)

— s 7—

See TRADE MARK I L R 40 Calc 281

MERCHANT SEAMEN ACT (I OF 1859)

— s 58 & 81—Merchant Shipping Act (57 and 58 Vic C 60) s 111 cl 3 and 2nd cl (b) and (c)—If *ultra* disobedience of lawful commands—Order given to transfer from one ship to another—Seaman disobeying the order—Clause about transfer in articles of agreement *ultra vires* The accused signed articles of agreement in London with the Master of the SS *Arcadia* (a steamer belonging to the Peninsular and Oriental Steam Navigation Company) under which he agreed inter alia to obey the lawful commands of the Master or the superior Officers and to transfer to any other vessel of the Company when required during the period of service. These articles were initiated by an Officer of the Board of Trade. When the SS *Arcadia* arrived in the Bombay Harbour it was sold by the Company to an Indian Merchant. The accused was then ordered by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS *Arcadia* to transfer him to the SS *Salsette* another boat belonging to the Company. For a wilful disobedience of this order the accused was convicted under s 81 cl 4 of the Merchant Seamen Act (I of 1859). The accused applied to the High Court against the conviction contending first that the article respecting transfer was *ultra vires* and secondly that the order as to transfer given by the Marine Superintendent of the Company was not a lawful command—Held that having regard to s 114 cl 3 of the Merchant Shipping Act (57 and 58 Vic C 60) and to the fact that the articles of agreement had been initiated by an Officer of the Board of Trade the article as to transfer was not *ultra vires*. Held further the order to transfer having been given by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS *Arcadia* was a lawful command of the latter failure to obey which was punishable under s 81 cl 4 of the Merchant Seamen Act (I of 1859). *EXPERIOR* = A GOON NEW (1916) I L P 39 Bom 558

MERCHANT SHIPPING ACT (57 & 58 VICT C 60)

See HIGH SEAS I L R 42 Bom 234

MERCHANT SHIPPING ACT (57 & 58 VICT C 60)—contd

— s 114 cl (3) and 220 cl (B) and (C)—

See MERCHANT SEAMEN ACT (I OF 1859)
s 81 cl (4) I L R 39 Bom 558

— s 654 655—

See HIGH COURT JURISDICTION OF
I L R 39 Calc 467

MERGER

See CIVIL PROCEDURE CODE (1908) s 2
I L R 33 All 393

See CIVIL PROCEDURE CODE 1908 O IX
F 13 I L R 39 All 13

See DECREE FOR POSSESSION
I L P 38 All 509

See LANDLORD AND TENANT
I L P 43 Calc 164

See LIMITATION ACT (I OF 1908) Sec.
I Arts 120 13^o

I L P 39 All 74

Mokurari tenure specially registered under Act XI of 1859 granted by the zemindar—Subsequent grant of *pains* by the zemindar—Purchase of *pains* and *mokurari* by the same person—Merger—Transfer of Property Act s 2 (c) 111 (d) 117 Where a *mokurari* tenure has all along been treated as a distinct sub tenure there was no merger by the acquisition of a *pains* tenure and the *mokurari* tenure by the same person apart from the provisions of the Transfer of Property Act *Woomesh Chander Goopis v Paj Narain Roy* 10 W R 15 *Thomas Savi v Panchanan Poy* 25 W R 503 *Prossano Nath Roy v Jagat Chunder Pandit* 3 O L P 149 referred to *Siban Nath Khan v Golool Chunder Choudhury* I L P 19 Calc 802 followed *Surja Narain Mandal v Nanda Lal Sinha* I L R 3 Calc 1212 *Ujjat Hossein v Gayans Dass* I L R 36 Calc 802 distinguished Where a person acquires the superior and the subordinate interests piece meal at different times but ultimately the entire interests of the lessor and the lessee are vested in the same person at any point of time there is a merger of the two interests in any case to which the provisions of a 111 (d) of the Transfer of Property Act are applicable. A *mokurari* was created before the passing of the Transfer of Property Act and a *pains* was granted of the remainder within which the *mokurari* was created. Afterwards in 1856 the entire *pains* and the entire *mokurari* were acquired by the same person. Held—that the provisions of a 111 (d) of the Transfer of Property Act do not apply and there was no merger of the *mokurari* interest in the *pains* interest *Promotho Nath Mitter v Rah Prossano Choudhury* I L P 28 Calc 744 followed *Ujjat Hossein v Gayans Dass* I L R 36 Calc 802 explained *HIRENDRA NATH DUTT v HABIB MOHAMMAD GHOSH* (1914)

18 C W N 560

— Union of superior and subordinate rights in land in *mofussil* taking place before the Transfer of Property Act (IV of 1882) and Bengal Tenancy Act (VIII of 1885). In case unaffected by the provisions of the Transfer of Property Act and the Bengal Tenancy Act the union of a superior and a subordinate interest did not by operation of law necessarily merge the subordinate in the superior interest. But

MERGER—*contd*

although in such cases the union of the superior and subordinate interests may not automatically cause a merger of the latter in the former the conduct of the party concerned may show that he did not intend to keep the two interests alive as mutually distinct rights **PAN BESSEY DUTT v HARIPADA MUKERJI (1919) 20 C W N 830**

*Merger doctrine of if applied in *mufussil* before Transfer of Property Act—Merger a question of intention—Acquisition of superior and inferior interests by joint Hindu family in the names of different individuals to indicate an intention to prevent merger. *Quere*—Whether prior to the Transfer of Property Act there was a law of merger applicable in the *mufussil*. *Hindra Nath Dutt v Hari Mohan Ghosh 18 C B V 800* referred to. Merger is not a thing which supervenes upon the acquisition of what for the sake of a joint generalisation may be called the superior with the inferior right. The question to be settled in the application of the doctrine is was such a coalescence of right meant to be accomplished as to extinguish that separation of title which the records contain? The fact that acquisitions of the superior and inferior interests on behalf of a joint Hindu family have been made in the names of different members thereof may point to an intention to keep the two interests from merging. **DULHIN LACHLAPATI KUMAR v BODHATHI TIWARI (PC) 26 C W N 565***

MESNE PROFITS

See CIVIL PROCEDURE CODE (1882) s 583
I L R 38 All 163

See CIVIL PROCEDURE CODE (1882)—
s 583 I L R 38 All 79

s 11 EXPL V O X R 12
I L R 40 All 292

s 110 J Pat L J 377
O II R R 2 AND 4

I L R 38 Mad 829
O X R 12 2; C W N 369

See COURT FEES 3 Pat L J 101
S v DEKKHAN AGRICULTURISTS RELIEF

ACT (XVII of 1879) s 13
I L R 30 Bom 587

See EXECUTION OF DECREE
I L R 41 All 517

See HINDU LAW—ALIENATION
I L R 39 All 61

See HINDU LAW—JOINT FAMILY
I L R 30 Mad 265

See HINDU LAW—INTESTATE
I L R 44 Bom 179 621

See HINDU LAW—WIDOW
15 C W N 383 859

See JURISDICTION I L R 43 Calc 850
See MADRAS ESTATES LAND ACT

I L R 42 Mad 315
See MORTGAGE—REDEMPTION

14 C W N 1001
See RESTRICTION 3 Pat L J 367

See REVENUE SALE
I L R 37 Calc 559

MESNE PROFITS—*contd*

See SMALL CAUSE COURT
14 C W N 1001

See TRANSFER OF PROPERTY ACT 1882
s 6

— application to claim whether
is an executory or execution—

See LIMITATION ACT 1908 SCH I ART
182 I L R 45 Bom 819

— claim for by plaintiff from date of
disposal—

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 83 I L R 39 Mad 579

— decree for—
See EXECUTION OF DECREE

I L R 40 All 211
— Estimation of on proprietor's private

land—
See CIVIL PROCEDURE CODE 1908 s 2

6 Pat L J 166
— *Pendente Lite*—

See CIVIL PROCEDURE CODE 1908 O XX
r 12 6 Pat L J 54

— right to past transfer of—
See TRANSFER OF PROPERTY ACT (IV OF

1882) s 6 CL (s)
I L R 38 Mad 308

— suit for of a prove—
See PROVINCIAL SMALL CAUSE COURTS

ACT (IX of 1837) SCH II ART 31
I L R 40 All 142

— whether a decree for mesne profits
and costs in a redemption is a money de-

creed—
See CIVIL PROCEDURE CODE 1908 O

XVI r 63 4 Pat L J 336
1 ———— Civil Courts Act (XII

of 1903) s 18 19 21—Civil Procedure Code (Act
XII of 1857) s 211 212 213—Jurisdiction—
Mesne profits antecedent to the suit decree for if
can be executed to an amount which taken with the
value of the land would exceed jurisdiction of Court
passing decree—Mesne profits *pendente lite* ex-
ceeding the pecuniary jurisdiction of the Court
making the decree—Forms of application for re-
covery Where a plaintiff instituted his suit for
possession of property and mesne profits in the
Court of a Munsif and valued it so as to bring it
within the jurisdiction of the Munsif and the suit
was decreed—Held that he could not recover
mesne profits accruing before the institution of
the suit to the extent of more than the difference
between the maximum pecuniary jurisdiction of
the Munsif and the value of the land as stated in
the plaint *Goldap Singh v Indra Kumar 9 C L*
J 367 s c 13 C W N 493 followed *Sudaraham*
v Rameshadas 7 Ind Cas 755 not followed
In this respect mesne profits antecedent to the
institution of the suit and mesne profits *pendente*
lite in respect of which the cause of action had
not arisen at the date of the suit and which could
not at that date be approximately valued stand
on a different footing *Nil* further that the
value of the mesne profits *pendente lite* claimed in
the application for execution of the decree being
in excess of the pecuniary jurisdiction of a Munsif

MESNE PROFITS—*contd*

the Munsif had no jurisdiction to entertain the application *Panewar v Dulu I L R 21 Calc 550* distinguished and doubted *Gulab v Abdul 8 O W 1133 s c I L R 31 Calc 565 Iya tulla v Chandra Mohan I L R 31 Calc 564 11 O W 1133 s c 6 C L J 25 Golap Singh v Indra Kumar 9 C I J 57 s c 13 O W 493 Mannal v Samanda 46 I R 1906 91 P L R 1906 referred to In so far as the application for mesne profits *pendente lite* was concerned the Court therefore directed its return for presentation to the proper Court. No objection as to the jurisdiction of the Court to try the original suit having been raised before the decree and the decree as to recovery of land having become final the Court refused to give effect to the contention that in view of the amount of mesne profits now claimed the Court had no jurisdiction to make the decree *Buttappa Kumar Charrabatti v Putta Chandra Bose (1910)**

I L R 43 Calc 650
15 C W N 506

Execution of decree

—Immovable property suit for—Purchaser *pendente lite* whether legal representative of the original owner—Civil Procedure Code (Act 1 of 1908) OO XX r 19(2) 111 r 102 and 111 r 10 and s 2 (11) Proceedings for the assessment of mesne profits after a decree had been obtained in a suit for recovery of possession of immovable property are proceedings in continuation of the original suit. A suit for recovery of possession of immovable property was brought against A. During the pendency of the suit B and C purchased the property from A but they did not apply to have their names added as defendants in the pending suit. The suit having been decreed the decree holder applied for execution of the decree against B and C and asked for possession of land and for the assessment of mesne profits. On an objection taken by B and C that they were not the legal representatives of A and that they could not be made liable in execution proceedings for the mesne profits decreed against A. Held that although B and C were not the legal representatives of A the execution proceedings being proceedings in continuation of the original suit and they being purchasers *pendente lite* they were liable for the mesne profits decreed against A. *Midapore Zemindari Company Ltd v Nares Narain Pot (1911)*

I L R 39 Calc 220

Although a plaintiff may perhaps recover mesne profits though out of possession still in order to recover damages in a case where he was out of possession the plaintiff must show that he has a right to immediate possession. *Elani Bhes Mandal v Ram Nafayan Gosw (1911)*

16 C W N 288

3(a) Where a father as manager alienates joint Hindu family property without legal necessity and the sons repudiate the sale a purchaser who has no notice that the father was incompetent to sell is in equity only liable to pay mesne profits for the date of repudiation. *Lithou Nath Chavre v Nar Singh Tiwari*

I L R 39 All 61

4 Jurisdiction—Suit for recovery of possession with mesne profits—Mesne profits as costs in the execution proceedings—Amount assessed more than the pecuniary jurisdiction of the Court. A suit for recovery of possession of certain

MESNE PROFITS—*contd*

lands with mesne profits from the date of dispossession up to the date of restoration of possession was brought in the Munsif's Court. It was decreed together with the mesne profits claimed and the Court directed that the amount of mesne profits would be determined in the execution proceedings. The decree having been affirmed on appeal the decree holder applied to the executing Court for ascertainment of mesne profits. The total amount of mesne profits ascertained by the Munsif was Rs 1630 80 including interest. On an objection taken by the judgment debtor that the executing Court being a Munsif was not entitled to award mesne profits of a higher amount than Rs 1000. Held that the executing Court had jurisdiction to award the mesne profits ascertained in the present case. *Pamunni Mahlon v Dulu Mahlon I L R 21 Cal 500* followed in principle. *Ehugendra Kumar Chackralarti v Purna Chandra Bose 13 C I J 137* distinguished. *Panchapam Tekadap v Kivoo Haldar (1912)*

I L R 40 Calc 56

5—Suit for recovery

of mesne profits or damages with suit in declaratory and whether maintainable—Symbolical possession—Bengal Tenancy Act (111 of 1885) s 157 principle laid down in. If a person who has been dispossessed from an immovable property brings a suit for recovery of mesne profits the suit is not maintainable. The proper remedy is to institute a suit for declaration of title and recovery of possession with mesne profit. *Lep Singh v Amar I L R 21 Calc 214* referred to. When the title of the plaintiff is denied by the defendant he (plaintiff) ought not to obtain a decree for mesne profit till his title has been established in a Court of competent jurisdiction. Where the title of the plaintiff is established in a Court of competent jurisdiction that decision is conclusive between the parties for all time to come. The symbolical possession by the plaintiff is effective as against the judgment debtor though it may not be operative as against strangers to the suit. Where the title of the plaintiff to immovable property has been restored and he has obtained symbolical possession and allowed the defendant to continue in actual occupation of the land and successfully asserted his right to be paid a fair and reasonable amount of damages for use and occupation of the land it is not open to the defendant to question the title of the plaintiff and there is no intelligible reason why the latter should not be allowed to maintain an action for recovery of damages for use and occupation of the land. This principle is recognized by the Legislature in s 157 of the Bengal Tenancy Act. *Giri Narain Chatterji v Mohu Sudan Mukerji (1911)*

17 C W N 324

6—Applicator to assess

Limitation—Decree for mesne profits application for execution of by assignee—Right of assignee to apply for substitution in pending suit nature of application for ascertainment of mesne profits in pending suit limitation applicable to—Lenamidar if may apply—Assignee from assignee of party to suit application for substitution by—Claim for mesne profits if can be transferred—Stranger if may question assignment—Civil Procedure Code O XX = 12 O XXI = 10—Limitation Act (1 of 1908) Art 181. A durpatis held by three brothers D P and R was sold for rent and pur-

MESNE PROFITS—contd

chased by the *putnidar*. One of the three brothers *D* brought a suit and obtained a decree for the recovery of possession of the *durpuns* and mesne profits. After *D*'s death his widow got herself substituted in his place and in execution of the decree took possession of the property and subsequently a deed was executed between her and the two other brothers *P* and *R* in terms that the property belonged to the three brothers and she as the widow of the eldest was entitled to two annas and the remaining 14 annas were divided between her and the two brothers in equal shares as also the mesne profits. The *durpuns* was thereafter sold in execution of a money decree and ultimately passed into the hands of one *A*. On 21st May 1907 the two brothers *P* and *R* by a conveyance signed their share of the costs and mesne profits under the decree obtained by *D* to *M* a *benamidar* of *A* and on the 10th June 1907 *D*'s widow by another conveyance signed her share of the mesne profits and costs to *A*. On 22nd February 1909 *A* applied for execution of the decree and the application was admitted by the Subordinate Judge but under orders of the District Judge in appeal the application was returned for amendment on 4th March 1911 and amended on the same day. On appeal the High Court directed that this application presented by *A* should be treated as an application under O XX r 12 and remanded the case whereupon the amended application was placed on the record to be dealt with under O XX r 12 and *A* was substituted on the record in place of the original plaintiff. *Held* that the application should be treated as having been made on the date on which it was originally presented and that date being within 3 years of the dates of the conveyances assigning mesne profits and costs to *A* the application was not barred even if Art 181 of the Limitation Act was applicable. That even if the application was considered as having been made on the date on which it was amended the right of the assignee to apply for substitution in a pending suit is a right which accrues from day to day and is therefore not barred by limitation. That an application in a pending suit for ascertainment of mesne profits is not barred by the three years rule of limitation contained in Art 181 corresponding to Art 178 of the old Limitation Act. The law has not been changed by the new Limitation Act or the new Code of Civil Procedure. *Puran Chand v. Puri Radha Kishen* 1 L R 19 Cal 13 followed. *Held* (as to the contention that *A* could not be substituted when his two assignees *P* and *R* were not parties to the suit) that the property being the joint property of the three brothers and the suit having been brought by *D* as the eldest member of the family he might be taken to have represented the other two brothers also. That even if *I* and *P* were considered as assignees from *D*'s widow the position was that *A* was an assignee from *D*'s widow who was a party to the suit with respect to one third of the property and an assignee from *P* and *R* who in their turn were assignees from *D*'s widow with respect to two thirds, and O XX r 10 was applicable to an application made by a person who has not obtained an assignment directly from a party to the suit but who has obtained an assignment derivatively from a party to the suit. That a right to sue for damages cannot be transferred but in the present case the claim

MESNE PROFITS—contd

for mesne profits had already merged in a judgment before the assignment and the right under the judgment was assignable although the original cause of action was not. There is nothing in law to prevent a *benamidar* from applying to the Court for ascertainment of mesne profit. A stranger cannot take exception to an assignment on the ground of inadequacy of consideration that being a matter between the assignor and assignee. *Bhagat Dayal v. Debi Dayal* 1 L R 35 Cal 420 s.c. 1 L C H A 333 relied on. *Prasanno Kumar Panja v. Ashutosh Ray* (1913) 18 C W N 450

7 ————— *Application for ascertainment of estimated claim higher than court's pecuniary jurisdiction—order refusing application appeal from* Where the question of a court's jurisdiction is concerned it is the plaintiff alone which should be considered. Where the holder of a decree for possession of certain property with costs and mesne profits (which had not been claimed in the plaint) applied for ascertainment of the mesne profits and estimated the amount due therefore at Rs 1140 12 *held* that the court had jurisdiction to entertain the application although its pecuniary jurisdiction was limited to Rs 1000. An application for the ascertainment of mesne profits is an application for an order in the suit and is not an application for the execution of a decree and therefore no appeal lies from an order returning such an application for presentation to the proper Court. O VII r 10 of the Code of Civil Procedure 1908 applies only to the paper on which a suit is instituted and not to an application made in the course of a suit. Therefore an application for ascertainment of mesne profits does not fall within the provisions of that rule. *Sheikh Mohammad Abdul Ghafoor v. Manab Choudhury* 2 Pat L J 694

8 ————— *Date of decree—appeal—Court fees—application for refund of—Code of Civil Procedure Act 1 of 1908* O XL r 1 and O XLI r 13—*Court fees Act VII of 1870 s 13* Where the Privy Council on the 7th March 1913 dismissed an appeal from a decree of the High Court affirming a decree of the court of first instance dated the 29th November 1901, under which the plaintiffs were awarded mesne profits from the date of the decree to the date of recovery of possession and some of the plaintiffs obtained delivery of possession on the 9th May 1914 and others on the 14th January 1916 *held* that the decree to be executed was the decree of the Privy Council which affirmed the decree of the first court and that in effect the Privy Council decree awarded the plaintiffs mesne profits from the 29th November 1901 up to the date of delivery of possession and that effect would be given to the decree without contravening the provisions of O XX s 12 O XLI r 23 of the Code of Civil Procedure 1908 applies only where the original court has disposed of a suit on a preliminary point. A certificate for refund of court fees paid on an appeal against a preliminary decree cannot be granted under s. 13 of the Court Fees Act 1900. *Nandkumar Singh v. Bilas Ram Marwari* 3 Pat. L J 116

9 ————— *Claims against trustees—costs of calculation and repayment* Where

MESNE PROFITS—*concl'd*

mesne profits are claimed from a trespasser the costs of cultivation and reaping should be allowed
BALDEO RAI v. RAM DEBAL SI GH

4 Pat L J 301

10 ————— Partition suit—
Relief for future mesne profits claimed in suits—
Decree not referring to future profits—Relief must
be deemed to have been refused—Separate suit for
future profits—Civil Procedure Code (Act V of
1908) s 11, Expt V In a suit for partition a
claim was made for possession past mesne profits
and future profits The decree which granted
partition made no reference to future profits
although past profits were awarded The plain-
tiff having filed a separate suit to recover future
profits for three years. Held that the plaintiff
having claimed future mesne profits and the
Court having in its decree said nothing with
regard to the future profits the claim in respect
of the same must be taken to have been refused
and a separate suit for that relief was not main-
tainable under Expt V to s 11 Civil Procedure
Code 1908 *Dorainwami Ayyar v. Subramania
Ayyar* (1917) 41 Mad 188 and *Muhammad Isahq
Khan v. Muhammad Rustam Ali Khan* (1918)
40 All 292 not followed *ATMARAN BHASKAR v.
PANATHURAM BALLAL* (1920)

I L R 44 Bom 954

MHARKI VATAN

S = HEREDITARY OFFICES ACT (BOM. ACT
III OF 1874 AS AMENDED BY BOM. ACT
III OF 1910) ss 25 30 63 AND 64

I L R 41 Bom 23

MIADI SARBARAKARI TENUPE

See ORISSA TENANCY ACT 1913 s 3

4 Pat L J 387

MIGRATION

S = HINDU LAW—JOINT FAMILY

I L R 40 Calc 407

See SUCCESSION

L R 43 I A 35

MILITARY OFFICER

in the Indian Staff Corps—

See CIVIL PROCEDURE CODE (ACT V OF
1908) s 60 CL E (b)

I L R 35 Bom 667

MINES AND MINERALSSee LANDLORD AND TENANT—MINERAL
RIGHTS

I L R 37 Calc 723

I L R 38 Calc 696

See LEASE

1 Pat L J 441

I L R 45 Calc 87

See MINING LEASE

Income from rent and Royalties of

See INCOME TAX ACT 1918 s 5

6 Pat L J 62

rights of grantee to—

See GRANT

I L R 44 Calc 585

1 ————— Coal mine work-
ing of by lessee—suit for perpetual injunction to
restrain lessee from connecting leased mine with

MINES AND MINERALS—*concl'd*

other mines from instroke working and from cutting
or changing the thickness of supporting pillars—
Suit is to fail if premature in respect of one of
several reliefs—Injunction circumstances justifying
the grant of—Breach of contract between lessor and
lessee—Lessee is bound to leave barrier of coal to
prevent communication with adjoining mine—In-
stroke right of—Lessee is can be deprived of right
of instroke working without express provision in
lease.—Presumption of right in favour of lessee—
Subordinate owner's right of support against—Cir-
cumstances under which Court should protect such
right by injunction After the death of the lessee
of a coal mine his sons transferred their interest
in the mine to a person who had mines in the
immediate vicinity The plaintiffs sued for a
perpetual injunction to restrain the purchaser
(i) from connecting the disputed mine with the
adjacent mines (ii) from raising the coal from
the disputed mine through the pits of his mines
(iii) from ever cutting off or changing or dimin-
ing the thickness of the pillars of coal in the dis-
puted mine The subordinate Judge granted an
injunction on the first two grounds and refused
an injunction on the third ground It appeared
that under the lease the lessee was entitled to
remove all the coal of the demised mine but he
undertook to manage the work according to the
prevailing practice with special care and expert-
ness It was not suggested that the defendant
had acted in breach of this covenant The plain-
tiff alleged that the transfer had been made with
a view to enable the purchaser to injure the plain-
tiff by an improper working of the mine he further
asserted that there was a conspiracy amongst
the defendants who had threatened to cause
him loss The defendant denied the truth of these
allegations Held that it is well settled that a
man who seeks the aid of the Court by an injunc-
tion must show that the act complained of is in
fact a violation of his right or is at least an act
which if carried into effect will necessarily result
in a violation of the right The mere prospect
or apprehension of injury or the mere belief that
the act complained of may or will be done is not
sufficient That as the defendant claimed a right
to take away the entire coal the Court was com-
petent to grant an injunction if it was established
that what the defendant asserted he had a right
to do would constitute a breach of contract be-
tween the lessor and lessee That as regards the
mode of removal of the coal the plaintiff failed
to prove that he had any ground for an injunc-
tion in this respect but the suit could not conse-
quently be deemed premature in respect of all
the reliefs claimed though the objection might
hold good with regard to one of them That the
principle that a lessee who removes a barrier be-
tween the demised and an adjoining mine is guilty
of waste had no application to the circumstances of
the present case That it was not obligatory upon
the lessee to have a barrier of coal merely to pre-
vent communication with adjoining mines and the
injunction granted by the Court below restrain-
ing the defendant from breaking through the
existing barrier of coal could not be supported
That the right of instroke is the right of conveying
minerals leased to the surface through a pit or
shaft in the adjoining mine it is the converse right
to that of outstroke which is the right of convey-
ing minerals from an adjoining mine to the sur-

MINES AND MINERALS—contd

face-through a pit or shaft in the mine leased and a lessee is *prima facie* entitled to work by instroke but not by outstroke and if the lessor desires to deprive the lessee of his right of instroke working he must do so by clear and unambiguous provision. That in the present case the original lessee had no other land in the neighbourhood and could work the mine only through pits sunk therein and the original parties to the lease did not contemplate the contingency which happened and did not provide for it in the contract. There would consequently be a presumption of right in the lessee to work in the most advantageous way subject to his not committing a fraud on the lessor and no fraud on the part of the lessee having been proved the injunction to restrain the defendant from working the mine by instroke could not be sustained. That *prima facie* the owner of the surface has a right of support and the lessee is not entitled to work the mine so as to cause a subsidence. This right to support will be protected by an injunction if the Court is satisfied that injury is imminent and certain to result from the defendant's acts. The Court will also interfere by injunction when the defendant claims the right to do acts which must inevitably cause a subsidence. But in the present case there were no materials to show that the plaintiff had the right to the surface and till such right was established, he could have no right to claim protection against subsidence of the surface. Even assuming that the plaintiff had right in the surface there was no evidence to show that the pillars need be maintained in the present size and number to prevent subsidence and in view of the statutory rules for the working of mines it was extremely improbable that the defendant could alter the pillars in such a way as to endanger the surface and the injunction in this respect was rightly refused. **RAMJAS AGARWALLA v BRAJMOHAN SINGH (1914)** 19 D W N 887

Lessee for years or for life—Lessee in perpetuity—Intention of parties—Landlord's right. It is well settled in England that a tenant for life or for years has no right to work unopened mines. **Clegg v Rowland & Co 160** and **Campbell v Hardacre 4 App Cas 611** referred to **Gordon Stuart & Co v Fiskitnee Seodas Kowaree (1863)** 11 P 30 not followed. **Prince Mahomed Bullyar Shah v Rani Dhojmani 2 C L J 90** and **Titaram Mukerji v Cohen I L R 33 Cal 703** referred to. There is no difference in principle between a lessee for years and a lessee in perpetuity when nothing is known or can be inferred about the intentions of the parties at the time of the inception of the lease. The landlord continues to have a reversion in mines if covered after the inception of the lease. **Kally Dass Ahiri v Monmohini Dasree I L R 4 Cal 410** referred to. **Adhiram Goveani v Shjama Charan Vandi I L R of Cal 1003** followed. **Sonet Koorer v Hummut Bahadur I L R 1 Cal 391** **I L R 31 49** referred to. **Ishwar Shjama Chand Jiu v Pan Kanan Ghose I L R 35 Cal 56** not followed. **Shama Charan Vandi v Adhiram Goveani I L R 33 Cal 611** and **Megh Lal Pandey v Pajkumar Thakur I L R 34 Cal 353** distinguished. **Brayonath Bose v Durga Prosad Singh I L R 34 Cal 753** not followed and held to be practically overruled by **Hari Narayan Singh Deo v**

MINES AND MINERALS—contd

Sriram Chakravarthi I L R 37 Cal 723 **I L R 37 1 A 136** **Jyoti Prasad Singh v Lachipur Coal Company (1911)** **I L R 38 Cal 845**

Moghali Brah mottar—Grant. **Moghali Brah mottar** grant of a mauza does not pass the minerals under it to the grantee. **Hari Narayan Singh Deo v Sriram Chakravarthi I L R 37 Cal 723** and **Jyoti Prasad Singh v Lachipur Coal Co I L R 38 Cal 845** followed. **Sonet Koorer v Hummut Bahadur I L R 1 Cal 391** distinguished. **KUNJA BEHARI SEAL v DURGA PRASAD SINGH (1914)** **I L R 42 Cal 346**

Mining Rights— **Brakmottar** grant of mauza of entire maua before Permanent Settlement effect of in relation to mining rights. The effect of a grant of a rent free **brakmottar** of the whole of a mauza made before or after the Permanent Settlement is not to transfer any mining rights. **Jyoti Prasad Singh v Lachipur Coal Co 16 C W N 241** s c **I L R 38 Cal 845** and **Kunja Behari Seal v Raja Durga Prasad Singh 19 C W N 203** relied on. **Hari Narayan Singh Deo v Sriram Chakravarthi I L R 37 1 A 136** s c **I L R 37 Cal 723** **14 C W 745** followed. **Nowaghur Coal Co Ltd v BASHI BHUSAN RAY (1914)** **19 C W N 375**

Zamindar's grant of rent free debottar by—Grantee if entitled to under ground rights. Where a zamindar grants a tenure in lands within his zamindari and it does not clearly appear by the terms of the grant that a right to the minerals is included the minerals do not pass to the grantee. The principle applies to a rent free tenure. **RAGHUNATH ROY MAHARAJA v PAJJA DURGA PRASAD SINGH (1919)** **23 C W N 914**

Grant by zamindar of part of amindari land—Lease in perpetuity— In absence of evidence that zamindar expressly granted right to dig coal no such right passes by grant. Where a zamindar grants a tenure of lands within his zamindari and it does not clearly appear by the terms of the grant that a right to the minerals beneath the soil is included the minerals do not pass to the grantee. **Hari Narayan Singh v Sriram Chakravarthi I L R 37 Cal 723** **I L R 37 1 A 136** **Durga Prosad Singh v Brajanath Bose I L R 39 Cal 696** **I L R 39 1 A 133** and **Shau Bhusan Misra v Jyoti Prasad Singh Deo I L R 41 Cal 355** **I L R 41 1 A 46** followed. This principle applies as well as to rent free grants as to grants of tenure at fixed rents. A grant by the Rajah of Jheria of rent free **brakmottar** land part of this Raj property of which the terms were "You should enjoy it comfortably by cultivating and getting the same cultivated by others hence this pota is granted to you" was held not to pass the underground minerals to the grantee. **RAGHUNATH ROY MAHARAJA v DURGA PRASAD SINGH (1919)** **I L R 47 Cal 353**

Mineral rights in surface rights and a grant in mineral rights—Distinction between copyholders and a grant of freehold land in England—Construction of the terms of a grant as to conditions as to the exercise of the power in mining lease—Limitation—Increase of possession. Where the mineral rights were never in contemplation of the parties when the lease was



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granted in 1830 and the lessees never exercised any mineral rights whatsoever barring taking small quantities of coal from the outcrop for domestic purposes and burning lime and the zemindar by the lease granted a village containing 380 bighas at the abnormally low rent of Rs 17 per annum the presumption made in the absence of the original document was that only the surface rights were conveyed to the grantees. In such a case the mines and minerals and the property in the subsoil remained the property and in the possession of the zemindar. The surface rights with their incidents became vested in the grantees as tenure holders. *Hari Narain Singh Deo Bahadur v Surram Chackerbatty* L R 37 I A 136 s c I L R 37 Cal 723 14 C W N 46 and *Durga Prasad Singh v Braja Nath Bose* I L R 39 Cal 696 s c 16 C W N 48^o relied on. *Kunja Behari Seal v Durga Prasad Singh* I L R 42 Cal 316 s c 19 C W N 103 referred to. If the mines are presumed to be vested in and to be the property of the zemindar his rights must be just the same as those of a free simple free hold owner of land according to English Law who makes a grant with an express reservation of the mines to himself together with the incidents that follow therefrom. By reason of that presumption and by reason of the severance of the tenement and the reservation that must be deemed to rise in favour of the Raja the latter has an incident to his right of property and ownership in the mines the right by implication of law to enter upon the surface of the tenure holder's mouzah for all reasonable and necessary purposes to enable him to work the mines and exercise his mineral rights. The case of *Prince Mahomed Bakhtyar Shah v Rani Dhayamoni* 2 C L J 20 in so far as it decided that the owner of a limited estate in possession can prevent the grantor or his lessee to work and appropriate the mineral during the existence of such limited estate unless the grantor had expressly reserved the mineral right in his own favour was wrongly decided by the misapplication of the English Law of copyholds to the case of owners and tenants of freehold land. The distinction between freehold and copyhold law is that under the latter there is no division into strata and the tenant obtains possession of the entire surface and sub soil to the centre of the earth so that the lord of the manor cannot work the mines unless he proves a right or custom to that effect. It is under only the copyhold law and where there is no reservation of custom proved that a deadlock occurs and neither landlord or tenant can work the mines. Under the law applicable to freehold land there can be no deadlock or if the mines be excepted the grantor has an implied right to work them incidental to such exception. If there be no exception then that right is with the grantee as owner of the surface and sub soil. Where a tenement is severed the person in whose favour the reservation is made is the absolute owner of the sub soil and the rights of such a person are that he has by implication of law the power to go upon the surface and do all things reasonably necessary in order to exercise the enjoyment of his property. *Batten Pool v Kennedy* (1897) 1 Ch 256 and *Ramsay v Blair* L R 74 C 101 referred to. Held on the construction of a mining lease that under cl (3) of Part II of the lease the lessees had merely power and liberty to enter upon lands in direct pos-

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session of the Paja himself in order to exercise the mineral rights vested in them. The implied liberty to enter and work the mines subject to reasonable restrictions is not to be curtailed by the express conditions of the lease unless the intention is apparent. Part III of the lease headed 'Restrictions and conditions as to the exercise of the above liberties powers and privileges' must be construed as only restricting the liberties and privileges expressly conferred by Part II and not as any restriction upon the general right of access which is implied by law. *Earl of Cardigan v Armistage* 2 B & C 197 107 Eng Rep 361 referred to. Held also that the defendant acquired no title by adverse possession to the mines and minerals of the land in question. *NAWABAH COAL CO LD v BEHALKAL TRIBUNAT* (1916) 20 C W N 1135

Land Law in Bengal—Mokarari Lease— With all rights a mokarari lease of lands with all rights (*mas hal haluk*) does not carry a right to the subjacent minerals. *Sahib Bhusan Misra v Jyoti Singh* L R 44 I A 46 followed and applied. *GIRDHARI SENOR v MEQAN LAL PANDEY* (1917) L E 44 I A 246

Coal mines—Royalty received by proprietor of estate from lessees of coal mines—Liability to Cess under Bengal Cess Act (Bengal Act IX of 1880) ss 6 and 72—Return of annual net profits of coal mines—Income tax Held (upholding the decision of the High Court) that a royalty received by the appellant from person to whom he had leased a portion of his estate in Bengal for the purpose of working the coal mines situated therein was within ss 6 and 72 of the Bengal Cess Act (Ben Act IX of 1880) part of the annual net profits of the mines and that he had been properly assessed with cess on such royalty. The return required by s 27 was not with regard to the mine owner's profit but had reference to the general net profits of the property. The fact that the obligation to make the return was laid on the person most cognizant of the circumstances under which the mine was worked and of the profits derived from it did not alter the character of the royalty received by the proprietor for his share of the property of the mine. *MANENDRA CHANDRA NANDI v SECRETARY OF STATE FOR INDIA* (1910) I L R 38 Cal 372

Minerals under the soil right to—grant of surface to permanent tenure holder—reservation as to minerals presumption from—grantor's right to enter the surface holder's land to work minerals transferee of grantor's rights rights of The plaintiffs obtained from the Rajah of Khatras a lease of the underground mines and mineral rights in Mouzah Khamajuri dated the 2nd October 1879. They were prevented from working the mines by the defendants who claimed both the surface and sub soil rights in the Mouza under a deed from the Pajah of Khatras ancestor dated the 21st March 1830. The deed was not produced but it was said to have conferred upon the defendants a *Moghuli Brahman* tenure in respect of 830 bighas of land at a rent of Rs 17 per annum. In appeal the defendants asked the Court to presume a grant in their favour on the basis of a lost grant. The Court presumed a grant

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to the defendants as permanent tenure holders of the surface rights of the Mouzah and held that at the time of the grant there must be presumed to have been a severance of the surface rights from the property in the sub soil. The surface rights with their incidents became vested in the defendants as tenure holders and the mines and minerals in the Pajah as the owner of the property as if there had been a reservation in his favour. *Held* further that by reason of this presumption and by reason of the severance of the tenement and the reservation deemed to have arisen in favour of the Rajah the latter had as incidental to his right of property and ownership in the mines the right by implication of law to enter upon the tenure holder's land for all reasonable and necessary purposes to enable him to work the mines and exercise his mineral rights. A transfer of the Rajah's right to the mines and minerals would have the same right to enter the tenure holder's land as the Rajah himself had. **NAWAGAR COAL CO LTD v BEHARI LALL TRIGUNAIT**

1 Pat L J 275

Minerals—Patni

Lease whether conveys underground rights— **Adha Urdha Hal Hakul** meaning of in a lease—low rent—ignorance of parties to conveyance as to value of sub soil rights effect of. In the absence of express words conveying the underground rights a *patni* lease does not entitle the *patnidar* to work the minerals. The words *adha urdha* followed by the words *hal hakul* in a lease convey the underground rights. When sub soil rights are expressly transferred by the terms of a deed the fact that the rent is low or that the parties were not aware at the time of the execution of the deed that there were valuable minerals under the soil does not render the lease invalid. **PAM LAL KAVIRAJ v PAJA MAHARAJA KUMAR SATYA VIKRANJAN CHAKRAVARTY**

5 Pat L J 563

grant of surface

effect of—Adverse possession acquisition of title to minerals by—constructive possession—Limitation Act (IX of 1908) Art 120—Bengal Regulation I of 1793 Art 8 (3)—Bengal Regulation XIX of 1793 cl 2 (1) A grant by a *zamindar* of a tenure in lands within his *amindari* does not pass the minerals unless it appears clearly from the terms of the grant that the minerals were included in the grant. The mere fact that such a grantee has given leases which purport to give a right to the soil and the sub soil of his tenure and that minerals have been worked by the lessees will not convey a title by adverse possession on the grantee as against the *amindar* from whom he acquired his grant. Although possession of a part of a certain property is constructive possession of the whole if the whole is otherwise vacant this constructive possession is an incident of ownership and results from title. The doctrine of constructive possession is not applicable to a case where the occupant defends himself on the ground of his possession only without proving any title. A wrong doer's rights by adverse possession must be confined to land of which he is in actual possession and this principle applies equally to mine. Where an owner of land sells it reserving to himself the mineral he retains possession of the minerals in the same way as if he had not sold the surface. Mere non user is not an abandonment of possession and conse-

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quently no matter how long mines remain unworked by the owner his right is not barred so long as they are not worked by some one else. There are cases in which a title by adverse possession can be made out in respect to minerals but it does not follow that by working a part of the minerals or opening up particular quarries possession over a continuous field of minerals or quarries of which the portion worked forms a part can be acquired. A fresh course of action for a declaration that the mineral rights in certain land are vested in the plaintiff arises whenever any particular portion of the minerals is removed. The mere fact that no rent is reserved in a *patna* does not necessarily imply that by it a revenue free estate was granted. Direct payment of cess on account of rent free lands is not conclusive that those rent free lands constitute a separate estate. **KUMAR PRAMATHA NATH MALIA v A J MITTAL**

5 Pat L J 273

MINING LEASE

See LANDLORD AND TENANT

I L F 41 Calc 493

I L R 48 Calc 552

L R 45 I A 275

*See MINES AND MINERALS**See TENANTS IN COMMON*

1 L E 39 Mad 1049

Parcels—Area stated

within specified Boundaries—Alleged Deficiency—Abatement of Rent The appellant was lessor and the respondents lessees under a mining lease the terms of which were contained in a *habuliyat* granting the rights of cutting raising and selling coal beneath 400 *bighas* of land described in the schedule below in Mauza Dobari the schedule specified boundaries and added right in the coal underneath the 400 *bighas* of land within these boundaries. In a suit to recover arrears of rent the respondents alleged that they were in possession of less than 400 *bighas* and claimed to be entitled to an abatement of rent. *Held* (i) that the construction of the *habuliyat* as to the land included in the lease could not be varied by evidence of the negotiations which led to the contract or by evidence that there were not 400 *bighas* within the specified boundaries (ii) further that the respondents had failed to prove what was the area in fact contained within the boundaries or that of which they had been given possession. **DURGAPRASAD SINGH v RAJENDRA NARAYAN BAGCHI** (1913)

I L N 41 Calc 493

L R 40 I A 223

Construct on—Rule of

construction—Issue raised in the pleadings but neither at the hearing nor in appeal not allowed to be raised before the Privy Council In construing the terms of a deed the question is not what the parties may have intended but what is the meaning of the words which they used. Where a grantee of underground and coal mining rights in a village which at the date of the grant had railway communication only by the East India Company stipulated to pay royalty at a certain rate on all coals de-patched by the said railway line but in view of the contemplated construction of another line by the Bengal Nagpur Railway Company agreed that if by reason of such construction the freight of coal were reduced by two annas or more

MINOR—contd

1 ——— Mortgage executed by—Money borrowed to discharge debts of father—Contract executed by minor effect of In this appeal which was one from the decision of the High Court in *Maharaj Singh v Raviwant Singh* 1 L P 28 All 598 their Lordships of the Judicial Committee on the evidence upheld that decision on the question whether the defendant Maharaj was a minor at the time he signed the mortgage and said Having found as a fact that Maharaj Singh was a minor at that time it is not necessary for their Lordships to consider any other issues This suit has been brought on the mortgage deed of the 23th of October 1892 by the assignee of that mortgage and as their Lordships have held that the mortgage was not made by Sheoraj Singh as the manager of the family or in any respect as representing Maharaj Singh and as Maharaj Singh was then a minor the mortgage deed as against him and his interest in the estate was not merely voidable it was void and of no effect and must be regarded as a mortgage deed to which he was not even an assenting party and as a mortgage deed which did not affect him or his interest in the estate *BALWANT SINGH v R CHAND* (1912)

I L R 34 All 295

2 ——— Sale—Sale in favour of minor void A sale in favour of a minor is void *Mohora Bibee v Dharmadas Ghose* 1 L R 30 Calc 539 followed *NAYAKOTTI NARAYANA CHETTI v LOPALINGA CHETTI* (1909) 1 L R 33 Mad 312

3 ——— Custody of—Determination of custody of minor—Contract of apprenticeship by minor how far enforceable—Injunction against minor for breach of such contract—When Court will take minors from custody of parents or persons selected by them A minor may bind himself by a contract of apprenticeship if it be for his benefit but such a contract cannot be specifically enforced against him either directly or by restraining him from taking service under others or by restraining others from employing him *De Francesco v Barnum* 43 Ch D 165 referred to If the contract is for the benefit of the minor apprentice an action will lie for enticing away such apprentice and to recover his earnings Parents and guardians cannot divest themselves of their right of guardianship by any contract A delegation of such right is revocable at any time and the parent or guardian is bound to revoke it if it is used to the detriment of the children and it is open to the Court within whose jurisdiction the children are found to exercise the same power if cause is shown for such interference The jurisdiction of the Courts to take away children from parents or from persons selected by them is a parental one and the Courts must do what a wise parent under the circumstances would or ought to do *The Queen v Gynquill* (1893) 2 Q B 232 218 referred to The main consideration to be acted upon is the benefit or welfare of the child the welfare of the child means not only its physical but also its moral and religious welfare A male child above the age of 14 and a female child above the age of 16 years will not ordinarily be compelled to remain in custody to which he or she objects and in the case of younger children who are still old enough to form an intelligent preference their wishes will form one of the elements for consideration The Court will remove children

MINOR—contd

from the custody of one from whom cruelty or corruption is apprehended *POLLARD v POUSE* (1910) 1 L R 33 Mad 288

4 ——— Fraud—Misrepresentation—Minor—Estoppel—Evidence Act (I of 1872) s 115—Co-sharer landlord notice to quit by valid When a person between 18 and 21 years of age executes a conveyance with the knowledge that his minority has been extended by reason of an order under s 7 of the Guardians and Wards Act in favour of vendees who are not aware of that fact there is no misrepresentation and legal fraud on his part and he is estopped from taking advantage of his minority to show that the conveyance by him is inoperative *Mohun Bibi v Sarat Chand* 2 C W N 18 *Dhanmull v Ram Chunder* 1 L R 24 Calc 265 relied on *Mohora Bibee v Dharmadas Ghose* 1 L R 30 Calc 539 s c 7 C W N 411 referred to *SURENDRA NATH ROY v KRISHNA SAKSHI DAS* (1910)

15 C W N 239

5 ——— Representation of minor—Appointment of guardian ad litem—Absence of affidavit as required by s 456 of the Code of Civil Procedure 1882—Suit by minors to set aside proceedings—Civil Procedure Code 1882 s 443 Where an order was made by Court appointing a person guardian ad litem on behalf of certain minors in a suit in which a decree was duly made against them Held in a suit by the minors on attaining majority to set aside the decree and sale in execution thereunder that the absence of an affidavit such as is required by the provisions of s 456 of the Civil Procedure Code (Act XIV of 1882) at the time the application for the appointment of a guardian was made was not sufficient to render the proceedings illegal and void as against the minors on the ground that they were not properly represented therein *Walia v Banke Behari Pershad Singh* 1 L R 30 Calc 1021 1 L R 30 I A 182 followed The order being on the record the presumption was in the absence of evidence to the contrary that every thing was regularly and properly done *MANXU LAL v GRULAM ABBAS* (1910)

I L R 32 All 287

6 ——— Suit to set aside compromise of and decrees in suits to which minors were parties—Civil Procedure Code 1882 ss 443 456 and 462—Minors unrepresented owing to fraud and misrepresentation of de facto guardian whose interest conflicted with theirs—Form of decree—Civil Procedure Code 1908 s 98—Specific Relief Act (I of 1877) s 42—Question of law In this case the appellants sued for a declaration that a compromise of certain pre-emption suits and decrees based thereon made on their behalf in 1899 when they were minors were not binding on them having been obtained by the fraud and misrepresentation of the respondent (who was then their de facto guardian and manager of their property) and in proceedings in which they were practically unrepresented and they prayed that they might be restored to the position held by them prior to the date on which the compromise and decrees were made It appeared that although the appellants were described in the proceedings as under the guardianship of one H P he had never been properly appointed their guardian ad litem by the Court as required by s 443 of the Civil Pro

MINOR—contd

cedure Code 1882 that no *lond fde* application had ever been made under s 456 to have a guardian *ad litem* appointed by the Court and that the leave of the Court had not been obtained to enter into the compromise on the appellants behalf as was necessary under s 462. *Held* that the appellants were entitled to the declaration they sought. *H P* had their Lordships found, been introduced into the suits of 1899 by the respondent as the guardian or next friend of the appellants to advance the interests of the respondent and to defeat the interests of the appellants which conflicted with those of the respondent he had throughout acted under the directions and on behalf of the respondent and in his interest and contrary to the interests of the appellants and the respondent had taken advantage of his position to the detriment of the appellants. There was therefore no one to protect them and they were unrepresented in the proceedings which were therefore not binding on them. *Manohar Lal v Jadunath Singh* 1 L R 28 All 585 L R 33 I 4 123 followed S 42 of the Specific Relief Act (I of 1877) which had been applied to the case by the majority of the Court of the Judicial Commissioner was held not to be applicable. *Semble* The question whether on certain stated facts the relief which the appellants prayed for should be granted or refused was a question of law within the meaning of s 50 of the Civil Procedure Code (Act V of 1909) and where on a difference of opinion on that question between two Judges of the Court the case was referred under that section to a third Judge that was the only question he had jurisdiction to consider and decide. *PARTAB SINGH v BHANUTI SINGH* (1913)

I L R 35 All 487

7 ———— Guardian *ad litem* refusing to act—*Mitakshara* father's proper guardian in suit on mortgage of family property by him—*Hindu law* *Mitakshara* family—*Debt* son's liability for—*Mortgage* decree of *litem* inf son who is not represented—*Equity* of redemption if barred by such decree—*Decree* joint of—*Practice*—*Redemption* decree for *ga ed* In a suit on a mortgage executed by a *Mitakshara* father the father was proposed as guardian *ad litem* of his infant son by the plaintiffs but he refused to accept service of notice on him as such and entered appearance only on his own behalf and not as guardian of his son. No further step was taken by the plaintiffs to have a guardian *ad litem* appointed for the infant and the suit was decreed. *Held* that the infant was not represented in the suit and the decree was therefore not binding on him. *Walia v Banke Behari* 1 P 301 I 15 I L J 10 Cal 10 I distinguished *Kharajmal v Diam* 1 L R 3 Cal 96 9 C 11 701 referred to. In a suit by the infant for a declaration that the decree was fraudulent and not binding on him it was found that the mortgage was executed for legal necessity and that the infant son was not born at the time of the mortgage. *Held* that it would be unfair to drive the mortgagee or to a free suit to enforce the mortgage against the infant when the case had been decided on the merits and the mortgage found binding on the infant. But although the mortgage was binding on the plaintiff he had since his birth a bare in the equity of redemption and his right to redeem could not

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be shut out by a mortgagee decree in a suit to which he was not a party. Although therefore there was no prayer to be allowed to redeem in this suit decree for redemption was passed. *BAL-KISSEN LAL v CHONDHURY TAPESUR SINGH* (1911) 17 C W N 219

8 ———— Decree again—*Effect* of *litem*—*Minor* sued as major and unrepresented by guardian *ad litem* if party to a suit A decree against a person who is neither a party nor is properly represented on the record is a nullity and might be disregarded without any proceeding to set it aside. *Kharajmal v Diam* 9 C 11 N 201 I L P 3 Cal 96 referred to. Where a suit for rent was brought and an *ex parte* decree passed against a person who though sued as a major was found to have been a minor at that time and remained unrepresented by a guardian *ad litem*. *Held* that the minor was not a party to the suit and the decree passed against him was nullity. *Rashidunne sa v Ismail Khan* 13 C 11 A 1187 *Narsing v Jali* 15 C L J 1 followed *Walia v Banke Behari* 7 C 11 N 774 I L R 30 Cal 1021 distinguished. *Held* also that the ignorance of the plaintiff as to the minority of the defendant did not affect the rights of the minor. *PURVA CHANDRA KUNWAR v BEJOI CHAND MAHATAR* (1913)

17 C W N 549

9 ———— Guardian—*Custody*—*Plaint* in District Court—*Transfer* to High Court—*Jurisdiction*—*Letters Patent* 1865 cl 13 and 70—*Guardians and Wards Act* (VIII of 1890) ss 9 10 and 62 The first respondent instituted a suit against the appellant in a District Court by a plaintiff claiming a declaration that he was entitled to the guardianship and custody of his two minor sons (the added respondents) and for an order that they should be handed over to him. The suit having been transferred to the High Court under the Letters Patent 1865 cl 13 that Court declared that the minors should go to wards of the Court that the first respondent was guardian of their person and ordered the appellant to hand them over to him. The minors were in England both when the suit was instituted and when the order was made. They were not made parties to the proceedings nor were they represented before the Court. *Held* (i) that the District Court had no jurisdiction since the minors were not ordinarily resident in the district as required by s 9 of the Guardians and Wards Act 1890 and since the suit was not instituted by petition as required by s 10 of that Act (ii) that even if the High Court had any jurisdiction with regard to minors beyond that which must have been exercised by the District Court (which was not determined) the mandator order ought not to have been made since an attempt to enforce it would expose the appellant to *habes corpus* proceedings in England and since the minors were not represented before the Court nor adequate steps taken to ascertain their wishes and interests. *BESANT v NARAYANIAN* (1914)

L R 41 I A 314

10 ———— Guardian *ad litem*—*Appointment* of *procured* by suppression of the evidence of *near relation*—*Whether* decree *halve* *the* *sons* and—*Fraud* In a suit for the recovery of money against a father and his minor son the father refused to act as guardian *ad litem* of his minor

MINOR—*contd*

hereupon the Court appointed its Head Clerk as guardian on the affidavit of the plaintiff that there was no fit and proper person alive to act as the guardian of the minor & held as a matter of fact the plaintiff knew that the minor was living under the protection of his maternal grandfather. The decree passed in this suit was sought to be set aside by the minor on the ground of fraud. Held that the statement in the affidavit could not be held to be deliberately false so as to constitute fraud in the absence of any allegation of collusion between the plaintiff and the Head Clerk and the decree could not be set aside unless there was no appointment of a guardian and then the appointment was induced by fraud or what the Court would regard as tantamount to fraud. *Hanuman Prasad v. Muhammad Isahq* I L R 23 All 137. *Ram Landra Das v. Joti Prasad* I L R 29 All 675 and *Babaji bin Anand v. Maruti* II Bom II C 187 distinguished. **MARUTHAKALAI v. PALANI** (1912)

I L R 37 Mad 535

11 ——— In *Insolvency—Provincial Insolvency Act (III of 1907)* ss 1 cl (b) (g) 16—*Contract Act (I of 1872)* ss 11 17 253 254—*Insolvency Act of 1883* ss 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100—*Insolvency of partner—Dissolution of partnership in India*, as in England an infant partner of a firm cannot be so adjudicated an insolvent. *Lo di v. Christmas v. Gilbert Waller v. Beauchamp* (1892) A C 607 followed. The creditors of the firm are not entitled to proceed against him personally being restricted only to his interest in the property of the firm (vide s 247 of the Indian Contract Act). There is no difference in principle between the nature of the liability of an infant admitted by agreement in a partnership business and that of another (e.g. a Hindu) on whose behalf an ancestral trade was carried on by his guardian. *Joukiso v. Nityanand* I L R 2 Cal 783. *Ram Parth v. Football* I L R 20 Bom 767 referred to. It is not open to the Court to direct the receiver in insolvency to deal with assets other than those belonging to the persons who have been adjudicated insolvents. *Lorell v. Christmas v. Gilbert Waller Beauchamp* (1892) A C 607 explained. Whereas in England the bankruptcy of a partner works dissolution of the partnership without an order of the Court it is not so in India. *vide* s 253 254 of the Indian Contract Act. A receiver appointed under s 16 of the Provincial Insolvency Act merely replaces the solvent partner in respect of the business of the firm. The position of a receiver is the same both with regard to a Hindu joint family partnership assets and acquisitions therefrom. **SANKAR CHARAN MANDAI v. ASHUTOSH GHOSH** (1914)

I L R 42 Cal 225

12 ——— *Settlement accepted by—Transfer of property by husband acting as attorney—Impossibility to restore status quo ante to opening settlement—Ratification*. Where by a division of property by independent arbitrators a share was allotted to an infant who after coming of age sold a valuable property not allotted at a profit and it appeared that she was throughout acting with her husband who held a power of attorney from her and of who acts as attorney she had not complained and who if the infancy had been known would have been appointed her guardian and as

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guardian would have acted exactly as he had acted as attorney and it was only after the greater part of what she had received had been dissipated that she sought to set aside the transaction on the ground of her infancy. Held that though there could be no ratification by an infant after coming of age of the invalid power of attorney as it was impossible for her to restore the property he had received and a general contribution of the property divided could not possibly be ordered she could not be allowed to reopen the settlement. Held also that he was bound by a transaction which was not concealed from her in any way and formed part of the settlement. **CHUAN HOOT GUON NEON v. JAW SIN DEE** (1914)

19 W N 767

13 ——— *Representation of—Suit to set aside a decree against a minor—Minor properly represented in such suit—Fraud or collusion of guardian*. A decree obtained against an infant properly made a party and properly represented in the case cannot be set aside by means of a separate suit except upon proof of fraud or collusion on the part of the guardian. **BEVI PRASAD v. LAJJA PAX** (1916) I L R 38 All 452

14 ——— *Purchase of immovable property by or—Suit by purchaser for possession of property purchased—Transfer of Property Act (IV of 1882)* ss 54 and 55. A minor is capable of purchasing immovable property and where such a purchase has been completed by execution and registration of a sale deed he can sue to recover possession of the property purchased upon tender of the balance of the purchase money. Such a suit is not a suit for specific performance of a contract and no question of mutualivity arises. *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhury* I L R 39 Cal 230 and *Mohori Bibee v. Dharmodar Ghose* I L R 30 Cal 639 distinguished. *Shib Lal v. Bhagwan Das* I L R 11 All 244. *Baynath Singh v. Palu* I L R 30 All 125. *Yelagutha Chetty v. Govindaswami Naiken* I L R 30 Mad 534. *Ujjai Nay v. Gauri Shankar* I L R 33 All 657. *Munni Kunwar v. Madan Gopal* I L R 33 All 62. *Bahauddin v. Rafiqat Hussain* 18 Indian Cases 451. *Raghunath Bakhsh v. Hayt Sheikh Mahomed* 18 Oudh Cases 115 and *Muniya Kanan v. Perurat Kanan* 34 Mad L J 342 referred to. *Davuloti Varayana Chetty v. Logalinga Chetty* I L R 33 Mad 312 distinguished from **NARAIN DAS v. MUSAHMAT DHANVA** (1914)

I L R 38 All 154

15 ——— *Mortgage in favour of minor who has advanced the whole of the mortgage money—Enforceability of by him or by any other person on his behalf—Contract Act (I of 1872)* s 11—*Transfer of Property Act (IV of 1882)* s 7. A mortgage executed in favour of a minor who has advanced the whole of the mortgage money is enforceable by him or by any other person on his behalf. *Mohori Bibee v. Dharmodar Ghose* I L R 30 Cal 639. 30 I A 114 explained and distinguished. *Sembla*. A sale to a minor under similar circumstances is equally good. *Davuloti Varayana Chetty v. Logalinga Chetty* I L R 33 Mad 312 overruled. English and Indian Law reviewed. **PACHAYA CHARIAP v. SANTIYASA PACHAYA CHARIAP** (1916) I L R 40 Mad 309

16 ——— *Liability of, whenances rat trade carried on on his behalf—Contract Act (I of 1872)* s 91—*Interest not contracted for and*

MINOR—contd

whereupon the Court appointed its Head Clerk as guardian on the affidavit of the plaintiff that there was no fit and proper person alive to act as the guardian of the minor while as a matter of fact the plaintiff knew that the minor was living under the protection of his maternal grandfather. The decree passed in this suit was sought to be set aside by the minor on the ground of fraud. Held that the statement in the affidavit could not be held to be deliberately false so as to constitute fraud in the absence of any allegation of collusion between the plaintiff and the Head Clerk and the decree could not be set aside unless there was no appointment of a guardian *ad litem* or the appointment was induced by fraud or what the Court would regard as tantamount to fraud. *Hanuman Prasad v. Muhammad Isahag* I L R 29 All 137 *Ramesandra Das v. Joti Prasad* I L R 29 All 675 and *Padosi bin Hussaf v. Maruti* II Bom H C 187 distinguished. *MARUTHANALAI v. LALANI* (1912)

I L R 37 Mad 535

11 ——— Inolvency—Provincial Insolvency Act (III of 1907) ss 14 (b) (g) 16—Contract Act (I of 1872) ss 31, 32, 263, 264—Insolvency adjudication of an insolvent—Receiver in insolvency powers of—Hindu joint family—Bankruptcy Act 1883 (46 & 47 Vict c 52) ss 33, 102—Insolvency of partner—Dissolution of partnership In India as in England an infant partner of a firm cannot as such be adjudicated an insolvent *Lord & Christmas v. Gilbert Walter Beauchamp* (1894) A C 607 followed. The creditors of the firm are not entitled to proceed against him personally being restricted only to his interest in the property of the firm (vide s 247 of the Indian Contract Act). There is no difference in principle between the nature of the liability of an infant admitted by agreement in a partnership business and that of another (e.g. a Hindu) on whose behalf an ancestral trade is carried on by his guardian *Jaykiso v. Nityanand* I L R 3 Oudh 738 *Ram Parbhai v. Fochhai* I L R 20 Bom 767 referred to. It is not open to the Court to direct the receiver in insolvency to deal with assets other than those belonging to the persons who have been adjudicated insolvents *Lord & Christmas v. Gilbert Walter Beauchamp* (1894) A C 607 explained. Whereas in England the bankruptcy of a partner works dissolution of the partnership without an order of the Court it is not so in India vide ss 263, 264 of the Indian Contract Act. A receiver appointed under s 16 of the Provincial Insolvency Act merely replaces the insolvent partner in respect of the business of the firm. The position of a receiver is the same both with regard to a Hindu joint family partnership assets and acquisitions therefrom. *BAHYASI CHARAN MANDAI v. ASHUTOSH GHOSH* (1914)

I L R 42 Cal 225

12 ——— Settlement accepted by—Transfer of property by husband acting as attorney—Impossibility to restore status quo ante to re-opening settlement—Ratification Where by a division of property by independent arbitrators a share was allotted to an infant who after coming of age sold a valuable property so allotted at a profit and it appeared that she was throughout acting with her husband who held a power of attorney from her and of whom she acted as attorney she had not complained while the infancy had been known would have been appointed her guardian and as

MINOR—contd

guardian would have acted exactly as he had acted as attorney and it was only after the greater part of what she had received had been dissipated that she sought to set aside the transaction on the ground of her infancy. Held that though there could be no ratification by an infant after coming of age of the invalid power of attorney as it was impossible for her to restore the property he had received and a general redistribution of the property divided could not possibly be ordered she could not be allowed to reopen the settlement. Held also that he was bound by a transaction which was not concealed from her in any way and formed part of the settlement. *CHIVAN HOOR GUON NZON v. HUAN SIM BEY* (1914)

19 C W N 787

13 ——— Representation of—Suit to set aside a decree against a minor—Minor properly represented in such suit—Fraud or collusion of guardian A decree obtained against an infant properly made a party and properly represented in the case cannot be set aside by means of a separate suit except upon proof of fraud or collusion on the part of the guardian. *BEVI PRASAD v. LAJPA PAK* (1916) I L R 38 All 452

14 ——— Purchase of immovable property by or—Suit by purchaser for possession of property purchased—Transfer of property Act (IV of 1882) ss 54 and 55 A minor is capable of purchasing immovable property and where such a purchase has been completed by execution and registration of a sale deed he can sue to recover possession of the property purchased upon tender of the balance of the purchase money. Such a suit is not a suit for specific performance of a contract and no question of mutuality arises. *Mir Sarvarjan v. Fakhruddin Mahomed Chowdhury* I L R 39 Cal 232 and *Mohori Bibee v. Dharmodar Ghos* I L R 39 Cal 539 distinguished. *Shid Lal v. Bhagwan Das* I L R 11 All 244 *Baynath Singh v. Palu* I L R 30 All 125 *Velayutha Chetty v. Govindaswami Nair* I L R 39 Mad 594 *Ulfat Rai v. Gauri Shankar* I L R 33 All 657 *Munni Kunwar v. Madon Gopal* I L R 30 All 67 *Bahauddin v. Rajagat Husain* 18 Indian Cases 451 *Raghunath Bokhes v. Hayy Sheikh Mahomed* 18 Oudh Cases 115 and *Muniya Konan v. Perumal Konan* 24 Mad L J 34^d referred to. *Nankoti Narayana Chetty v. Logalinga Chetty* I L R 33 Mad 312 distinguished from *NARAIN DAS v. MUSANNAT DHANIA* (1915)

I L R 38 All 154

15 ——— Mortgage in favour of minor who has advanced the whole of the mortgage money—Enforceability of by him or by any other person on his behalf—Contract Act (I of 1872) s 11—Transfer of Property Act (IV of 1882) s 7 A mortgage executed in favour of a minor who has advanced the whole of the mortgage money is enforceable by him or by any other person on his behalf. *Mohori Bibee v. Dharmodar Ghos* I L R 39 Cal 539, 30 I L R 114 explained and distinguished. *Sembla* A sale to a minor under similar circumstances is equally good. *Nankoti Narayana Chetty v. Logalinga Chetty* I L R 33 Mad 312 overruled. English and Indian Law reviewed. *PACHAVA CHARIAR v. SHIVAYASA PACHAVA CHARIAR* (1916) I L R 40 Mad 308

16 ——— Liability of when ancestral trade carried on on his behalf—Contract Act (I of 1872) s 247—Interest not contracted for and

MINOR—*co Id*

did no wish a fresh guardian to be appointed and was old enough by appearance to act for himself no fresh guardian need be appointed. After the defendant managed his own affairs and acted as a man who has attained majority would do. The plaintiff alleged that the dealings were entered into on defendant's assurance that he had become an adult. This was disputed by defendant but the High Court found on the evidence (contrary to the finding of the District Judge) that the defendant did represent himself to be of full age and that the plaintiff was misled by the false representation. *Held* that s 115 of the Evidence Act is applicable to the case and that the defendant's plea of minority can no be heard. *Ganai Lal v Durga* (I L R 21 Bom 195) *Nelson v Soaker* (4 de Gex and J 455) *dictum* of *Turner L J* cited in I L R 20 Cal 393 and *Lereve v Brownham* (Times L R 1111 s 801) followed. *Dharma Das Ghose v Brahmoo Dutt* (I L R 20 Cal 616) and *Mohun Bibi v Dharma Das Ghose* (I L R 30 Cal 539 P O) distinguished. *Dharmvill v Pam Chandra Ghose* (I L R 24 Cal 266 F B), *Brahmo Dutt v Dharma Das Ghose* (I L R 20 Cal 381 F B) *Saral Chandra Mitter v Mohun Bibi* (I L R 20 Cal 371 F B) and *Delat Ram v Dada* (6 P P 1910) no followed. *WAKINDA RAM v SITA PAM* I L R 1 Lab 359

MINOR CO-PARCENER

—Purchaser from—

See PARTITION SCTR

I L R 45 Bom 983

MINOR REVERSIONER

*See HINDU LAW—JOINT FAMILY PRO-
PERTY* I L R 4 Cal 274

MINOR WIDOW

See GUARDIAN I L R 42 Cal 953

MINORITY

See CIVIL PROCEDURE CODE, 1908—

s. 4b. I L R 39 Bom 256

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I L R 41 All 473

See HINDU LAW—ALIMENT

I L R 40 Cal 866

See LIMITATION ACT (IX OF 1908)—

s. 1 I L R 41 All 435

See I AER 18. (6) c. "

I L R 49 All 600

See MINOR.

See TITLE, PROOF OF

I L R 45 Cal 909

—of Mahomedan when to cease—

See PENAL CODE (Act XIV of 1860)
s. 343 I L R 3 Mad 557

MIRASDAR

See KADIM ISAMBAR

I L R 42 Bom 112

—general rights of, over house-sites
and waste in villages—

See MIRASI VILLAGE.

I L R 49 Mad 410

MIRASDAR—*contd*

—Holding under a Kadim Isambar
who is a grantee of the soil as well as of the
royal share of revenue—

*See LAND REVENUE CODE (Box Act V
of 1879) s. 217*

I L R 45 Bom 61

MIRASI LEASE

See SHARJAM I L R 34 Bom 329

MIRASI LEASE AND MORTGAGE

*See HEREDITARY OFFICES ACT (Box III
of 1874) ss 11 11A.*

I L R 37 Bom 57

MIRASI VILLAGE.

—*House-sites in—Ownership of—* Local presumption of ownership in Government and not in mirasidars—Prescription of title by mirasidars effect of—General rights of mirasidars over house-sites and waste in villages The plaintiff's claim to be mirasidar of a mirasi village in the Chingleput district sued to eject certain persons from a portion of the gramastham (house-sites) which the defendants claimed to hold and enjoy under a patta granted to them by the Government. On the plea taken by the Government that the Government and not the mirasidars are the owners of house-sites in mirasi villages the following question was referred to the Full Bench: "Whether in a mirasi village the mirasidar is entitled to recover possession of a house-site held under a patta from Government?" On a review of the history of mirasi tenure in the Presidency both before and after the establishment of the British Government and on a review of several revenue and judicial records relating to the question *Held* by the Full Bench—In the absence of proof to the contrary the presumption is that the Government and not the mirasidars are the owners of house-sites in mirasi villages *Per WALLIS C J*—But where there is evidence of title by the mirasidars the presumption of their ownership readily arises *Per JUDGE J*—The mirasidars may show that they are the owners by proving a previous grant by Government or prescription as against the Government *Per HUMAYUNSAH SASTRIGAR J*—(i) In mirasi villages the rights of Government over waste (including nistam and cheri) are subject to the rights of the mirasidars (ii) The nature and extent of such rights are not uniform throughout the Presidency but vary and the onus is on the mirasidars to prove that any specified incidents attached to mirasidars in any particular district there being no presumption that gramastham is the exclusive property of the mirasidars (iii) The rights of mirasidars over waste are not extinguished by the mere fact that the Government grants pattas to transferees *Dictum of C J for India v B. P. D. I L R 29 Bom 675* *Sakun Dutt v Lachmana Gowda* I L R 2 Mad 149 *Sivarekha Venkata v Venkataswami Chari* I L R 40 Mad 371 *Secretary of Govt for India v M. Krishna Rao* I L R 25 Mad 257 *Visaya Gramani v Venkatarama Paddi* I L R 40 Mad 570 and *Elakurappa v The Collector*

MISDIRECTION—contd

■ 21 27 30 It is a misdirection which must have misled the Jury to instruct them to take into consideration statements not amounting to confessions by an accused as against the co accused. It is a misdirection to put to the Jury and to leave it to them to determine whether a confession to a Magistrate and how much of a confession to the police are admissible. It is the duty of the Judge to determine the question of the admissibility of evidence in accordance with the law on the subject and of the Jury to estimate the value of such evidence after its admission by the Judge. The Judge should avoid the use in the charge to the Jury of interrogative expressions as imputing the guilt of the accused such as *Is not this* or *Does not that* and of slang and colloquial phrases. S 27 of the Evidence Act qualifies not only ss 25 and 26 but also s 24. *Queen Empress v Babu Lal I L R 6 All 509* approved. Though the accused has himself produced the stolen articles so much of his anterior statements as led to the discovery are admissible under s 27 of the Evidence Act but not statements contemporaneous with the act of production such as *I got these ornaments as my share in the dacoity*. *Queen Empress v Hona I L R 18 Bom 260* and *Legal Member v Chema Das I L R 25 Cal 413* referred to. S 27 does not render admissible the whole history of the investigation or an account of the various steps by which the police obtained and worked up clues and finally succeeded in arresting the accused. Under the section the whole of the statement of an accused is not admissible but only so much as led directly to the discovery or related directly to the fact discovered. *Per SHAMSUL HUDA J*. If a single statement contains more information than is contemplated by s 27 the whole statement is not admissible but only the particular information which led to the discovery. Where an accused states to the police that he killed A with a knife and concealed the corpse at a particular place the only part of the information admissible under the section is that relating to the concealment and not the murder. *Queen Empress v Babu Lal I L R 6 All 509* followed. *Per TEJNOK J*. Verification proceedings are not wholly illegal and may be useful in testing the truth of the confession e.g. as to the accused's knowledge of the localities he has mentioned or as furnishing clues to a further inquiry. *Per SHAMSUL HUDA J*. Verifications in the company of the accused lead to very great abuses and should be avoided though a verification independently of and unaided by the accused is unobjectionable. *Held per CURRAM*. In connection with such proceedings the Courts must ensure against the reception of evidence not strictly admissible. Statements to the verifying Magistrate when not recorded in the manner provided by s 164 of the Criminal Procedure Code are inadmissible and cannot be proved orally by such Magistrate. *Emperor v Radac Hildan C II N 290 King Emperor v Pappas I L R 8 C II N 22 Queen Empress v Chaurab Chander Chakraborty C II N 709* and *Queen Empress v Yaron I L R 9 Mad 241* followed. *Per SHAMSUL HUDA J*. Even if the statements are recorded after the verification it is difficult to hold that they are voluntary. *AMIRUDDIN AHMED I L R 45 Cal 557* (1917).

MISDIRECTION—contd

Misdirection to Jury—

Prosecution duty of to produce material evidence—Circumstantial evidence—Presumption of innocence—Criminal Procedure Code (Act V of 1898) s 342—Court's power to draw inferences from answers of accused—Evidence Act s 106. The appellant and two other persons P and A were accused of having committed murder of a man travelling in a boat of which they were the boatmen. R was tried first and at this trial A was given a pardon and examined as a witness. The appellant was tried subsequently and the prosecution did not examine A. The jury by a majority returned a verdict of guilty against the appellant who was convicted by the Sessions Judge. In appeal the High Court set aside the conviction on the ground of misdirection to the jury. *Held* (as to the non examination of A) *Per TEJNOK J*—That the case of *Dhannoo Ka I L R 8 Cal 191* is not an authority for the proposition that the prosecution is required to produce and examine such a witness but as he was examined as an approver at the former trial of P it would have been more satisfactory if the prosecution had at least secured his attendance and failing in this had given details of evidence of the efforts made in that direction. *Per SHAMSUL HUDA J*—That the omission to direct the attention of the jury to the question whether the prosecution was bound to call A as a witness and whether there was sufficient explanation why the prosecution did not call him was a defect in the charge which prejudiced the accused. That in the absence of anything to show that an effort was made to ascertain his whereabouts and to produce him in Court his absence from the village deposed to by one of the prosecution witnesses was not a sufficient explanation for his non production. *Held* (as to the direction of the Sessions Judge that the accused had said nothing about what had happened to the deceased and had given no explanation as to how he came by his death and this was a strong point against the accused) *Per TEJNOK J*—That where a prima facie case of circumstances making out or tending to support the charge against the accused is established and the accused withholds evidence in dispute or explanation available to him and not accessible to the prosecution an inference unfavourable to the accused may legitimately be drawn. Under s 342 Criminal Procedure Code it is open in the Court and jury to draw such inferences as they think just from the answers made by the accused to the necessary questions put to him by the Court. *Per SHAMSUL HUDA J*—That the accused is merely on the defensive and owes no duty except to himself that he is at liberty as to the whole or any part of the case against him to rely on the witness for the prosecution or to call witnesses or to meet the charge in any other way he chooses and no inference unfavourable to him can properly be drawn because he takes one course rather than the other. Where in a criminal case there is a conflict between presumption of innocence and any other presumption the presumption of innocence prevails. *Per SHAMSUL HUDA J* (*TEJNOK J* dissenting). The strength of this presumption varies according to the seriousness of the charge upon which an accused person is put on his trial. The greater the crime the stronger is the proof required for conviction. *Per SHAMSUL HUDA J*—That whatever force a presumption arising under s 106 of the Indian Evidence Act

MISDIRECTION—*see* *d*

may have in civil cases is no criminal case in a trial for murder it is extremely weak in comparison with the direct proof of innocence. If it is to direct the jury that they must not acquit the accused simply because in their opinion he may possibly not be guilty but that they should do so if they thought the prosecution evidence was for good reason not satisfactory. *PER BHANU CHANDRA J.*—That the case rested on circumstantial evidence and before the jury could find the prisoner guilty they had to be satisfied not only that the circumstances were consistent with his having committed the act but that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person. That the prosecution evidence may be quite satisfactory and yet may leave ample room for doubt regarding the complicity of the accused in the crime and it was the duty of the Judge to have given the jury clear and unambiguous direction on these points. *ASHRAY ALI v. KING EMPEROR (191*)*

21 C W N 1152

MISJOINDER*See* CHARITABLE TRUSTS

I L R 34 Mad 406

See COMMON CARRIER, LIABILITIES OF

L L R 35 Cal 28

See JURY RIGHT OF TRIAL BY

I L P 37 Cal 46*

See PRELIMINARY DECREE

I L R 37 Bom 60

MISJOINDER OF CAUSES OF ACTION*See* ADMINISTRATOR 2 Fed L J 642*See* AGRA TENANCY ACT (II of 1901)

s 34 I L R 35 All 512

See CIVIL PROCEDURE CODE 1840 ss 13

44 I L R 35 Bom 28*

See CIVIL PROCEDURE CODE 1840—

s 47 O XXI BR 100 s 10

I L R 40 Mad 964

O I s 3 I L R 40 All 7

O II s 5 I L R 38 Bom 120

See PREEMPTION I L R 32 All 14

1 — Persons whose separate rights have been infringed by a single act of another cannot join in one suit.—Course to be adopted when there is a misjoinder of causes of action—*Civil Procedure Code Act V of 1908 s 99* Where the separate right of each of several persons is affected by a single act of another person each of such persons has a separate cause of action against such other person and they cannot bring a suit jointly against such other person. *Smurthwaite v. Hannay (1895)* A O 491 referred to Where there has been a misjoinder of cause of action which has prejudiced the defendant on the merits and no objection to such misjoinder was taken in the written statement or at the settlement of issues the provisions of s 99 of the Civil Procedure Code Act V of 1908 will apply and the ends of justice will be sufficiently met by findings in the case of each separately instead of dismissing the suit. *ATYAYU MUPPAN v. VELLAYA NADAN (1910)*

I L R 34 Mad 55

MISJOINDER OF CAUSES OF ACTION—*continued*

Decision that a suit as framed not maintainable is a judgment and is appealable under clause 15 of the Letters Patent. *LAKSHMINAATH LOY v. ROJINATHA NATH DAS (1911)* 21 C W N 191

MISJOINDER OF CHARGES*See* CHARGE I L R 40 Cal 318 319

I L R 41 Cal 66 72-2

I L R 42 Cal 957

I L R 46 Cal 712

I L R 47 Cal 164

See CRIMINAL PROCEDURE CODE ss 2 2

() 33 I L R 38 All 42

s 7 3 I L R 11 All 562

See EXCISE I L R 41 Cal 694*See* FINANCE CODE (Act VII of 1860)

s 404 I L R 40 All 565

Joint trial for offences

under s 10 B of the Penal Code and ss 19 (f) 20 of the Arms Act committed in pursuance of the object of the conspiracy—Identity of transaction—*Criminal Procedure Code Act V of 1898 s 99*—Joint possession of arms—Mere keeping of fire arms not an offence. Fire arms whether inclusive of parts of the same—*Arms Act (XII of 1885) s 3 s 11 19(a) (f)*—*Criminal conspiracy* proof of—*unintentional when act contemplated not done*—*Penal Code (Act VII of 1860) ss 109 116 100B*—A charge of criminal conspiracy to manufacture arms under s 10 B of the Penal Code read with 19(a) of the Arms Act (XII of 1885) may be tried jointly with charges of offences under s 10 (f) and 20 of the latter Act committed in pursuance of the object of the conspiracy. As long as the conspiracy continues the transaction which began with the forming of the common intention continues and the offences under ss 19 (f) and 20 of the Arms Act are committed in the course of the same transaction. *Legal Memorandum* *Jenral v. Mon Mohan Roy 19 C W N 62*—*I C J 19* followed. Where two persons rented a house and lived in it and parts of arms were found in one of the rooms—*Held* that both being in joint occupation of the house were in joint possession of the articles so found. The word fire arms in s 14 read with the meaning of arms in s 4 of the Arms Act includes parts of fire arms. Fire arms means only arms fired by gunpowder or other explosives. *Ahmed Hussein v. Queen Empress I L P 27 Cal 69** *Emperor v. Dhan Singh & Or I J 435 3 A I J 3* followed. The offence under ss 6 and 19 (a) of the Arms Act is not a mere keeping of arms but a keeping of the same for sale. In cases of conspiracy the agreement between the conspirators cannot generally be directly proved but only inferred from the established facts of the case. Where two persons took a house in which a considerable number of pieces of fire arms was found with tools and implements and work had been actually done to some of the parts of fire arms the Court may and ought to infer a conspiracy to manufacture arms. *Per CURRIE*. Where there is only a conspiracy to manufacture arms without an actual manufacture the sentence should be imposed under s 10 B of the Penal Code read with s 19 (a) of the Arms Act and s 116 of the Penal Code and the maximum term of imprisonment.

MISJOINDER OF CHARGES—contd

ment awardable under these sections is 9 months rigorous imprisonment *Per BEACHCROFT J* The punishment awardable under s 120B of the Penal Code varies according as the offence has or has not been committed in consequence of the conspiracy. If an offence has been committed the punishment is that provided by s 109 of the Penal Code though strictly speaking there should not be a conviction in such cases of conspiracy but of abetment. If it has not been committed the punishment is governed by s 116 of the Penal Code. **HARSHA NATH CHATTERJEE v EMPEROR (1914)** 1 L R 42 Calc 1153

MISJOINDER OF PARTIES

See CIVIL PROCEDURE CODE (1908) O I

R 3 1 L R 38 All 406

s 99 1 L R 1 Lab 295

See PRE EMPTION 1 L R 32 All 14

1 L R 41 All 423

See RELIGIOUS ENDOWMENTS ACT 1863

s 7 1 Pat L J 393

Joint trial—Commission of criminal breach of trust in the same transaction as abetment of cheating and attempt to cheat and as part of a common design—Joint trial of one accused under ss 408 and 409 with another under

ss 408 and 409 of the Penal Code—Legality of separate sentences—Concurrent sentences—Criminal Procedure Code (Act V of 1898) s 239 Where A a railway ticket collector made over two used tickets which he had collected from passengers to B and instructed him to apply for a refund of the fares covered by the same as unused tickets at the place of issue and the latter proceeded there and made such an application but was discovered in the act—*Held* that the joint trial of A on charges under

ss 408 and 409 of B under ss 408 and 409 of the Penal Code was legal under the provisions of s 239 of the Criminal Procedure Code. **Parmeshwar Lal v Emperor 13 C W N 1039** distinguished *Subramania Ayyar v King Emperor 1 L R 25 Mad 61* referred to. *Held* also that A had committed two distinct offences in the same transaction and that separate sentences were not illegal, though concurrent sentences were under the circumstances more appropriate. *Re Noyan 7 Mad H C R 375* referred to. The two parts of s 239 of the Criminal Procedure are not mutually exclusive so that if A includes B to cheat and B attempts to do so they may be tried together for abetment of and attempt at cheating respectively and if in the course of the same transaction A commits the separate offence of criminal breach of trust in furtherance of the conspiracy to cheat he may be separately charged for such offence at the same trial. **KALI DAS CHUCKERBUTTY v EMPEROR (1911)** 1 L R 38 Calc 453

Wrongful confinement on one day—Wrongful confinement and assault of the same persons on a subsequent day—Identity of transaction—Unity of object—Criminal Procedure Code (Act V of 1898) s 239 Where in consequence of certain persons having killed a cow on a zamindar's estate contrary to practice and eaten its flesh they were taken to the *cutcherry* on the 14th December fined therefor and confined till they had furnished security for the payment of the fine within three days and on their failure to do so were again taken to the *cutcherry* and detained there and on information given to the police one of them was beaten and all ejected—*Held* that the illegal confinement on the first day and the similar confinement and assault on the second day were parts of the same transaction the object of the accused on both days being the same viz to punish the persons for a breach of the rule by extorting the fine and the assault on the second day being the conclusion of the transaction and that the joint trial of the accused for offences under s 347 of the Penal Code committed on the 14th and 18th and for that under s 352 on the latter date by them was legal. **Emperor v Datto Hanmant Shahapurkar 1 L R 30 Bom 49** and **Emperor v Sheruful Ali Shoy 1 L R 27 Bom 135** approved. **Budhai Shekh v Emperor 1 L R 33 Calc 292** and **Gul Mahomed Sircar v Cheharu Vandal 10 C W N 63** distinguished. **DEPUTY LEGAL REMEMBRANCE v KAILASH CHANDRA GHOSE (1914)** 1 L R 42 Calc 760

Parties—Appeal—causes of action—Practice—Judgment—Criminal Procedure Code (Act V of 1908) O I rr 1 and 3 O II r 3—Letters Patent 1865 cl 15 An appeal lies under the Letters Patent from an order of the High Court on its Original Side refusing to allow plaintiff to proceed in one suit against several defendants on the ground of misjoinder and giving him time to elect how he would proceed with his suit and which of the defendants he would retain on the record. O I r 1 and O I r 3 of the Civil Procedure Code apply to questions of joinder of parties as also of causes of action. **Umaidas v Bhaui Balwant 1 L R 34 Bom 353** and **Jankidas v Shrinivas Ganesh 1 L R 38 Bom 130** distinguished from. The plaintiff brought a suit against four sets of defendants for the recovery of certain documents of title and the goods covered thereby and in the alternative for damages. In his plaint he alleged that the goods in suit were his property that the defendant No 1 obtained from him the documents of title relating thereto by fraud and made them over to defendant No 2 that defendant No 2 knowing that defendant No 1 had no title either to the documents or to the goods wrongfully dealt with them and sold the goods to defendants Nos 3 and 4 that defendants Nos 3 and 4 wrongfully claimed to retain the goods and the documents of title and lastly that one of the documents of title was a railway receipt was pledged by defendant No 1 to defendant No 5 though the goods covered by it were in the possession of defendant No 3. *Held* that the suit was not bad for misjoinder of parties and causes of action. **RAJENDRA NATH LOY v BRAJENDRA NATH DAS (1917)** 1 L R 45 Calc 111

Property received by receivers separately and at different times—Joint trial of receivers—legality of—Criminal breach of trust at one place and dishonest receipt subsequently at another place—Joint trial of thief and receivers—legality of—Some of the offences charged not committed in the same transaction—Illegality vitiating whole trial—Criminal Procedure Code (Act V of 1898) s 239 Where property is stolen and

JOINDER OF PARTIES—contd

the proceeds of the estate are received by different persons separately and at different times they cannot be tried together. *135a 45 Bom 173* I L R 33 Cal 161 171. The joint trial of two receivers who had received shares of the separately and at different times was the reverse of the legal principle. When they are taken and subsequently received by them as the legal heirs of the joint trial of the trial and receiver is open when there is a trial and a receiver for the parts of the estate. *135a 45 Bom 173* I L R 33 Cal 161 171. The joint trial of the receiver for the criminal breach of trust committed by the receiver and two receivers who received the property subsequently at a joint trial is not justified. A joint trial of several persons all of whom are charged may have been committed by them in the one and the same transaction. If any of the offences so charged were not committed in the same transaction the whole trial is illegal unless. 239 of the Criminal Procedure Code for misjoinder. *Om Bhawan Ashikapi v Imperi (1918)* I L R 46 Cal 741

MISJOINDER OF PERSONS AND OFFENCES

See CHARGES I L R 46 Cal 712

MISREPRESENTATION

See ADVERSE POSSESSION

I L R 40 Cal 173

See CHECKING LIGHT

I L R 42 Cal 28

See COMPANY I L R 42 Bom 264

MISTAKE.

See CLERICAL MISTAKE.

I L R 39 Cal 265

See CONTRACT ACT (15 of 1872) s 20

6, I L R 40 Bom 638

See DECREE I L R 40 Bom 118

3 Pat L J 465

See REGISTRATION

I L R 41 Cal 872

See REGISTRATION ACT 1877 s 17 49

I L R 34 Bom 202

See RES JUDICATA 2 Pat L J 313

See SALE IN EXECUTION OF DECREE

I L R 41 Cal 590

— amendment of—

See POWER OF ATTORNEY

I L R 37 Cal 399

— in description of plaintiff—

See CIVIL PROCEDURE CODE ACT (V of 1908) O I R 10

I L R 40 Mad 743

— in drawing up of a decree—

See CIVIL PROCEDURE CODE (1908) s 102 I L R 37 All 323

— in sale deed—

See EVIDENCE ACT (1 of 1822) s 92 cl (a) I L R 39 Mad 792

— rectification of—

See DECREE I L R 40 Bom 118

MISTAKE—contd

— Discovery of when first Court's decree was passed—

See LIMITATION ACT (1908) SCH I Art 96 I L R 45 Bom 582

— It takes evidence of—
— Similar mistake in other documents—Admissibility
— Concurrent finding of fact based on no evidence
The proper description of houses in towns for the purpose of registration is by the street in which they are situated and the number which they bear in that street. Where a stranger to a mortgage decree passed in the Original Side of the High Court who had previous thereto acquired a title in property actually intended to be conveyed (all of which was outside Calcutta) proved that there was no property in Calcutta bearing the street name and number given to the only item of Calcutta property included in the mortgage and that the property in Calcutta which in fact answered the description of that property by metes and bounds given in the mortgage deed did not belong to the mortgagor. Held that the onus of proving (as it was open to him to prove) that there was a clerical or other error in the description of the property and that in fact an existing property situated in Calcutta was intended by both parties to be mortgaged was on the mortgagee decree holder. That to prove this the mortgagee should have examined himself as also his mortgagor. That as no evidence whatever was given to prove this case it was not open to the Courts in India to come to the conclusion that the entry of the property was a mistake. Evidence to show that the mortgagor had purported to mortgage with other mortgagees the same property under the same description and had been compelled by them to consent to rectification was irrelevant at the trial to prove that the entry in the document was a mistake. That the principle of concurrent findings of fact did not apply to such a case as it was a case of no evidence and it was open to the Privy Council to hold from the conduct of the mortgagee in not examining himself or his mortgagor and from other evidence in the case that the entry was intentionally fictitious. *Harpendra Lal Roy Chowdhuri v Hari Das Deb (1914)* I L R 41 Cal 972

— Suit to set aside previous decree on ground of mistake—Competence of compromise and decree thereon—Rectification—
— Fraud A decree can be set aside by suit on the ground of fraud if of the required character. But a suit does not lie to set aside a decree in a previous suit on the ground that the Judge in passing that decree made a mistake. *Jogeeswar Atha v Ganga Bishnu Ghatak 8 C W N 473* dissenting from *Mahomed Gohar v Mahomed Sultman I L R 21 Cal 612* *Sadha Misser v Gohar Singh 3 C W N 375* and *Bhandi Singh v Doulat Ray 17 C W N 32* 15 C L J 675 referred to. While in the case of a compromise as the contract is capable of being rectified for an appropriate mistake so as the necessary consequence is the decree which is merely a more formal expression given to that contract. *Huddersfield Banking Co Ltd v Henry Lister and Sons Ltd (1895) 2 Ch 273* followed. *Kusodhraj Bhurka v Braja Mohan Bh A (1915)*

H 43 Cal 217

MISTAKE OF FACT

See EASE I L R 37 Cal 333

MISTAKE OF LAW

by arbitrator—

See ARBITRATION I L R 35 Bom 153

by Liquidator—

See CONTRACT WITH ENEMY I L R 44 Bom 631

Courts order passed on—Effect of—

See BENGAL TENANCY ACT 1885 ss 170 AND 174 6 Pat L J 16

MITAKSHARA

See HINDU LAW

See HINDU LAW—ALIENATION

I L R 33 All 654
I L R 39 Cal 862

See HINDU LAW—GIFT

I L R 37 Cal 1

See HINDU LAW—INHERITANCE

I L R 37 All 604
I L R 34 Bom 321 510
I L R 35 Bom 389

See HINDU LAW—JOINT FAMILY

I L R 45 Cal 666 733
I L R 43 Cal 1031
I L R 35 All 302
I L R 40 Cal 407
I L R 32 All 183
I L R 33 All 436
I L R 39 All 437
I L R 40 All 159
I L R 41 All 235 338 361

See HINDU LAW—JOINT FAMILY PROPERTY I L R 43 Bom 472

See HINDU LAW—LEGAL NECESSITY

See HINDU LAW—MITAKSHARA

See HINDU LAW—MORTGAGE

I L R 42 Cal 1068

See HINDU LAW—PARTITION

I L R 34 All 505
I L R 39 Bom 373
I L R 43 Cal 459
I L R 38 All 83

See HINDU LAW—STRIDHAN I L R 36 Bom 424

See HINDU LAW—SUCCESSION

I L R 37 All 545
I L R 33 All 702
I L R 39 Cal 319
I L R 34 All 663
I L R 35 Mad 152
I L R 38 Bom 438
I L R 38 All 416
I L R 43 All 228

See HINDU LAW—WIDOW

I L R 40 All 96

See SUCCESSION CERTIFICATE

I L R 38 Cal 182

Settling of as to right by birth—

See HINDU LAW—PARTITION

I L R 38 Mad 556

MITAKSHARA—contd

Whether father's sister's sons are heirs—

See HINDU LAW—SUCCESSION

I L R 1 Lab 554

Ch II s 5 pl 4 and 5—

See HINDU LAW—SUCCESSION

I L R 39 Bom 17

Ch II s 5 6—

See HINDU LAW—INHERITANCE

I L R 42 Cal 384

Ch II s 8 para 2—

See HINDU LAW—SUCCESSION

I L R 39 Bom 168

Ch II s XI paras 9 11 25—

See HINDU LAW—STRIDHAN

I L R 43 Cal 944

MITAKSHARA FAMILY

See BENGAL TENANCY ACT 1881 ss. 105 AND 188 25 U W N 88

See HINDU LAW—DEBT

I L R 48 Cal 341

MITTADAR OR ZAMINDAR

assignment of jodi under permanent sanad—

See INAMDAR I L R 40 Mad 93

MIXED FUND

See HINDU LAW—JOINT FAMILY PROPERTY I L R 44 I A 201
I L R 40 All 159

MOFUSSIL MAGISTRATE

See CONTEMPT OF COURT

I L R 41 Cal 173

MOFUSSIL PROPERTY

See MORTGAGE (MIS)

I L R 47 Cal 770

MOGHALI BRAHMOTTAR

See MINES AND MINERALS

I L R 42 Cal 346

MOGULI RENT

Moguli rent meaning of Moguli is a word of doubtful meaning and at the best imports no more than that the rent assessed represents a proportion of the Government revenue NAWAGARH COAL CO LD v BEHARILAL TRIGUNNAH (1916) 20 C W N 1135

MOHUNT

See HINDU LAW—SUCCESSION

14 C W N 191

MOKARARI

See BENGAL TENANCY ACT s 85

14 C W N 141

MOKARARIDARS

See PARTITION I L R 37 Cal 918

MOKARARI LEASE

See DOWRY TENURE

I L R 39 Cal 696

MOKARARI LEASE—cont^d

See LANDLORD AND TENANT (LEASE)
14 C W N 263

See LEASE, (11)
I L R 45 Calc 57

See MINERALS
L R 44 I A 246

MOMBASA, MIGRATION TO

See STOCKS 107
L R 43 I A 35

MONEY

— left with purchaser for payment to mortgagee—

See MORTGAGE (SALE OF PROPERTY)
I L R 33 All 209

— suit for—

See PROVINCIAL SMALL CAUSE COURTS
ACT (IX OF 1857) SEC II ART 3
I L R 37 Mad. 533

MONEY DECREE.

See EXECUTION OF DECREE.
I L R 45 Calc 520

See OCCUPANCY HOLDING
I L R 48 Calc 181

— execution of—

See LIMITATION (44) I L R 45 Calc 630

MONEY HAD AND RECEIVED

— Money deposited in usum jus habentis improperly withdrawn by a person not entitled to it. Where money is deposited in Court in usum jus habentis and it is withdrawn by a person who is declared not to have any right thereto the money so obtained may properly be held to be received for the use of the person entitled to it. *Lill v Martindale* 18 C B 314 referred to *MAUND HUSAIN v SUEH CHAND* (1911) I L R 33 All 450

MONEY LENDER

See CIVIL PROCEDURE CODE (ACT V OF 1908) SS 115 AND 151
I L R 38 Bom 638

MONEY ORDER

— Receipt on—

See STAMP ACT s 65
I L R 34 All 192

MONEY PAID UNDER DECREE

— suit for—

See VOLUNTARY PAYMENT
I L R 40 Calc 598

MOOFU

See HINDU LAW—PARTITION
I L R 44 Mad 740

MOPLA

See MAHOMEDAN LAW—GIFT
I L R 38 Mad 385

MORPHIA

— Whether included in the term "opium"—

See OPIUM ACT 1878 s 3
I L R 1 Lah 443

MORTGAGE

See ADVERSE POSSESSION

I L R 33 All 463
I L R 38 Mad 97
I L R 44 Calc 425
23 C W N 815

See AGRA TENANCY ACT (II OF 1901)

ss 19 20 I L R 32 All 383

s 20 I L R 33 All 136

I L R 37 All 278

s 21 I L R 33 All 779

See AGREEMENT AGAINST PUBLIC POLICY
I L R 40 Calc 113

See ATTESTING WITNESS
I L R 48 Calc 81

See BENGAL TENANCY ACT 1850 s 65
1 Pat L J 161

See BHAGDARI AND NARWADARI TENURES
ACT (BOM V OF 1862) s 3
I L R 39 Bom 358

See BOMBAY CITY LAND REVENUE ACT
(BOM II OF 1876) ss 30 35 80 AND
40 I L R 30 Bom 664

See BUNDHEKHAND ALIENATION OF LAND
ACT (II OF 1903)

s 9 I L R 30 All 376

s 16 I L R 42 All 142

s 17 I L R 38 All 351

See BUNDHEKHAND ENCUMBERED
ESTATES ACT (I OF 1903) s 13
I L R 33 All 138

See CENTRAL PROVINCES GOVERNMENT
WARD ACT s 18
I L R 40 Calc 784

See CENTRAL PROVINCES TENANCY ACT
(VI OF 1899) s 45
I L R 46 Calc 70

See CHOTA NAGPUR ENCUMBERED ESTATES
ACT APPLICATION OF
I L R 46 Calc 1

See CIVIL AND REVENUE COURTS
I L R 35 All 464

See CIVIL COURTS ACT (XII OF 1887)
s 21 I L R 41 All 384

See CIVIL PROCEDURE CODE 1882
s 13 I L R 32 All 215

ss 13 43 I L R 32 All 119

s 257A. I L R 38 Bom 219

ss 278 282 283 287
I L R 41 Bom 84

ss 366 371 I L R 40 Bom 248

s 411 I L R 34 All 223

See CIVIL PROCEDURE CODE 1908
s 11 I L R 40 Bom 614, 679

s II EXPL IV AND II s 2
I L R 39 Bom 138

s 11 EXPL V I L R 40 All 584

s 47 I L R 42 All 544

s 60 I L R 34 All 25

O 1, s 9 1 Pat L J 468

MORTGAGE—*contd*

- O 11 n 2 I L R 36 All 264
I L R 39 All 506
I L R 45 Bom 55
- O 1 v r 5 I L R 38 Bom 377
- O XVII n 10 I L R 37 All 226
- O XXIV n 1
I L R 35 All 441 484
I L R 44 Bom 698
- RR 4 5, 10 I L R 41 All 473
- RR 4 5 I L R 38 All 398
- R 5 I L R 38 All 21
I L R 39 All 641
I L R 42 All 517
- R 6 I L R 40 All 551 553
I L R 41 All 581
I L R 42 All 519
- R 8 I L R 35 All 116
I L R 43 All 25
- R 14 I L R 32 All 377
I L R 35 Bom 248
I L R 35 All 518
I L R 39 All 36
I L R 41 All 399
I L R 44 Bom 366
I L R 42 All 566
I L R 43 All 677
- See COMPANY I L R 36 Bom 564
I L R 42 Bom 215
- See CONSIDERATION I L R 45 Calc 774
- See CONSTRUCTION OF DEED
I L R 39 Bom 119
I L R 40 Bom 74
- See CONSTRUCTION OF DOCUMENT
I L R 35 All 122
- See CONTRACT ACT IX of 1872
s 20 65 I L R 40 Bom 638
s 39 I L R 34 All 273
s 70 I L R 40 Bom 646
s 74 I L R 32 All 448
s 120 140 I L R 42 All 70
- See COURT FEES ACT (VII of 1870)—
s 7 cl. (IX) I L R 35 All 92 94
SCH I ART I SCH II ART 11
I L R 35 All 476
- See DEKHAN AGRICULTURISTS RELIEF
ACT 1879—
s 2 I L R 34 Bom 161
I L R 44 Bom 217
s 3 (u) 12 13 I L R 40 Bom 655
s 10A I L R 45 Bom 87
s 13 I L R 41 Bom 453
I L R 43 Bom 1
s 13 15 (J) 16 I L R 39 Bom 73
s 15 I L R 44 Bom 372

MORTGAGE—*contd*

- See EQUITABLE MORTGAGE
- See EQUITY OF REDEMPTION
- See ESTOPPEL I L R 30 Calc 513
- See EVIDENCE I L R 35 All 194
I L R 44 Calc 345
I L R 45 Calc 320
- See EVIDENCE ACT I of 1872—
ss 53 92 I L R 42 Mad 41
s 68 I L R 35 All 254
ss 68 69
I L R 39 All 109 112 & 241
ss 69 70 I L R 35 All 364
s 92 I L R 44 Bom 55
s 94 I L R 38 All 103
- See EXPROPRIATORY TENANT
I L R 36 All 248
- See FAMILY FIRM I L R 36 Bom 515
- See FORFEITURE I L R 36 Bom 539
- See FRAUD I L R 36 Bom 185
- See HIGH COURT I L R 37 Bom 631
- See HINDU LAW—ALIVELAND
I L R 40 Calc 721
I L R 42 Calc 876
I L R 39 All 500
I L R 40 All 171
I L R 45 Bom 105
- See HINDU LAW—JOINT FAMILY
- See HINDU LAW—MORTGAGE
- See HINDU LAW—WIDOW
I L R 35 All 311 326
- See INSOLVENCY I L R 41 All 481
- See JURISDICTION I L R 42 Mad 813
I L R 48 Calc 882
24 C W N 633
- See LIMITATION I L R 37 Bom 328
I L R 42 Calc 244 294
I L R 47 Calc 746
- See LIMITATION ACT (XV of 1877)
- SCH II ARTS 134 143
I L R 32 All 160
- SCH II ART 148 I L R 36 All 195
- SCH II ART 179 I L R 39 Bom 110
- See LIMITATION ACT (IX of 1908)—
ss 6 7 AND ART 144
I L R 43 Bom 487
s 20 I L R 41 All 111
I L R 44 Bom 500
s 22 I L R 39 Bom 729
s 31 I L R 35 All 167
- SCH I ARTS 91 AND 120
I L R 37 All 640
- SCH I ARTS 126 144 148
I L R 41 Mad 650
- SCH I ARTS 132
I L R 36 All 567
I L R 43 All 596

MORTGAGE—*contd*

- See I ART 131 I L R 37 All 660
I L R 38 All 133
I L R 44 Bom 614
- See I ARTS 131 141 and 142
I L R 43 All 164
- See I ARTS 140 141
I L R 40 Bom 239
- See I ART 141 I L R 40 All 65
- See I ART 181 I L R 40 All 235
I L R 43 All 320
- See I ARTS 181 and 182
I L R 43 Bom 659
- See MAHOMEDAN LAW—DOWER
I L R 33 All 421
- See MAHOMEDAN LAW—JUDGMENT
I L R 37 Cal 179
I L R 47 Cal 866
- See MALABAR TENANTS IMPROVEMENTS
ACT (Mad 1 of 1900) s 3 5
I L R 38 Mad 954
- See MINOR I L R 34 All 298
- See MORTGAGE BOARD
- See MORTGAGE DEBT
- See MORTGAGE DECREE
- See MORTGAGE DEED
- See MORTGAGE OR SALE
- See MORTGAGE SETT
- See MORTGAGEE
- See MORTGAGOR
- See OCCUPANCY HOLDING
14 C W N 71
I L R 43 All 81
- See OCCUPANCY RANTY
I L R 40 All 228
- See TALAS OR TURKS OF WORSHIP
I L R 42 Cal 455
- See PURDANASHIN LADY
14 C W N 165
- See PENALTY I L P 44 Cal 162
- See PRE EMPTION I L P 32 All 45
I L R 34 All 416
I L R 38 All 530
- See PROVINCIAL IN OLIVENCY ACT 1907
s 16 I L R 43 All 555
- See PREEMPTION 3 Pat L J 490
- See REGISTRATION
I L R 41 Cal 872
- See REGISTRATION ACT (III of 1877)
s 50 I L R 44 All 631
- See REGISTRATION ACT (VII of 1903)—
s 17 I L R 41 Bom 510
s 17(?) (2) I L R 44 All 528
s 50 I L R 35 All 271
s 77 I L R 2 Lah 203
- See SINGLE MORTGAGE
- See SOUTHERN PARAGANAS—
I L R 41 I A 197
- See SPECIFIC RELIEF ACT 1877 s 34
I L R 42 Mad 20

MORTGAGE—*contd*

- See TRANSFER OF PROPERTY ACT (IV of 1880)—
s 2 (d) I L R 35 Bom 189
s 1 I L R 39 All 186
ss 18 to 11—
- See TRUSTS ACT—
s 5 I L R 36 Bom 398
- See UNITED PROVINCES COURT OF WARDS
ACT 1912 s 6 I L R 43 All 478
- See EJECTMENTARY MORTGAGE
- See VARY I L R 34 Bom 175
- See VENDOR AND PURCHASER
I L R 41 Bom 300
- anomalous—
- See TRANSFER OF PROPERTY ACT (IV of 1880) ss 59 60 61
I L R 39 Mad 1010
- See MORTGAGE CONSTRUCTION
I L R 42 All 87
15 C W N 722
- a variation of—
- See TRANSFER OF PROPERTY ACT 1882
s 59 I L R 44 Bom 405
- between Hindus—
- See DAMEPAT RULE OF
I L R 42 Cal 828
- See ASSIGNMENT
I L R 35 Bom 199
- by agriculturists—
- See DEKKHAN AGRICULTURISTS RELIEF
ACT (VII of 1870) s 16B
I L R 37 Bom 614
- by Directors of a Company—
- See PRESIDENCY BANKS ACT (VI of 1876) s 40 37
I L R 39 Mad 101
- by conditional sale—
- See CONSTRUCTION OF DOCUMENT
I L R 33 All 37 585
I L R 38 All 570
- See SALE DEED I L R 44 Bom 961
- See PRE EMPTION I L R 39 All 544
- See REGULATION XVII of 1806 s 8
I L R 40 All 387
- See TRANSFER OF PROPERTY ACT (IV of 1880) ss 60 and 9—
I L R 38 Mad 667
- by Executor—
See WILL I L R 44 Bom 209
- by Hindu widow—
- See PERS JUDGATA I L R 41 Cal 69
- by Karta—
- See HINDU LAW—JOINT FAMILY
I L R 39 All 500
- by minor—
- See MORTGAGE I L R 38 Mad 1071
- by Tlukdar—
- See BROACH AND KAIRA INCUMBERED
ESTATES ACT (XVI of 1881) s 28
I L R 41 Bom 546

MORTGAGE—*contd*

- O 11 R 2 I L R 36 All 284
I L R 39 All 506
I L R 45 Bom 85
- W V R 5 I L R 38 Bom 377
- O XXII R 10 I L R 37 All 226
- O XXIV, R 1
I L R 35 All 441 484
I L R 44 Bom 698
- RR 4 5 10 I L R 41 All 473
- RR 4, 8 I L R 38 All 398
- R 5 I L R 38 All 21
I L R 39 All 641
I L R 42 All 517
- R 6 I L R 40 All 551 553
I L R 41 All 581
I L R 42 All 519
- R 8 I L R 35 All 116
I L R 43 All 25
- R 14 I L R 32 All 377
I L R 35 Bom 248
I L R 35 All 518
I L R 39 All 36
I L R 41 All 399
I L R 44 Bom 366
I L R 42 All 566
I L R 43 All 677
- See COMPANY I L R 36 Bom 564
I L R 42 Bom 215
- See CONSIDERATION I L R 45 Calc 774
- See CONSTRUCTION OF DEED I L R 39 Bom 119
I L R 40 Bom 74
- See CONSTRUCTION OF DOCUMENT I L R 32 All 123
- See CONTRACT ACT IX OF 1872
s 20 G. I L R 40 Bom 638
s 39 I L R 34 All 273
s 70 I L R 40 Bom 646
s 74 I L R 32 All 448
s 120 140 I L R 42 All 70
- See COURT FEES ACT (VII OF 1870)—
s 7 CL (IX) I L R 35 All 92 94
SCH I ART I SCH II ART II
I L R 35 All 476
- See DEBHAM AGRICULTURISTS' RELIEF
ACT 1879—
s 2 I L R 34 Bom 161
I L R 44 Bom 217
s 3 (w) 12 13 I L R 40 Bom 655
s 10A I L R 45 Bom 87
s 13 I L R 41 Bom 453
I L R 43 Bom 1
s 13 15 (d) 16 I L R 39 Bom 73
s 15 I L R 44 Bom 372

MORTGAGE—*contd*

- See EQUITABLY MORTGAGE
- See EQUITY OF REDEMPTION
- See ESTOPPEL I L R 30 Calc 513
- See EVIDENCE I L R 35 All 194
I L R 44 Calc 345
I L R 45 Calc 320
- See EVIDENCE ACT I OF 1872—
s 58 92 I L R 42 Mad 41
s 68 I L R 35 All 254
s 68 90
I L R 39 All 109 112 & 241
s 69 70 I L R 35 All 364
s 92 I L R 44 Bom 55
s 94 I L R 38 All 103
- See EXPROPRIATORY TENANT I L R 30 All 248
- See FAMILY FIRM I L R 36 Bom 515
- See FORFEITURE I L R 36 Bom 539
- See FRAUD I L R 36 Bom 185
- See HIGH COURT I L R 37 Bom 631
- See HINDU LAW—ALLOCATION
I L R 40 Calc 721
I L R 42 Calc 876
I L R 39 All 500
I L R 40 All 171
I L P 45 Bom 105
- See HINDU LAW—JOINT FAMILY
- See HINDU LAW—MORTGAGE
- See HINDU LAW—WIDOW I L R 35 All 311 326
- See INSOLVENCY I L R 41 All 481
- See JURISDICTION I L R 42 Mad 813
I L R 48 Calc 882
24 C W N 633
- See LIMITATION I L R 37 Bom 326
I L R 42 Calc 244 294
I L R 47 Calc 746
- See LIMITATION ACT (XV OF 1877)
SCH II ARTS 134 148
I L R 32 All 160
- SCH II ART 148 I L R 36 All 195
- SCH II ART 170 I L R 39 Bom 20
- See LIMITATION ACT (IX OF 1908)—
s 6 7 AND ART 144
I L R 43 Bom 487
s 20 I L R 41 All 111
I L R 44 Bom 500
s 22 I L R 39 Bom 729
s 31 I L R 35 All 167
- SCH I ARTS 91 AND 120 I L R 37 All 640
- SCH I ARTS 126 144 148 I L R 41 Mad 650
- SCH I ARTS 132 I L R 36 All 567
I L R 43 All 596

MORTGAGE—*contd*

- See I ACT 134 I L R 37 All 660
 I L R 39 All 133
 I L R 44 Bom 614
- See I ACT 134 146 and 148
 I L R 43 All 164
- See I ACT 140 141
 I L R 40 Bom 239
- See I ACT 145 I L R 40 All 683
- See I ACT 151 I L R 40 All 223
 I L R 43 All 320
- See I ACT 151 and 152
 I L R 43 Bom 689
- See MANOMEDAN LAW—DOWER
 I L R 33 All 421
- See MANOMEDAN LAW—ENDOWMENT
 I L R 37 Cal 179
 I L R 47 Cal 866
- See MALABAR TENANTS IMPROVEMENTS
 ACT (Mad 1 of 1900) s 3
 I L R 38 Mad 954
- See MINOR
 I L R 41 All 296
- See MORTGAGE BOND
- See MORTGAGE DEED
- See MORTGAGE DEED
- See MORTGAGE DEED
- See MORTGAGE OR SALE
- See MORTGAGE SUE
- See MORTGAGEE
- See MORTGAGOR
- See OCCUPANCY HOLDING
 14 C W N 71
 I L R 43 All 81
- See OCCUPANCY PAYAT
 I L R 40 All 228
- See PALAS OR TURNS OF WORSHIP
 I L R 42 Cal 455
- See PURDANASHIN LADY
 14 C W N 166
- See PENALTY I L P 44 Cal 162
- See PRE EMPTION I L R 32 All 45
 I L R 34 All 418
 I L R 38 All 530
- See PROVINCIAL INDEMNITY ACT 1907,
 s 10 I L R 43 All 555
- See REDEMPTION 3 Pat L J 490
- See REGISTRATION
 I L R 41 Cal 972
- See REGISTRATION ACT (III of 1877)
 s 50 I L R 34 All 631
- See REGISTRATION ACT (VII of 1908)—
 s 17 I L R 41 Bom 510
 s 17 (2) (zi) I L R 44 All 528
 s 50 I L R 35 All 271
 s 77 I L R 2 Lah 202
- See SIMILE MORTGAGE
- See SOUTHAL PARGANAS—
 L R 41 I A 197
- See SPECIFIC RELIEF ACT 1877 s 39
 I L R 42 Mad 20

MORTGAGE—*contd*

- See TRANSFER OF PROPERTY ACT (IV of
 1884) —
 s 2 (d) I L R 35 Bom 189
 s 1 I L R 39 All 126
 ss 3 to 11
- See TRUSTS ACT—
 s 5 I L R 36 Bom 396
- See UNITED PROVINCES COURT OF WARDS
 ACT 1912 s 5 I L R 43 All 478
- See ULTIMATORY MORTGAGE
- See VATES I L R 34 Bom 175
- See VENDOR AND PURCHASER
 I L P 41 Bom 300
- anomalous—
- See TRANSFER OF PROPERTY ACT (IV of
 1884) ss 59 60 68
 I L R 39 Mad 1010
- See MORTGAGE OF CONSTRUCTION
 I L R 38 All 97
 15 C W N 722
- a testation of—
- See TRANSFER OF PROPERTY ACT 1884
 s 63 I L R 44 Bom 405
- between Hindus—
- See DAMUDAT RULE OF
 I L R 42 Cal 828
- See ASSIGNMENT
 I L R 35 Bom 189
- by agriculturists—
- See DEKKHAN AGRICULTURISTS RELIEF
 ACT (VII of 1880) s 16B
 I L R 37 Bom 614
- by Directors of a Company—
- See PRESIDENCY BANKS ACT (VI of
 1876) s 30 37
 I L R 39 Mad 101
- by conditional sale—
- See CONSTRUCTION OF DOCUMENT
 I L R 33 All 37 585
 I L R 38 All 570
- See SALE DEED I L R 44 Bom 981
- See PRE EMPTION I L R 39 All 544
- See REGULATION VII of 1806 s 8
 I L R 40 All 387
- See TRANSFER OF PROPERTY ACT (IV of
 1884) ss 60 and III
 I L R 38 Mad 667
- by Executor—
- See WILL I L R 34 Bom 209
- by Hindu widow—
- See LES JUDICATA I L R 41 Cal 69
- by Karta—
- See HINDU LAW—JOINT FAMILY
 I L R 40 All 500
- by minor—
- See MORTGAGE I L R 38 Mad 1071
- by Talukdar—
- See BROACH AND KAIRA INCUMBERED
 ESTATES ACT (VII of 1881) s 2a
 I L R 41 Bom 846

MORTGAGE—contd

by vatandar—

See HEREDITARY OFFICES ACT (BOM
III OF 1874) s 5
I L R 39 Bom 587

by widow—

See HINDU LAW—ALIENATION
I L R 40 Cal 721

decree absolute for sale on—

See CIVIL PROCEDURE CODE (1908) O
XXIV s 5 I L R 38 All 21

decree for redemption—

See LIMITATION ACT (IX OF 1908) ARTS
181 182 I L R 43 Bom 689

See SPECIFIC RELIEF ACT (I OF 1877)
s 39 I L R 42 Mad. 20

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 67 I L R 41 All 631

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See BENGAL TENANCY ACT 1885 s 65
1 Pat L J 161

dispossession of mortgagee by
person with better title—

See TRANSFER OF PROPERTY ACT 1882
s 68 I L P 43 All 484

divisibility of—

See CHOTA NAAGPUR ENCUMBERED ESTATES
ACT 6 Pat L J 328

executed by Collector—

See BUNDELKHAND ALIENATION OF
LAND ACT (II OF 1903) s 17
I L R 38 All 351

extinguishment of—

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 60 (c)
I L R 39 Mad 959

Forfeiture—Effect of—

See BOMBAY LAND REVENUE ACT 1879
s 66
I L P 37 Bom 692

in fraud of creditors—

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 53 I L R 36 Mad 29

money borrowed on suit to re-
cover—

See HINDU LAW—ENDOWMENT
I L R 40 Mad 402

Money decree—priority of—

See EXECUTION OF DECREE
1 Pat L J 449

Mortgage in possession—obligations
of—

See TRANSFER OF PROPERTY ACT 1882
s 70 5 Pat L J 492

new charge on old security—whether a new
mortgage—

See REGISTRATION ACT 1908 s 77
I L R 2 Lah 202

non joined parties in Mortgage
Suit—

See CIVIL PROCEDURE CODE 1908 O I R.9
1 Pat L J 468

MORTGAGE—contd

Maha Brahmins Rights—

See TRANSFER OF PROPERTY ACT (IV OF
1882) ss 6 58 I L R 39 All 196

of Mukarrari interest—

See TRANSFER OF PROPERTY ACT 1882
s 70 11 Pat L J 347

of occupancy holding—

See NORTH WESTERN PROVINCES RENT
ACT (XII OF 1881)

I L R 37 All 444
s 9 I L R 39 All 186

See LANDLORD AND TENANT

I L R 33 All 335

of promissory note—

See TRANSFER OF PROPERTY ACT (IV OF
1882) ss 130 AND 134
I L R 39 Mad 297

of stock in trade—

See CONSTRUCTION OF DOCUMENT
I L R 37 All 390

proof of execution of—

See EVIDENCE ACT (I OF 1872) —
s 68 69 I L R 39 All 109 112 241
s 69 70 I L R 35 All 364

redemption of—

See CIVIL PROCEDURE CODE (1908)
O XXII s 10
I L P 37 All 226

See LIMITATION ACT (XV OF 1877) SCH
II ART 148 I L R 36 All 195

See LIMITATION ACT (IX OF 1908) —

SCH I ARTS 134 144
I L R 38 All 138

SCH I ART 148
I L R 40 All 683

Sale deed when may be construed
as mortgage—

See DEERHAR AGRICULTURIST RELIEF
ACT 1879 s 2
I L R 44 Bom 217

suit on a—

See AMENDMENT OF PLAINT
I L R 45 Cal 305

See CIVIL PROCEDURE CODE (ACT V OF
1908) O V s 5
I L R 38 Bom 377

See GUJARAT TALUKDARS ACT (BOM ACT
VI OF 1888 AS AMENDED BY BOM ACT
II OF 1905) ss 29 29B (1) (2) (3)
AND 29C I L R 33 Bom 604

See LIMITATION I L R 41 Cal 654

Suit on a prior mortgage without
impleading puisne mortgagee—

See TRANSFER OF PROPERTY ACT 1882
ss 57 AND 89 I L R 43 All 204

surplus proceeds—

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 69 I L R 40 Mad 767

with possession by lessee—

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 108 (j)
I L R 40 Mad. 1111

MORTGAGE—contd

— — — — —	Valian mortgaged with possession	
	See LIMITATION ACT (IX OF 1908) s 20	
	CL (1) ACT 11C	
	I L R 45 Bom 1206	
— — — — —	Sale to mortgagee in possession —	
	subsequent sale to a stranger—	
	See NOTICE	I L R 45 Bom 910
— — — — —	Mortgagee having the option to	
	sue for interest or for possession on mort-	
	gagor's failure to pay interest	
	See CIVIL PROCEDURE CODE, 1908 II II	
	2. 2	I L R 1 Lah 45
— — — — —	Acquisition of equity of redemption	
	by adverse possession	
	See LIMITATION ACT	
	I L R 1 Lah 549	
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ASSIGNMENT

See TRANSFER OF PROPERTY ACT 55
130—139

Application of the Rule
of damdupit—Transfer of Property Act (II of 1882)

MORTGAGE—contd**MORTGAGE—contd**

s 2 (1) The fact that the person entitled to sue on a mortgage has been assigned to be a Parso cannot affect the (Hindu) mortgagor's right to claim the advantage of the rule of damdupit if it existed when the mortgage was entered into. It is not proper to infer that because it has been enacted that nothing in Chapter II of the Transfer of Property Act (II of 1882) shall be deemed to affect any rule of Hindu Law the Legislature has deprived a Hindu mortgagor of the protection afforded him by the rule of damdupit. The right of a mortgagee to sue for his principal and interest arising from a contract must be taken to be made subject to the usages and customs of the contract in parties. JEWANATH v. MANOJAS (1910) I L R 35 Bom 190

Suit by assignee of mortgage bond—Set off by the defendant of a decree obtained against the assignee—Is set off allowable—Transfer of Property Act (II of 1882) ss 3 and 13—Actionable claim nature of the doctrine of equitable set off is always confined to unascertained sums arising out of the same transaction. *Sulramanian Chelliar v. Muthuswami Aiyangar* 17 Mad L J 481 dissented from. Where a mortgage is transferred without the privity of the mortgagor the transferee takes subject to the state of account between the mortgagor and mortgagee at the date of the transfer but not subject to any independent debt in no way connected with the mortgage. *Turner v. Smith* [1901] 1 Ch 749 followed. *Chinnayya Parulhan v. Chidambaram Chetty* I L R 2 Mad 210 distinguished. *SUBRAMANIAM PATTAI v. SUBRAMANIAM PATTAI* (1916) I L R 40 Mad 683

ATTACHMENT

Attachment—Civil Procedure Code (Act V of 1908) O XXXVIII r 5 The plaintiff in a mortgage suit after the preliminary decree and before the date appointed for payment into Court applied for attachment of certain other properties of the defendants on the ground of insufficiency of the mortgaged security. Held that as the plaintiff would ultimately have to apply for a personal decree against the defendants who had a right to get an attachment under O XXXVIII r 5 of the Civil Procedure Code. *Bhambhar Salas v. Sukhdar* I L R 16 All 186 and *Jaiparkash Narain Singh v. Basanta Kumari Devi* 15 Ind Cas 601 referred to. *JOGENAYA DASSI v. BAIDYANATH PRAMANICK* 1918 I L R 46 Cal 245

ATTESTATION

See EVIDENCE ACT 1872 ss 68 AND 69

See TRANSFER OF PROPERTY ACT 1882 ss 53 AND 98

Transfer of Property Act (II of 1882) s 58—Co-executant if may all at execution by others—Evidence Act (I of 1872) ss 68 69 70 A mortgage bond executed by several persons was sought to be proved by the evidence of one of the executants who was also the scribe of the document. Held that a party executing a document required by law to be attested cannot be an attesting witness thereof and his evidence even if he was present at and witnessed the execution of it by others cannot be accepted as that

MORTGAGE—contd**ATTESTATION—contd**

of an attesting witness in regard to such executions
Jogendra Nath v. Vats Churn 7 C N 1 335
 distinguished *Bryan v. White* 2 Robertson 315
 317 *Sharpe v. Birch* L R 8 Q B D 111 *Wright*
v. Talham 1 Ad. & Ell. 3 23 *Freshfield v. Peed*
 9 M. & W. 404 and *Seal v. Clonidge* L R 7
 Q B D 516 relied on *Quare* Whether admis-
 sion of execution by a party is not receivable in
 proof of execution of such document by himself
PEARL MOHAN MAITI v. SREENATH CHANDRA MAITI
 (1908) 14 C W N 1046

Transfer of Property Act
 (IV of 1882) s. 3—Execution of mortgage by *pardanashin* lady attestation of—Requirements as to
 identity of executant and as to witnesses—seeing
 actual execution of deed—Acknowledgment of her
 signature by executant On a question whether a
 mortgage sued upon had been properly attested
 under the provisions of s. 59 of the Transfer of
 Property Act (IV of 1882) the evidence showed
 that the attesting witnesses had not though
 present seen the executant (a *pardanashin* lady)
 sign the deed but had subsequently to the execu-
 tion on received from her son who had been with her
 on the other side of the *pardah* an acknowledg-
 ment that the signature on the deed had been
 made by his mother Held (reversing the judgment
 of the High Court) that the requirements of s.
 59 had not been complied with and the deed was
 therefore invalid as a mortgage *Shamu Patter*
v. Abdul Kadir Barathan I L R 35 Mad 607
 L R 39 I A 35 and *Podarath Holwa v. Ram*
Amin Uphadia I L R 37 All 474 L R 42 I
 A 163 distinguished *Ganga Pershad Singh v.*
Ishtu Pershad Singh (1918) 1 L R 45 Cal 748

Attesting witness—
Scribe—Execution admitted by adult executant, whether
binding on minor—Evidence Act (I of 1872) ss. 65
and 70 Where it is sought to prove the execution
 of a mortgage by the evidence of a person who
 signed the deed as a scribe it must be established
 that the latter in signing as a scribe intended to
 sign as a witness Where a person who has signed
 a deed as a scribe subsequently asserts that he
 signed as a witness the onus of proving this asser-
 tion lies very heavily on him *NAKSHWAR*
PRASAD v. BACHU SINGH

4 Pat L J 511

CONSENT DECREE

Consent decrees between
mortgagors and mortgagee—Joint management—
Equal division of rent and produce—Prohibition
against partition—Mortgagee competent to grant
mirasi lease—Mortgagors get one fourth of the
na arana (present)—Rights of the mortgagors con-
veyed to the mortgagee—Equitable mortgage by
mortgagee—Settlement by mortgagor in favour of his
relations—Suit by equitable mortgagee—Decree—
Execution—Auction purchase or put in possession—
Suit by donees under the settlement—Donees entitled
to possession—Rights of the parties to be worked out
by amicable settlement or by a suit—Suit by repre-
sentatives of a class of purchasers to recover one fourth
share by partition—Jointiffs entitled to possession
of the na arana in common—Mirasi lease by
mortgagee as a valid mortgagee's consent—
Lease not to be for the benefit of the assignee—The

MORTGAGE—contd**CONSENT DECREE—contd**

owners of certain land mortgaged to S In the
 year 1866 consent decrees Exhibits 57 and 58
 were passed between the mortgagors and the mort-
 gagee S The consent decrees provided that both
 parties should jointly carry on the management of
 the land each being entitled to half of the produce
 and rent that the land itself should not be parti-
 tioned that S was competent to grant a *mirasi*
lease provided the *na arana* (present) accepted was
 not less than Rs. 500 and that the said *na arana*
 should be divided between the mortgagors and S
 in the proportion of $\frac{1}{2}$ and $\frac{1}{2}$, respectively The
 said rights of the mortgagors were subsequently
 conveyed by them to S for consideration Exhibit
 64 Afterwards S in April 1891 deposited
 Exhibit 64 by way of equitable mortgage with two
 persons In October 1891 S settled the property
 which was subject to the equitable mortgage on
 his relatives J and M In 1892 the two equitable
 mortgagees sued S to recover their equitable
 mortgage debt and got a decree against the pro-
 perty equitably mortgaged and against S person-
 ally The property was put up for sale in execu-
 tion and purchased by H for Rs. 542 which
 covered the claim of the equitable mortgagees
 J and M obstructed the auction purchaser H in
 his attempts to obtain possession and their obstruc-
 tion having failed they brought a suit against H
 The final decree in the suit made a declaration that
 as against H J and M were entitled to the pro-
 perties and their possession subject to H's right
 conveyed to the mortgagee S under Exhibit 64
 and subsequently purchased by H and that the
 rights of the parties as thus declared must be
 worked out by amicable settlement between
 them or by means of a separate suit The
 plaintiffs as executors under the will of H deceased
 who was deprived of possession under the aforesaid
 decree having brought a suit against the signees
 of J and M to recover by partition $\frac{1}{2}$ share of the
 land the lower Courts dismissed the suit for the
 recovery of $\frac{1}{2}$ share by partition on the ground
 that the clause in the consent decrees Exhibits
 57 and 58 affected to prohibit partition On
 second appeal by the plaintiffs Held reversing
 the decree that though the plaintiffs as tenants
 in common would be entitled to partition yet
 by virtue of the consent decrees they were estopped
 from exercising such right Held further that
 though the consent decrees did empower the
 mortgagee S to grant a *mirasi lease* without the
 mortgagor's consent yet this power did not enure
 for the benefit of his assignees *COWASI TENDULJI*
v. KISANDAS TENDULJI (1911) 1 L R 35 Bom 372

CONSIDERATION

See TRANSFER OF PROPERTY ACT
 s. 34

Consideration—Factual
in mortgage deed of receipt of consideration—Burden
of proof Where a mortgage deed is proved to
 have been executed and the document contains an
 acknowledgment of the receipt of the considera-
 tion this is strong *prima facie* evidence that the
 consideration has been actually received and i-
 evidence not only against the mortgagors but also
 against persons claiming under them subsequent
 to the date of the mortgage The mere fact that a

MORTGAGE—contd

CONSIDERATION—id

COURT WAS SATISFIED WITH THE EVIDENCE WHICH THE PLAINTIFF ADDUCED IN ADMITTANCE TO THE ACKNOWLEDGMENT. WILLIAMS & L. THE DEFENDANTS FROM PRESUMING THAT THE PLAINTIFFS WERE THE ACKNOWLEDGERS IN THE DEED OF THE DEED THERE WAS NO CONSIDERATION IN FACT. **BARBER & DITTA PAM (1914)** I L R 48 All 478

IN MORTGAGE DEEDS THE CONSIDERATION—LEGAL DECREE—LAW OF DEEDS. Where execution of a mortgage deed has taken place as required by law an acknowledgment contained therein of receipt of consideration is evidence not only as against the mortgagor but also as against a purchaser from the mortgagor in an auction purchase at a sale held in execution of a decree on the mortgage although the value of the acknowledgment as evidence may vary and possibly it may be more weighty as against a purchaser by private contract than against an auction purchaser but it is clearly evidence as against both. **Lallu v Sita Ram I L R 36 Ill 39** and **Nawal Kunnar v Sukhdev Singh I L R 30 A L J 30** followed. **NARAIN DAS v DILAWAR (1916)**

I L R 41 All 20

Consideration failure of part of effect of. When a mortgagee has advanced a part but not the whole of the amount stipulated for in the mortgage bond he is entitled to enforce the mortgage for the amount actually advanced by him. Notwithstanding the terms of s 4 of the Transfer of Property Act 1882 the provisions of s 39 of the Contract Act 1872 do not apply to the case of a transfer by way of mortgage when an interest in the mortgaged property has actually vested in the mortgagee on execution and registration of the mortgage bond. Failure on the part of the promisor to perform a promise which formed the whole or part of the consideration inducing an executed conveyance does not give the promisee a right of rescission. Where registration does not render a sale of immovable property or a mortgage operative from the time of registration if there is a condition attached to the contract that the operation of sale of mortgage is to be postponed till the actual payment of the full amount of consideration. In every case the onus is upon the person setting up such a condition. **MORHAN LAL SHARMA v HANUMANT BOY**

2 Pat L J 168

CONSOLIDATION

Right of does not arise when equities of red mfg on are severed—Subsequent mortgage executed by some of the descendants of original mortgagor whether in rigga or may consolidate. The right of consolidation can be exercised against successors in title to the mortgagors only so long as the equities of redemption are not severed. There cannot be a consolidation of mortgages where the first mortgage is executed by the sole owner of the land mortgaged and the subsequent mortgage is executed by some one of the successors of the original owner. There cannot be two different usufructuary mortgages on the same land at the same time. **LALA LAL NARAIN LAL v LALA MURLIDHAR** 5 Pat L J 644

CONSTRUCTION

1 ————Decree mortgage of—Mortgagor has a charge on amount realised in execution of

MORTGAGE—contd

CONSTRUCTION—contd

of decree or judgment—Civil Procedure Code Act VII of 1908 s 6—Attachment and mortgage of decree on same day—Mortgage valid unless attaching creditor shows it to have been effected during the pendency of attachment. Where a decree is mortgaged and the amount due under the decree is subsequently realised in execution the mortgagee has a charge on the amount so realised. The mortgagee is entitled to a charge on property which through no fault of his has taken the place of the mortgaged property. **Singaravelu Layan v Pina Iyer 13 Mad L J 306** directed from. The receipt by one Court of a notice of attachment by another Court is not a judicial act to which the principle that judicial acts must be presumed to have been done at the earliest point of time of the date thereof would apply. Where therefore a decree is mortgaged on a certain date and notice of attachment of such decree is received by the Court on the same day it lies on the attaching creditor seeking to set aside such mortgage as made during the pendency of attachment under s 270 of the Civil Procedure Code to show that the receipt of such notice was prior to the execution of the mortgage when a decree is attached and the attachment is subsequently withdrawn by agreement the attachment does not continue against the money realised in execution of such decree in the absence of anything to that effect in the agreement. **VENKATRAMA IYER v EUSUBA ROWTHNEY (1909)** I L R 33 Mad 429

2 ————Mortgaged for family purposes—Liability of minor son when authority may be presumed—Alienation—Onus of proof—Evidence Act (I of 1872) s 106—Transfer of Property Act (I of 1882) s 30—Civil Procedure Code (I of 1908) O XXXI r 6. Where a mortgage purports to charge the entire interest in a property and the mortgage money was advanced for legitimate family purposes express or implied authority of minor coparceners may be implied and the mortgage may be enforced against the entire family interest. **Suraj Bains Koor v Sheo Prasad Singh I L R 5 Cal 148** L R 6 O 1 A 88 referred to. Authority to mortgage may also according to the peculiar circumstances of a case be implied even in cases where the mortgage money was not advanced for legitimate family purposes. A mortgage is an alienation even though it is for a very particular purpose e.g. as security only for the amounts drawn or paid on account of instalments of rent. **Gharib Noh v Khalak Singh I L R 25 Ill 407** L R 30 I A 165 referred to. Where on the one side it is provided that the whole of the mortgage money with the exception of a very small portion of it was advanced for legitimate family purpose and there is therefore a sufficient foundation for a decree for sale on the mortgage and on the other side it is not shown that the small portion of the debt was not for any immoral purpose the smaller item may be regarded as a debt of the father binding on the son. **Il noomanpersaud Panday v Munraj Koon weere 6 Moo I 4 393** 18 W R 81 n. **Luchman Dass v Girdhar Choudhry I L R 5 Cal 85** **Udasear D R Tewari v Anilam Singh I L R 34 Cal 184** **Anshun Persad Choudhry v Tipan Iershad Singh I L R 34 Cal 135** **Lala Suraj Prasad v Golab Chand I L R 38 Cal 517**

MORTGAGE—*contd*CONSTRUCTION—*contd*

referred to **BISWANATH PRASAD MAHTA v JAGDIP NARAIN SINGH** (1912)

I L R 40 Cal 342

3 ———— **Redemption—Covenant** that the loan would be repaid within a year — **Mortgagor if may redeem within a year** — Unless there is an agreement to the contrary the right of foreclosure and the right of redemption must be deemed co extensive Whether there is any special provision in the contract which takes the case out of the general rule must be determined upon the terms of the contract between the parties Where the mortgage deed provided that the money would be paid principal and interest within one year Held that the case fell within the class of cases in which the mortgage is payable before a certain day and no within the class where a day is fixed for the payment of the debt and it was open to the mortgagor to redeem the mortgage within one year of the falling of the loan **PURVA CHANDRA SARMA v PFARY MOHAN PAI** (1912)

17 C W N 149

4 ———— **Usufructuary mortgage** followed by lease to mortgagor—**Contemporaneous deeds—Interpretation—Lease on easy terms surrendered by mortgagor—Mortgagee if may insist on appropriation of whole profits to interest—Unregistered agreement to easy mortgage deed if admissible—Registration Act (III of 1877) ss 17 49—Evidence of preliminary negotiations if admissible—Evidence Act (I of 1872) ss 91 92** Where in a mortgage bond it was stipulated that the mortgagee should be in possession of the mortgaged property and take the profits in lieu of interest but by a practically contemporaneous instrument the mortgagee granted a lease to the mortgagor on easy terms reserving a rent of Rs 4 200 only when the interest worked out to Rs 9 000 but the mortgagor being unable to pay this rent gave up possession to the mortgagee Held in a suit for redemption of the mortgage that the mortgagee was entitled to appropriate the whole of the profits realised by him towards interest according to the terms of the mortgage bond That the mortgage and the lease were parts of one and the same transaction but there was no inconsistency between the two instruments It is not permissible to contradict or vary the express and unambiguous terms of a written instrument by reference to preliminary negotiations or previous conversations An unregistered agreement purporting to set out in what manner the rents and profits of the mortgaged property were to be dealt with at variance with the stipulation in that behalf contained in the registered mortgage deed was inadmissible in evidence by the provisions of the Registration Act **ABDULLAH KHAN v BASHARAT HUSSAIN** (1912)

I L R 30 All 43

17 C W N 233

5 ———— **Anomalous mortgage—Suit for foreclosure—Limitation—Suit on Act (I of 1903) Sec 1 Art 133—Regulation No VIII of 1806** A mortgage was made on the 20th of February 1861 for a period of six years It was provided that if after six years anything remained due to the mortgagor they might forthwith enter into possession of the mortgaged property and

MORTGAGE—*contd*CONSTRUCTION—*contd*

realize the principal and interest It was further provided that the property would not be transferred so long as any principal or interest remained due and that if it was transferred or if the money due to the mortgagee was not paid the mortgagee without putting for the expiry of the six year might bring a suit for recovery of the principal and interest and might also get possession by completion of sale Nothing at all was paid by the mortgagor in the way of either principal or interest and in 1867 part of the mortgaged property was transferred Proceedings under a S of Regulation XVII of 1806 were not taken by the mortgagee In the year 1910 the representative of the mortgagee instituted a suit or foreclosure Held on a construction of the mortgage bond in suit that the cause of action accrued in 1867 and the suit was barred by limitation **Kishori Mohan Roy v Gangri Bahu Debti** I L R 23 Cal 223 distinguished, **Srinath Das v Khetter Mohan Singh** I L R 16 Cal 693 followed **Shyam Chander Singh v Baldeo** 10 All L J 52 and **Pam Dewar Pai v Bhurgu Rai** 10 All L J 533 referred to **BANS GOPAL v SHED PAI SINGH** (1915)

I L R 38 All 97

6 ———— **Mortgage not validly executed if creates a charge—Personal liability to repay if to be implied from fact that document mentioned advance of money—Transfer of Property Act (IV of 1882) ss 59 67 100** Held on the construction of a document which purported to be a usufructuary mortgage but was not enforceable as such by reason of its not being attested as required by s 59 of the Transfer of Property Act that the mortgagor did not intend that he should be personally liable to repay the advance and the Trial Court and the High Court erred in assuming from the mention in the document that a certain sum had been advanced that it might be inferred that it was the intention of the parties that the mortgagor should be personally liable That the document did not create a charge within the meaning of s 100 Transfer of Property Act **PUN NARAYAN SINGH v ADITHYAN NATH MUKHERJI** (1916)

20 C W N 989

7 ———— **Agreement postponing payment of interest and selling property to mortgagee if not then paid—Construction of contract—Mode of calculating the manner of payment of purchase money under the contract on execution of decree or specific performance—Delay in transfer of property to mortgagee—Usages of English Courts as to rights of Vendor and Purchaser—Transfer of Property Act (IV of 1882) s 54** A mortgage deed of certain land was executed in favour of the appellant to secure repayment of Rs. 1000 with interest which the mortgagee expressly covenanted to pay on 30th December 1900, which was afterwards extended for three months from 3rd January 1906 On 4th April 1906 the mortgagee being unable to pay the interest wrote as follows to the mortgagee I write this to inform you that as I have not got the interest due on Rs. 1000 ready now I request you to give me three months more for payment to you of all interest due thereon Should I fail to do so on or before 6th July 1906 I agree to the whole land being sold to you for Papes one lakh (Rs 100 000) After deduction

MORTGAGE—contd

CONSTRUCTION—contd

tinguished—Transfer of Property Act s 89 construction of The question in this appeal was whether property mortgaged to the respondent on the 15th of October 1891 should when sold under a decree absolute for sale be treated as sold subject to an alleged prior right of the appellant under an earlier mortgage of the same property dated the 25th of February 1890. The appellant in 1883 acquired the title of the mortgagor and also such title as remained to the mortgagee under the earlier mortgage. In 1892 the prior mortgagor brought a suit on his mortgage and in 1895 obtained a decree absolute for sale under the Transfer of Property Act. The suit was however only against the mortgagor and the second mortgagee was not made a party to it. Neither the prior mortgagee nor his successor took any steps to execute that decree and it became barred and inoperative after the lapse of three years from the date on which it became absolute. It was admitted that the later mortgage was duly registered and that the earlier mortgagee must be taken to have had notice of it when he brought his suit and obtained a decree in 1892. *Held* in a suit brought on the 20th of July 1910 by the first respondent on his mortgage of the 15th of October 1891 against among others the appellant that respondent was entitled to a decree absolute under O XXXIV r 2 of the Code of Civil Procedure 1908 for sale but that the sale was not subject to the prior mortgage of the appellant. The true construction of s 89 of the Transfer of Property Act is that on the making of the order absolute for sale under that section the security as well as the defendant's right to redeem were both extinguished and that for the right of the mortgagee under his security there was substituted the right to a sale conferred by the decree. *HER RAM v SHAD RAM* (1918) I L R 40 All 407

11 — *Mortgage Bond—Rice lent—Covenant of repayment—Mortgagees to realise money in case of default by sale of mortgaged properties—Suit on mortgage bond whether a suit for recovery of money charged on mortgaged properties* Where in a suit to enforce a mortgage the plaintiffs lent a certain amount of rice and there was in the bond the usual covenant of repayment and interest and the bond also provided that if default was made in the loan the mortgagees would be competent to realise the money which would be due at the rate of Rs 6 per mase by sale of the mortgaged properties belonging to the mortgagor. *Held* that the primary object of the suit was to recover money and what the Court would give the plaintiffs would be money and not rice if they succeeded in the suit and that that money was a charge on the mortgaged property. *Held* also each case must turn on the construction that the Court places on the mortgage deed in that particular case. *SRI PATI LALL DEB v SARAT CHANDRA MONDAL* (1918) 22 C W N 790

12 — *Two Mortgages—Separate sums secured—Tenants in Common—Right of each Mortgagee—Unlawful Influence—Parol Evidence—Compromise—Independent Advice—True Test* Upon a mortgage to two mortgagees to secure two separate sums the whole mortgaged property being conveyed to the mortgagees as tenants in common. It being no covenant to repay to each separately if one mortgagee desires repayment

MORTGAGE—contd

CONSTRUCTION—contd

his co mortgagee not consenting to proceeding his proper course is to sue for a mortgage decree in respect of the whole sum secured—joining his co mortgagee as a defendant the decree should provide for all necessary accounts and payments but no personal decree against the mortgagor in favour of the mortgagee who sues. To support an agreement by a pardanashin lady in compromise of litigation it is sufficient to show that the general result of the compromise as distinct from the details and legal technicalities involved was understood by her and that disinterested and competent persons with a fair understanding of the whole matter advised her to execute it. *SUNITABALA DEBI v DHARA SUNDARI DEBI CHOWDHURAN* (1919) L R 48 I A 272

13 — *Mortgage of entire sixteen acres of village—Without reservation—Grove lands* Where a zamindar mortgages his entire zamindari rights in a village without any reservation whatever there is no reason why the mortgage should not be held to include the mortgagor's rights in grove land purchased some time before the execution of the mortgage. *HASAN ALI KHAN v AZHAP UL HASAN* (1918) I L R 41 All 45

14 — *Debtor executing a mortgage of his properties in favour of alleged creditor (a relation)—Soon after suspending payment—Bona fides of transaction how to be determined—Consideration of facts as a whole and in relation to each other essential* C and D were related to each other and had between them numerous business dealings which it was alleged left D indebted to C to the extent of Rs 80,000. On 26th September 1899 just after D had suspended payment D purposed to execute a usufructuary mortgage of all his immovable properties in favour of C in consideration of the said alleged debt owed by D to C. Certain creditors of D who in the meanwhile had instituted suits against D attached before judgment the said properties whereupon C unsufully laid claim to the properties under s 278 of Act XIV of 1882. *Held* in a suit by C to set aside the attachment that the question for determination in the case was whether the mortgage was a bona fide transaction entered into with the object of securing the debt of C or whether it was a mere contrivance for defeating or delaying the just claims of the other creditors and retaining the properties for the benefit of or in trust for D. That taking the facts as a whole the mortgage was a mere device for rescuing the bulk of the available assets of D for the benefit of his family and indirectly for himself. That also Court of first instance fell into an error in taking each fact which militated against the bona fides of the mortgage separately from the rest of the facts and proceeding to demonstrate that it was quite consistent with good faith whereas in a case like the present it was essentially necessary that the facts should be considered in relation to each other and weighed as a whole as was done in the Appeal Court whose decision the Judicial Committee affirmed. *CHUGHAN DAS v LAKHESHAN* (1919) 23 M W N 817

15 — *Mortgage of several properties—Sale of some under a farman title—Failure of mortgagee to take payment out of surplus sale proceeds of amounts to release—Mortgagee if may realise the whole debt from remain*

MORTGAGE—*co 1*

CONSTRUCTION—*contd*

1 property—*Transfer of Property Act (11 of 1899) s 8* If properties A, B and C are mortgaged there are all equally liable in the first instance for the mortgage debt. If however during the subsistence of the mortgage they go into other hands they are still equally liable but the owners of the properties released are entitled to have the liability apportioned rateably between the properties according to their value at the date of the mortgage (s 82 of the Transfer of Property Act). This does not affect the right between the holders of the properties for A and does not affect the mortgagee's right to enforce his mortgage against all or any of the properties. If however the mortgagee releases one or more of the properties from liability under the mortgage with knowledge that there has been a change of ownership as to some or all of the properties then the properties which remain liable are only liable to such part of the mortgage debt as is proportionate to their value at the date of the mortgage. Whether a mortgagee is entitled to enforce his charge against the surplus proceeds of mortgaged properties sold under a paramount title amounts to a release of the properties from their liability to the mortgage debt is a question of fact. *The Madhav Rao Wani Co. Ltd v. Abinash Chandra Mitter* (1918) 23 C W N 308

16 ———— **"Mukhiza—Transfer of Property Act (1899) s 53 100** A deed the basis of a suit for sale as on a mortgage opened with a recital that the executant had borrowed a sum of money followed by a promise to pay the amount with interest at 2 per cent per month within a certain time and then provided *mukhiza a la o sud to yom ul wazul upar* (description of the share) *laqat min mugur* *gaim valaga* *liha a latirul tamas ul mukhiza* *jalad ka lillaya* Held that this deed could not be construed as mortgage. The word *mukhiza* did not necessarily imply a power of a sale and there was nothing else in the deed from which an intention to give a power of a sale could be inferred. *Dalit Singh v. Bahadur Ram* (1912) I L R 34 All 446

17 ———— **When only part of the consideration paid—Mortgagee in possession cannot press rule for high interest by asserting a larger amount as due—Limitation Act Sch II Arts 141 145** Where only a part of the consideration for a mortgage has been paid the mortgage is a good security for the amount that has validly passed. The mortgagee by retaining in possession for more than 12 years under such a mortgage cannot by merely claiming to hold for the full amount acquire by prescription a right to hold as mortgagee for such full amount. Notwithstanding the assertion by the mortgagee of a larger interest than was validly passed to him by the mortgagee article 145 of the Limitation Act will apply to a suit for redemption by the mortgagor. Article 144 will not apply as article 148 specially provides for the case. *Rajah Thrusral Raju v. Pandya Mathial Nasidu* (1911)

I L R 35 Mad 114
18 ———— **Collateral agreement—Where a mortgage is executed but there is a collateral agreement that no obligation should attach under the instrument till payment of money on the**

MORTGAGE—*contd*

CONSTRUCTION—*contd*

on hand and delivery to the registering officer on the day of the mortgage the condition is fulfilled (clauses 1 and 2) and attestation of the document. There is no analogy between a common law deed in this respect. *Jaywant Anand Singh v. Deo Narain Singh* (1911) 16 C W N 612

19 ———— **Liability for deficiency in interest—Which is personal merely or a charge on the mortgage property** A mortgage deed provided that the mortgagee should take possession of the mortgaged property and out of the rents and profits pay the Government revenue and appropriate 10 1/2 per annum in account of interest at the rate of 11 annas per cent per mensem. It further provided that should the amount of profits calculated on the basis of the patwaris' accounts be found insufficient to cover the whole amount payable for interest the deficiency would be made good by the mortgagor together with interest at the rate of Rs 2 per cent per mensem. Held that deficiency in the stipulated interest was realizable as well from the mortgaged property as from the mortgagor personally. *Saidmadhujuman v. Chondra Shah* (1911) I L R 35 C referred to *Chitramay v. Dulari* (1910) I L R 35 All 107

20 ———— **Interest partly in kind and partly in cash—Interest when payable—Suit for arrears of interest—Words amounting in covenant to pay year by year** In this case their Lordships of the Judicial Committee held (reversing the decision of the High Court) that on the true construction of the mortgage there was clearly a personal covenant to pay interest on the mortgage money from year to year and that the suit which was for arrears of interest was therefore maintainable. *Madappa Hegde v. Pankrishna Narayan* (1911)

I L R 35 Bom 327
21 ———— **Personal decree, suit for—Mortgaged properties if must be first proceeded against** Held on the construction of the mortgage bond in this case that it contained an express promise to pay the amounts secured so that the mortgagee was entitled to sue for a personal decree only. Held further that a stipulation that if the debt be not paid off by the hypothecated properties the mortgagee will be able to realize the money by sale of the mortgagor's other moveable and immovable properties did not imply that the parties agreed to postpone the remedy against the person and other properties to that against the mortgaged properties. *Devi Kishore Dey v. Devedra Kishore Nandy* (1911)

15 C W N 722
22 ———— **Simple or anomalous mortgage—Covenant to pay—Option of mortgagee to take possession on default of payment of interest—Mortgage of usufructuary—Decree for sale if proper** Held on the terms of the bond in suit that it was a simple mortgage. A simple mortgagee is entitled to a decree for sale as a matter of course, notwithstanding that under the terms of the mortgage bond he has the option on the mortgagor's default in payment of interest to take possession of the mortgaged properties and to enjoy the same as under a usufructuary mortgage. *Arintha Bhupati Devu Gattu v. Sultan Bahadur of Vizianagram* (1911) 15 C W N 441

MORTGAGE—*contd.*CONSTRUCTION—*contd.*

23 ——— **Attornment clause in mortgage deed—Construction of Deed** The courts in India will not in the absence of the strongest reasons give a construction to an alleged attornment clause in a mortgage deed which will have the effect of creating rights of tenancy in derogation of the rights of the mortgagee. By a deed dated the 14th August 1896 defendants 1st party mortgaged to the plaintiffs their shares in several *mauzas* inclusive of 200 *bighas* of *zerai* land. Out of the 200 *bighas* of *zerai* land 50 *bighas* was left in the possession of the mortgagors at a nominal rent. By a *kabuli* dated the 25th September 1902 a further area of 4 *bighas* 10 *cottahs* of jungle land was let to the defendants at a rental of Rs 14 5 6. The plaintiffs sued for arrears of rent and for possession in terms of the mortgage. Held on a construction of the mortgage deed that with regard to the 50 *bighas* of *zerai* land the real relationship between the parties was not that of landlord and tenant but mortgagor and mortgagee and that the arrears of rent claimed in the present suit were really on account of principal and interest. The plaintiff was entitled to a decree for the amount claimed as rent and for recovery of possession of the 50 *bighas*. *Obiter dictum*. As the Bengal Tenancy Act 1885 does not contemplate a *raiya* who does not come under any of the clauses of s. 4 of that Act the mortgagor must with regard to the *zerai* land be held to be a non-occupancy *raiya*. Held further on a construction of the *kabuli* that with regard to the 4 *bighas* 10 *cottahs* the relationship of landlord and tenant existed and that the mortgagor was not precluded from obtaining the status of an occupancy *raiya* under the mortgage. The plaintiff was entitled to a decree for arrears of rent but not to recovery of possession as the mortgagor was found to have acquired occupancy rights in the holding. *UDAY CHAND & SANGU BHADUR SINGH* 1 Pat L J 353

24 ——— **Simple mortgage—Effects of recitals in mortgage deed—Effect of mortgagee in possession acts of how far binding on mortgagee** The recitals in a mortgage deed are important in considering the nature and the scope of the implied authority which arises as between the mortgagor and mortgagee when the former is allowed to remain in apparent possession and ownership of the mortgaged property. A deed which is expressly called a mortgage deed and which expressly mortgages and hypothecates the property charged as security for the mortgage debt is according to the law of India a valid simple mortgage. When a mortgagor remains in possession after the date of a mortgage he can deal with the property in the usual and customary way so as to bind the mortgagee but he must not do anything prejudicially affecting the mortgaged property as security for the debt. The fact that a mortgage deed declares itself to be executed by a Manager appointed under the Guardians and Wards Act 1890 rather limits than extends the ordinary rights of a mortgagor in possession. Where a person obtains a contractual benefit from a mortgagor in possession after the date of the mortgage the onus is upon such person to prove that it was a benefit which he might derive and retain in the usual course of the management of the property. The High Court is entitled to examine and enquire into

MORTGAGE—*contd.*CONSTRUCTION—*contd.*

the grounds and basis upon which an entry in the Record of Rights was made. *ANANDA RAM MAWARI & DHANPAT SINGH* 1 Pat L J 563

25 ——— **What charges may be added to mortgage debt—whether payments on account of road cess may be added** A mortgagee is not entitled to add the expenses incurred for payment of road cess to the sum due on the mortgage. The payment of a public charge for which the mortgaged property may not be summarily sold cannot be constituted a charge upon the property. ■ 72 of the Transfer of Property Act 1882 does not cover a case in which the right title and interest only of the mortgagor may be put up for sale. The section includes only payments made to save the security itself. *RAJENDRA PRASAD & BANURIA RAYAN JOSEPH* 1 Pat L J 580

CONTRIBUTION

See TRANSFER OF PROPERTY ACT 1882
s. 82

—**Payment by co-mortgagor—Guardian and Minor—Power of de facto guardian to mortgage minor's property—Mahomedan law** Held that where a joint mortgagor seeks contribution upon the ground that he has paid the whole mortgage debt and thus relieved the property of his co-mortgagor from a burden it is not necessary for him to plead that he did so under compulsion. Held also that the de facto guardian of a minor Mahomedan is competent in case of necessity and for the benefit of the minor to make a valid mortgage of the minor's property. *ABID ALI & IMAM ALI* (1915) 1 L R 39 All 82

—**Property subject to three mortgages sold under decrees on two—Decrees not satisfied—Property sold not liable to contribute to third mortgage** Where property the subject of more than one mortgage is sold in execution of a decree on a prior mortgage and that decree still remains unsatisfied it cannot thereafter be made liable to contribution under a decree on a second or third mortgage. *Hari Raj Singh v Ahmad ud din Khan* 1 L R 19 All 545 and *Bohra Thakur Das v The Collector of Aligarh* 1 L R 23 All 39 referred to. *CHAUDHARI PRASAD & SHAFAT MUHAMMAD CHAUDHARI* (1920) 1 L R 43 All 42

—**Limitation of suit for contribution by co-mortgagor—Contribution suit by co-mortgagor paying off mortgage decree in excess of his share—period of limitation for—Limitation Act (X of 1908) Arts 60 92 120 or 132 which of them applies—A co-mortgagor redeeming a mortgage if to be treated as an assignee of the original security** A B and C mortgaged their properties to H in 1858 the due date of the mortgage being September 1891. In 1903 the mortgagee brought a suit upon his mortgage and a preliminary decree was passed in June 1903. In February 1904 some of the mortgagors paid a portion of the mortgage debt to the mortgagee. In May 1903 order absolute for sale of the mortgaged properties was passed and the mortgagee thereafter put up the properties to sale. To prevent the sale two of the mortgagors satisfied the mortgage decree by depositing the decretal amount in Court on the 23rd March 1909 and one of them brought the present suit for contribution on the 7th October 1911 against his co-mort

MORTGAGE—contd

LSTOPPI L—contd

of entire property pending mortgage suit—Sale and purchase by mortgagee in presence of defendant—Defendant if estopped from proving title to the other half—Ignorance of plaintiff of real fact and mislending by defendant a conduct to be proved J who owned a half share in a property purported to mortgage the whole After a preliminary decree had been passed in favour of the mortgagee in his suit against J brought on the mortgage J purchased the interest of J and his co share and was brought on the record as the successor in interest of J The mortgage decree was thereafter made absolute and the property put up to sale and purchased by the mortgagee In a suit by the latter against J to establish his title to the entire mortgaged property held that J would not be estopped from showing that the mortgage sale passed only J's half share in the property to the plaintiffs unless it was established that the mortgagee was not aware that J had only a half share in the property which he purported to mortgage and that he was misled by some representation by conduct of J into believing that J had full title *Kamal Ahmar Nandi v Kazi Miran* (1911)

25 C W N 572

2 ——— Power of representatives of mortgagor to question validity of mortgage—Adverse possession—Possession adverse to mortgagor not necessarily adverse to mortgagee Held that although the representatives of a mortgagor cannot as such question the validity of the mortgage it may be open to them as mulatallis to plead that the property was wakf and that the mortgage of it was void *Qul or Ali v Jida Ali* I L R 6 All 25 distinguished Held also that a simple mortgage being not merely a security for a debt but a transfer of an interest in the property mortgaged a trespasser who ousts the mortgagor and holds the property adversely to him may by prescription become the owner of the limited estate which the mortgagor had in the property but such adverse possession cannot extinguish the right of the mortgagee *Agency Company v Ghori* L R 13 A C 793 *Smith v Lloyd* 9 Fz 86° *Secretary of State for India v Krishnamoorti* Gupta I I R 20 Calc 518 and *Ismdar Khan v Ahmad Husain* I L R 30 All 119 referred to *Ramaswami Chetty v Panna Padayachi* 21 Mad L J 397 and *Pralay Bahadur Singh v Maheshwar Bakhsh Singh* 12 O C 45 not approved *Amar Mandal v Mahan Lal Day* I L R 33 Calc 1015 and *Parthasarathi Nayan v Lakshmana Nayan* 21 Mad L J 467 approved and followed *Karan Singh v Bakar Ali Khan* I L R 5 All 1 discussed *NANDAN SINGH v JUMMAN* (1912)

I L R 34 All 642

3 ——— Purchase of mortgaged property by mortgagee in execution of his decree for sale—Subsequent suit for sale by a prior mortgagee—Plea of incompetence of Mortgagee raised by mortgagee—Purchaser Held that a mortgagee who in execution of a decree for sale in his favour has purchased the mortgaged property himself could not be permitted in another suit on a prior mortgage of the same property in which he was a party as defendant to set up the defence that the mortgagor was incompetent to execute the mortgage in suit *Bishumbar Dayal v Parshadi Lal* 10 All L J 11° *Bakhshi Ram v Laladhar* I I R 35 All 353 and *Prayag Paj v Sidhu Prasad*

MORTGAGE—contd

FSTOPPI L—contd

Tiwari I I R 30 Calc 577 referred to *Radha Bai v Kamod Singh* I I R 30 All 38 distinguished *TOTA RAM v HAR GOVIND* (1913)

I L R 34 All 141

EXECUTION OF MORTGAGE DECREE

1 ——— Order in which properties to be sold discretion of Court as to—Execution of mortgage decree—Partial execution application for if may be entertained—Two properties A and B were mortgaged by one deed by S Subsequently S sold the property A to one P The mortgagor brought a suit on the mortgage and got a decree against S and P The decree holder applied for execution against both the properties but the Court, in the exercise of its discretion ordered execution against the property B in the first instance Thereupon the decree holder had the petition for execution dismissed and made a fresh application for execution against the property A alone Held that the discretion as to the order in which the execution should issue is vested in the Court alone and the decree holder cannot be allowed to fetter the hands of the Court by petition for partial execution Held also that execution could not be ordered unless the decree holder included both the properties in his petition *Amir Chand v Bakshi Akro Perahad* I I R 34 Calc 13 distinguished *MAHOMED SADDIC v SAUDA GAR MIY LAHARI* (1910) 15 C W N 50

2 ——— Mortgage by co-partner—Hindu Law—Mitakshara—Decree directing property to be held in specific shares and charging mortgagor's share with the mortgagee a decree enforceable in execution—Separate suit to enforce lien if necessary A mortgage by a co-partner in a Mitakshara joint family was declared to be void in so far as it purported to affect the specific share of the mortgagor but the Court directed by its decree that the mortgagor and his co-sharer do hold the properties in specified shares and that the share of the mortgagor be held subject to the lien of the mortgagee for the sum advanced with interest The mortgagor or his co-sharers not having asked to redeem the share of the mortgagor by paying off the mortgage money with interest no decree for redemption was made Held that the mortgagor could bring the share to sale in execution of the decree and it was not incumbent on him to institute a separate suit to enforce the lien *RAM SUNDAR DAS v NATHUNI SINGH* (1911)

15 C W N 748

3 ——— Interest—Transfer of Property Act (IV of 1882) ss 83 84—Mortgage interest on up to what date payable—Prior incumbrancers joined in suit by puisne mortgagee if may get interest at contract rate after date fixed in preliminary decree for repayment A puisne mortgagee having joined the prior mortgagees in his suit a decree was passed fixing the period of redemption for the plaintiff but not in regard to the prior incumbrancers The decree did not also determine the amounts payable to the latter In execution the property was sold and the purchase money deposited Subsequently the mortgagor brought a suit to set aside the sale which was ultimately dismissed and the sale was then confirmed On the question up to what date the prior mortgagees would be entitled to get interest Held that interest would be payable on the principle of s 84 of the Trans

MORTGAGE—contd**EXECUTION OF MORTGAGE DECREE—contd**

fer of property Act up to the date of confirmation of sale and not up to the date fixed for payment in the decree. Although it may be open to the Court to distribute the sale proceeds amongst the claimants before the sale has been confirmed it is not obligatory on the Court to distribute it then nor is the sum distributable as a matter of course. Order for distribution ought not ordinarily to be made before the confirmation of the sale. *Jogendra Nath Sarker v Chandra Chunder Siddi* 1 L R 12 Cal 35. *Hafiz Mahomed Ali Khan v Damodar Paramanick* 1 L R 18 Cal 24 explained. The order for distribution by the Court was a decree within s. 2 read with s. 4th sub s. (1) of the Civil Procedure Code and appealable as such. *BEYODE LAL BANDOPADHYA v HARISH CHANDRA TEWARI* (1910) 15 C W N 783

EXONERATION OF CERTAIN ITEMS MORTGAGED

*Suit for sale of one item exonerating other items mortgaged—Right of mortgagee in exoneration—Contribution July of which lost by exoneration—Transfer of Property Act (IX of 1908) ss 60 and 8. A mortgagee seeking to realize the amount due to him brought a suit for sale of one only of the items mortgaged impleading therein the mortgagor and the person who purchased the equity of redemption in the one item in execution of a money decree. The mortgagee exonerated from liability the other items mortgaged. Held by the FULL BENCH that a mortgagee voluntarily releasing from the suit a portion of the mortgaged property is not bound to abate a proportionate part of the debt and is entitled to recover the whole of the mortgage amount from any portion of the mortgaged property. *Ionnisami Mudaliyar v Srinivasa Aiyekar* 1 L R 31 Mad 333 and *Suryiram Marwari v Barlamdeo Iersad* 1 C I J 337 dissented from *Semle*. A release of certain items by the mortgagee has not the effect of releasing those items from liability for contribution under s. 82 of the Transfer of Property Act. *Jugal Kishore Sahu v Achar Nath* 1 L R 34 All 60th referred to. *PERUMAL PILLAI v RAMAN CHETTIAR* (1917) 1 L R 40 Mad 988*

FEMALES REPRESENTATION OF

Mortgage bond executed by male members of Mahomedan family—No proof of custom to exclude females as in Hindu family—Female members added as defendants in mortgage suit though not executors of bonds—Form of decree—Whether females were represented in the mortgage transaction by male members of family—Estoppel by conduct. The appellants were the female members of a Mahomedan family which had adopted the Hindu religion in matters of worship and as to which both Courts in India concurrently held that there was no custom proved excluding female members from inheritance which was the case set up by the respondent. In a suit brought by the latter to enforce a mortgage bond which has been executed only by the male members of the family in which suit the appellants were also joined as defendants the first Court made a decree against the interests of the male defendants only in the property but the High Court decreed the suit against both the male and female defendants on the grounds that because

MORTGAGE—contd**FEMALES REPRESENTATION OF—contd**

the female members had not actively interfered in the management of the property the male defendants must be taken to have represented them in the mortgage transaction. It appeared that in other transactions the male members of the family had dealt with the family property without the active concurrence of the females. Held by the Judicial Committee reversing the decision of the High Court that the evidence did not prove that the male defendants had represented the appellants. The latter were *purdana* ladies and naturally left the management of the property to their male relatives. There was nothing to show that the appellants had misled the respondent either by word or conduct to the belief that they had no proprietary interest in the property and he made no inquiries in the matter from them or their husbands as he might have done if he had any doubt in the matter. The decree of the High Court was therefore erroneous so far as it made the appellants liable and should have been limited to making liable only the interests in the property of the male defendants the executors of the mortgage bond. *AZIMA BIBI v SHAMALACHAND* (1912)

1 L R 40 Cal 378

FORECLOSURE.

1. — **Order absolute application for—Mortgage—Foreclosure—Limitation—Execution of decree application for—Revival of pending execution—Limitation Act (IX of 1908) Sec 11 Art 181.** Previous to the passing of the Limitation Act (IX of 1908) and the Civil Procedure Code (V of 1903) there was no rule of limitation applicable to an application for order absolute of a decree now made under s. 86 of the Transfer of Property Act (IV of 1882). *Tiluck Singh v Jarootein Prashad* 1 L R 92 Cal 94. *Rahmat Karim v Abdul Karim* 1 L R 34 Cal 672 referred to. An application for execution of a decree may be treated as one in continuation or revival of a previous application similar in scope and character the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless or has been suspended by reason of an injunction or like obstruction. *Qamaruddin Ahmad v Jauhar Lal* 1 L R 27 All 334. 1 L R 321 A 102. *Fara Narain Guria v Pachu Maity* 1 L R 23 Cal 437. *Narayan Gobind Manil v Sono Sado Mir* 1 L R 21 Bom 345. *Rahim Ali Khan v Isha Chaud* 1 L R 13 All 482. *Mir Aymuddin v Mathura Das* 11 Bom II C 706. *Surya Peddiar v Arudam Ammal* 1 L R 28 Mad 50. *Pura Ram v Gardner* 1 L R 1 All 555 referred to. The Limitation Act (IX of 1908) does not profess to provide for all kinds of applications whatsoever. *Gonnd Chunder Gourami v Kungunmoney* 1 L R 6 Cal 60. *Sital Prasad v Abdul Rashid* 11 Oudh Cases 208 referred to. Nor does it apply to an application to a Court to do what the Court has no discretion to refuse. *Kyla a Gowdan v Pama sams Ayyan* 1 L R 4 Mad 12. *Rajaji v Avelala* 1 L R 30 Bom 415 referred to. Nor is it applicable to an application to the Court to terminate a pending proceeding the final order in which has been postponed for the benefit of the defendant or for the convenience of the Court. *Puran Chand v Roy Radha Kieken* 1 L R 19 Cal 130th refe

MORTGAGE—contd

I STOPPED—contd

of entire property pending mortgage suit—Sale and purchase by mortgagee in presence of defendant—Defendant if estopped from proving title to the other half—Ignorance of plaintiff of real fact and misleading by defendant's conduct to be proved *J* who owned a half share in a property purported to mortgage the whole After a preliminary decree had been passed in favour of the mortgagee in his suit against *J* brought on the mortgage *A* purchased the interest of *J* and his co share and was brought on the record as the successor in interest of *J* The mortgage decree was thereafter made absolute and the property put up to sale and purchased by the mortgagee In a suit by the latter against *A* to establish his title to the entire mortgaged property held that *A* would not be estopped from showing that the mortgage sale passed only *J*'s half share in the property to the plaintiffs unless it was established that the mortgagee was not aware that *J* had only a half share in the property which he purported to mortgage and that he was misled by some representation by conduct of *A* into believing that *J* had full title *KAMAL KUMAR SANYAL v KALI PRASAD* (1911)

15 C W N 572

2 ——— Power of representatives of mortgagor to question validity of mortgage—Adverse possession—Possession adverse to mortgagor not necessarily adverse to mortgagee Held that although the representatives of a mortgagor cannot as such question the validity of the mortgage it may be open to them as *mutawallis* to plead that the property was *wakf* and that the mortgage of it was void *Gul or Ali v Fida Ali I L R 6 All 24* distinguished Held also that a simple mortgage being not merely a security for a debt but a transfer of an interest in the property mortgaged a trespasser who ousts the mortgagor and holds the property adversely to him may by prescription become the owner of the limited estate which the mortgagor had in the property but such adverse possession cannot extinguish the right of the mortgagee *Agency Company v Short I L R 13 A C 703 Smith v Lloyd 9 Ex 568 Secretary of State for India v Krishnamoni Gupta I L R 29 Cal 518 and Imdar Khan v Ahmad Husain I L R 30 All 119* referred to *Ramaswami Chetty v Panna Padayachi 21 Mad L J 397* and *Pratap Bahadur Singh v Maheswar Bakhsh Singh 12 O C 4*, not approved *Amadar Mandal v Mahan Lal Day I L R 33 Cal 1015* and *Parthasarathi Naikan v Lalashmana Naikan 21 Mad I J 467* approved and followed *Raman Singh v Bakar Ali Khan I I R 5 All 1* discussed *NANDAN SINGH v JUMMAN* (1912)

I L R 24 All 643

3 ——— Purchase of mortgaged property by mortgagee in execution of his decree for sale—Subsequent suit for sale by a prior mortgagee—Plea of incompetence of mortgagor raised by mortgagee—Purchaser Held that a mortgagee who in execution of a decree for sale in his favour has purchased the mortgaged property himself could not be permitted in another suit on a prior mortgage of the same property in which he was arrayed as defendant to set up the defence that the mortgagor was incompetent to execute the mortgage in suit *Bishambhar Dayal v Parshad Lal 10 All L J 112 Bakhshi Ram v Laladhar I L R 25 All 37* and *Prajaag Paj v Sidhu Prasad*

MORTGAGE—contd

I STOPPED—contd

Tiwari I I P 30 Cal 877 referred to *Radha Bai v Kamed Singh I I P 30 All 38* distinguished *TOTA I AM v HAR GOVIND* (1913)

I L R 36 All 141

EXECUTION OF MORTGAGE DECREE

1 ——— Order in which properties to be sold discretion of Court as to—Execution of mortgage decree—Partial execution application for if may be entertained—Two properties *A* and *B* were mortgaged by one deed *I* & *S* Subsequently *S* sold the property *A* to one *P* The mortgagor *I* brought a suit on the mortgage and got a decree against *S* and *P* The decree holder applied for execution against both the properties but the Court, in the exercise of its discretion ordered execution against the property *B* in the first instance Thereupon the decree holder had the petition for execution dismissed and made a fresh application for execution against the property *A* alone Held that the discretion as to the order in which the execution should issue is vested in the Court alone and the decree holder cannot be allowed to fetter the hands of the Court by petition for partial execution Held also that execution could not be ordered unless the decree holder included both the properties in his petition *Amir Chand v Nakehi Shero Pershad I L R 31 Cal 33* distinguished *MAHOMED SADDIK v SAUDA OAR MIAN LAHARI* (1910) 15 C W N 80

2 ——— Mortgage by co-parceners—Hindu Law—Mutaksharn—Decree directing property to be held in specific shares and charging mortgagor a share with the mortgagee's dues if enforceable in execution—Separate suit to enforce lien if necessary A mortgage by a co-parcener in a *Mutaksharn* joint family was declared to be void in so far as it purported to affect the specific share of the mortgagor but the Court directed by its decree that the mortgagor and his co-sharer do hold the properties in specified shares and that the share of the mortgagor be held subject to the lien of the mortgagee for the sum advanced with interest The mortgagor or his co-sharers not having asked to redeem the share of the mortgagor by paying off the mortgage money with interest no decree for redemption was made Held that the mortgagee could bring the share to sale in execution of the decree and it was not incumbent on him to institute a separate suit to enforce the lien *Rast Sundar Das v NATHUNI SIKH* (1911)

15 C W N 748

3 ——— Interest—Transfer of Property Act (17 of 1882) ss 83 31—Mortgage interest on up to what date payable—Prior incumbrances joined in suit by puisne mortgagee if may get interest at contract rate after date fixed in preliminary decree for repayment A puisne mortgagee having joined the prior mortgagees in his suit a decree was passed fixing the period of redemption for the plaintiff but not in regard to the prior incumbrances The decree did not also determine the amounts payable to the latter In execution the property was sold and the purchase money deposited Subsequently the mortgagor brought a suit to set aside the sale which was ultimately dismissed and the sale was then confirmed On the question up to what date the prior mortgagees would be entitled to get interest Held that interest would be payable on the principle of s 84 of the Trans

NOT AGZ- 1

FOI EXCLUDED -

that the Decree was a r an redeem the
whole or half the r r r r r within one year
and as he h r w l r e in part the execution of
the d e H e l t h a u h a decree d e not
rea a fresh m o r t a e D e l a r e l a n g L a l
6 P P 1914 d approved H e l t h a n t
t e p r e n t o u n t e n e d t h m r t a r e u n d e r
the decree on failure of p r m n t h r m o r t e
was that of a full owner a l a s u c h a s a d e r e
t e m o d a o a n h i s u e v e r i n l a b
H A R O L D M A L R L A N Z L A I L L H 2 L a b 53

on minor mortgagor through his brother
the other mortgagor as guardian of his
property and for foreclosure. The plaintiff
sued for possession of the property and
for foreclosure. The application for
foreclosure was dated 10th May 1911.
The demand was made by a written notice
dated 30th August 1909 which was served upon
H. L. for himself and as guardian of the
other mortgagor or a minor. In application for
guardianship had been dismissed on the ground
that H. C. and H. L. were members of a joint
Hindu family and it was found that the minor
lived with his relation. Held that the service of
the notice on H. C. through H. L. was under the
circumstances sufficient. *Pur Musa Dibia v.*
Pran Kishan Das (11 Moo 11 327 309) and Lal
Singh v. Gopal Das (31 P R 189) referred to
Held also that there is no authority for the contention
that the demand must have been made before the
application for foreclosure and that the foreclosure
proceedings were consequently not defective
because the demand was made sometime previous
to the application for foreclosure. *Bhagwati v.*
Yash Mal (105 P P 1997) Dal Singh v. Jaimal
Singh (134 P L R 1910) and Birkat Ali v. Ali
(31 P P 1913) referred to. *Nasara Singh v.*
Muhammad Khan (11 P L R 1991) distinguished
and in part distinguished from *Cornwall Das v.*
Mussamat Purnani (11 L R 1 Loh 292)

8. — Final decree application for by transferee from defendants effect of — Code of Civil Procedure (Act 1 of 1908) O XXXIV p 3 (2)—decretal amount not paid in time when defendant entitled to pay between expiry of time and passing of final decree Although an application for a final decree in a foreclosure suit should be made by the plaintiff yet where such an application was made by a transferee from the defendants in the presence of the latter Held that the defendants were not entitled subsequently to challenge the final decree on the ground that it had not been applied for by the plaintiff The proviso to O XXXIV p 3 (2) gives the Court a discretionary power to extend the time for payment of the decretal amount but a mortgagor has no absolute right to pay the money after the expiry of the specified period even though no final decree has up to the time of such payment been made PATNAKAR GOVINDA L CHANDRA SATAPATHY 4 Pat J J 347

FRAUD

Suit to recover the amount due—Defendant's plea that the mortgage was effected to defraud his creditor—Attachment of the property by the creditor—Order for sale subject to the mort

MOPTAGE - 1

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1st—Cred or 1st of before sale—Decree for plaintiff on the ground that defendant can not plead his own fraud—Fraud not carried out—Defendant's intention not punishable. The plaintiff sued to recover from the defendant the amount due under a mortgage. The defendant pleaded that the mortgage deed was effected to protect his property from his creditor and that no consideration really paid under the deed. Previous to the suit the defendant a creditor had attached the mortgaged property and the mortgagee (present plaintiff) had made a claim on the basis of the mortgage for the release of the property from attachment. The mortgagor (present defendant) admitted the mortgage and the property was ordered to be sold subject to the mortgage. But the property was however not sold because the mortgagor paid off his creditor before the order for sale was carried into effect. Both the lower courts decreed the claim on the ground that the defendant could not be allowed to defeat the plaintiff by pleading his own fraud. On second appeal by the defendant filed setting aside the decree that as the defendant a creditor had not been defrauded there was no reason why the Court should punish his intention to defraud by passing a decree against him. *Sidlingappa v Naraya I L R 31 Bom 405 explained and distinguished Pam Surun Singh v Pran Peary I L Moo I A 111 referred to GIRDHARLAL BRAYAGIATT v MANTHANMA (1913)*

GUARDIAN MORTGAGE BY

Guardians and Wards
Act (VIII of 1890) as to 30—Mortgage by guardian without Judge's authority—Ward benefited—Suit to enforce mortgage—Minor's remedy—Pestitutio of benefit—Equitable obligation of defendant
 A mortgage of a minor's property executed by a certificated guardian without permission taken from the District Judge is voidable only. But it is not necessary that the person affected should sue to set aside the transaction it is sufficient if he declares his will to rescind by way of defence in an action to enforce the mortgage against him. Where it was found that the money raised by the mortgage was for the benefit of the minor the latter cannot avoid the mortgage without restoring the benefit which he had received under it this equitable doctrine being applicable as well to a defendant in an action on the mortgage as to a plaintiff seeking to avoid the mortgage. *The Eastern Mortgage and Agency Co v Pabai Kumar* 3 C L J 260 followed. *Hem Chandra Sarkar v Lalit Mohan Kar* (1912)

16 ■ W N 715
—Sanction to raise loan granted by District Judge but subsequently revoked—Money lent without notice of revocation and applied by guardian for minor's benefit—Effect of the revocation of sanction on the mortgage—Rate of interest The certificated guardian of a minor obtained the leave of the District Judge to raise a loan for a certain amount from the plaintiff. Subsequently the District Judge called upon the guardian to state whether the mortgage had been executed or not and on the guardian's failure to do so the Judge evoked the order. No notice of revocation was given either to the plaintiff

MORTGAGE—contd**GUARDIAN MORTGAGE—contd**

or the guardian and the plaintiff advanced the money on the mortgage which was executed by the guardian and the entire amount was applied to the benefit of the minor's estate. The rate of interest was not placed before the District Judge and was not sanctioned by him but it was stipulated in the mortgage bond was Rs 18 with annual rests. *Held* that even assuming that the order of the District Judge revoking the leave was effective as against the plaintiff the transaction stood in the same position as if there was no sanction by the Judge to the certificated guardian. The order was merely a voidable one under s 30 of the Guardians and Wards Act at the instance of the minor on coming of age after restoration of the benefit received by him under the order and the plaintiff was entitled to a decree for the amount advanced by him on the mortgage bond but only to interest at the rate of 12 per cent simple interest. **MANASHARAM DAS v ANURADHA HOARI PRODHAN (1916)** 21 C W N 63

Mortgage executed by purnadashin Bai as guardian of minor son with sanction of District Judge—Lender is justified in relying on Court's sanction and making no further enquiry—Application of money borrowed lender is bound to see to. A purnadashin lady acting as guardian of her minor son applied to the District Judge for raising a loan by mortgage and the District Judge being satisfied as to the necessity of the loan sanctioned it. In a suit on the mortgage it was pleaded *inter alia* that there was no necessity for a considerable portion of the loan. *Held* that the lender was not bound to go behind the order of the District Judge sanctioning the loan and was entitled to rely upon it and if he acted *bona fide* he was not bound to see to the application of the money. **AKHIL CHANDRA SAHA v GIRISH CHANDRA SAHA (1917)** 21 C W N 364

INTEREST

1 *Preliminary decree appeal by mortgagee against dismissal—Mortgagee if may claim contract rate of interest up to date of payment fixed in final decree—Purchaser of equity of redemption is personally liable.* Where the mortgagee plaintiff prefers an unsuccessful appeal against the preliminary decree made in his suit and the mortgagor does not ask for extension of time to enable him to redeem it is not open to the mortgagor to demand interest at the contract rate up to the date fixed for payment in the final decree. A purchaser of the equity of redemption is not personally liable to repay the mortgage debt. **TARA CHAND MARWATI v BROJA GOPAL MOOKERJEE (1912)** 17 C W N 457

2 *Mortgage by conditional sale with no provision for post diem interest—Post diem interest not allowed.* A mortgage executed in 1869 provided for the payment of the sum of Rs 300 with interest at Rs 18 per cent per mensem in one lump sum upon a certain specified date four years from the date of the mortgage. It further provided that if the money was not paid upon that date the property mortgaged should become the absolute property of the mortgagee. There was no stipulation of any kind as to the payment of interest after the date fixed. *Held* that the mortgagee was not entitled

MORTGAGE—contd**INTEREST—contd**

to post diem interest. **Mallura Das v Paja Narindar Balalul I L R 19 All 29** distinguished. **Led Cudris Koor v Mulunewari Cumar Singh I L R 19 Cal 19** and **Mohi Singh v Jankarai Sin I L R 1 A Cal 699** followed. **BALWANT SINGH v GAYAN SINGH (191)** 1 L R 25 All 534

3 *Loss of part of security by acquisition of mortgaged land—Mortgagee applying to Land Acquisition Judge for return of mortgage money (out of the compensation money) within term whether entitled to interest for the whole term—Law is, position Act (I of 1884) s 15 30.* If the mortgagee makes a demand for payment within the term and the mortgagee complies the mortgagee cannot insist upon payment of interest for the whole of the term. **Lal v Hutelins I L R 10 Lg 16 In re Mo 31 C I D 90 Smith v Smith [1921] 3 Ch 500** referred to. Where the mortgagee has given notice requiring payment within the term he cannot withdraw it without the consent of the mortgagor. **Santley v Wilde [1929] 1 C I 47 2 Ch 414** followed. Where the mortgagor agreed to keep the money for one year from 24th September 1912 on condition that the land should remain as security for the loan during the term but one of the properties given as security had been acquired (the mortgagee probably having no knowledge thereof) and on the 11th October 1911 the mortgagor applied to the Land Acquisition Deputy Collector that the moneys due under the mortgage (including one full year's interest) might be paid to him out of the compensation money and the mortgagee consented. *Held* that as the contract between the parties could not be performed according to its letter by reason of circumstances beyond their control the mortgagor was not bound to pay interest beyond the period of one month (as admitted by him). **Balla Rao Begam v Hussaini Khanum I L R 36 All 195** explained. **PROKASH CHANDRA CHOWH v HASAN BAYT BIBI (1914)** 1 L R 42 Cal 1140

4 *Covenant of possession by the mortgagee in lieu of interest—Mortgagee wrongfully kept out of possession of mortgaged property—Interest—Charge on mortgaged property—Limitation Act (IX of 1908) Sec 1 Art 116 132—Transfer of Property Act (XI of 1882) s 7.* A mortgage deed expressly covenanted that the mortgagee should have possession of the mortgaged property in lieu of interest and that if the mortgagors failed to pay the amount of the debt at the end of the period specified the mortgagee should be at liberty to foreclose according to law. Except for one year the mortgagee in spite of his efforts was wrongfully kept out of possession by the mortgagor. In a suit brought by the mortgagee on the mortgage deed—*Held* that the mortgagee was clearly entitled to some interest as a charge on the property and the interest claimed was not excessive. **Paya Oodis Purlath Singh v Martindell 4 Moo I A 444** **Pargan Pandey v Mahatam Maho G C L J 143** **Parab Bahadur Singh v Gajodhar Bakhsh I L R 24 All 521** **L P 29 I A 148** and **Moti Singh v Ramolari Singh I L P 24 Cal 699** referred to. **Mahadaji v Joti I L P 17 Bcm 4.5** distinguished. **SITA NATH GHOSH v TAKRABDAS CHAKRAVARTY (1918)** 1 I R 10 Cal 448.

MORTGAGE—*con d*INTEREST—*could*

5. ————— *Stipulations as to payment of interest of one necessaries and binding on purdandashin executant*—See *sub App Hurd* deprived of interest for period during which case was hung up at Rs 10 per mensem in regard to an executant's claim of interest. Where is a mortgage deed it was stipulated that the mortgagee was to remain in possession and enjoy the rent and profits and that after the expiry of thirty years at the time of redemption interest shall be paid along with the principal at the rate of 1 percent per mensem. *Held*—That the mortgage deed did not bind the mortgagee to pay interest from the date of the mortgage and the condition to pay interest only came into force on the expiry of the thirty years. That so interpreted the contract was not one which the executant of the mortgage a purdandashin lady could not understand. The Judicial Committee did allow interest to the mortgagee from the date of the decree of the Subordinate Judge (which had been reduced by the Judicial Commissioners but on the mortgagee's appeal the Board restored) to the date of the appeal by the Privy Council, the case having in its view been hung up by his persistence in asserting an unwarrantable claim of interest from the date of the mortgage. **PADA SING MOHAMMAD ALI MOHAMMAD KHAN BANADUR v. QAZI PAMAZAN**
24 C W N 977

LOST BOND

————— *Suit on lost bond*—*Admission of execution—Plea of payment—How far question of loss material*. In a suit brought on a lost mortgage bond the defendant a son of the executant admitted execution but pleaded payment and denied the loss. *Held* that since the defendant admitted execution it lay on him to prove that the mortgage had been discharged. The question of the loss of the bond was only material for the purpose of determining whether the bond had been discharged and returned. **JHANDU MAL v. KARAN SINGH** (1915)
I L R 37 All 426

MAPSHALLING

————— *Mortgagee failing to pay a part of consid ration as provided in the mortgage deed—Failure of consideration—Subsequent payment cannot be taken as part of mortgage debt—Transfer of Property Act (IV of 1932) ss 56 81 85—Marshalling of securities*. In 1896 G mortgaged some lands (Serial Nos 1—10) to V for Rs 400 of which Rs 200 were paid in cash and Rs 200 were to be paid to N a prior mortgagee. V having failed to pay to N G sold to defendant No 5 some of the lands mortgaged (Serial Nos 6—10) and other property and redeemed N's mortgage by paying Rs 200 to him. Subsequently V paid Rs 200 to G. Shortly afterwards G mortgaged some more lands (Serial Nos 1 3 4 and 5) to defendant No 4 for Rs 400. The defendant No 4 sued on his mortgage and obtained a decree against G. In execution of the decree the lands Serial Nos 1 3 4 5 were sold and were purchased by defendant No 4. V then sued on his mortgage treating it as one for Rs 400 to recover the amount by sale of all the ten numbers. The lower Courts recognized V's mortgage only for Rs 200 and granted him a decree authorizing him to proceed

MORTGAGE—*con d*MAPSHALLING—*could*

against Serial No 2 alone and if the sale proceeds failed to satisfy his claim to proceed against the other serial numbers which were sold to defendant Nos 4 and 5. On appeal *Held* that V was not entitled to treat his mortgage as one for Rs 400 since V having failed to pay Rs 200 to N either at once or within a reasonable time there was partial failure of consideration for the mortgage and the subsequent payment of Rs 200 to G by V could not serve in law to undo the effect of that failure so as to prejudice the rights of defendant No 4. *Held* further that the Court had power under s 88 of the Transfer of Property Act (IV of 1882) to pass in such a suit a decree for sale ordering that in default of G paying the mortgaged property or a sufficient part thereof be sold 1st to N. The provisions of s 88 of the Transfer of Property Act 1882 apply only as between a seller and his buyer not as between a mortgagee of the seller and the buyer. **SUBBA LAKSHI VENKATE N v. GANPA** (1911)
I L R 35 Bom 395

MINOR

1. ————— *Mortgage by—Settlement of all property by mortgagor after majority—Fraud of creditors—No fraudulent misrepresentation as to age—Liability to refund—Mortgagee if a creditor—Transfer by mortgagee—Attestation by mortgagor—Endorsement of payments by mortgagor—Suit against mortgagor and his son—Estoppel of mortgagor—Suit not maintainable against the son—Transfer of Property Act (IV of 1882) s 53—Subsequent creditors if included*. The plaintiff sued on a mortgage bond executed by the first defendant during his minority in favour of the third defendant who transferred it to the fourth defendant who again transferred it to the plaintiff. After attaining majority the first defendant executed a settlement transferring all his property to his mother and his wife on behalf of his minor son the second defendant stipulating only for maintenance for himself. The first defendant after attaining majority had endorsed payments on the mortgage deed and attested the transfer of the same by the third defendant to the fourth defendant. It was found by the lower Appellate Court that the settlement was intended to be operative but that it was executed by the first defendant with intent to defeat and delay his creditors. It was also found that there was no fraud or misrepresentation by the minor as to his age when he borrowed on the mortgage. The plaintiff contended that the first defendant was bound to refund the amount advanced on the mortgage to the third defendant and that he was consequently a creditor entitled to set aside the settlement. The first defendant admitted the plaintiff's claim. The second defendant who contested the suit preferred the Second appeal. *Held* where a minor has obtained money by misrepresenting his age that amounts to fraud and he may be made to refund it but in the absence of fraud a refund cannot be ordered. As there was no fraud or misrepresentation by the minor as to his age when he borrowed money on the mortgage he could not have been ordered to refund and the third defendant was not one of his creditors at the date of the settlement consequently the plaintiff was not competent to sue under s

MORTGAGE—contd**MINOR—contd**

of the Transfer of Property Act to set it aside. The admission of the first defendant during the suit his endorsement of payments on the mortgage and his attestation of the transfer deed could not give the plaintiff the right to set aside the settlement as against the second defendant. *Quære*—Whether subsequent creditors are included under s 53 of the Transfer of Property Act. *See* *Sadasiva Aiyar v A person* does not actually become a subsequent or prior creditor by reason of the estoppel of the debtor. An estoppel cannot overrule a plain provision of law. The statutory provision that a minor is incompetent to incur a contractual debt cannot be overruled by an estoppel. *Vaipentara Pillai v Anthimoo Chettiar* (1911) 1 L R 38 Mad. 1071

2. —In favour of—Mortgage of land because executed in favour of minors. The plaintiffs executed a mortgage in favour of the defendants who were minors at the time. The defendants sued on the mortgage had the property sold in execution of their decree and purchased it themselves. They were of full age when the suit was brought. The plaintiffs sued to have it declared that the mortgage bond was void and to have the decree and the sale set aside. Held that the defendants were entitled to enforce the mortgage which was not void simply because of their minority at the time of its execution. That the case was not concluded by the decisions of the Judicial Committee in *Mohori Bibi v Dharmadas Ghosh* 1 L R 10 Cal 539 7 C W N 411 and *Mir Saricaran v Fakhraddin Malomed* 1 J 1 39 Cal 232 16 C W N 74 inasmuch as there was no covenant which it was for the minors to perform. *Hari Mohan Mondal v Mohini Mohan Banerjee* (1910) 22 C W N 130

MOVABLES

—Mortgage equitable of loose chattels—Indian Contract Act (IX of 1872) s 172 if prohibits such hypothecation—Equitable mortgage of land—Fixtures if pass to mortgagee—Letter written by mortgagor stating purpose of deposit of title deed, if must be registered as a document of mortgage—Transfer of Property Act (IV of 1882) s 59 There is nothing in the Indian Contract Act which contains only a portion of the law of contract applicable in British India to prevent a person from hypothecating his goods to another person for security. As between mortgagor and mortgagee the law is settled that fixtures pass with the land to the mortgagee. A letter written by the mortgagor to the mortgagee stating the purpose for which the title deed has been deposited with the latter is not a document requiring registration under the provisions of the Indian Registration Act as being a mortgage. *Hanipada Sadruckhan v Anath Nath De* (1918) 22 C W N 758

—Hypothecation of stock in trade left in possession of the debtor—subsequently sold to a purchaser with notice of the creditor's lien—whether the creditors can follow the property into the hands of the purchaser. Held that in India there is no rule of law by which a person having a mortgage on moveable property is debarred from following that property into the hands of a purchaser with notice of the mortgage. *Deans v Pickardson* (3 N W P H C P 54) *Ko Kyetnee v Ko Aung Bane* (5 W R 129) and *Tatham v Andree* (1 Moa

MORTGAGE—contd**MOVABLES—contd**

P C 336) cited in *Ghose v Law of Mortgage* 4th Edition Volume 1 page 108 followed. *Addison v Law of Contract* 10th Edition page 760 referred to and discussed. *ORIENT BANK v Mst Gulam LATIFA* 1 L R 1 Lah 422

PARTIES

—Hindu law—Mortgagee holding an usufructuary and a simple mortgage over the same property—Suit by the mortgagee as karta of joint Hindu family on later mortgage alone—Maintainability—Non joinder of necessary party—Transfer of Property Act (IV of 1882) s 59—Civil Procedure Code (Act I of 1908) O XXII r 11 Where the karta of a joint Hindu family who was the holder of an usufructuary and a simple mortgage brought a suit on the latter without joining as party one of the members of the family who had a joint interest with him in the usufructuary mortgage. Held that under the terms of s 59 of the Transfer of Property Act and O XXII r 1 of the Civil Procedure Code the plaintiff was bound to make him a party. *Hori Lal v Munman Kunwar* 1 L P 34 All 619 and *Madan Lal v Kisan Singh* 1 L R 34 All 672 not followed. *Kula Surja Prasad v Golab Chaudhary* 1 L R 27 Cal 724 28 Cal 517 followed. *Debi Prosad Saha v Dhanrajit Narayan Sen* (1914) 1 L R 41 Cal 727

PARTITION EFFECT OF

—Mortgagee of undivided share—Effect of subsequent partition—Mortgagee takes effect on substituted share. A mortgagee of an undivided share in common property or of one of the joint properties before partition from one of the sharers is only entitled to proceed against the substituted property which falls to the share of the mortgagor at the partition unless the partition has been unfair or in fraud of the mortgagee. *Muthia Paja v Appala Paja* (1910) 1 L R 84 Mad 175

—It is one of the incidents of a mortgage of an undivided share that the mortgagee cannot follow his security into the hands of the co-sharer of the mortgagor who has obtained the mortgage share upon a partition. If the partition is tainted with fraud or if in the making of the partition the incumbrance was taken into account and the partition was made subject to the incumbrance the result will be different but in the absence of such fraud the mortgagee's remedy is against the share or property which the mortgagor has obtained under the partition. Hence where execution of a decree for sale of a share in undivided property the subject of a mortgage was going on *part passu* with proceedings for partition and the mortgaged share was sold two days after the final decree for partition (by which the mortgaged property fell to the share of a member of the family other than the mortgagor) was made it was held that the auction purchasers (in this case the decree holders them- selves) took nothing by their purchase. *Bynath Lal v Ramoodeen Chowdry* 1 L R 11 A 103 *Amolak Ram v Chandan Singh* 1 L R 24 All 483 *Hem Chander Ghose v Thako Moni Deb* 1 L R 20 Cal 533 *Venkatarama Iyer v Eswarna Routhen* 1 L P 33 Mad 449 *Muthia Raja v Appala Paja* 1 L R 34 Mad 175 *Shahab ada*

MORTGAGE—contd**PARTITION EFFECT OF—contd**

Mahomed Karam Shah v P S Hull 11 P 35
Calc 599 and *Halim Lal v Jom Lal* 6 C L J
referred to *INTER VIVUM v CHITTA SINGH*
1 L R 42 All 596

PRIORITY

1. — Prior mortgagee right of —
A second mortgagee brought a suit on his mortgage making the transferees of the prior mortgage parties to the suit and obtained a decree and in execution thereof the transferees applied to be allowed to deposit in court the full amount of the second mortgage debt in order to save the property from sale. The Court of first instance allowed the application but, on appeal, the District Judge set aside the order of the first Court. — *H 11* that the transferees of the prior mortgage were entitled to pay off the mortgage debt due on the subsequent mortgage to save the mortgaged property from sale. *RAJYA NARI MAITI v GAYENDRA NARAIN MAITI* (1909)
1 L R 37 Calc 262

2. — Civil Procedure Code 1859 s 244 A prior mortgagee in an application under s 244 of the Code of Civil Procedure in execution is entitled to have his right settled without being put to the extra expense and unnecessary trouble of bringing a fresh suit. *GOVIND PRASAD MISSEER v LACHMI CHARAN BHARWARI* (1909)
14 C W N 675 note

3. — Limitation Act (XV of 1877) Sch II Art 130 1st 148—Suit by prior mortgagee without making subsequent mortgagee party—Sale and purchase by himself—Subsequent suit by second mortgagee and purchase by himself—Interest acquired by latter—Suit by him to redeem prior mortgagee purchaser Where a prior mortgagee sues on his mortgage without making the second mortgagee a party and in execution of the decree obtained by him purchases the property himself and subsequently the second mortgagee also sues on his mortgage without making the prior mortgagee a party and purchases the property in execution of his decree he acquires by his purchase only the interest he previously possessed as mortgagee. He can seek to enforce his rights as such by suit as against the prior mortgagee purchaser only within the period of 12 years from the due date of his own mortgage as provided in Art 132 of Sch II of the Limitation Act (XV of 1877) and he cannot claim the benefit of a fresh period of limitation running in his favour from the date of his purchase. A suit brought by him to redeem the prior mortgagee purchaser more than 12 years after the due date of his mortgage would be barred by Art 132 of Sch II of the Limitation Act (XV of 1877). *NIDHINAM BANDU PADHYA v SARDESSUR BISWAS* (1909)
14 C W N 439

4. — Decree obtained on a prior mortgage satisfied by execution of a fresh mortgage in favour of decree holder—Priority over an intermediate mortgage A decree for sale upon a mortgage of 1893 was obtained in 1901. In 1903 the decree holder accepted in satisfaction of the decree a sale deed of a certain portion of the mortgaged property but this adjustment was never certified to the court. Subsequently the decree was put into execution and a sale was

MORTGAGE—contd**PRIORITY—contd**

ordered but before it was carried out the parties came to term and the judgment debtor executed a fresh mortgage to secure the decretal amount. This was in May 1904. Meanwhile in April 1904 another mortgage had been executed by the judgment debtor. *Held* that the mortgage of May 1904 being in satisfaction of the earlier mortgage of 1893 had priority over that of April 1904. *Kanhaiya Lal v Chidda Singh* 7 All L J 954 and *Shyam Lal v Pasuruddin* 1 L P 28 All 73 followed. *RAMCHANDRA v BARNI DAS* (1911)
1 L R 30 All 368

5. — Sale of mortgage property in execution of prior mortgagee's decree—Subsequent mortgagee's party to suit—Price to be paid by subsequent mortgagee seeking to redeem A subsequent mortgagee is not entitled to redeem the prior mortgage by simply paying the price for which the mortgaged property may have been purchased at an auction sale held in execution of a decree obtained by a prior mortgagee without joining the subsequent mortgagee as a party but such subsequent mortgagee must if he wishes to redeem pay to the prior mortgagee the full amount due on the prior mortgage. *Dip Narain Singh v Hira Singh* 1 L P 19 All 697 applied. *PHUL NANI CHAUDHARY v NAGESHAR PRASAD* (1911)
1 L R 33 All 370

6. — Mortgage of chattel—Priority—Prior Mortgagee inducing subsequent encumbrancer to advance money as first charge Where a first mortgagee was an assenting party to the mortgage or charge executed in favour of a subsequent encumbrancer and actually obtained a large portion of the mortgage money thus raised and the subsequent mortgage contained an express covenant that the property mortgaged was free from encumbrances. *Held* that the prior mortgagee having thus concurred in inducing the subsequent encumbrancer to advance money as a first charge could not turn round and claim priority over that charge in favour of his own mortgage subsisting from an earlier date. *RAMAN CHETTY v STEEL BROTHERS AND COMPANY* (1911)
15 C W N 813

7. — Third mortgagee paying off first mortgage and claiming priority as against second mortgagee—Presumption as to intention of third mortgagee Where a mortgagee pays off prior incumbrances on the mortgaged property it is to be presumed that he does so with the intention of keeping these incumbrances alive and using them as a shield should occasion arise and he can so use them as much when he is a plaintiff suing for sale as when he is a defendant to an intermediate or subsequent mortgagee's suit. If the payment is made in the form of leaving part of the money with the mortgagee to be paid to the prior mortgagees the subsequent mortgagee does not thereby become the agent of the mortgagor for the purpose of paying off the prior mortgages. *Gokaldas Gopaldas v Puranmal Premsukhdas* 1 L R 10 Calc 1035 *Dinobundhu Shaw Choudhry v Jogmaya Das* 1 L P 29 Calc 154 and *Jogadhar Narain Prasad v A M. Frown* 1 L P 33 Calc 1133 followed. *Tufail Fatma v Btola* 1 L R 27 All 400 and *Bay Nath v Ataridhar* All W N 1907 85 dissenting from *GUR NARAIN v SHADI LAL* (1911)
1 L R 34 All 102

MORTGAGE—contd

PRIORITY—contd

8 ————— Mortgage right of person paying of prior—Cannot claim rights of prior mortgage unless prior debt is completely satisfied. Where there are two mortgages on a single property and a person advances money for the payment of the first mortgage the claim of such person to priority over the second mortgage cannot be sustained unless the first mortgage is entirely discharged. *HANUMANTHAN v. MEENATHAN* (1911) L. L. R. 35 Mad. 183

9 ————— Sale of mortgaged property—Prior mortgage extinguishment of—Intention of parties—Effect of payment of prior mortgage by subsequent mortgagee—Is indicative—Omission to raise issue in former suit when party thereto—Civil Procedure Code (Act XI of 1857) s. 13 expl (2)—Transfer of Property Act (II of 1882) s. 55—Parties to mortgage suits—Limitation Act 1877 Sch II Art 13. In a suit brought on a simple mortgage deed dated 17th February 1888 to recover Rs 12,000 and interest and to have it declared that the properties covered by the mortgage in suit and by a *arpeshi* deed dated 20th November 1874 were liable for the decretal amount it appeared that by the deed of 1874 the properties in suit were hypothecated as security for Rs 12,000 the mortgagee to have possession until the amount was repaid in 1887. Subsequently on dates intermediate between 20th November 1874 and 17th February 1888 three of the properties in suit (the only properties concerned in this appeal) were further charged by simple mortgages some of them relating only to two of such properties and one of them relating only to the third of such properties and suits on them were brought on 6th September 1888 3rd May 1890 and 10th July 1890 and decrees for sale were obtained in them the mortgagee of the mortgage in suit of 17th February 1888 or her representatives being made parties only to those suits and decrees which related to two of the properties mortgaged. The mortgage in suit was repayable in two years and was by agreement of the parties to it made for the express purpose of paying off the debt of Rs 12,000 on the *arpeshi* deed of 1874 and charged the same properties as were hypothecated by that deed. The money then borrowed was on 16th July 1889 in accordance with the agreement applied in charging the debt in the *arpeshi* deed and that deed was then given up to the mortgagee of the mortgage in suit and her representatives on 16th June 1891 assigned the mortgage in suit to the plaintiffs who on 22nd September 1900 instituted the present suit making defendants the representatives of the mortgagors the representatives of the mortgagee and the persons whose titles as decree holders and purchasers arose under the intermediate mortgage made between 20th November 1874 and 17th February 1888 claiming priority over the last set of defendants. Held that under the circumstances the mortgagee of the mortgage in suit intended to keep alive for her benefit the charge created by the *arpeshi* deed of 20th November 1874 notwithstanding that no formal assignment in writing of that deed was made and she thereby obtained priority over the mortgagee of the intermediate further charges. *D. N. S. v. Shau Chowdhry & Jogmaya Das* L. L. R. 29 Cal. 151 L. R. 29 I. A. 9 followed. Held also that in any case she was under a 8 of the Transfer of Property Act (II of 1882) a

MORTGAGE—contd

PRIORITY—contd

need vary party to all the suits on the intermediate mortgages and consequently in the suits to which she or her representatives were made parties her rights under her mortgage were barred by explanation (2) of s. 13 of the Civil Procedure Code (Act XI of 1857) by her omission in those suits to put the rights in issue though such rights were not affected by the decree in the suit to which she or her representatives were not made parties. But held further that the appellants' rights of priority under the *arpeshi* deed of 1874 were barred by Art 132 of the Limitation Act (VI of 1877) the present suit to enforce them not having been instituted within 12 years from the date when the money under that deed became repayable in 1887. It is therefore that they were only entitled in the present suit to a decree for redemption of their interest in the third property the subject of the suit to which their assigns had not been made parties. *MAHOMED IBRAHIM HOSSEIN KHAN v. ANIL K. PRASAD SINGH* (1912)

I. L. R. 30 Cal. 52

10 ————— Prior and pawns mortgages—Sale to prior mortgagee after creation of a pawns mortgage—Prior mortgage kept alive to what extent—Prior mortgagee whether entitled to charge interest after date of sale—His claim for necessary repairs and municipal taxes whether allowable—Practice—Appel—Transfer of Property Act (II of 1882) ss. 65, 72 and 103—Madras District Municipalities Act (II of 1884) s. 10—Doors and windows not moveable property. When after the creation of pawns mortgage the mortgagor sells the property to the prior mortgagee with possession the prior mortgage is kept alive against a pawns incumbrancer in the circumstance mentioned in s. 101 of the Transfer of Property Act but not against the owner whose equity of redemption has been purchased by the prior incumbrancer. The prior mortgagee is not entitled to claim interest on his mortgage after the date of his sale against the pawns mortgagee. The effect of the sale is this that what was enjoyed by the prior mortgagee till sale as compensation for the amount of the usufructuary mortgage he agreed subsequently to enjoy in consideration of the whole price and he cannot therefore claim any further compensation from the date of sale for any portion of the price. Where by the terms of the mortgage deed the mortgagor personally covenanted to pay the municipal taxes himself the mortgagee who pays the same cannot add it to the mortgage amount and recover it from the pawns mortgagee either under s. 65 clause (c) or under s. 72 Transfer of Property Act as money spent for preservation of the property as the doors and windows of a house are not moveable property and could not have been seized under s. 103 of the District Municipalities Act before its amendment in 1899. The cost incurred by the prior mortgagee after the sale for necessary repairs to the property is for restoring a room that had fallen are recoverable as all rights incidental to the mortgage must subsist with the mortgage right itself and the prior mortgagee is consequently entitled to add all moneys to the principal amount which he would be entitled to do under s. 72 of the Transfer of Property Act if the sale had not taken place. There is nothing to prevent the appellant from attacking only a portion of the decree by paying court fee only thereon although the reason for

MORTGAGE—*contd*PRIORITY—*contd*

the attack might cover the whole decree. **SYED IBRAHIM SANI v. ARWUQILAYEE (1917)**

I L R 38 Ind 11

11. ————— Two mortgages executed by the same mortgagor—Mortgage decrees by inferior courts of decree for sale on prior mortgage—Effect of one of the prior mortgages. Held that a mortgagor who had become liable in consequence of a decree against himself on a prior mortgage was not entitled to hold up such prior mortgage as a shield against the decree of a subsequent mortgage from himself. **Ottar v. Four 6 Dec 41 (1935) Platte v. N. d. I. P. Ch. D. 116 and Lijun Chowdh. v. Ch. n. Lal 11 C. B. v. 281 referred to. BADARI v. MURARI (1915)**

I L R. 37 All 309

12. ————— Prior and subsequent mortgage—Decree obtained on prior mortgage—Fresh mortgage executed in consideration of the balance due under the decree—Interest on the debt the decree shall be deemed to be charged. The effect of decree of the court in extinction of the equity. A second mortgage brought a suit upon his mortgage impugning the first mortgage and obtained a decree for sale for the amount of both mortgages. This decree was made absolute but the mortgaged property was not in fact brought to sale under it. A third mortgagee then sued on his mortgage obtained a decree brought the mortgaged property to sale and purchased it himself. To this suit the second mortgagees were not made parties. Subsequently to this the second mortgagees took another mortgage comprising the property originally mortgaged to them and some more for the balance remaining unpaid of their former decree and a small further advance. In this deed it was expressly stated that the decree was to be deemed to be discharged thereby. Held in suit on this third mortgage that the plaintiffs were not entitled to go behind their deed and claim priority of the third mortgagees in virtue of their own second mortgage. **Filia v. Filia 1 C. D. 619 D. I. k. u. Proad Singh v. Harilar Prasad 11 a. n. v. q. 91 C. I. J. 104 Kanhaia Lal v. Chhita Singh 7 I. L. J. 354 and Het Ram v. Shadi Pam 11 I. R. 40 All 307 referred to. (MURARI v. MUHAMMAD HIRAT KHAN (1917))**

I L R 41 All 458

13. ————— Mortgage—Suit and decree by prior mortgagee without impugning puisne mortgage—Purchase of mortgage property by prior mortgagee in execution—Receipt of rents and profits thereafter—Mode of accounting between the two mortgagees. A mortgagee decree obtained by a prior mortgagee without impugning a puisne mortgagee does not affect the latter and the amount therefore payable by the latter in discharge of the prior mortgage is not the amount of the decree but that which is due on the footing of the prior mortgage as if no suit had been brought and if the prior mortgagee buys the mortgaged property in execution of his decree and gets possession of the same the rents and profits received by him cannot be set off as equivalent to the interest due for the period of possession but must be accounted for and deducted from the amount payable by the puisne mortgagee. **Umes Chunder Sircar v. Zalur Fatima 1 I. R. 18 Cal 163 and Ganga Pershad Sahu v. The Land Mortgage Bank of India 1 I. L. R. 21 Cal 366 applied.**

MORTGAGE—*contd*PRIORITY—*contd*

Syed Ibrahim Sahib v. Arwugilayee 1 I. R. 38 Ind 18 considered. MUTHAMMAL v. RAZU 11 All (1917)

I L R 41 Mad 513

Prior and subsequent mortgage rights of inter se—Separate and independent decrees obtained by each set of mortgagees—Property sold by prior mortgagee and purchased by a third party leaving a surplus of sale proceeds—Rights of action of senior and puisne mortgagees. A mortgagee the same property first to B and then by two separate mortgage deeds to C B and C both sued on their mortgage each party without impugning the other and obtained decrees. B's decree was executed first. The mortgaged property was sold and was purchased by K. B's mortgage was paid up and a considerable surplus remained which was deposited in court. C then endeavoured to execute his decree against the surplus sale proceeds but failed and the money was ultimately withdrawn by the mortgagor. C next proceeded with the execution of his decree against the property in the hands of K the auction purchaser and K in order to retain possession paid up the amount of B's decree. K then sued the representatives of A to recover the amount so paid. Held that in the circumstances K was entitled to a decree. **Parhamdeo Prasad v. Tara Chand 1 I. R. 41 Cal 651 referred to. KARAN SINGH v. ISHTIAK HUSAIN**

I L R 43 All 268

REDEMPTION

See UNDER SUB HEADINGS CONSTRUCTION PURCHASE CONSOLIDATION AND SALE

See BRITISH REGULATION 11 of 1793

I L R 34 All 261

See CIVIL PROCEDURE CODE 1908 O 34

R 1 I L R 34 Bom 698

See LIMITATION ACT 1877 ART 134

I L R 32 All 160

See LIMITATION ACT 1309 ART 126

I L R 41 Mad 650

ART 140

I L R 40 Bom 239

See MORTGAGEE AND MORTGAGEE

See REDEMPTION

See REDEMPTION OF MORTGAGE PUNJAB

ACT 1913 I L R 2 Lah 234

See TRANSFER OF PROPERTY ACT 1882

s 83 I L R 43 All 424

See ss 1 to 103

Acknowledgment of mortgagor's right to—Signature by mortgagee in the Register of Sanads—

See LIMITATION ACT (11 of 1908) s 19

I L R 45 Bom 934

Clag on—

See TRANSFER OF PROPERTY ACT 1882

O I L R 45 Bom 117

————— Suit by some of the heirs of mortgagor—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O I R 10 (2) and O XXXIV

R 1 I L P 45 Bom 1009

Lekha Mukhi—

Suit for redemption—limitation—

MORTGAGE—contd**PLEDGE—contd**See **INDIAN LIMITATION ACT 1908 (11)****I L R 1 Lah 69**

appeal for decrees for—

See **COURT OF APPEALS I L R 1 Lah 234**

Provision for mortgage to remain in possession as long fruit bearing trees remain on land—**Weather v Clog**—

See **TRANSFER OF PROPERTY ACT (IV OF 1882) s 60 I L R 40 Bom 117**

1 ———— **Click on the equity of redemption**—Two mortgages—Contract to discharge the second mortgage before the first—**Consolidation** Under a covenant contained in a mortgage of the year 1867 the mortgagor took possession of the mortgaged property. Subsequently the mortgagor took a further advance from the mortgagees and gave them a second mortgage on the same property in which they covenanted that they would pay off the amount due on the second mortgage before redeeming the first. **Held** on suit by the mortgagees to redeem the mortgage of 1867 that this was an admissible covenant and not a clog on the equity of redemption. **Bharu v Dalip Ali Weekly Notes (1906) 28 distinguished** **Muhammad Abdul Hamid v Javraj Mal Ali Weekly Notes (1906) 267** referred to. In second appeal the plaintiffs mortgagees were allowed to amend their plaint so as to include a payer for redemption of both the mortgages. **Prud LAL SINGH v BHAWANI SINGH (1910)**
I L R 30 All 651

2 ———— **Redemption suit for—deposit of money in Court if terminates mesne profits**—Mortgagor's claim for mesne profits after such deposit and before getting possession—**Provincial Small Cause Courts Act (IX of 1937) Sec 11 Art 32** The relation of mortgagor and mortgagee ceases as soon as the mortgagor deposits the money in Court in pursuance of the Court's order in a redemption suit and the possession of the mortgaged thereafter becomes wrongful possession. **Bhuvan Bibi v Sacha Dinah I L R 31 Cal 863 s c 8 C W N 581** referred to. Where under orders of the Court in a suit for redemption a mortgagor deposited the amount due on the mortgage in Court but the mortgagee did not deliver possession of the mortgaged property till some time later. **Held** that a suit by the mortgagor for mesne profits up to the date when possession was delivered was maintainable. The test to be applied is whether the sum claimed in the suit could have been recovered in the previous suit for redemption. **Inayat v Duttatraya I L R 90 Bom 661** referred to. **Pulimnibai v Venkatesh I L R 1 Bom 527** **Satyabadi v Harabati I L R 34 Cal 223 s c 5 C L J 192** and **Pam Din v Bhup Singh I L R 30 All 225** distinguished. A suit by a mortgagor against the mortgagee for mesne profits for the period during which he held wrongful possession of the property is maintainable in a Small Cause Court. Art 31 of Sch II of the Provincial Small Cause Courts Act is no bar to such suit being instituted in a Small Cause Court. **SAHANI DUTT v SHANKU ARUNDEY (1910)**
14 C W N 1001

3 ———— **Purchase by mortgagee of equity of redemption—Transfer of Property**

MORTGAGE—contd**PLEDGE—contd**

Act (IV of 1882) s 99—Sale voidable not void—Mortgagor if may redeem without selling a sale—Mortgagee trustee for mortgagor—Indemnity right of mortgagee to and to credit for amount paid for purchase. It is a well established principle that a purchase by the mortgagee of the equity of redemption constitutes him a trustee for the mortgagor and that he does not (unless there has been a release of the equity of redemption or other circumstance which in law would bar his right to redeem) acquire an irredeemable till. **Ahmarajmal v Dham I L R 30 Cal 295 312 s c 9 C W N 991** referred to. The right to redeem which according to this principle would still subsist in the mortgagor has not been affected by the decision of the Full Bench in **Achut Sildar v Behari Lal I L R 35 Cal 61 s c 11 C W N 1011** where it was held that a sale in contravention of the terms of s 99 of the Transfer of Property Act is not a nullity but an irregular sale liable to be avoided merely on proof that the terms of the section have been contravened. The mortgagor is under no necessity to have the sale set aside first in order to be entitled to redeem the property. He may sue for redemption within the period of limitation allowed by law. But in such a case the mortgagor would have to pay the mortgagee the amount given credit for by the latter in respect of the sale. **Moghan Pathani v Pakuran I L R 22 Mad 347** and the mortgagee would further be entitled to be reimbursed and to add to the mortgage-debt the amount which he has expended for the protection and preservation of the property. **PRADHAN LAL CHOWDHURY v KANUN FAKHAR MISHRA (1910)**
14 C W N 579

4 ———— **Mortgagor out of possession—Equity of redemption—(1) If in moiety of mortgaged property—Transfer of Property Act s 68 74 and 91—English Conveyancing and Law of Property Act s 14** The discharge of a mortgage merely enlarges the security of a subsequent encumbrancer or adds to the interest of the owner of the equity of redemption. Where A is the owner of the equity of redemption in a moiety of certain property and a gift though the right to possession was outstanding in the mortgage at the date of the gift A is entitled to possession of the moiety on the discharge of the mortgage. **Transfer of Property Act ss 60 74 91** construed and compared with the English Conveyancing and Law of Property Act s 15. **PONNAMMAL JALITHIRATHA MUDALI (1910)**
I L R 34 Mad 115

5 ———— **Bengal Regulation No XV of 1793 s 10**—Redeemed meaning of—Jurisdiction—**Bengal W P and Assam Civil Courts Act (XII of 1857) s 19**—Competence of Court to pass a decree for an amount exceeding the pecuniary limits of its jurisdiction. **Held** that the word 'redeemed' as used in s 10 of Regulation XV of 1793 was not to be construed in the sense that the mortgage had been redeemed in the full scope of that word that is satisfied and possession given to the mortgagor. So long therefore as the property remains in the hands of the mortgagee the mortgagor can bring a suit for redemption even if the mortgage had been satisfied over 12 years before suit. **Held** also that where a suit is filed within the pecuniary jurisdiction of a court the jurisdiction of the Court is not ousted by the subsequent discovery that a sum is in fact due to the plaintiff exceeding

MORTGAGE—contd

REDEMPTION—contd

compromise SHANKAR DIN v. OKAL IPASAD (1912) I L R 34 All 620 I C R 81

10 ——— Mortgagee allowed to redeem before expiry of term of mortgage—Aon payment of greater part of mortgage money certain property was mortgaged by way of conditional sale for Rs 9500 for ten years. Of the mortgage money Rs 50159 only were paid and the balance was left with the mortgagees for payment to prior incumbrancers. The mortgagees did not pay off the prior incumbrancers and the mortgagor having meanwhile sold the mortgaged property his assignees sued for redemption of the mortgage before the expiry of ten years. *Held* that on equitable grounds the defendants not having performed what was a most essential part of the contract the plaintiffs ought to be allowed to redeem before the expiration of the period of ten years. CHHOTU LAL v. BALDEO BARKER (1912) I L R 33 All 833

11 ——— Transfer of mortgage—Rights of the transferee—Redemption—Construction of statute—Legislative exposition—Limitation Acts (I of 1877 and I of 1908) Art 134. The plaintiffs sued in the year 1906 to redeem a mortgage effected prior to the year 1874. The representatives in title of the mortgagee claiming to be absolutely entitled mortgaged the land with possession to A in 1874 and he sold his rights to defendant B. The suit having been brought more than 12 years after the alienation to A defendant B claimed as against the plaintiffs the ant rest of mortgagee by virtue of his adverse possession under Art 134 of the Limitation Act (XV of 1877). *Held* that it was obligatory on the plaintiffs to redeem defendant B before they could recover possession of the property. *Jesu Ramji Kainath v. Balkrishna Lakshman* I I P 15 Bom 533 *Malay v. Fahrhand* I L P 22 Bom 225 and *Rinchandra v. Sheikh Mohidin* I L P 23 Bom 614 followed. *Abiram Gossami v. Shyama Charan Nandi* L R 36 I A 143 and *Ishwar Shyam Chand Jiu v. Ram Kanai Ghose* I L R 33 Cal 576 explained. The alteration in the language of Art 134 of the Limitation Act (IX of 1908) was a legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees. *Swift v. Jewsbury* L P 9 Q B 312 and *Morgan v. London General Omnibus Company* 12 Q B D 201 referred to. *BAGAS UMARJI v. NATHABHAI UTAMRAJ* (1911) I L R 38 Bom 146

12 ——— Right of assignee of mortgagor to redeem first mortgage after a decree for redemption obtained by a puisne mortgagee had become inoperative. A mortgaged certain properties to B and afterwards mortgaged the same with other properties to C. C obtained a decree for redemption against B but the decree was allowed to become inoperative by not being executed. D obtained an assignment of the right of A in the mortgaged properties and also the rights of C therein. A sued to redeem the mortgage in favour of B. *Held* that although the suit by D as the assignee of C was not maintainable still it was competent to him as assignee of A to bring the suit after the decree obtained by C had become inoperative. *AUTTHASARI RAMAN NAMBOODHI v. ACHUTHA ISHUR DI* (1904) I L R 33 Mad 42

MORTGAGE—contd

REDEMPTION—contd

13 ——— Clog—Usufructuary mortgage—Law—Right to retain possession as lessee after satisfaction of mortgage. A provision in a mortgage deed whereby the mortgagee is to remain in possession after payment of the mortgage debt is unenforceable as it acts as a fetter upon the right to redeem. When a mortgage deed is accompanied by a lease the effect of which is to keep the mortgagor out of possession notwithstanding the discharge by him of the mortgage debt there is a fetter on the equity of redemption which the Court ought not to enforce. *ANKHEDU v. SUBBIAH* (1912) I L R 35 Mad 744

14 ——— Usufructuary mortgage—Accountability of mortgagee for illegal realisation of cess from tenants—Transfer of property Act (I of 1882) s 16—Stipulation by mortgagee to pay a portion of profits to mortgagor—Subsequent arrangement regarding mode of payment if may be proved by parol evidence—Evidence Act (I of 1874) s 92. Under a usufructuary mortgage of 1877 the mortgagee undertook to pay to the mortgagor an annual sum of Rs 10 odd and apply the balance of the profits to payment of revenue charges and interest on the mortgage debt. *Held* that oral evidence to prove a subsequent arrangement under which the mortgagee allowed the mortgagor to possess and enjoy a portion of the property in lieu of the payment was admissible in evidence inasmuch as it did not supersede or vary the stipulation regarding the payment but merely concerned the mode of payment. *Held* further that in a suit for redemption by the mortgagor the mortgagee was bound to account for the amounts they realised from the tenants as cesses subsequently imposed by the Cess Act of 1880 and payable by the tenants to the mortgagor. The mortgagee's accountability is not limited to items within the contemplation of the mortgage contract but may extend to amounts which the mortgagee was enabled to realise out of the mortgaged property by taking advantage of his position as mortgagee. *PANAYATAR SINGH v. FULSI PRASAD SINGH* (1911) 18 C W N 137

15 ——— Practice—Redemption decree under appeal by mortgagee—Deposit of decretal amount—Duty of mortgagee to withdraw under protest—Responsibility of mortgagee for loss of right in deposit by lapse of time although amount of decree increased by Appellate Court. In a suit for redemption the Court of the Judicial Commissioners in India passed a decree entitling the mortgagor to recover a certain sum on account of principal and interest from which decree the mortgagees appealed to the Privy Council who increased the amount. Pending the appeal the mortgagors had deposited the amount of the decree of the Judicial Commissioners which however the mortgagees did not withdraw as they might have done without prejudice to their pending appeal either by arrangement or the sanction of the Court in India or the sanction of the Board which would have been given as a matter of course. *Held* that if the amount deposited has lapsed to Government under the rules owing to the same not having been withdrawn in time the mortgagees must give credit for the amount. *CHAMPAT SINGH v. JANU SINGH* (1911) 16 C W N 793

16 ——— Parties—Mortgage by Mitakshara co-parceners—Suit for foreclosure

MORTGAGE—contd

PREFERENCE—contd

which sons of a mortgagor put joint-decree in execution as a bona fide representation of sons of the father, who did not share as equal. The plaintiffs father among other co-partners of a joint Mahabharata Hindu family executed a mortgage by conditional sale the terms of which expired in 1888 whereupon the mortgagee instituted a suit for foreclosure against the mortgagors and obtained delivery of possession in 1889 in execution of the decree in that suit. The plaintiffs were not made parties in that suit the mortgagee not having had notice of their interest at the time and they brought the present suit in 1907 for redemption. Held that in the absence of allegation by the plaintiffs that the debt was an immoral debt the father of the plaintiff sufficiently represented the plaintiffs in the previous suit and with the extinction of the father's right to redeem the son's right of redemption was also extinguished. *Luxmi Das v. Gena Lal Jha* 11 C L J 330 *Ram Tarun Gossain v. Ram Das Malia* 11 C L J 1078 referred to *BALU MAHATRA v. BROJODASI PANDA* (1911)

16 C W N 1019

12 ——— Mortgage and lease to mortgagor contemporaneously granted—Mortgage executed before Transfer of Property Act (1882) came into force—Mortgagee's security reduced by portion of property being withdrawn—S. 63(a) of Transfer of Property Act—Right of mortgagee of compensation. The plaintiff (respondent) mortgaged to the defendant (appellant) certain property by a deed dated the 20th of August 1880 for Rs 70,000 for eight years. On the 29th of August (and so practically contemporaneously with the mortgage) a lease of the mortgaged property was executed by the mortgagee in favour of the mortgagor at an annual rent of Rs 4,000 which represented interest on the mortgage debt at the rate of 5 per cent per annum. The mortgage contained a clause that it is agreed by mutual consent of the parties that the profits of the property mortgaged shall belong to the mortgagee in lieu of the interest on the mortgage money and the mortgagor shall have no claim for the same profits. The mortgagee also shall have no right to claim interest on the mortgage money advanced by him. The lease after reciting the mortgage referred to a provision in the latter that the mortgagor should be entitled to sell a certain portion of the mortgaged property on condition that he handed over the whole of the proceeds of the sale to the mortgagee in payment of the mortgage debt and provided that under the condition whatever share of money the mortgagor should pay to the mortgagee in a lump sum should be credited and set off against the rent payable under the lease with interest at 8 annas per cent per mensem. Subsequently three further charges were tacked on to the mortgage the latest of which was dated the 13th of December 1882. In June 1891 the mortgagor was in arrears with his rent and the mortgagee brought a suit against him on which the mortgagor gave up possession of the property to the mortgagee. In a suit for redemption (the right to redeem not being disputed) Held that the mortgagee was entitled under the terms of the mortgage to appropriate the profits of the mortgaged property in lieu of the interest on the mortgage money not paid by

MORTGAGE—contd

PREFERENCE—contd

the mortgagor. Evidence of preliminary negotiations and previous conversations were not admissible to contradict or vary the terms of the mortgage (Evidence Act s. 92). Held also that the mortgage and the lease were both parts of one and the same transaction. But there was no inconsistency between the two instruments nor would there have been any inconsistency if the mortgage itself had contained a provision for granting a lease on the terms upon which the lease was actually granted. Held further that the original mortgage having been executed before the Transfer of Property Act came into operation that Act was not applicable notwithstanding that one of the further charges was executed subsequently to that date. Whatever might be the construction of s. 63(a) of that Act (which was cited in support of the mortgagee's claim) he was not on the evidence and under the circumstances of the present case entitled to compensation for any loss or damage occasioned by his security being diminished owing to a portion of the mortgaged property being successfully claimed from the mortgagor. *ABDULLAH KHAN v. BASHARAT HUSAIN* (1912) I L R 35 All 48

18 ——— Redemption by reversioners after foreclosure decree—Subrogation—Transfer of Property Act (1882) s. 91. While a sale in execution under a mortgage decree was in progress plaintiff (a stranger) paid the decree amount into Court on behalf of some of the reversioners to the property. Held that though the mere payment of a mortgage debt by a stranger will not entitle him to the mortgagee's rights by subrogation yet here under s. 91 Transfer of Property Act (1882) the reversioners became equally entitled to a charge over the property and they could validly assign this charge to the plaintiff by way of submortgage. The English and Indian Law relating to the doctrine of subrogation compared and discussed. *Per SUNDARA AYYAR J.*—I am on the whole inclined to hold that a reversioner cannot voluntarily claim to redeem a mortgage made by the last male holder or institute a suit for that purpose. But does it necessarily follow that when a suit is instituted by a mortgagee for sale the reversioner has not got a sufficient interest in the property to entitle him to discharge the mortgage to prevent the loss of the property to which he would be entitled to succeed on the death of the widow? I do not think I am bound to hold that his right stand on the same footing when he claims of his own accord to redeem and when he tries to save the property for the estate upon the mortgagee attempting to sell it. The right of a person interested in the payment of money which another is bound by law to pay and who therefore pays it to be reimbursed by the other is recognised in s. 69 of the Indian Contract Act. There is no reason for holding that only those who have an interest in a mortgaged property within the meaning of ss. 87 and 91 of the Transfer of Property Act can be held to be interested in the payment of money due on a mortgage created by the last male owner. *NARAYANA KUTTI GOUNDAN v. PETCHANMAL* (1913)

I L R 36 Mad. 426

19 ——— Accounts—Mortgagee obstructing and prolonging litigation to keep property in possession—Interest disallowance of for period during

MORTGAGE—contd**REDEMPTION—contd**

which defendant prosecuted appeals to Higher Courts unsuccessful—Liability of defendants to account for rents and profits received during the period—Expenses of management necessarily incurred—Costs of taking accounts and striking balance against redemption money—Costs of special leave application. Where a suit for redemption of a mortgage in respect of property of which the mortgagees took and kept possession from 11th February 1864 was commenced on 30th May 1889 and a preliminary decree for accounts etc. was passed by the Subordinate Judge on 29th June 1889 and the decree subject to certain modifications in favour of the plaintiffs was affirmed by the High Court on 10th September 1900 and the decree of the High Court was affirmed by the Privy Council on 27th July 1890 and the plaintiffs having applied in the meanwhile for the taking of accounts in pursuance of the decree of the High Court the same was taken and a final decree for redemption was passed by the Subordinate Judge on the 29th July 1900 declaring that a sum of Rs 33160.11 was due from the plaintiffs to the defendant at that date and decreeing that on payment into Court within six months from that date of the said sum with interest at 12 per cent per annum on the sum of Rs 286886 from the 29th July 1900 to the date of payment into Court within such six months plaintiffs should have a reconveyance free of incumbrances of the property under mortgage etc. and the plaintiffs appealed to the High Court and the defendants also filed cross objections but both were dismissed by that Court and upon appeal and cross appeal by both parties to the Privy Council the decree of the Subordinate Judge of 29th July 1902 was affirmed by the Board of judgment dated the 13th June 1912 but the Privy Council found that in the action the defendants had been obstructive and oppressive and they had unduly and intentionally prolonged the litigation to their own advantage and to the serious detriment of the plaintiffs. Held by the Privy Council that no further sum as interest beyond the interest on the sum of Rs 286886 decreed by the Subordinate Judge for the period from 29th July 1902 to the 28th January 1903 should be allowed to the defendants in the accounts which the High Court was directed to take of the rents and profits which the defendants had received since 29th July 1902 and it was ordered that the expenses of taking such account and all proceeds incident thereto and to the striking of the balance upon payment of which redemption might be made was to be borne by the defendants that allowance should be made in taking the accounts for money if any necessarily spent by the defendants after the 29th July 1902 in the proper management and preservation of the mortgaged property but no interest should be allowed on the money so spent but that simple interest should be allowed to the plaintiffs on the balance or excess of each year's receipts over expenditure at a rate to be fixed by the High Court and that the sum of money found to be due to the plaintiffs should be deducted by the High Court from the amount which would have been payable by the plaintiffs into Court on the 28th January 1903 if payment had been made under the decree of the Subordinate Judge of 29th July 1902 and that the plaintiffs should be allowed to redeem on payment by them into the High Court within

MORTGAGE—contd**REDEMPTION—contd**

a time to be fixed by that Court of the balance to be ascertained in the manner indicated. In the appeal and cross appeal the respective parties were directed to bear their own costs except those in connection with the application for special leave to cross appeal which in accordance with the order granting such leave was to be paid by the cross appellants GANGA BAHU DEBI & APURBA KRISHNA ROY (1912) 17 C W N 25

20 ——— Purchase by mortgagees of part of mortgaged property—Tender of proportionate part of mortgage money by purchasers of the residue—Tender refused on ground of subsequent mortgages affecting the property—Suit for redemption—Form of decree. Tender of payment under s 83 of the Transfer of Property Act was made by the purchasers of part of the property comprised in a mortgage (the rest of the property having been purchased by the mortgagees themselves) who paid into Court what they believed to be the proportionate amount due on the share purchased by them and within the period limited by the mortgage deed. This tender was however refused upon the ground that there were two subsidiary mortgages affecting the property under which further sums were due. The mortgagees thereupon brought a suit for redemption expressing their readiness to pay what might be found by the Court to be the proper proportionate amount due by them in respect of the property which they have purchased. Held on the finding that the plaintiffs when they made their original tender were unaware of the existence of the two subsidiary bonds that the Court below was right in giving a decree for redemption on payment of the amount due under the three mortgages in respect of the share purchased by the plaintiffs and for possession at the corresponding period of the following year. NARSHAN SINGH v. ACHARYAN SINGH (1913)

I L R 36 All 36

21 ——— Prior and puisne incumbrancers—Seeing in succession—Suit for sale by prior incumbrancer without impleading puisne incumbrancer—Subsequent suit by puisne incumbrancer for sale—Form of decree. Where a prior incumbrancer sues for sale on his mortgage and brings the mortgaged property to sale without making a puisne incumbrancer party to his suit and thereafter the puisne incumbrancer brings a suit for sale on his mortgage the proper decree to be made in the second suit is to direct a calculation of what was due on foot of the prior incumbrancer up to the date of the taking over of possession upon sale or if that date cannot be ascertained the date of the sale and to declare the puisne incumbrancer entitled to redeem upon payment of the amount so ascertained. DYP ARRAN SINGH v. HIRA SINGH I L R 19 All 271. *1. Khatran Chaudhuran v. Dagehar Prasad I L R 33 All 370 and Manohar Lal v. Ram Babu I L R 34 All 373* referred to. PACHUNATH KUNWAR v. SHANKAR SINGH (1913) I L R 36 All 123

22 ——— Clog—Condition intended to defeat the right of redemption—Condition held to be unenforceable. A Court of Equity will not permit any device or contrivance designed or calculated to prevent or impede redemption although it may be impossible to lay down any general rule as to what should not be regarded as an improper restraint or fetter on the right of

MORTGAGE—*contd***REDEMPTION—*contd***

redemption Where a mortgage was made for forty years and a provision was inserted in the deed fixing a particular day on which it was to be redeemed failing which the mortgage was to be renewed for another term of forty years and it was further provided that the mortgage should not be redeemed with borrowed money it was held that these provisions were designed to make redemption very difficult if not impossible and should not be enforced *Donis v Gurdhar Lal* 42 Weekly Notes (1894) 143 and *Jambhar Singh v Pamlar Singh* 10 Indian Cases 943 referred to *SARADWAT SINGH v BHAI SINGH* (1914)

I L R 33 All 551

23 ——— Subsequent mortgages ob-
taining decrees on his mortgage in absence of first mortgage—Sale of property subject to first mortgage—Subsequent mortgagee purchasing property with permission of Court—Execution of decree by first mortgagee—Subsequent mortgagee can ask the mortgage amount of first mortgage to be determined again—If purchase subsequent mortgagee does not lose his rights under his mortgage—Extinction of mortgage—Transfer of property Act (11 of 1880) s. 101 In 1846 certain property was mortgaged to I. It was again mortgaged by the same mortgagors to H in 1857. In 1862 I obtained a decree on his mortgage. H was not made a party to the suit. I having sold his rights his assignee A obtained another decree in 1876 against the mortgagors on the mortgage and other debts. To this suit also H was not a party. In 1890 H sued on his own mortgage without making the first mortgage a party. A decree was passed in terms of an award. The property was sold in execution of the decree subject to the first mortgage and was purchased by H with the permission of the Court. In 1908 the decree holder applied to execute the decree of 1890. H was made a party to the execution proceedings. It was contended by H that he was not bound by the decree under execution and was entitled to have the mortgage amount determined again in the execution proceedings. The decree holder urged that H's mortgage had been extinguished by his purchase at the Court sale and as such purchaser he was bound by the decree by which the original mortgagors were bound at the date of the auction sale and that H did nothing to show that he intended to keep alive his mortgage. Held that as a second mortgagee H was entitled to redeem the first mortgage and to have the amount of the first mortgage determined again as between himself and the first mortgagee. Held further that as auction purchaser H became entitled to all the rights which the mortgagors and the mortgagee had at the date of the sale i.e. to all the rights of the mortgagors as they existed at the date of the mortgage upon which the decree was based. Held also that H must be presumed to have intended to keep his mortgage alive and it was clearly for his benefit to do so. *SHANKAR VENKATESH v SADASHIV MAHADEVI* (1913)

I L R 38 Bom 24

24 ——— Valuation—Jurisdiction—Malabar law—Mortgage by karnavan whether a junior member is bound to sue to set aside. The proper valuation of a suit to redeem a mortgage is the amount of the mortgage admitted by the plaintiff to be binding on him and not that of the mortgagors set up by the defendant. In such a

MORTGAGE—*contd***REDEMPTION—*contd***

suit the question of jurisdiction has to be decided in the averments on the plaint and not with reference to the pleas of the defendant. *Chardu v Kanti* I L R 9 Mad 908 followed. *Unni v Kunchi Amma* I L R 14 Mad 969 referred to. When a karnavan of a Malabar taluk makes an alteration which is not binding on the other members the latter need not sue to set it aside but can recover possession on the strength of their title in the absence of proof of the validity of the alienation. *Secus* where the plaintiff has himself executed the instrument under which the defendant claims the trustee of a Malabar *devam* first executed an *ottu* for Rs 0 and subsequently renewed the same in a consolidated *ottu* for Rs 1600 and further created a *purankodam* for Rs 1000 on the same property. His successor sued to redeem the *ottu* for Rs 0 treating the other mortgages as invalid. Held that the suit as framed was maintainable and the plaintiff was not bound to sue to set aside the later mortgages credited by his predecessors or CHAIRMAN v RAUL (1919)

L R 37 Mad 420

25 ——— Extinction of equity of redemption—Mortgagor in *rajnama* to Redeem for the *rajnama*—Mortgagee executing *kabuliyat* to pay Government land assessment In 1806 the plaintiff mortgaged the land in dispute to the defendant and in 1879 passed a *rajnama* relinquishing all his occupancy rights in the said land in favour of the defendants. The latter at the same time gave a complementary *kabuliyat* agreeing to pay Government assessment on the land. The plaintiff having sued to redeem the mortgage. Held dismissing the suit that the *rajnama* and *kabuliyat* effectually extinguished the plaintiff's equity of redemption. *VENKAJI NARAYAN v OPAL PANCHANDRA* (1914)

I L R 39 Bom 55

26 ——— Previous decree in mortgages in favour for possession if bars redemption suit—Civil Procedure Code (Act XXI of 1880) s. 94—Order in execution of decree in suit for possession directing mortgagee to furnish account and permitting redemption effect of Where in a suit by a mortgagee for recovery of possession

by right of *ijara* of the immovable properties mortgaged the Court passed a decree directing *inter alia* that the plaintiff do get possession of the same by right of *ijara* and be in possession thereof so long as the money for which the said *mehtas* were mortgaged were not repaid out of the income arising therefrom. Held that the decree was clearly a decree for ejectment and a suit by a person interested in the equity of redemption or redemption of the mortgage was not barred by s. 244 of the Civil Procedure Code of 1880. That the fact that once the decree in the ejectment suit a predecree interest of the plaintiff had applied in the executing Court *in limine* that the decree holder could file accounts showing what monies had been realised by him since he took possession under the decree and if the decretal money was not fully paid to let the Court know how much still remains due by rendering a proper account thereof and the Court overruling the objection of the mortgagee that the matter could not be dealt with under s. 244. Held that the petitioner could redeem the mortgaged properties but the latter took no steps to do so. Held that

MORTGAGE—contd**REDEMPTION—contd**

this order is binding at all in the suit for redemption was to be regarded merely as interpreting the mortgage and the fact that the plaintiff in his plaint made a prayer that in the taking of accounts the directions contained therein might be followed did not mean that he waived his right of redemption on that judgment. The passing of the final decree in a mortgage suit pending an appeal from the preliminary decree is no bar to the hearing of the appeal. *PRANJY MOHUN MUKERJEE v CHANDRA SEKHAR SARKAR* (1914).

[19 C W N 1132]

27 ——— Adverse possession—Usufructuary mortgage—Mortgagee in possession—Equity of redemption—Increase of possession while period of redemption is running—Suit to redeem by a person whose name is recorded in revenue papers. *Held* that a person could not acquire a title by adverse possession to land which was the subject of a usufructuary mortgage and therefore in the possession of the mortgagee merely because he had managed to get his name recorded in the village papers for a series of years in respect of the mortgaged property. *Lala Lakhoo Lal v Mani Bibi* 6 C W N 601 not followed. *Casborne v Scarfe* 1 All 605 distinguished. *KUTWAR SEW v DARBARI LAL* (1916).

I L R 33 All 411

28 ——— Tender of mortgage money as condition precedent to the institution of a suit for redemption—A usufructuary mortgage of agricultural land provided that the right to redeem should be exercised only in the month of *Jeth* of any year. *Held* that before the mortgagor could sue for redemption it was necessary for him to prove that he had tendered to the mortgagee the mortgage debt or such amount as he considered due on the mortgage in the month of *Jeth* of some year. *Bansi v Girdhari Lal* All W N (1894) 143 followed. *MUHAMMAD ALI v BALDEO PANDI* (1915).

I L R 35 All 148

29 ——— Limitation—Application for execution—Time of runs from date of decree or date of ascertainment of exact amount. Where in a suit for redemption a certain decree was passed on 27th July 1909 and it was directed therein that it will be necessary to have fresh accounts taken to determine the amount due to the appellants and the amount was not definitely ascertained till the 23rd February 1910 and the application for execution was filed on 20th January 1913. *Held* that the judgment of the District Judge dated 27th July 1909 sets forth clearly the exact method of ascertaining the sum to be paid in redemption and the calculation of that sum was a matter purely of office routine and that the application for execution was barred by limitation. *Golan Gaffer Mandal v Colan Bibi* I L R 25 Cal 109 followed. *SCRABDEO NARAYAN SINGH v MUSHAROO RAO* (1916).

20 C W N 950

30 ——— One mortgagor redeeming the entire mortgage—Acknowledgment—*Dakkhal nama*—Limitation Act (IX of 1908) s 19. *See* I L R 148. In a suit by the representatives of some of the co mortgagors for the redemption of the shares in certain property against the representative of co mortgagor who had redeemed the mortgage the plaintiffs alleged that the mort-

MORTGAGE—contd**REDEMPTION—contd**

gago had been made by one Sukhjit in favour of one Muhammad Hanain in the year of 1913 Samvat. The plaintiffs also relied on certain acknowledgments made by the defendant's predecessor in title. One of these was a *dakkhalnama* executed by Ram Lal in 1890 which contained a description of the property and was signed by Ram Lal. The defendant contended that there was no mortgage that he was absolute owner that the acknowledgments had not been proved and that the suit was time barred. It was held by the lower Appellate Court that the date of the mortgage had not been proved but the acknowledgments were in respect of some mortgage and that the plaintiffs were entitled to redeem. *Held* that the rule of limitation governing a suit of this kind was that laid down in *Ashfaq Ahmad v Saif Ali* I L R 11 All 423 viz. that Art 149 of Sch I to the Limitation Act applied that is the limitation extended for a period of 60 years from the date of execution of the mortgage or from the date when the mortgage money became due and the burden was upon the plaintiffs of proving the mortgage that they had set up and that it was for them to prove that the acknowledgment relied upon by them as contained in the *dakkhalnama* had been made at a date within the period of limitation. *Held* further that the acknowledgment contained in the *dakkhalnama* amounted to nothing more than a description of the property purchased and was not acknowledgment of liability within the meaning of s 10 of the Limitation Act. *Dharma Prakash v Gound Sadavalkar* I L R 8 Bom 99 referred to. *KHILALI PAM TAIK I AM* (1916).

I L R 38 All 540

31 ——— Adverse possession—Mortgagee in proprietary possession under an agreement unregistered but acted upon for a very long period. The parties to a mortgage by conditional sale executed in 1869 entered into an agreement in 1876 whereby the mortgagor gave up all his equity of redemption in the property mortgaged. The agreement was not registered but both the parties consented to the complete transfer of the equity of redemption and both parties acted on the agreement for very nearly forty years. *Held* on a suit being brought in 1912 for redemption of the mortgage of 1869 that the mortgagee or their predecessors in title had been in adverse possession since the year 1876 and the suit was barred by limitation. *Mahomed Musa v Aghore Khan Ganavi* I L R 43 Cal 801 and *Uman Khan v Dasanna* I L R 57 Mad 545 referred to. *KHEDU RAI v SHEO PARSON RAI* (1914).

I L R 39 All 42

32 ——— Major portion of mortgaged property purchased by mortgagee—Suit by one only of the heirs of the mortgagor to redeem the whole of the remaining share in the mortgaged property. Out of the original 16 annas of a village which was the subject of a usufructuary mortgage the mortgagee acquired by purchase 13 annas and 4 pies. After the death of the mortgagor one of his heirs used to redeem the whole of the remaining 2 annas and 8 pies. The other heirs were made parties to the suit as *pro forma* defendants and consented to the plaintiff redeeming to the whole of the remaining share. *Held* that notwithstanding this the plaintiff was only entitled to redeem her own personal share. *Kura, Mal v Pura*

MORTGAGE—*contd*REDEMPTION—*contd*

Val I I I 2 All 55 and Venuka v Daulat I I I 29 All 26 followed *Sallaram Narayan v Opal Lal Bhatia I I I 29 Ecr 66 (Note)* not followed *Zain ul Abidin v Mahafaza Iqbal Khan Singh (1917)*

I L R 39 All 618

— Annuity provided for by terms of deed—*Equity of redemption acquired by mortgagor*—*Suit by heirs of annuitant to recover a sum of annuity*. By the terms of a mortgage deed an annuity or *shik* charge was made payable to one Muhammad Tural un and his heirs by the mortgagor. By a series of transactions the mortgagee ultimately became the owner of the equity of redemption in the whole of the mortgaged property. *Held* that the mortgagee nevertheless still continued liable for the payment of the annuity secured by the mortgage. *LACHMI NARAIN v SAJJADI BEGAM (1917)*

I L R 39 All 70

23 (a) — *Zarpeshgi* deed executed in 1874 in favour of one C provided interest for the payment by C to the executors of A. Zarpeshgi rent of Rs 500 odd every year. The principal amount was made payable in September 1887. In February 1888 Rs 12,000 was borrowed by the mortgagor from A and in accordance with the agreement between them was applied in paying the Zarpeshgi debt and the Zarpeshgi deed upon such payment was taken back and handed over to A in whose favour a simple mortgage was executed to secure the loan of Rs 12,000 given by her. *Held* that so far as it operated as a lease the Zarpeshgi deed came to an end but the charge created by the Zarpeshgi was kept alive for the benefit of A. *Mohd Ali Lal v Mohd Ali Bawan Das I R 101 A 60 (1883)* *Gokildas v Rambur Soha d L P 11 I A 120 (1894)* *Dinobondhu Shaw Chowdhry v Jogmaya Dass I R 29 I A 9 s r 6 C 3 209 (1901)* referred to. That in suits for sale instituted after the date of A's mortgage of 1888 by persons who had obtained mortgages between the dates of the Zarpeshgi of G and the simple mortgage of A A's as a puisne mortgage was a necessary party under s 8a of the Transfer of Property Act. Where in such suits was made a party but did not set up prior title under the Zarpeshgi of 1874 and some of the properties covered by the Zarpeshgi were sold. *Held* that A's right to proceed against the said properties by a suit for sale on the basis of the Zarpeshgi deed was barred by Expt II of s 13 of the Civil Procedure Code of 1882. In one such suit instituted by M within 12 years of the due date of payment under the Zarpeshgi of 1874. A not having been joined as a party the sales held did not affect or take away A's right as a puisne mortgagee under the mortgage of 1888 or her claim of priority under the Zarpeshgi of 1874. But A's claim to priority under the Zarpeshgi of 1874 became barred in 1900 when a suit was first instituted by A assignee to enforce A's mortgage and the only decree plaintiff in this suit would get as against the purchasers in M's suit was to be allowed to redeem the mortgage of M on payment to the purchaser of the amount at principal and interest in respect of which the property purchased by him was sold in M's suit. In a mortgage suit a puisne mortgagee of whose interest in the mortgaged property the plaintiffs have notice is a necessary party under s 8a of the Transfer

MORTGAGE—*contd*REDEMPTION—*contd*

of Property Act and a sale of the property had in such a suit does not take away the puisne mortgagee's right to redeem. *SYED MAHOMED, IFAHIM HOSSEIN KHAN AND ANOTHER v AMBICA IFAH SINGH AND OTHERS (1911 19)*

I L R 39 All 505

24 — Mortgage by conditional sale — Mortgagor in possession as tenant of mortgagee — Suit for rent in arrears — Decree for rent barred by limitation — Suit for redemption — Mortgagee whether entitled to claim arrears of rent and interest as part of price of redemption — Standstill of charge — Election of remedies. In a suit for redemption the mortgagee is not entitled to claim any arrears of rent with interest in respect of the mortgaged lands which were left in the possession of the mortgagor as tenant of the mortgagee under the terms of the mortgage deed when the mortgagee has already sued and obtained a decree for such rent with interest and has allowed the decree to become barred by limitation even though the arrear of rent is a charge under the deed. *English and Indian cases reviewed* *Heerachal Singh v Jauhar Singh I L R 16 Cal 307 distinguished* *Imdad Hasan Khan v Bachu Prasad I L R 20 All 401* referred to. *NARAIN PAO v SHIVU RAO (1918)* I L R 41 Cal 164

35 — Partial owner of equity of redemption if can redeem whole mortgage. A partial owner of the equity of redemption is entitled to redeem the whole mortgage. *BAIKANTH NATH DAS v MOHESH CHANDRA DAS (1916)* 22 C W N 128

See also *PROTAP CHANDRA DHAR v PPRAY MOHAY DHAR (1918)* 22 C W N 500

36 — Mortgage suit—Purchaser of mortgaged property applying to be made a party not allowed on plaintiff's objection—*Subsequent suit by purchaser at mortgagee's sale to recover possession—Gift of previous purchaser to redeem*. Where an application by a purchaser A of mortgaged property to be made a party in the mortgage suit was on the mortgagee's objection refused and he was thus prevented from exercising the right of redemption amongst other reliefs which he desired to claim. *Held* that in a suit by the purchaser at the sale in execution of the mortgage decree B to recover the property from A who was in possession A was entitled to redeem B. *REBATI MOHAY DAS v NADABASHI DE (1918)*

22 C W N 543

37 — Decree passed under Dekkhan Agriculturists Relief Act (XVII of 1879) not governed by Transfer of Property Act—*Decree not executed—Second suit to redeem the mortgage not maintainable—Civil Procedure Code (Act I of 1908) s 47*. The plaintiff obtained in 1889 a redemption decree under the provisions of the Dekkhan Agriculturists Relief Act 1879 which provided that on plaintiff's default to pay the decretal amount by the end of March 1893 his right to redeem should be forever barred. The decree was not executed. In 1913 the plaintiff filed a second suit for redemption of the same mortgage. *Held* that no fire suit could lie under the provisions of s 47 of the Civil Procedure Code 1908 inasmuch as the decree of 1889 to which the provisions of the Transfer of Property Act 1882 did not apply was capable of execution and

MORTGAGE—*contd*RFDI MPTION—*contd*

this order if binding at all in the suit for redemption was to be regarded merely as interpreting the mortgage and the fact that the plaintiff in his plaint made a prayer that in the taking of accounts the directions contained therein might be followed did not mean that he waived his right of redemption on that judgment. The passing of the final decree in a mortgage suit pending an appeal from the preliminary decree is no bar to the hearing of the appeal. **PEARY MOHUN MUKERJEE v CHANDIA SERNAN SARKAR** (1915)

[19 C W N 1132]

27 ——— Adverse possession—Usufructuary mortgage—Mortgagee in possession—Equity of redemption—Adverse of possession while period of redemption is running—Suit to redeem by a person whose name is recorded in revenue papers. *Held* that a person could not acquire a title by adverse possession to land which was the subject of a usufructuary mortgage and therefore in the possession of the mortgagee merely because he had managed to get his name recorded in the village papers for a series of years in respect of the mortgaged property. **Lala Kuntoo Lal v Mani Bibi** 6 C W N 601 not followed. **Casborne v Scarfe** 1 All 605 distinguished. **KUTWAR SEV v DARBARI LAL** (1916)

I L R 33 All 411

28 ——— Tender of mortgage money a condition precedent to the institution of a suit for redemption—A usufructuary mortgage of agricultural land provided that the right to redeem should be exercised only in the month of *Jeth* of any year. *Held* that before the mortgagor could sue for redemption it was necessary for him to prove that he had tendered to the mortgagee the mortgage debt or such amount as he considered due on the mortgage in the month of *Jeth* of some year after the mortgage money had become payable. **Banas v Giridhari Lal** 11 W N (1894) 143 followed. **MUHAMMAD ALI v BALDEO PANDY** (1915)

I L R 38 All 148

29 ——— Limitation—Application for execution—Time if runs from date of decree or date of ascertainment of exact amount. Where in a suit for redemption a certain decree was passed on 27th July 1909 and it was directed therein that it will be necessary to have fresh accounts taken to determine the amount due to the appellants and the amount was not definitely ascertained till the 23rd February 1910 and the application for execution was filed on 29th January 1913. *Held* that the judgment of the District Judge dated 27th July 1909 sets forth clearly the exact method of ascertaining the sum to be paid in redemption and the calculation of that sum was a matter purely of office routine and that the application for execution was barred by limitation. **Gulam Gaffar Mandal v Golan Bibi** I L R 25 Cal 109 followed. **SCHAUDEO NARAYAN SIKOH v MUSHAROO RAUT** (1916)

20 C W N 950

30 ——— One mortgagor redeeming the entire mortgage—Acknowledgment—*Dakhlanama*—Limitation Act (IX of 1908) s 19. *Sch I Art 143*. In a suit by the representatives of some of the co mortgagors for the redemption of the shares in certain property against the representative of co mortgagor who had redeemed the mortgage the plaintiffs alleged that the mort-

MORTGAGE—*contd*RFDI MPTION—*contd*

gage had been made by one Sulhjit in favour of one Muhammad Iftu in the year of 1913 Sambat. The plaintiffs also relied on certain acknowledgments made by the defendant's predecessor in title. One of these was a *dakhlanama* executed by Pam Lal in 1890 which contained a description of the property and was signed by Pam Lal. The defendant contended that there was no mortgage that he was absolute owner that the acknowledgments had not been proved and that the suit was time barred. It was held by the lower Appellate Court that the date of the mortgage had not been proved but the acknowledgments were in respect of some mortgage and that the plaintiffs were entitled to redeem. *Held* that the rule of limitation governing a suit of this kind was that laid down in *Ishaq Ahmad v Haider Ali* 1 L R 11 All 173—that Art 148 of Sch I to the Limitation Act applied that is the limitation extended for a period of 60 years from the date of execution of the mortgage or from the date when the mortgage money became due and the burden was upon the plaintiffs of proving the mortgage that they had set up and that it was for them to prove that the acknowledgment relied upon by them as contained in the *dakhlanama* had been made at a date within the period of limitation. *Held* further that the acknowledgment contained in the *dakhlanama* amounted to nothing more than a description of the property purchased and was not acknowledgment of liability within the meaning of s 19 of the Limitation Act. **Dharma Nath v Govind Sadanilar** 1 L R 8 Bom 99 referred to. **KHALLI RAM v TATE PARI** (1916)

I L R 24 All 540

31 ——— Adverse possession—Mortgagee in proprietary possession under an agreement unregistered but acted upon for a very long period. The parties to a mortgage by conditional sale executed in 1869 entered into an agreement in 1876 whereby the mortgagor gave up all his equity of redemption in the property mortgaged. The agreement was not registered, but both the parties consented to the complete transfer of the equity of redemption and both parties acted on the agreement for very nearly forty years. *Held* on a suit being brought in 1912 for redemption of the mortgage of 1869 that the mortgagees or their predecessors in title had been in adverse possession since the year 1876 and the suit was barred by limitation. **Malomed Vusa v Aghore Kumar Ganguli** 1 L R 40 Cal 801 and **Uman Khan v Dasanna** 1 L R 37 Mad 45 referred to. **KHEDU RAI v SHEO PARSON PAI** (1917)

I L R 39 All 42

32 ——— Major portion of mortgaged property purchased by mortgagee—Suit by one only of the heirs of the mortgagor to redeem the whole of the remaining share in the mortgaged property. Out of the original 16 annas of a village which was the subject of a usufructuary mortgage the mortgagee acquired by purchase 13 annas and 4 pies. After the death of the mortgagor one of his heirs sued to redeem the whole of the remaining 3 annas and 8 pies. The other heirs were made parties to the suit as *pro forma* defendants and consented to the plaintiff redeeming to the whole of the remaining share. *Held* that notwithstanding this the plaintiff was only entitled to redeem her own personal share. **Kuraj Mal v Pura**

MORTGAGE—contd**DEFINITION—contd**

Mah L I I 1 0 All 63 and Wussah v Paulat I L I 99 All 66 *Hossain Saligram Narayan v Chel Lal Juman I L P 10 Err 666* (Note) not followed *Zairun N A H M Mahapaja* *Lafert Nafin Singh* (1911)

I L R 39 All 618

33 ———— Annuity provided for by terms of deed—*Equity of redemption acquired by mortgagor—Right of annuitant to recover arrears of annuity* By the terms of a mortgage deed an annuity of Rs 1000 charge was made payable to one Mahant at Total annuity and her heirs by the mortgage. By a series of transactions the mortgagor ultimately became the owner of the equity of redemption in the whole of the mortgaged property. *Held* that the mortgagee nevertheless still continued liable for the payment of the annuity secured by the mortgage. *LACHMI NARAYAN SAJJADI BEGAN* (1917)

I L R 39 All 70

33 (a) ———— *Zarpeshgi* deed executed in 1874 in favour of one C provided inter alia for payment by C to the executors of a Zarpeshgi rent of Rs 500 odd every year. The principal amount was made payable in September 1889. In February 1888 P s 1000 was borrowed by the mortgagor from A and in accordance with the agreement between them was applied in paying the Zarpeshgi debt and the Zarpeshgi deed upon such payment was taken back and handed over to A in whose favour a simple mortgage was executed to secure the loan of Rs 12000 given by her. *Held* that so far as it operated as a lease the Zarpeshgi deed came to an end but the charge created by the Zarpeshgi was kept alive for the benefit of A. *Mohd Lal v Mohd Bawan Das I R 10 I A 62* (1883) *Gokildass v Rambur S orhand L R 11 I A 196* (1884) *D nolandhu Shaw Chowdhry v Jogmaya Das I L 9 I A 9 s c 0 C H 1 909* (1901) referred to. That in suits for sale instituted after the date of A's mortgage of 1888 by persons who had obtained mortgages between the dates of the Zarpeshgi of G and the simple mortgage of A A as a puisne mortgagee was a necessary party under s 8a of the Transfer of Property Act. Where in such suits was made a party but did not set up prior title under the Zarpeshgi of 1874 and some of the properties covered by the Zarpeshgi were sold. *Held* that A's right to proceed against the said properties by a suit for sale on the basis of the Zarpeshgi deed was barred by Expi II of s 13 of the Civil Procedure Code of 1882. In one such suit instituted by A within 12 years of the due date of payment under the Zarpeshgi of 1874. A not having been joined as a party the sales held did not affect or take away A's right as puisne mortgagee under the mortgage of 1888 or her claim of priority under the Zarpeshgi of 1874. But A's claim to priority under the Zarpeshgi of 1874 became barred in 1900 when a suit was first instituted by A as a signor to enforce A's mortgage and the only decree plaintiff in this suit would get as against the purchasers in A's suit was to be allowed to redeem the mortgage of A on payment to the purchaser of the amount at principal and interest in respect of which the property purchased by him was sold in A's suit. In a mortgage suit a puisne mortgagee of whose interest in the mortgaged property the plaintiffs have notice is a necessary party under s 8a of the Transfer

MORTGAGE—contd**DEFINITION—contd**

of Property Act and a sale of the property had in such a suit does not take away the puisne mortgagee's right to redeem. *SYED MAHOMED IBRAHIM HOSSAIN KHAN AND ANOTHER v AMBIKA IPO AD SINGH AND OTHERS* (1911 12)

18 C W N 505

34 ———— Mortgage by conditional sale—Mortgagor in possession as tenant of mortgagor—Suit for rent in arrears—Decree for rent barred by limitation—Suit for redemption—Mortgage whether entitled to claim arrears of rent and interest decree as part of price of redemption—Wardenship of charge—Fiction of time. In a suit for redemption the mortgagee is not entitled to claim any arrears of rent with interest in respect of the mortgaged lands which were left in the possession of the mortgagor as tenant of the mortgagee under the terms of the mortgage deed when the mortgagee has not yet sued and obtained a decree for such rent with interest and has allowed the decree to become barred by limitation even though the arrear of rent is a charge under the deed. English and Indian cases reviewed. *Hewanchal Singh v Jawahir Singh I L R 10 Cole 307* distinguished. *Imdad Hasan Khan v Bachu Prasad I L R 90 All 401* referred to. *NARAYAN RAO v SHIVU RAO* (1918) I L R 41 D 1047

35 ———— Partial owner of equity of redemption if can redeem whole mortgage. A partial owner of the equity of redemption is entitled to redeem the whole mortgage. *BAIKRANTH NATH DAS v MOHESH CHANDRA DEY* (1910) 22 C W N 128

See also *PROTAP CHANDRA DHAR v PEARL MOHAN DHAR* (1918) 22 C W N 600

36 ———— Mortgage suit—Purchaser of mortgaged property applying to be made a party not allowed on plaintiff's objection—Subsequent suit by purchaser at mortgagee's sale to recover possession—Right of previous purchaser to redeem. Where an application by a purchaser A of mortgaged property to be made a party in the mortgage suit was on the mortgagee's objection refused and he was thus prevented from exercising the right of redemption amongst other reliefs which he desired to claim. *Held* that in a suit by the purchaser at the sale in execution of the mortgage decree B to recover the property from A who was in possession A was entitled to redeem. *B PERAZI MOHAN DAS v NADIADASHI DE* (1918)

22 C W N 543

37 ———— Decree passed under Dekkhan Agriculturists Relief Act (XVII of 1879) not governed by Transfer of Property Act—Decree not executed—Second suit to redeem the mortgage not maintainable—Civil Procedure Code (Act 1 of 1908) s 47. The plaintiff obtained in 1893 a redemption decree under the provisions of the Dekkhan Agriculturists Relief Act 1879 which provided that on plaintiff's default to pay the decretal amount by the end of March 1893 his right to redeem should be forever barred. The decree was not executed. In 1913 the plaintiff filed a second suit for redemption of the same mortgage. *Held* that no fresh suit could lie under the provisions of s 47 of the Civil Procedure Code 1908 inasmuch as the decree of 1893 to which the provisions of the Transfer of Property Act 1882 did not apply was capable of execution and

MORTGAGE—contd**REDEMPTION—contd**

its execution was time barred long before the date of this suit and *Rinji v Pankharinath* 1 L R 43 Bom 334 distinguished *Lala Chhaya v Bhaiji Ahaniya* 1 L R 7 Bom 532 followed *Dattu Din Yesu v Shripad* (1910)

1 L R 43 Bom 703

33 ———— Decree nisi—Fulcrum to apply to make absolute—Execution time barred—Second suit for redemption maintainable as of—Civil Procedure Code (1st V of 1908) ss 11 47 and O XXIV rr 7 and 8—Transfer of Property Act (19 of 1908) s 69 A question having been referred whether a mortgagor who has brought a suit for redemption and obtained a decree nisi which neither the mortgagor nor the mortgagee has applied to be made absolute can after the execution of that decree is time barred bring a fresh suit for redemption *Held* (SHEKH J dissenting) that the mortgagor could bring a second suit for redemption and the same would not be barred by s 11 or s 47 of the Civil Procedure Code 1908 *Ramji v Pankharinath* (1918)

1 L R 43 Bom 334

39 ———— Decree for sale of mortgaged property—purchaser by mortgagee—Puisne mortgagee's right to redeem—Prior mortgagee obtained a decree on his bond on the 31st May 1897 brought the mortgaged property to sale and purchased himself on the 4th July 1900 and obtained a decree of possession. A puisne mortgagee obtained a mortgage decree against the same property on the 8th April 1907 purchased the property in execution of his decree and obtained registration of his name in the Collectorate register. In a suit by the prior mortgagee for a declaration of title and confirmation of possession or in the alternative for recovery of possession the Munsif decreed the suit but gave the puisne mortgagee permission to redeem. The lower appellate Court held that the defendant was not entitled to redeem as he had not done so before the making of the order absolute for sale in the plaintiff's suit. *Held* that the right of redemption continued until the confirmation of sale. It appeared that the puisne mortgagee's name had been omitted from the execution proceeding. *Held* that this was merely an irregularity and the sale could not be considered a nullity even though the prior mortgagee was himself the purchaser. *SYED MUHAMMAD RAFI v SYED MUHAMMAD ASAFI*

1 F L J 261

43 ———— Effect of sale in execution of decree and purchase by mortgagee—Minors join as defendants in mortgage suit but not represented by a guardian—Subsequent suit by them or redemption on ground that they were not properly parties to former suit—No claim to set aside decree or sale. The head of a joint Hindu family governed by Mitakshara law mortgaged in 1896 immovable property belonging to the family for purposes for which he was admittedly able to bind the other members. The mortgage money was not repaid and in 1901 the mortgagee brought a suit on the mortgage against the mortgagor and his two brothers and joining also as defendants the two sons of the mortgagor now represented by the first respondent. In that suit a decree was made on the 1st January 1901 in execution of which the mortgaged property was sold and purchased by the mortgagee. In a suit in 1909 by the sons of

MORTGAGE—contd**REDEMPTION—contd**

the mortgagor in which they impeached neither the debt nor the mortgage but admitted that they were binding on them and did not in their plaint seek to set aside the decree or the sale under it but only claimed to be entitled to redeem the mortgaged property on the ground that they had been minors at the time of the suit on the mortgage and not having been represented by a guardian had not been properly parties to that suit. It was found as a fact by the two Courts in India and upheld by the Judicial Committee that they had not been effectively joined in the mortgage suit. *Held* that the right of redemption had been extinguished by the decree and sale in execution of it and that until the sale had been set aside it could not be exercised. *CARAT JAL v BHADRA PRASAD VARMA SINGH* (1910)

1 L R 4 Cal 924

41 ———— Transfer of part of equity of redemption—Mortgagee in possession—Suit for foreclosure without making transferee from mortgagor a party—Right to redeem whole of the mortgaged property—Account. In 1893 the owner of sixteen fields in Berar mortgaged them to the appellant. In 1896 the mortgagor coveyed one of the fields to the respondents. In 1899 the mortgagee brought a suit to enforce the mortgage against the mortgagor alone without making the respondents parties and obtained a decree by consent which was afterwards made absolute. The decree declared that in default of payment within a definite time of the mortgaged fields (including that conveyed to the respondents) were to be foreclosed and possession of them made over to the appellant and no payment having been made that was done under the decree. In a suit for redemption by the respondents (who not being parties to it were not affected by the decree) the only question was whether they were entitled to redeem the whole of the nine field or only the field conveyed to them subject to the mortgage over the whole. *Held* that subject to the safeguarding of the equal title to redeem of any other person who had a right of redemption the respondents were entitled to redeem the entire mortgage unless something had happened to extinguish the mortgage in whole or in part or the conduct of the respondents had estopped them from asserting what would normally have been their rights. It was not the law in India any more than in England that one of several mortgagors cannot redeem more than his own share unless the owners of the other shares consent or make no objection subject to the safeguarding of the rights which the owners might possess. The respondents as owners of an interest on the equity of redemption as it originally stood were entitled to redeem the mortgage on the footing of paying the balance left of the mortgage debt after debiting the mortgagee with a fair occupation rent during the period of his possession and crediting him with simple interest on the debt due to him under the mortgage deed. *YADALI BEG v TUKARAM* (1920)

1 L R 48 Cal 111

42 ———— Clog—subsequent lease of mortgaged property by mortgagor to mortgagee—effect of—A who was a permanent tenant holder of 7 plots executed an usufructuary mortgage of all the plots in favour of B from whom he subsequently took a lease of 4 of the plots. In 1908 A granted a permanent *mukarrari* of one of the

MORTGAGE—*contd*PEDEMPTION—*contd*

its execution was time barred long before the date of the said suit *Ramji v. Lasharimath I L R 13 Bom 334 distinguished Ladu Chima v. Brijay Khanlari I L R 7 Bom 532, followed Dingu v. Yesu v. Shrinath (1919)*

I L R 43 Bom 703

38 ———— Decree nisi—Failure to apply to make absolute—Execution time barred—Second suit for redemption inadmissible of—Civil Procedure Code (let 1 of 1908) ss 11 47 and O XXXII rr 7 and 8—Transfer of Property Act (11 of 1925) s 60 A question having been referred whether a mortgagor who has brought a suit for redemption and obtained a decree nisi which neither the mortgagor nor the mortgagee has applied to be made absolute can after the execution of that decree is time barred bring a fresh suit for redemption *Held* (Snare J dissenting) that the mortgagor could bring a second suit for redemption and the same would not be barred by s 11 or s 47 of the Civil Procedure Code 1908 *Parsi v. Pandharinath (1918)*

I L R 43 Bom 334

39 ———— Suit for sale of mortgaged property—purchaser by mortgagee—prior mortgagee's right to redeem—prior mortgagee obtained a decree on his bond on the 31st May 1897 brought the mortgaged property to sale and purchased himself on the 4th July 1900 and obtained delivery of possession A puisne mortgagee obtained a mortgage decree against the same property on the 8th April 1903 purchased the property in execution of his decree and obtained registration of his name in the Collectorate register In a suit by the prior mortgagee for a declaration of title and confirmation of possession or in the alternative for recovery of possession the Munsif decreed the suit but gave the puisne mortgagee permission to redeem The lower appellate Court held that the defendant was not entitled to redeem as he had not done so before the making of the order absolute for sale in the plaintiff's suit *Held* that the right of redemption continued until the confirmation of sale It appeared that the puisne mortgagee's name had been omitted from the execution proceedings *Held* that this was merely an irregularity and the sale could not be considered a nullity even though the prior mortgagee was himself the purchaser *SYED MUHAMMAD RAFI v. SYED MUHAMMAD ASHAFI*

1 Pat L J 261

40 ———— Effect of sale in execution of decree and purchase by mortgagee—Minors joined as defendants in mortgage suit but not represented by a guardian—Subsequent suit by them or redemption on ground that they were not properly parties to former suit—No claim to set aside decree or sale The head of a joint Hindu family governed by Mitakshara law mortgaged in 1896 immovable property belonging to the family for purposes for which he was admittedly able to bind the other members The mortgage money was not repaid and in 1901 the mortgagee brought a suit on the mortgage against the mortgagor and his two brothers and joining also as defendants the two sons of the mortgagor now represented by the first defendant In that suit a decree was made on 9th Jan'y 1902 in execution of which the mortgaged property was sold and purchased by the mortgagor In a suit in 1909 by the sons of

MORTGAGE—*contd*REDEMPTION—*contd*

the mortgagor in which they impeached neither the debt nor the mortgage but admitted that they were binding on them and did not in their plaint seek to set aside the decree or the sale under it but only claimed to be entitled to redeem the mortgaged property on the ground that they had been minors at the time of the suit on the mortgage and not having been represented by a guardian had not been properly parties to that suit It was found as a fact by the two Courts in India and upheld by the Judicial Committee that they had not been effectively joined in the mortgage suit — *Held* that the right of redemption had been extinguished by the decree and sale in execution of it and that until the sale had been set aside it could not be exercised *CANFAT LAL v. BINDA LAL PASHAD VARAYAN SINGH (1920)*

I L R 47 Cal 924

41 ———— Transfer of part of equity of redemption—Mortgagee in possession—Suit for foreclosure without making transferee from mortgagor a party—Right to redeem whole of mortgaged property—Accounts In 1893 the owner of sixteen fields in Berar mortgaged them to the appellant In 1896 the mortgagor conveyed one of the fields to the respondents In 1899 the mortgagee brought a suit to enforce the mortgage against the mortgagor alone without making the respondents parties and obtained a decree by consent which was afterwards made absolute The decree declared that in default of payment within a definite time nine of the mortgaged fields (including that conveyed to the respondents) were to be foreclosed and possession of them made over to the appellant and no payment having been made that was done under the decree In a suit for redemption by the respondents (who not being parties to it were not affected by the decree) the only question was whether they were entitled to redeem the whole of the nine field or only the field conveyed to them subject to the mortgage over the whole *Held* that subject to the safeguarding of the equal title to redeem of any other person who had a right of redemption the respondents were entitled to redeem the entire mortgage unless something had happened to extinguish the mortgage in whole or in part or the conduct of the respondents had topped them from asserting what would normally have been their rights It was not the law in India any more than in England that one of several mortgagors cannot redeem more than his own share unless the owners of the other shares consent or make no objection subject to the safeguarding of the rights which the owners might possess The respondents as owners of an interest in the equity of redemption as it originally stood were entitled to redeem the mortgage on the footing of paying the balance left of the mortgage debt after debiting the mortgagee with a fair occupation rent during the period of his possession and crediting him with simple interest on the debt due to him under the mortgage deed *YADALI BEH v. TUKARAN (1920)*

I L R 43 Cal 22

42 ———— Clog—subsequent lease of mortgaged property by mortgagor to mortgagee effect of—A who was a permanent tenure holder of 7 plots executed an usufructuary mortgage of all the plots in favour of B from whom he subsequently took a lease of 4 of the plots In 1908 A granted a permanent *mukarrar* of one of the

MORTGAGE—contd**PEDEMPTION—contd**

decree for money entered as between the mortgagee defendant and the mortgagor—*Held* that in this case the mortgage clearly effected the conveyance of the real estate to the mortgagees as tenants-in-common and no redemption could be effected of part of the property by paying to one of the mortgagees her separate debt. It was not a mortgage to each of a divided half but a conveyance to them of the whole property. In this case the mortgage completing a compromise was executed by a Hindu *pardanashin* lady—*Held* that it was not necessary nor desirable in such a case to insist upon a clear understanding of each detail of a matter which may be much involved in legal technicalities. It is sufficient that the general result of the compromise should be understood and that the lady should have had people disinterested and competent to give advice with a fair understanding of the whole matter who advised her that she should execute the deed. *SUBBIAIA DEBI v DHARA SUNDAR DEBI CHOWDHURANI* (1910) 1 L R 47 Cal 175

48 — By one of several co-mortgagors—When one of two co-mortgagors redeems the mortgage and obtains possession of the property a suit by the other mortgagor to recover possession of his share of the mortgaged property is not a suit for redemption but for possession as is governed by Art 144 and not Art 148 of the Limitation Act and in such a suit Plaintiff is entitled to succeed unless the redeeming mortgagor establishes that he has been in possession for 12 years on an assertion of a hostile title to the knowledge of the Plaintiff. *RAM NARAYAN RAI v RAM DEVI RAI* 6 Pat L J 680

49 — Deed excluding right—*Anomalous mortgage—Statutory right—Act No IV of 1882 (Transfer of Property Act) s 60 98* Immovable property was mortgaged by deed for five years to secure a debt. The deed provided that the years and that if he did not do so the mortgagee was to have the option of taking possession for a period of twelve years. If the mortgagee took possession was provided that during the period of twelve years the mortgagor was not to be entitled to redeem but that at its conclusion he was to do so. The mortgage debt not being repaid at the end of five years the mortgagee took possession in the same year the mortgagor sued to redeem. *Held* that the mortgagor had by s 60 of the Transfer of Property Act 1882 a statutory right to redeem whether or not the mortgage was one in which by s 98 the rights and liabilities of the parties were to be determined by their contract. *MUHAMMAD SHER KHAN v RAJA SETH SWAMI DAYAL* 1 L R 44 All 185

50 — Previous redemption decree—*Right to redeem reserved—Second suit for redemption* In 1915 the plaintiff sued to redeem a mortgage of 1874. The defendant contended that the suit was barred in consequence of a previous redemption decree of 1881 the terms of which were as follows. The plaintiff should pay to the defendant Rs 400 with interest at the rate of eight annas per cent per mensem by annual instalments of Rs 50 each from 31st March 1884. If the plaintiff were to pay more than Rs 50 the defendant should not refuse to accept the same.

MORTGAGE—contd**REDEMPTION—contd**

In case the plaintiff fails to pay any instalment the defendant should take the land in his possession and receive the produce of the land in lieu of interest on the remaining amount and Government assessment and on the plaintiff paying the principal amount at the end of any last year the land belonging to the plaintiff should be returned to him. *Held* that on the construction of the decree the right to redeem was reserved and therefore the plaintiff was entitled to sue for redemption. *ABDUL RAJACK v VAMAY GANESH* 1 L R 45 Bom 1335

PLGISTPATION

1 — Endorsements on mortgage bond—*Registration—Registration Act (III of 1877) s 17 cl (n)*—Endorsement on a mortgage bond of payment made in satisfaction of a previous mortgage debt—*Civil Procedure Code (Act VI of 1852) s 44*—Payment by subsequent mortgagee under s 74 of the Transfer of Property Act (II of 1877) effect of The endorsements on a mortgage bond of payments made in satisfaction of a mortgage which payments did not purport to extinguish the mortgage are covered by cl (n) of s 17 of the Registration Act and as such do not require registration. *Jivan Ali Beg v Ba a Val* 1 L R 3 All 108 and *Uppalalanki Kunhi Aunts Ali Haji v Kunnam Mithai Kottiparthi Abdul Pakuman* 1 L R 19 Mad 289 followed. A subsequent mortgagee who makes a payment of a prior mortgage debt under the provisions of s 74 of the Transfer of Property Act in a suit to enforce his original mortgage against the security which by his payment of the former mortgage he has protected and made more valuable for the realisation of his debt is bound under s 43 of the Code of Civil Procedure to join in that suit any further claim which he has against that property by reason of such payment made by him. *Sunder Singh v Bhola* 1 L R 20 All 392 distinguished. *HARI NARAYAN BANERJEE v KUSUM KUMARI DAS* (1910) 1 L R 37 Cal 589

2 — Endorsement releasing mortgaged property for consideration in cash—*Registration* An endorsement made by a mortgagee (on the back of the mortgage deed) releasing the mortgaged property in consideration of a cash payment of Rs 300 is a document which requires registration and not being registered was not admissible in evidence either of the redemption of the property or of the real nature of the original transaction between the parties. *PAMA HAPAPANT v PAMA* (1909)

1 L R 31 Bom 202

■ — Registration of mortgage out of time by altering date—*Lessee from executant if may question validity of mortgage registered out of time—Estoppel* Where a mortgage deed had been presented for registration more than four months after the date of its execution and its registration had been secured by the executant altering the date of the instrument. *Held* that even assuming that the deed had been wrongly registered there being no fraud the mortgagor would be estopped from taking the objection. *Held* further that the lessee from the mortgagor who took their lease after the registration of the mortgage are in the absence of fraud equally estopped with the mortgagor from taking the objection.

MORTGAGE—contd**SALE OF MORTGAGED PROPERTY—contd**

Several mortgages as part of the same transaction over the same property—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O II R 2

I L R 45 Bom 55

1 ——— Practice—First mortgage a suit for sale—Surplus of sale proceeds—Second mortgage a claim for sale in first mortgage—a suit of other property on which he has a mortgage—CIVIL PROCEDURE CODE (ACT I OF 1908) O XXXIV —Costs B mortgaged property in Calcutta to A and afterwards mortgaged the same property and a further property in the mofussil to C A brought an ordinary mortgage suit against B for sale making C a party defendant A obtained a decree C thereupon claimed to be entitled to a decree for sale of the property mortgaged to A including the mofussil property not included in A's mortgage—Held that in a suit C could only obtain the surplus of the sale proceeds of the property in that suit and could not get any relief against the other property in the mofussil *Kesary Mohan Poy v Kally Charan Ghose* I L R 22 Calc 100 *Kesary Mohan Poy v Kally Charan Ghose* I L R 24 Calc 190 *In re Kesary Mohan Roy v Kally Charan Ghose* I C W A 106 and *Halt v Mendel* 27 Ch D 216 distinguished *Macintosh v Watkins* I C I J 31 followed The effect of the incorporation of the sections in the Transfer of Property Act into O XXXIV of the new Code of Civil Procedure is to put an end to any independent practice on the Original Side of the High Court based on the old procedure and the Original Side should now follow the provisions of O XXXIV of the Code Costs will be on Scale No 2 not Scale No 1 against the mortgagor who does not appear *SARAT CHANDRA ROY CHOWDHURY v NAHAPIT* (1910) I L R 37 C 16 90^c

2 ——— Execution of mortgage decrees—

—Stay of sale in execution of mortgage decree—Jurisdiction of Court to stay sale—Writ on behalf of minor of fresh sale proclamation—Guardian ad litem right of—Benefit to minors—Minors entitled to impugn sale afterwards for want of fresh proclamation—Transfer of Property Act (I of 1882) s 89—CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 291 The Court has jurisdiction to order stay of a sale in execution of a mortgage decree under a 271 of the CIVIL PROCEDURE CODE 1882 *Shyamkishan v Sundar Koor* I L R 31 Calc 373 explained *Pibyan Bibi v Sucha Bewal* I L R 31 Calc 463 referred to There is no conflict between s 89 of the Transfer of Property Act and s 291 of the Code of Civil Procedure 1882 The former section is concerned with the Court's order absolute for sale the latter with the adjournment of the sale The two sections relate to different matters Even if an order of the Court is erroneous it is ordinarily not open to a party who has obtained and enjoyed the benefit of an erroneous order to turn round afterwards and ask that the order should be treated as a nullity and disregarded The guardian ad litem appointed by the Court and acting in good faith is entitled to make applications on behalf of the minor and has the power to waive the right of the minors to a fresh sale proclamation after postponement of the sale if the postponement is ensured to the benefit of the minors The minor are not entitled in such a case to impugn the sale on the ground that a fresh sale

MORTGAGE—contd**SALE OF MORTGAGED PROPERTY—contd**

proclamation was not made *BITTU BEHARI MITTA v JATINDRA NATH GHOSH* (1910)

I L R 37 Calc 847

3 ——— Attachment of sale proceeds—Mortgage decree—Sale for arrears of revenue pending suit—Where the surplus sale proceeds in the hands of the Collector of a mortgaged property sold for arrears of revenue after the preliminary decree passed in the mortgage suit was attached in execution of that decree and subsequently the decree was made absolute Held that so soon as the decree was made absolute the sum attached became available to the decree holder and to that extent the decree was satisfied at that date *Mogray Varuon v Varang Molun Thakur* I L R 33 Calc 540 *Debendra Nath v Abdul Samad* 10 C L J 100 distinguished *Gori KRISHNA MANDOL v RAM LAL MANDOL* (1910)

14 C W N 484

4 ——— Preliminary mortgage decree—

—Application for sale of mortgaged property—Limitation Act (IX of 1908) Sch I Arts 181 182 and 183—Transfer of Property Act (I of 1882) ss 83 and 89—CIVIL PROCEDURE CODE (ACT V OF 1908) O XXXIV ss 4 and 5 O XLI r 20—Party addition of a preliminary mortgage decree under s 83 of the Transfer of Property Act 1882 does not require and is not followed by any supplemental decree but only if necessary for an application for an order absolute for sale under s 83 of the Transfer of Property Act Such an application is a petition for realization by the mortgagee of his decree and is an application to enforce a judgment or decree etc within the provisions of Art 183 of the Limitation Act 1908 *Harendra Lal Poy Chowdhry v Maharan Dan* I L R 23 Calc 557 I P 28 I A 89 referred to *Madhab Mani Das v Lambert* I L R 37 Calc 796 15 C W N 437 discussed It is a question for the Court in its discretion to determine in each case whether or not it will make an order for the addition of a party as contemplated by O XLI r 20 of the Code of Civil Procedure 1908 *ANZOOK CHAND PAPRAK v SARAT CHANDER MUKERJEE* (1911) I L R 38 Calc 913

5 ——— Private sale of mortgaged property—Consideration left with purchaser for discharge of two mortgages—First mortgage alone discharged—Suit for sale by second mortgagee—Purchaser not entitled to hold up first mortgage as a shield Where a purchaser of mortgaged property undertook to discharge out of the purchase money two subsisting mortgages and in fact discharged only the earlier one Held that it was not competent to him to hold up this mortgage as a shield against the suit of the puisne mortgagee for sale *Gopal Das v Pawan Mal* I L R 10 Calc 1035 10 G referred to *MUHAMMAD SADIQ v GHUAS MUHAMMAD* (1910) I L R 33 All 101

6 ——— Purchase of mortgaged property by mortgagee application of sale proceeds to reduce the debt due of pro tanto extinguished—Mortgagee may proceed duly against other properties—Portion of equity may be released by mortgagee—Purchasers of equity of redemption position of Where a mortgagee purchased portions of the mortgaged property for a fair price without fraud or undue influence and applied the purchase money to the reduction of the debt under an agreement to that effect and it appeared that the property was

MORTGAGE—contd

SALE OF MORTGAGED PROPERTY—contd

intended to be conveyed free of the mortgage—*Held* that as between the mortgagor and the mortgagee the mortgage was not pro tanto diminished and that the debt remaining due after deducting the purchase money was chargeable on the rest of the property. The effect of the transaction must be judged by its nature, whether the sale was of the equity of redemption only or of the property freed of the mortgage. *Held* that subsequent purchase of the equity of redemption in the remaining portion of the mortgaged property and in the share of the mortgagee and still not to be having the whole mortgage debt realized by sale of the property in their hand. Where there are no other persons having a lien on the same property it is settled that as between the parties to the mortgage the mortgagee is entitled to realise a portion of the hypothecated property and release the whole lien upon the residue. A subsequent purchaser of the equity of redemption of the residue therefore cannot object to the release and require the property to be sold to contribute rateably to the satisfaction of the debt. *First Ali Hazi v. Lancha Ali (Hatterjee) (1910)*

15 C W N 800

7 ——— Purchase by mortgagee—Subsequent purchase by landlord—Mortgage encumbrance—Mortgage purchase rights of to fall back on mortgage—Sale under Bengal Tenancy Act—Ordinary Court sale its effect—Decree for sale and effect of—*Ngil Teancy Act (1111 of 1881) ss 164, 165, and 166* Where the mortgagee of a tenure purchased the mortgaged property in execution of a decree of his own mortgage and the landlord subsequently purchased the same property in execution of a rent decree but did not annul the mortgage encumbrance *Held* that the mortgage purchaser was entitled to fall back on his mortgage as a shield against the purchase by the landlord. *Alloy Kumar Soor v. Biju Chand Mahatap I L R 29 Cal 813* followed and *the obiter dictum* in the case discussed. *Bhawanji K. v. Mathura Prasad I C L J 1* referred to. *Held* further that the landlord could not oust the mortgagee from the tenure without annulling the encumbrance under s 167 of the Bengal Tenancy Act and this would be so even if the mortgagee had not proceeded to sale before the purchase of the landlord. Where the bidding for a tenure put up to auction under s 164 of the Bengal Tenancy Act did not reach the level of the decretal amount and a sale of the tenure subsequently followed but without a second proclamation as contemplated by s 16 of the same Act the sale must be held to have been an ordinary Court sale and the purchaser to have acquired only right title and interest of the judgment debtor. *Yar Mahomed Sirkar v. Qureshi Chunder Chowdhury 2 C W N 551* and *Alloy Kumar Soor v. Biju Chand Mahatap I L R 29 Cal 813* distinguished. The special provisions for the sale of tenures under the Bengal Tenancy Act are a part of the public policy intended for the benefit of all parties concerned and the results of such sales are generally destructive of various derivative rights belonging to third parties not before the Court. The provisions of the Act are therefore very stringent and if the landlord wants the special results provided for by the Act he must

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proceed strictly in accordance with its provisions. Where a suit for rent has been rightly brought against the real tenant and a decree has been obtained the decree is a good decree for rent and the tenant was recognised as such a tenant. *Lala Vener v. Sana Monee Ditta 2 B L J 334* and *Surnamoyee v. Denomath C. Surnamoye I L R 29 Cal 904* referred to. *BANJARSI KAPUR v. KRISHNA LAL SINGH EOB (1911)*

I L R 38 Cal 923

8 ——— Limitation—An application made in the 3rd July 1901 for an order at date for sale by a mortgagee who had obtained the preliminary decree on his mortgage in the High Court on the 15th December 1896 was barred by Art 167 of sch I of the Limitation Act (IX of 1908) or the corresponding article of Act XI of 1877. The application was one to enforce a judgment within that article. The meaning of the word enforce is not limited to realization by execution but may have a wider meaning. *Harendra Lal Jai Chowdhury v. Mahaswami Das I L R 29 Cal 189* referred to. *Madhub Mondal v. Jambala Lambert 15 C W N 37* distinguished. *AMOOK CHAND LATAK v. SAPAT CHANDRA MEKHEJ (1911) I L R 38 Cal 913*

16 C W N 49

9 ——— Mortgaged property sold subject to mortgage—Transfer of Property Act (IX of 1882) s 55 sub s (5) cl (1)—Endor and purchaser—Implied contract of indemnity—Seller damaged by reason of buyer not declaring mortgage debt—Suit for damages if lies—Limitation—Limitation Act (XX of 1877) Sch II Art 83—Measure of damages. Where one buys from another an equity of redemption on subject to a mortgage and merely pays for the value of that equity of redemption he contracts to protect his vendor from the obligation of the mortgage the buyer a contract with the mortgagor being that the debt should not fall upon the latter. It is a contract of indemnity and the buyer would be bound without any specific contract to indemnify the seller. *Tweedale v. Tweedale 2 Brown & P of Ch Cas 153 23 Beav 311* relied on. Where a portion of the mortgaged property was sold subject to the mortgage but the buyer having failed to pay off the mortgagee the latter sued on his mortgage and the whole of the mortgaged property was sold and the seller was disposed of the lands which had been retained by him. *Held* that a suit by the seller for damages against the buyer was governed by Art 83 of Sch II of the Limitation Act time running from the date when the seller was actually damaged at the date of disposal. The word contract in Art 83 does not mean an express contract. *Quare* Whether the deed of sale being recorded the period of limitation was that provided by Art 116. *Quare* What under the circumstances would be the proper measure of damages. *PAN PARAI SINGH v. SHEODENI SINGH (1912) 10 C W N 1040*

10 ——— Estoppel—Decree on mortgage—Decree set aside as against one mortgagor—Second suit to recover proportionate share of the debt maintainable. A mortgagor died leaving him surviving a brother two daughters and an illegitimate son. The four sons of the brother took an assignment of the mortgage from the mortgagor and brought a suit for sale

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of the mortgaged property against the children of the mortgagor and inasmuch as they were themselves owners of part of the mortgaged property framed their suit as one for the recovery of specific shares of the mortgage money from the portions of the property in the possession of each of the defendants. They obtained in this suit an *ex parte* decree which however was set aside as against one of the daughters upon the ground that she was a minor and not properly represented therein. *Held* that the plaintiffs were not precluded from maintaining a fresh suit against this defendant for the recovery of a share in the mortgage debt proportionate to her share in the property. **PASUNDI VENKATA S. MOHAMMAD ISMAIL KHAN (1912)** I L R 34 All 474

11 ————— **Chota Nagpur Tenancy Act (Beng VI of 1908) s 47—Decree for sale of property situate in Manbhum—Estoppel** After the preliminary decree on a mortgage was passed and before the final decree for sale was made the Chota Nagpur Tenancy Act 1908 was extended to Manbhum where the mortgaged property was situate. The judgment debtor having objected to the application of the decree holder for sale of the said property both Courts set aside the objection and the sale to the decree holder was thereafter confirmed. Upon appeal to the High Court *Held* that the sale was in direct contravention of the provisions of s 47 of the Chota Nagpur Tenancy Act. *Held* further that the judgment debtor cannot be estopped from bringing to the notice of the Court what the Court must be taken to know of itself that there was a distinct provision of law which prevented the sale of the property. **LAKSHMI BIRI KUTRANI & ATAL BIHARI HALDAR (1913)** I L R 40 Cal 534

12 ————— **Parties—Suit for entire mortgage money and sale of entire mortgaged property—Omission to implead certain persons interested—Decree to which plaintiffs entitled** Where a plaintiff mortgagee sued for the recovery of the whole of the mortgage money by the sale of the whole of the mortgaged property but by an oversight omitted to implead certain persons who had acquired a share in the property subsequent to the mortgage in suit it was *held* that so much of the claim should be decreed as was proportionate to the interests of the persons who were before the Court. **CANESHT LAL v CHARAN SINGH (1913)** I L R 35 All 247

13 ————— **Suit for sale against auction purchaser of mortgaged property—Evidence of admission of receipt of consideration—Estoppel** *Held* that an admission made by a mortgagor in a mortgage deed and also before the registering officer as to the receipt of consideration is admissible in evidence against the purchaser of the mortgaged property at an auction sale in execution of a money decree. **Bihari Lal v Mahdum Baksh J L P 35 All 191** followed. **Manohar Singh v Sumrita Kaur J L R 17 Ill 478** not followed. **Malomed Mo ufer Ho se v Kishore Mohan Poy J L P 20 Cal 999** referred to. *Held* also that a purchaser at auction of the right title and interest of the father also in joint family property which had been mortgaged by the father was not entitled to raise the plea that the mortgage was made

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without legal necessity so long as there was time yet for the sons to challenge the purchase. **Muhammed Mu amillullah Khan v Mithu Lal J L P 33 All 783** distinguished. **Baransi Pasi & LILADHAR (1913)** I L R 35 All 353

14 ————— **Sale of mortgaged property for any claim of mortgagee unconnected with mortgage—Civil Procedure Code (Act I of 1908) O XXXI—Transfer of Property Act (I of 1882) s 92** A mortgagee is competent under the Civil Procedure Code of 1908 to have his mortgaged property sold in satisfaction of any claim which he may have against the mortgagor though the claim may be unconnected with the mortgage. **TARAK DATI ADRIKANI & PRUDANESHWAR MITRA (1914)** I L R 42 Cal 780

15 ————— **Suit by second mortgagee—Surplus sale proceeds taken out by fourth mortgagee in execution of its decree—Third mortgagee if may sue to recover amount realized by fourth mortgagee—Civil Procedure Code (Act I of 1908) s 73 (1) proviso (c)** A second mortgagee obtained a decree on his mortgage in execution of which the property was sold and purchased by the third mortgagee. There was a surplus of sale proceeds left after satisfying the decree. The fourth mortgagee thereafter sued on his mortgage without making the third mortgagee a party and in execution of the decree obtained by him withdrew a portion of the surplus sale proceeds. The third mortgagee thereafter without seeking to put his mortgage in suit sued the fourth mortgagee to recover over the amount of the surplus sale proceeds withdrawn by the latter. *Held* that the plaintiff could not succeed on this footing. **Derhamdeo Pershad v Tara Chand J L P 33 Cal 92** referred to. Cl (c) of proviso to subs (1) of s 73 of the Civil Procedure Code does not apply to this case as the Plaintiff was not the holder of any decree. **NATHAN SAO & ANNE BESANT (1913)** 19 C W N 535

16 ————— **Purchase money "left with the purchaser for payment to the mortgagee"—Nature of this transaction—Trust** Where a mortgagor sells the mortgaged property and as it is commonly expressed leaves part of the price with the purchaser for payment to the mortgagee the transaction is merely one of sale subject to the mortgage. No trust is created in the purchaser for payment of the portion of the price left with him to the mortgagee. **JAMNA DAS & RAM AUTAR PANDE (1916)** I L R 38 All 200

17 ————— **Mortgage by two persons of two properties for a single debt—Payment by one his portion—Suit against other for the balance—Transfer of Property Act (I of 1882) s 6** There is nothing in the provisions of the Transfer of Property Act to support the view that as between a mortgagee and the holders of equity of redemption the mortgagee is bound to distribute his debt rateably on the mortgage properties. **Ari Na Nayyar v Muthuswami ayyangar J L R 21 Mad 217** followed. Where therefore the plaintiff sued the defendant one of the mortgagees for the recovery of the balance of mortgage money due under a deed of mortgage without joining the other mortgagor *Held* that the plaintiff was entitled to a decree for a sale of the plaintiff men

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tioned properties for the whole of the balance due on the mortgage **VENKATA SUBBA PEDIYI v BAGLAMMAL (1914)** **I L R 39 Mad 419**

18 ——— Mortgage by two out of three

others members of joint Hindu family—Death of an executant—Suit against other executant and the non-executing brother only as representing the deceased executant—Ex parte decree and sale in execution and purchase by mortgagee—Non-executing brother's original share if passed by the sale—Decree for joint possession if can be made—Transfer of Property Act (I) of 1882 s 41 Delivery of symbolical possession is operative against the judgment debtor who from that date becomes a trespasser and the remedy of the decree holder who has failed to get actual possession is by suit (Where A and B two out of three brothers A B and C members of a joint mitalshara family executed a mortgage of their whole property and the mortgagee on the death of A sued to enforce the mortgage against B as mortgagor and also as the legal representative of A and again C describing him only as A's legal representative Held that the decree and the sale could not affect C's original one third share in the mortgaged property since the question of the validity of the mortgage as against C who was not a party thereto could not be raised and decided in the mortgage suit That in a suit by the purchaser to recover the property C was not barred from raising the question by the doctrine of constructive *res judicata* That the plaintiff as purchaser of an undivided two thirds share in huts used as residence by a joint Hindu family could not be given a decree for joint possession regard being had to s 44 of the Transfer of Property Act That the proper course to follow is either to direct delivery of possession by partition in execution proceedings or to allow the purchaser to his remedy by a separate suit for partition **CIPRA KANTA CHAKRAPARTY v MOHINI CHANDRA ACHARYA (1916) **20 C W N 675****

19 ——— Death of judgment debtor

after decree nisi but before order absolute—Order absolute made without fringing all the legal rep = estoppel on the record—Sale in execution of decree—Title of purchaser at such sale A Hindu widow was in possession of one sixth share of her husband's estate upon a partition made among her sons (One of the sons lived jointly with her She made a mortgage of her share to raise money to pay off debt legally binding upon the estate The mortgagee brought a suit against her and obtained the decree nisi against her She then died and the one who was living jointly with her was allowed to be put on the record as her legal representative An order absolute was obtained and the shares of the widow and the son who was joint with her were sold and purchased by plaintiff When they applied for mutation of names they were opposed by the other sons They thereupon commenced the present a suit for recovery of possession Held that the order absolute having been obtained against one only out of several heirs there was not in existence any decree under which the interest of the other heirs could be sold and consequently the plaintiffs could not obtain possession **Mallurajin v Narkana I L R 5 Bom 337 distinguished KANDAY SINGH v SRIJA KUNWAR (1916)** **I L R 39 All 67**

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20 ——— Agra Tenancy Act—Mortgage comprising both fixed rate and occupancy holdings executed before the passing of the Agra Tenancy Act 1901—Suit for sale of the fixed rate holdings only A mortgage made prior to the passing of the Agra Tenancy Act 1901 comprised both occupancy and fixed rate holdings The mortgagee brought a suit for sale of the fixed rate holdings only Held that the mortgage so far as it related to the fixed rate holdings was not bad and these being distinct from the occupancy holdings the suit was maintainable **Kanhai v Tulsi 16 Indian Cases 42 and Badri Malla v Budama Mal 10 All L J 176 distinguished RAJENDRA PRASAD v PAM JATAN RAI (1917) **I L R 39 All 599****

21 ——— Second mortgage debt secured by sureties—Assignment of equity of redemption to sureties—Sub mortgage by sureties in favour of assignor—Sale of mortgaged property by prior mortgagee—Subsequent sale by sub mortgagee—Remainder of mortgaged property in existence and available for sale insufficient to satisfy sub mortgagee's debt—Application for personal decree against sub mortgagors—Civil Procedure Code (Act I of 1908) O XVIII s 11 The plaintiffs who were the mortgagees of the equity of redemption in respect of certain properties further secured their mortgage debt by a promissory note executed in their favour by two sureties on behalf of the mortgagor They subsequently assigned their equity of redemption to the sureties who executed a sub mortgage thereof in favour of the plaintiffs Some time after the plaintiffs obtained a preliminary mortgage decree which was later followed by a final decree directing that the premises charged under the mortgage or a sufficient part thereof should be sold subject to the prior mortgage In the meantime between the dates of the preliminary and final decrees the mortgagor having been adjudicated an insolvent the prior mortgagees obtained an order of the Court exercising insolvency jurisdiction that the zemindari properties included in the prior mortgage should be sold free from all incumbrances and that the balance of the sale proceeds after payment of the costs of the sale and the claim of the prior mortgagee should be retained by the Official Assignee and be paid by him in discharge of other incumbrances in accordance with their respective priorities The sale was duly carried out by the Official Assignee in pursuance of this order The amount thus realised was not sufficient to meet the debt of the prior mortgagee Subsequently in pursuance of the mortgage decree the Official Assignee put up for sale the equity of redemption in certain properties specified in the plaintiff mortgage and remaining unsold at the sale by the Official Assignee and as the amount realised at the Official Assignee's sale was not sufficient to meet the plaintiffs' debt the plaintiffs applied for and obtained a personal decree against the sub mortgagors for the amount of their claim Held that the plaintiffs' claim for a personal decree was not debarred **Per SANDERSON C J regard to the fact that all the properties which were in existence for sale at the date of the Official Assignee's sale and assuming not responsible for the properties included in the mortgage were sold (by plaintiffs of the mortgagee**

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available for sale though the sale purported to include them I think it should be taken that the provisions contained in the rules and the directions contained in the mortgage decrees as to the sale have been complied with and that the plaintiffs are entitled to the personal decree which the learned Judge has directed. *Pam Panyan Chakravarti v Indra Narain Dass I L R 33 Calc 890 and Badri Das v Inayat Khan I L R 22 All 404 distinguished Per WOODROFFE J* We must look at this matter rationally and with reference to the reason of the rule namely that the personal liability will only be enforced where there is a deficiency after the sale of all the mortgaged property available for sale at the date of sale. In other words the personal liability must not be improperly increased. *SATISH RANJAN DAS v MERCANTILE BANK OF INDIA LD (1917)*

I L R 45 Calc 702

22 ——— Decree not in accordance with s 88 Transfer of Property Act—(14 of 1882)—Sale in execution of decree—Confirmation of sale—Purchase by mortgagee at auction sale with leave of the Court—Right of redemption by mortgagor—Suit to redeem against auction purchaser—Parties—Civil Procedure Code (Act XII of 1882) s 244—Question in execution of decree In a suit to enforce a mortgage and for sale of the mortgaged property the decree made was not in accordance with the provisions of s 88 of the Transfer of Property Act (14 of 1882) no day being fixed by the Court on which payment might be made within six months from the date of declaring in Court the amount due. In execution of the decree the mortgaged property was attached sold and purchased with the leave of the Court by the mortgagee decree holder and the sale was duly confirmed. In a suit by the mortgagor for redemption of the mortgage which was one of ancestral property made by the plaintiff's father before the birth of his sons. *Held* that whether or not the decree was in accordance with the provisions of the Act the property and all the right title and interest of the defendant were in fact sold in execution of the decree of a Court which had jurisdiction to entertain the suit in which the decree was made and that decree was not appealed from and that consequently the mortgagor had no right of redemption. *Held* further that the question now raised could have been raised before the sale was confirmed and if so raised would have been determined by the Court executing the decree and that the suit was therefore barred by s 244 of the Code of Civil Procedure (Act XIV of 1882). *Prasanna Kumar Sanyal v Kali Das Sanyal I L R 19 Calc 683 I L R 19 I A 166 followed GANA PATHY MUDALIAR v KRISHNACHARIAR (1917)*

I L R 41 Mad 403

23 ——— Estoppel—Mortgaged property partly sold and partly mortgaged to persons induced by some of the mortgagees themselves to believe property to be free from encumbrance—Interests of co-mortgagees if severable—Document creating transfer of simple mortgage if compulsorily registrable—Transfer of Property Act (14 of 1882) s 54—Registration Act (XII of 1908) s 17 (b) In a mortgage suit some of the defendants were purchasers of a portion of the mortgaged property and on had taken a puisne mortgage of the remainder. It appeared that some of the plaintiff mort-

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gagees led these defendants to believe that the whole property was unencumbered. The lower Court dismissed the suit so far as these plaintiffs were concerned. *Held* that as regards the defendants who were purchasers of a portion of the mortgaged property the claim of these plaintiffs was rightly dismissed under the rule of estoppel but as regards the other defendant who was a puisne mortgagee of the remainder of the mortgaged property the effect of the estoppel under s 78 of the Transfer of Property Act was to postpone these plaintiffs in respect of their share of the original debt to this defendant and the decree should declare that the property mortgaged to this defendant hypothecated to the plaintiffs for their share of the original mortgage debt and their rights as mortgagees were postponed to those of this defendant. That co-mortgagees are presumably tenants in common of the mortgage debt and their interests are severable or partible among themselves and it was open to the Court to sever the interests of those plaintiffs who had taken no part in the deceit practised upon the purchaser from those who did and to make a decree in their favour in proportion to their interest in the debt. That a mortgage debt is immoveable property both for the purposes of s 54 of the Transfer of Property Act as also for the purposes of s 17 (b) of the Registration Act and where a mortgage including a simple mortgage is transferred by an instrument in writing and the value of the right title or interest transferred is one hundred rupees or more the writing requires registration and the absence of registration makes the document inadmissible. *SABHUDDIN SAHA v SONAULIAN SARKAR (1918)*

22 C W N 641

24 ——— Decree directing sale of other properties of judgment debtor if sale proceeds of mortgaged property insufficient—Limitation as to latter part of decree—Civil Procedure Code (Act V of 1908) s XV O 20 s 6—O XXIV r 6 Where a mortgage decree after directing that the available proceeds of the sale to be held under the decree was to be paid in satisfaction of the decretal debt but that if the amount due to the plaintiff was not satisfied by the sale of the mortgaged property the balance would be realised from other properties and the persons of the defendants. *Held* that limitation for execution of the latter part of the decree did not run from the date of the sale of the mortgaged property but from the date of the decree as fixed by O XXIV r 6 of the Civil Procedure Code. *ANILMA LOAN COMPANY v JYANENDRO NATH BOSE (1917)*

99 C W N 124

25 ——— Rights of Puisne mortgagee—Decree for sale at the instance of prior mortgagee—Right of puisne mortgagee to apply for sale in execution for amount ascertained to be due to him—Subsequent suit by puisne mortgagee for sale—s 47 Civil Procedure Code whether a bar to suit In a suit for sale by a prior mortgagee against the mortgagor and a puisne mortgagee the decree not only directed the sale of the mortgaged properties for the amount found due to the prior mortgagee but also ascertained the amount due to the puisne mortgagee and ordered the payment to him of this amount out of the surplus sale proceeds. *Held* (1) that the puisne mortgagee was not entitled to execute the decree for the amount due to him

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when no sale was held for the realization of the amount due to the prior mortgagee (ii) that the remedy of the puisne mortgagee was a suit for sale (iii) that s 41 Civil Procedure Code was no bar to the suit and (iv) that the decree in the previous suit did not operate as *res judicata*. **VEDAYASAGAN v THE MADRAS HINDU LABOUR CO LTD (1918)** **I L R 42 Mad 90**

20 — Preliminary decree containing directions as to personal liability of defendant in case mortgaged property be insufficient to satisfy decree—No mention of personal liability in final decree—Preliminary decree whether composite—Application under O XXXI r 6 of the Civil Procedure Code (Act 1 of 1903) whether maintainable. In a mortgage suit the decree for sale of the mortgaged property contained a direction that if the whole amount was not realized by the sale of the mortgaged properties for the rest of the claim if legally realizable the defendant No 1 would be liable. In the final decree there was no provision for any personal decree. Before the mortgaged properties could be sold a third party succeeded in having it declared that the mortgaged property could not be sold in execution of the decree. Thereupon the plaintiff applied under O XXXI r 6. It was contended that the preliminary decree was a composite decree and that therefore a fresh decree was not necessary. **Held** that the preliminary decree was not a composite decree allowing the decree holder to proceed against the other properties of the judgment debtor. It said that he might proceed if he were legally entitled to do so thus leaving it for future decision whether the decree holder was legally entitled to obtain such a decree. **SHANATH SHAH BANIK v MADAN MOHAN DAS (1919)**

23 C W N 924

27 — Sale for arrears of revenue—Suit on the mortgage—purchase by mortgagee—Rights of mortgage. In execution of a mortgage decree plaintiff the mortgagee himself purchased the mortgaged property and obtained formal possession. Before that suit was brought the defendants had purchased the property at a sale for arrears of revenue. That purchase was subject to the plaintiff's mortgage. Plaintiff sued for possession and the Lower Courts gave him a decree for possession in case the defendants failed to pay the amount due on the mortgage within 6 months. **Held** that the plaintiff was not entitled to a decree for possession but was entitled to have the mortgaged property put up for sale. If the defendants failed to redeem. **BALI SINGH v BHANESHWARI TEWARI** **I Pat L J 133**

28 — Subsequent sale of part of the mortgaged property—purchaser's liability to contribute to mortgage debt. Certain properties including a house were mortgaged. Subsequently the defendant purchased half of the house from the mortgagor who then conveyed the equity of redemption in respect of all the mortgaged property to the mortgagee. In a suit by the latter to enforce his mortgage by sale of the mortgaged properties **held** that having regard to the terms of s 96 of the Transfer of Property Act 1882 it was improper to order the property to be sold without fixing the proportion of the mortgage debt chargeable on the house purchased by the defendant. **MAHARAJAH LAKSHMAN SINGH v LAKSHMAN LAL PRASAD** **I Pat L J 225**

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29 — Different persons becoming interested in fragments of equity of redemption—Mortgagee not entitled to throw the burden of entire mortgage debt on a portion of the mortgaged property. The property in suit was mortgaged to plaintiff. Subsequent to the date of the mortgage M and A purchased the equity of redemption in half shares. Plaintiff sued to recover the entire mortgage debt by sale of half of the mortgaged property in the hands of M without adding A as a party to the suit. **Held** that it was contrary to the principles of equity that the plaintiff who by his own negligence had lost his remedy against the owner of half of the equity of redemption should seek to throw the whole burden of the mortgage on the owner of the other half. **Imam Ali v Baiy Yath Pann Sahu (1906) 33 Calcutta 613 at p 651 followed** **BLDNMAL KEVALCHAND v PAMAVLAD YESU (1919)**

I L P 44 Eom 223

30 — Double sale—Where plaintiff purchased a mortgaged property from the mortgagor in execution of a money decree and subsequently the mortgagee brought a suit against the original mortgagor without making the purchaser a party and in execution of the decree purchased the mortgaged property and sold it to another from whom plaintiff sought to recover. **Held** that plaintiff by virtue of his purchase acquired only a right to redeem and was not entitled to recover possession after the mortgage sale. The fact that he was left out of the suit did not vitiate the decree. **SHAKIR PALA SHARIF v ABDOY CHIRAN HEMAKAR**

25 C W N 253

31 — Suit for sale by second mortgagees making prior mortgagee a party but not attacking his title—Decree for sale—Subsequent suit by assignee of prior mortgage to enforce a mortgage against second mortgagees—Civil Procedure Code (Act 1 of 1903) s 11 Explanation II—Transfer of Property Act (15 of 1882) s 96—Res judicata. The respondents were second mortgagees of certain villages under a mortgage of April 1891 and the appellant was the assignee of the original mortgagee of the same property under a mortgage of May 1891. The respondents brought a suit (100 of 1906) to enforce their mortgage to which they made the assignor of the appellant a party but did not attack or impugn the validity or priority of his mortgage and he did not appear to defend it. In a suit by the appellant in 1907 to enforce his mortgage against the second mortgagees they contended that the mortgage deed of 1891 might and ought to have been made a ground of defence in the former suit and by the omission to do so the present suit was barred as *res judicata*. In this suit the appellant's mortgage was admittedly valid. **Held** that under these circumstances the case came within the terms of s 96 of the Transfer of Property Act and that the property could only be sold as there was no deed with the consent of the prior mortgagee who had a paramount claim out of the controversy of the suit unless his mortgage was impugned and this referred to within the plea of *res judicata* it was incumbent on the respondents to show that they sought in the former suit to displace the title of the prior mortgagee and postpone it to their own and that had not been done. The respondents, therefore, failed to establish the ends;

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tions essential to their plea *PADMA KISHORE & ANUPSHED HOSSAIN* (1919)

I L R 47 C.L.C. 662

32 ————— *Sale certificate—Conclusiveness of—in subsequent suit—Code of Civil Procedure (I of 1908) s 47* Certificates of sale are documents of title which ought not to be lightly regarded or loosely construed. Where upon a sale under a mortgage decree the purchaser has been given a sale certificate which plainly includes certain property and has been put into possession of that property, it is not open to a Court in a subsequent suit by the mortgagor's representative to hold by reference back to the mortgage deed that the property in question was not sold under the decree. The title of the purchaser can be questioned only by a petition in the execution proceedings under s 47 of the Code of Civil Procedure and not at all where that remedy is barred by limitation. Judgment of the High Court reversed. *RAMABHADRA NAIDU v KADIMITASAMI NAICKER* (1921)

I L R 44 Mad (PC) 483

33 ————— *Decree for sale and decree for balance can be made at the same time—Portion of decree payable later when proceeds of sale found insufficient—Transfer of Property Act (IV of 1882) s 90* It is not necessary to put such a construction on s 90 of the Transfer of Property Act (IV of 1882) as would establish as a condition precedent to the power of decreeing personal payment of the balance that the mortgaged property must first be sold and found insufficient to satisfy the debt. The words of the section are satisfied in cases where the Court passes a decree that on the happening of the event when the net proceeds of the sale are found to be insufficient the balance should be paid. *JESVA BAHU v PARNESWAR NARAYAN MANTRA* (1913)

I J R 47 Cal 370

34 ————— *Holder of two independent mortgages—If constitutive separate suits* There is nothing in the Civil Procedure Code or Transfer of Property Act to prevent the holder of 2 independent mortgages over the same property who is not restrained by covenant in either from obtaining a decree for sale on each in a separate suit subject to the reservation that he cannot sell the property twice over nor under the second decree subject to the first. *MILA v ASIRBAND MANDAL*

95 M W N 129

35 ————— *Mortgage extinguished by sale—Purchaser by first mortgagee—Subsequent suit by second mortgagee who was not made a party to first mortgagee's suit—Act No 21 of 1925. (Transfer of Property Act) s 89* An order made under s 89 of the Transfer of Property Act 1925 for the sale of mortgaged property has the effect of substituting the right of sale thereby conferred upon the mortgagee for his rights under the mortgage and the latter rights are extinguished. Where therefore a first mortgagee brought a suit for sale under the Transfer of Property Act on his mortgage without making a second mortgagee of the same property a party to his suit and obtained a decree for sale and purchased the property under that decree and the second mortgagee afterwards sued on his mortgage. Held the amount to be paid by the second mortgagee was to be calculated on the basis of the decree and not with regard to

MORTGAGE—contd

SALE OF MORTGAGED PROPERTY—contd

the amount due on the prior mortgage. *Het Ravi v Shada Ram I L R 40 All 407 L R 45 I A 130* followed. *Umes Chunder Sircar v Zahur Fatima I L R 18 Calc 164 L R 17 I A 901* a case decided before the Transfer of Property Act 1882 was passed distinguished on that ground. *MATRU LAL v DUEGA KUDWAR*

I L R 42 All 364

36 ————— *Prior and subsequent mortgagee's rights of inter se—Separate and independent decrees obtained by each set of mortgagees—Property sold by prior mortgagee and purchased by a third party leaving a surplus of sale proceeds—Rights of auction purchaser and puisne mortgagee* A mortgaged the same property first to B and then by two separate mortgage deeds to C and D both sued on their mortgage each party without impleading the other and obtained decrees. B's decree was executed first. The mortgaged property was sold and was purchased by K. B's mortgage was paid up and a considerable surplus remained which was deposited in court. C then endeavoured to execute his decree against the surplus sale proceeds but failed and the money was ultimately withdrawn by the mortgagor. C next proceeded with the execution of his decree against the property in the hands of K the auction purchaser and K in order to retain possession paid up the amount of B's decree. K then sued the representatives of A to recover the amount so paid. Held that in the circumstances K was entitled to a decree. *Barhamdeo Prasad v Tara Chand I L R 41 Calc 654* referred to. *KARAN SINGH v ISHTIAQ HUSAIN*

I L R 47 All 268

37 ————— *Sale by mortgagor of part of the mortgaged property—Suit for sale on mortgage without impleading the lender—Subsequent suit for redemption by auction purchaser against vendee—Decree to which plaintiff is entitled—Limitation* In 1901 A took a lease of certain property from B and as security for the due payment of the rent hypothecated two separate items of property x and y. In 1905 A sold property y to C. In 1906 the rent due to B having fallen into arrears B sued to recover it and obtained a decree from the Rent Court. In 1909 B brought a suit in a Civil Court to enforce his lien against both x and y but apparently being unaware that y had been sold did not make C a party. In this suit B obtained a decree for Rs 60,999. In 1912 properties x and y were brought to sale in execution of B's decree and purchased by him for Rs 1,000. In 1916 B sold both properties to D. In 1917 D sued C for the recovery of Rs 2,000 as representing the proportionate share of B's decree for Rs 60,999 which was attributable to property y. Held that the suit was in time and that D was entitled to recover from C the proportionate part of B's decree for Rs 60,999 (not of the amount which B had paid for the two properties) for which property y was liable. *Hajra Bibi v Shiam Narair II A L J 367* referred to. *MAHADEO RAI v BALDEO RAI*

I L R 43 All 559

38 ————— *Suit for sale on—D fence that no money was due on mortgage—Mortgagor shown to have been under influence of mortgagee an unscrupulous man who abused that influence*

MORTGAGE—contd**SALE OF MORTGAGE PROPERTY—contd**

Mortgagee put in possession of all mortgagor's property never rendered accounts—Onus of proof—Indian Trusts Act (11 of 1882) as 3 6
B a very young man leading a most immoral life mortgaged the ancestral property of his family to *A* and gave *A* possession of practically all his property which included other villages not mortgaged to *A* who sold a considerable part of the property including some of the mortgaged villages and some of the mortgaged village were purchased by *A*. Neither *A* nor the plaintiffs who claimed through *A* rendered accounts of what had been received by him from and in respect of any of the properties not even of the mortgaged properties. *B* was completely under the influence of *A* an unscrupulous man who exercised that influence regardless of the interest of *B* and his infant son who was born subsequently to the two mortgages on which *A* plaintiffs sued. Held that this was not an ordinary case of a suit for sale based on a mortgage in which it would be for the defendant the mortgagor to prove that nothing remained due under the mortgage if that was his defence and the onus lay on the plaintiffs to prove that the mortgages had not been satisfied and what if any was due under each mortgage before they could get a decree for sale. The plaintiffs having failed to prove that anything was due the suit should be dismissed. Shortly after the first of the mortgage *B* executed an agreement by which he appointed *A* manager and receiver of all his property movable and immovable for 10 years and put *A* in possession under that agreement. *A* was to keep accounts and explain them to *D* in July of each year and was to receive certain remuneration for his work. Held that the agreement did not constitute *A* a trustee within the meaning of the Indian Trusts Act. **B L P A I 24 C W N 69**

Mortgage—Equity of redemption on sale of—Purchaser retaining portion of purchase money to pay off mortgage if per small lot for the mortgage debt. A purchaser of mortgaged property who retains a portion of the purchase money in order to enable him to pay off the mortgage does not thereby become personally liable to discharge the mortgage debt. **ANNU SINGH KAMTA IRASID 20 C W N 771**

SALE OF MORTGAGEES INTEREST
 See UNDER SUB-HEADING SALE OF MORTGAGED PROPERTY

Mortgage—Decree of Court splitting up mortgagee's rights—Transfer of Property Act (11 of 1882) as 6 cl (d) analogi of The principle of the rule embodied in s 10 cl (d) of the Transfer of Property Act enabling one of several mortgagees to enforce by suit the payment of his portion of the mortgage money when the mortgagees sever their interests with the consent of the mortgagor is applicable to a case where the severance effected by a decree of Court binding on the mortgagor. **VIJAYABHUCHANAMMAL v EVALAPPA MEDALLAR (1914)**

L L R 39 Mad 17

SIMPLE MORTGAGE.

Simple mortgage—Power to create leasehold on mortgaged property—A simple mortgage in India unlike a legal mortgage in England does not arrest the mort-

MORTGAGE—contd**SIMPLE MORTGAGE—contd**

gagor's power of leasing in the ordinary course of management and the mortgagor acts within his powers in creating a temporary lease which does not impair the value or impede the operation of the mortgage. *Banee Pershad v Rati Bhunjun Singh 10 W R 375* referred to *Keech v Hall 1 Douglas 91* not applied. **BALMUNAD RUTIA v MOTI LAL BARMAN (1915) 20 C W N 350**

SUBROGATION**See SUBROGATION**

One of the mortgagees paying off the mortgage—

See LIMITATION ACT (IX of 1908) Sec 1 APT 120 1 L R 45 Bom 597

1—Presumption of intention—Intere t—Co ts if part of decree Where the kobala by which mortgaged properties were sold recited certain mortgages which were paid off out of the purchase money and the mortgage bonds were preserved by the purchaser. Held that there was a presumption of subrogation of the purchaser to the rights of the mortgagees. Held further that in order to establish right by subrogation it was not necessary for the purchaser to prove any intention or agreement to subrogate and the presumption from the circumstances would be in his favour. Where the contract rate of interest is not provided for a penalty or unconscionable the Court should not disturb. Co ts form a part of the entire decree and carry Court rate of interest. **PRAYAG NARAIN KAPRI v CREDI PAI (1910) 14 C W N 1093 note**

2—Intersumpt on of intention—Legal and equitable claim if both may be urged together The principle of subrogation is one based on a presumption of intention which may be supported by circumstances or evidence of assignment or agreement or both. Where a debt on a mortgage decree obtained by *A* was paid off by money paid by plaintiff for which the defendant executed a fresh mortgage bond at an increased rate of interest which recited the necessity for paying off the decretal debt and *A* actually mentioning one of the three mortgagees said that the property was cleared free from encumbrance. Held that the plaintiff stepped into the shoes of *A* on the ground of subrogation and had priority over the mortgagee. Subrogation by intention creates an equitable right and subrogation by agreement a legal claim. It is therefore open to a party to set up his claim on both intention and agreement. **Singh v Chandralal Singh 5 C L J 111** referred to. **Laxman Prasad v Lala Hardev Singh 6 C L J 131** referred to. **TAKA v KUNDAKAR (1910) 14 C W N 1093**

3—Transfer of mortgage—Intere t—Co ts if part of decree Where the kobala by which mortgaged properties were sold recited certain mortgages which were paid off out of the purchase money and the mortgage bonds were preserved by the purchaser. Held that there was a presumption of subrogation of the purchaser to the rights of the mortgagees. Held further that in order to establish right by subrogation it was not necessary for the purchaser to prove any intention or agreement to subrogate and the presumption from the circumstances would be in his favour. Where the contract rate of interest is not provided for a penalty or unconscionable the Court should not disturb. Co ts form a part of the entire decree and carry Court rate of interest. **PRAYAG NARAIN KAPRI v CREDI PAI (1910) 14 C W N 1093 note**

MORTGAGE—contd

SUBROGATION—contd

ceded that an application for a review of the decree if made would be heard by the Bench hearing the present appeal which arose in execution proceeding and proceeded to ascertain the rights of the parties as upon such application. If one of several joint mortgagors in order to protect his interest pays the joint debt he is placed in the position of the mortgagee in relation to his co mortgagors to the extent of their shares of the debt. But the substitution of the new creditor in place of the original one does not place the former precisely in the position of the latter for all purposes. The extent to which subrogation would be carried in any particular case must be governed by equitable considerations. In so far as any question of priority is concerned he no doubt enjoys the same advantage as the original mortgagee and is entitled to priority over subsequent mortgagees from his co mortgagors. In so far however as the amount of money which he is entitled to recover from his co mortgagors is concerned he can claim contribution only with reference to the amount actually and properly paid to effect redemption to which sum he can and his legitimate expenses. In so far as interest on these sums is concerned he cannot claim it for any period antecedent to the redemption. In regard to these matters the Court has a discretion which it will exercise with a view to secure substantial justice regardless of form. *In re Hewitt* 125 N 8 E 210 *Surjaram v Barhamjee* 30 C L J 288 *Gurdoo v Chandrikah* I L R 36 Cal 193 s.c. 50 I J 611 referred to. The doctrine that a mortgagee is not bound to accept any sum in part satisfaction of his debt and is entitled to an order absolute unless the entire amount is brought into Court for payment to him is applicable only where there is no dispute as to what amount is due. An unconditional tender of a sum which turns out in the end to be less than what is really due may be valid *pro tanto* if there is a dispute as to the amount due though a tender to a part of what was admittedly due is of no avail. *Ganga Das v Jogendra Nath* 11 C N 403 s.c. 50 C L J 315 *Ram Kamaldevari v Sukhn Singh* 7 C W 172 *Dixon v Clark* 5 C B 365 75 R P 747 referred to. Though a tender of a smaller amount than that of which an indivisible and entire claim consists may be invalid as a tender there is nothing to prevent the creditor from accepting the amount tendered in part payment and his doing so will not preclude him from afterwards claiming the residue of his account always provided that the debtor does not make it a condition of his tender that it be accepted in discharge of the whole. *Bowen v Owen* 11 Q Q B 130 75 R R 396 relied on. *Digambar Das v Harendra Narayan Pandey* (1910) 14 C W N 617

4 ————— Mortgage subrogation of—Undertaking to pay subsequent incumbrance rebuts presumption of intention to keep alive prior mortgage. Where property subject to two mortgages is sold and the purchaser who undertook to pay off both the mortgages with the purchase money discharges the prior mortgage only he cannot as against the subsequent mortgagee claim to stand in the shoes of the prior mortgagee. His right to use the prior mortgage as a shield is based on a presumed intention to keep alive the prior mortgage for his own benefit and such presumption is rebutted when he undertakes to dis-

MORTGAGE—contd

SUBROGATION—contd

charge both the mortgages. *Govindasami Tevan v Dorasami Pillai* (1910) I L R 34 Mad 119

5 ————— Mortgage sale advance of money to set aside—Mortgage in favour of lender—Sale in execution of money decree after sale set aside but before mortgage executed. Plaintiff advanced small sums of money to the mortgagor for payment to the mortgagee pending execution of a mortgage decree and the balance due to the mortgagee after sale in execution of the decree with the result that the sale was set aside. One month after the mortgagors executed a mortgage in favour of the plaintiff to secure the amounts paid by him but during this interval a portion of the property had been sold in execution of a money decree obtained against the mortgagor by the defendant and purchased by him. The sale was however not confirmed till after the plaintiff's mortgage. Held that the plaintiff cannot claim to be placed in the position of the mortgagee whose dues he discharged with respect to the property purchased by defendant. No 1 which was free from encumbrances at the time he purchased it. *Shyam Lal v Bashiruddin* I L R 23 All 778 and *Vannikalinga v Chidambaram* I L R 29 Mad 37 distinguished. The defendant No 1's title to the property accrued on the sale and not for the first time on confirmation thereof. *Bhagwan Koer v Mathura Prasad* 7 C L J 1 and *Adhur Chunder v Aghore Nath* 20 W N 589 relied on. *Prem Chand v Purnima* I L R 15 Cal 546 and *Amir Kazim v Darbari Mal* I L R 24 All 475 distinguished. *Ram Saran Singh v Kharak Singh* (1910) 15 C W N 312

6 ————— Third mortgagee advancing money for discharge of first mortgage—Application of part only towards discharge—Priority over other mortgagees to that extent. A mortgagee who advances money towards the discharge of a first mortgage on a property is entitled to priority over an intermediate mortgagee to the extent to which the money advanced by him went towards discharging the first mortgage. *Pupabas v Audumulam* I L R 11 Mad 345 followed. *Hanumanthaiyay v Veenatchi Vaidu* I L R 35 Mad 183 referred to. *SANJAY PILLAI v KRISHNA IYER* (1913) I L R 118 Mad 548

7 ————— Partial discharge of prior incumbrance—Purchaser of equity of redemption entitled to stand in the shoes of prior incumbrancer to the extent that the incumbrance has been discharged. A purchaser of the equity of redemption is entitled to stand in the shoes of a prior incumbrancer where the purchaser has with the consent of that incumbrancer partially discharged the liability. *Gurdeo Singh v Chandrika Singh* I L R 36 Cal 193 dissented from. *Chetind v Allen* 1 Ch D 553 followed. *Baroness Benlock v The River Dea Company Ld* 19 C B D 155 referred to. *UDIT NARAIN MISHRA v ASHARFI LAL* (1916) I L R 38 All 502

8 ————— Suit for recovery of mortgage money—Payment of prior mortgage debts—Subrogation—Circumstances in which intention to keep prior mortgage alive is to be inferred. On the 22nd of March 1911 one A executed two or three peshgi leases in favour of G L comprising a zamindari share in the village of Kura Mai and a house in the town of Marchra. Upon this A

MORTGAGE—contd**SUBROGATION—contd**

F brought a suit against A A and G L for specific performance of an agreement entered into by A A to mortgage to her the zamindari in Kura Mai and for a declaration that the ar : peahgi leases entered into with G L were ineffective as against her. The plaintiff obtained a decree which was upheld in appeal by the High Court and as the result a ar : peahgi lease was executed by A A in favour of A F under the order of the Court and G L's leases were declared to be void as against A F. Immediately after the execution of the ar : peahgi leases of the 22nd of March 1911 G L paid off two prior mortgages of 1907 and 1908. No reference however was made to these in the deeds of 1911 nor was there any contract between the parties to the deeds that the mortgage was to be subrogated to the benefits of the earlier securities which were to be paid off. Moreover the mortgages of 1907 and 1908 comprised other property besides that included in the deeds of 1911. Held that it was not competent to G L in a suit on his ar : peahgi leases of 1911 to set up a title under the mortgages of 1907 and 1908 and claim to recover from A F the money which he had expended in their redemption. **GULZARI LAL v. AZIZ FATIMA (1919)** I L R 41 All 372

9 ————— Prior and subsequence mortgages—Priority over intermediate mortgage—Mortgage pending execution proceedings—**Estoppel—Civil Procedure Code (Act V of 1908)** O XXI rr 13 62 66—Decision in course of execution proceedings effect of—Order by consent how far binding. As to whether a subsequent mortgage is not entitled to be subrogated to the rights of the first depends upon the question whether the property has been sold subject to the mortgage or whether mere notice of the alleged mortgage has been given in the proclamation of sale. **Inayat Singh v. Iz ut un nissa Begam** I L R 27 All 97. **Ra nachandra Joshi v. H. K. Kasseim** I L R 16 Mad 907. **Shantappa Chedambara v. Subrao Pa nachandra Yellapur** I L R 18 Bom 115. **Shib Kunwar Singh v. Sheo Prasad Singh** I L R 23 All 413. **Ganesh Morechwar Joshi v. Purushottam Balkrishna Pote** I L R 33 Bom 317 and **Jairaj Mal v. Padma Kishan** I L R 35 All 257 referred to. **KALIDAS CHALDHURI v. PRASAD KUMAR DAS (1919)** I L R 47 Cal 446

TRANSFERENCE MORTGAGES

Transferee from lender—Right of suit. A transferee mortgage can maintain a suit on the mortgage though the mortgage named in the bond is only a beneficiary and though the beneficial owner is not added as a party. **Kritibis Das v. Gopal Jiu** 19 C L J 193 and **Parameswar Dutt v. Ananda Das** I L R 37 All 113 followed. **SINGA LALLA v. GOVINDA REDDY (1917)** I L R 41 Mad 435

USUFRUCTUARY MORTGAGE

1 ————— Bombay Regulation 1 of 1877 s 71 cl 3—Usufructuary mortgage of 1869—Agreement to pay the debt after fixed period—Suit by mortgagee after the expiration of the period for the recovery of the debt by sale of mortgaged property. A usufructuary mortgage executed in the year 1869 contained the following agreement—The amount of Rs. 1700 is borrowed on the said premises. We three of us shall, after paying

MORTGAGE—contd**USUFRUCTUARY MORTGAGE—contd**

off the said amount of debt after fifteen years from this day redeem our premises. Perhaps any one of us three might within the period pay off at one time the amount of rupees according to his share, you should allow redemption of the premises proportionately after receiving the amount and you should pass a receipt for the moneys received. In the year 1900 the mortgagee having brought a suit for the recovery of the mortgage debt by sale of mortgaged property the first Court allowed the claim but the Appellate Court reversed the decree and dismissed the suit on the ground that where in the case of a usufructuary mortgage the mortgagor agrees to redeem by payment of the principal after a stated period the mortgagee has no higher or better right than he has under a simple usufructuary mortgage. Held on second appeal by the plaintiffs that the mortgage in suit was governed by cl (3) s XV of Regulation V of 1827 and there being nothing in the terms of the agreement between the parties which either expressly or by implication indicated that the property should not by means of a suit be applied in liquidation of the debt the suit would lie. The decree of the Appellate Court reversed and that of the first Court restored. **Mahadaji v. Joti** I L R 17 Bom 425 and **Ramchandra v. Tripurabas (1898)** P J 43 followed. **Shail Idra v. Abdul Pahiman** I L R 16 Bom 303. **Sadasahu v. Vyankatrao** I L R 20 Bom 296 and **Krishna v. Hari** 10 Bom L R 615 explained. **PARASHARAM v. PUTLASHIMAO (1909)** I L R 34 Bom 128

2 ————— Civil Procedure Code (Act XIV of 1889) s 963 274—Debt—Immovable property—Execution of money decree—Attachment. Where a deed of mortgage with possession provided that the mortgagee was to enjoy the profits in lieu of interest for ten years and was to be redeemed on the expiration of the term by payment of the mortgage money. Held that the document created a purely usufructuary mortgage. Held further that in the case of a usufructuary mortgage there was no debt payable by the mortgagor to the mortgagee which could be attached in execution of a money decree against the assignee of the mortgagee and that s. 208 of the Civil Procedure Code (Act XIV of 1889) was not applicable to such a case. The procedure should be by attachment under s. 204 of the Civil Procedure Code of the interest in immovable property and its sale according to the provisions of the Code. **Taraji Pholanaik v. Evi Kashi** I L R 36 Bom 305 explained. **MANILAL PATCHOD v. MOTIBHAI HIRABHAI (1911)** I L R 35 Bom 253

3 ————— Usufructuary mortgage—personal covenant to pay—Suit against mortgagor personally on usufructuary mortgage—Limitation Act 15. Sec. II Art 116. Every loan is a promise to repay and an unqualified admission of indebtedness is equivalent to an express covenant and creates a personal liability. **Kier v. Purton** 4 C L J 310 referred to. A usufructuary mortgage providing for the repayment of the mortgaged debt with interest from the rents and profits of the mortgaged property within a specified period on the expiry of which the mortgagor is to be put in possession while prescribing a mode of payment, does not create

MORTGAGE—contd**USUFUCTUARY MORTGAGE—contd**

early imply that the creditor is limited to that mode alone if it is found insufficient to satisfy the debt. There was clearly a personal obligation to pay where the document expressly provided that the debtor would be responsible for the deficiency. *Marotam v Sheo Pargash* L P 111 A 83 I L P 10 Cal 740 and *Kalla Singh v Paras Ram* L P 23 I 1 68 I L R 22 Cal 431 distinguished. *Parbati Charan v Gourinda Chandra* 4 C L J 246 referred to. A suit to recover from the debtor personally money due on a registered mortgage bond is a suit for compensation for the breach of a contract in writing registered within the meaning of Art 116 of Sch II of the Limitation Act. *Berr v Ruxton* 4 C L J 510 relied on. *Nolo Coomar v Siru Vellick* I L P 6 Cal 91 and *Huvani Ali v Haje Ali* I L P 3 All 620 referred to. *Held* on a construction of the document that the present case fell within the second division of Art 116 of Sch II of the Limitation Act. Where the mortgage bond provided that a specified sum would be paid out of the income of certain properties at prescribed times towards the satisfaction of the debt but the document gave the debtor seven years time altogether for the repayment of his loan. *Held* that it could not be held upon a construction of the document as a whole that whenever the mortgagee found it impossible to collect the sums mentioned at the appointed time there was a breach of contract and that time ran from the date of each successive breach. The intention was that the liabilities of the parties should be adjusted on the expiry of the term and time ran from that date. **PAN NARAY SINGH v ODINDRA NATH MUKERJEE** (1911) 17 C W N 369

4 ———— *Covenant to pay money due on simple mortgage before redemption of the usufructuary mortgage—Suit on simple mortgage barred by limitation—Redemption of usufructuary mortgage*. Plaintiff executed a usufructuary mortgage and later executed a simple mortgage in favour of the defendant. In the latter bond he covenanted not to redeem the usufructuary mortgage till he had paid the money due on the second bond. The present suit was brought to redeem the usufructuary mortgage at a time when if the defendant had to sue on the simple mortgage it would have been barred by limitation. *Held* that the plaintiff was entitled to redeem the first mortgage without paying money due on the second bond. **KASHI KUMAR v KASHI PAN** (1915) I L R 37 All 634

5 ———— *Construction of—Balance remaining due to mortgagee at end of term of mortgage—Allegation in plaint of wrongful acts by mortgagor by which mortgagee unsatisfied of part of his security—Transfer of Property Act (IV of 1882) ss 58, 59 and 63—Mortgage deed unaltered and not enforceable as a mortgage—Privy Council practice of—Per statement and rehearing after decision of case ex parte*. The question for determination on this appeal was whether the respondents (mortgagees) were entitled to recover from the appellant (mortgagor) the balance due on a usufructuary mortgage dated 14th April 1896 where it was alleged that they had been deprived of part of the security by the wrongful acts of the mortgagor. It had been calculated that the amount borrowed with interest would be paid off by the

MORTGAGE—contd**USUFUCTUARY MORTGAGE—contd**

rents of the properties mortgaged on 14th January 1903 when they were to be returned to the mortgagor. Both parties acted on the deed but on the date mentioned it was found that the mortgagee in possession had not by the collection of the rents received sufficient to discharge the principal of the loan with interest as mentioned in the deed. In a suit brought by the mortgagee on 13th January 1903 the deficiency was attributed in paragraphs 6 and 7 of the plaint to the facts that the defendant (mortgagor) had taken rents which should have gone to the mortgagee but which had not been paid over to him by the mortgagor and that the rents in some cases were less than the amounts mentioned in the deed and those were wrongful acts complained of. The claim was for a mortgage decree under Order XXIV r 4 of the Civil Procedure Code 1908 or in the alternative for a decree for the amount due on the footing of the personal liability of the mortgagor. In the course of the suit it appeared that the mortgage deed had not been attested and the Subordinate Judge held that it could not having regard to s 59 of the Transfer of Property Act (IV of 1882) be enforced as a mortgage which decision as it was not appealed from became final. The sole question therefore was whether the mortgagor was personally liable. The facts on which the allegations of wrongful acts by the mortgagor were based were not investigated but both Courts in India held that on the construction of the deed it imposed a personal liability on the mortgagor and they made decrees in his favour. *Held* (reversing those decisions) that the nature and terms of the deed were such as to show that it was not originally intended that the mortgagor should be personally liable. The respondent ought to be given an opportunity of proving the allegations in paragraphs 6 and 7 of the plaint and of establishing that those facts were sufficient to bring s 68 of the Transfer of Property Act into operation. The position of the mortgagor under that section could not however by reason of the deed be better than it would have been if the mortgage had been duly attested. The case was for that purpose remitted to India for further trial. After the appeal had been heard *ex parte* and judgment had been given in favour of the appellant the respondents were allowed to have it retried and reheard on the ground that the person with whom they came to an agreement to defend the appeal on their behalf and to whom they advanced funds to pay the expenses of entering appearance and taking other necessary steps in the conduct of the appeal defrauded them misappropriated the money without doing anything in the matter of the appeal and left them in complete ignorance of its progress until they discovered that there was not a word of truth in his misrepresentations and that the appeal had been decided *ex parte* against them. They had to pay the costs of the first hearing as the appellant was in no way to blame. **PAN NARAY SINGH v ANINDRA NATH MUKERJEE** (1916) I L R 44 Cal 388

MISCELLANEOUS

1 ———— *Suit to enforce earlier mortgages without joining the claim under the latest mortgage—Maintainability*. There is nothing in law to

MORTGAGE—contd**MISCELLANEOUS—contd**

prevent a person who has several mortgages over the same property from bringing a suit on the earlier mortgages without joining in that suit his claim under the latest if he does not in such a suit pray for the sale of the property subject to the latest mortgage *Keshtaram Dulatram v Panchhod Fakira* 1 L R 30 Bom 156 *Dorasan v Venkata Seshayyar* 1 C W N 814 *Bhagwan Das v Bhawan* 1 L R 26 All 14 *Nattu Krishnama Chariar v Annagaram Chariar* 1 L R 30 Mad 303 referred to *GOBINDA PRASAD v LALA HAPIHAR CHAPAN* (1910) 1 L R 113 Cal 60 14 C W N 1053

2 ——— Two mortgagees advancing money in equal shares—Discharge of debtor by one not binding on the other One of two mortgagees who have advanced the mortgage money equally cannot give a good discharge for the entire mortgage debt without the consent of or reference to his co mortgagee *Man v Ali v Mahmud unis* 1 L R 30 All 155 followed *Blup Singh v Zain ul Abidin* 1 L R 9 All 903 and *Barber v Maran v Ramana Goundin* 1 L R 30 Mad 461 distinguished *PAM CHANDRA v GOSWAMI RAJAN LAL* (1909) 1 L R 32 All 164

3 ——— Gross and culpable negligence of vendor (first mortgagee) in leaving title deeds with vendee (mortgagor)—Whether prior mortgage postponed thereby in favour of subsequent mortgage by deposit of title deeds—Search in *Pegistra* 1121 off —Constructive notice—Priority—Transfer of Property Act (II of 1882) ss 3, 18, 57 of the Transfer of Property Act makes its three ingredients fraud misrepresentation or gross negligence disjunctive and one cannot be defined in terms of the other or others They are three different kinds of conduct and are in no way co-extensive *Monindra Chandra Nandy v Troy Luckho Nath Bural* 2 C W N 750 discussed and distinguished *Walker v Linon* [1907] —Ch 104 followed Neglect to recover the title deeds by a vendor from a vendee who has secured the greater part of the purchase money to the vendor by giving him a mortgage on the property itself when the vendor has full notice that the vendee is unscrupulous and a bad paymaster and thereby the vendee is enabled to obtain a second mortgage on the property by deposit of the title deeds is gross and culpable negligence (which postpones the prior mortgagee) and is rendered more so by a deliberate suppression of the existence of the mortgage in the sale deed and a suggestion that the purchase money was required in cash and paid accordingly *Colyer v Finch* 5 H L 905 followed Registrars not being it self notice a search made by the clerk to the solicitor to the vendee (mortgagor) who has an interest to conceal the encumbrance from the second mortgagee cannot saddle the latter with notice of the encumbrance *Mad a Tailoring Company v Parola deo* 1 L R 13 Mad 353 1 L R 13 Mad 36 and *Majji Karimhas v Hoorbas* 1 L R 35 Bom 34 followed *NANDA LAL ROY v ABDUL AZIZ* (1911) 1 L R 113 Cal 1052

4 ——— Framing suit —A suit brought to enforce a mortgage against a person as the legal representative of the mortgagor cannot be thrown out as improperly framed because the defendant sets up a title paramount to that of the mortgagor in the mortgaged premises. *See* *Section*

MORTGAGE—contd**MISCELLANEOUS—contd**

Dutt v Bhuvan Mohan Mitter 1 L R 30 Cal 425 sc 3 C L J 205 distinguished *Biaya Chaudhuri v Chuni Lal Marwari* 5 C L J 90 sc 11 C W N 254 relied on *NAGAR CHANDRA KOOKDOO v RATAN MALA* (1910)

15 C W N 60

5 ——— Mortgage of sir land—Purchase of proprietary rights by mortgagee—Suit for redemption—Amount payable by mortgagor After a usufructuary mortgage of certain sir lands the mortgagee at an auction sale in execution of a simple money decree purchased the proprietary rights in the mortgaged property the mortgagor becoming an ex proprietary tenant On a suit for redemption being brought Held that the mortgagee having him self broken up the integrity of his security could not be permitted to cast the whole burden of the debt upon the ex proprietary rights *Biseshwar Dial v Jam Sarup* 1 L R 22 All 981 referred to *CHITANI LAL v SIKISHAN SINGH* (1911) 1 L R 33 All 434

6 ——— Mortgage of math properties —Math Mahant of dispute between rival chellans in succeeded to—Mortgage of math properties by chellans who established will but never got possession—Compromise chellans agreeing to manage a math properties jointly —Mortgage is valid—Onus On the death of the Mahant of a math disputes arose between two chellans one of whom succeeded in establishing a will in his favour purporting to be that of the deceased Mahant but could not get possession and the other who alleged that he had been installed by the deceased as his successor managed to obtain and keep possession of the properties of the math Pending these disputes the former executed the mortgage in suit hypothecating math properties Soon after there was a compromise between the claimants under which the survivor of the two was to be the Mahant and till the death of one of them neither was to take the place of the deceased but both should jointly manage the property and the survivor would be bound to repay loans jointly raised by the claimants No provision was made in the compromise regarding the discharge of the mortgage in suit Held that the mortgagee was aware that the property mortgaged was property of the math and that the mortgagor had not succeeded in establishing his title as Mahant and that this suit to enforce the mortgage should fail *MAHMO PRASAD v MAHANT PAMRATAN SIP* (1911) 15 C W N 838

7 ——— Suit upon a mortgage executed by Hindu widow and reversioner—Joint title of co-mortgagor as title not possible in mortgage suit In a suit upon a mortgage where it was proved that the mortgage deed had been duly executed by a Hindu widow and her reversioner it was not open to the defendant to invite the mortgagor's title nor is it permissible to the mortgagor to set up their title and join her title to be given for the plaintiffs with effect *CHANDER SHAW v JAGANNATH DAS* (1911) 15 C W N 915

8. ——— Mistake of fact —Factual error of fact by one of mortgagor not a defence to a mortgage suit *1 L R 113 Cal 1052* and *1 L R 35 Bom 34* referred to *Section* who has advanced money with the knowledge of mutual mistake of fact between the mortgagor

MORTGAGE—contd**MISCELLANEOUS—contd**

L R 37 Calc 907 and *Harendra Lal Roy Chowdhury v Hari Das Deb I L R 41 Calc 372*
I R 51 I A 110 referred to. Where the decision of the Court is void for want of jurisdiction over the subject matter of a suit it cannot operate as *res judicata* in order that a judgment may be conclusive between the parties the essential prerequisite is that it should be the judgment of a Court of competent jurisdiction under s 11 of the Civil Procedure Code. Where a Court judicially considers and adjudicates the question of its jurisdiction and decides that facts exist which are necessary to give it jurisdiction over the case the decision is conclusive till it is set aside in an appropriate proceeding. But where there has been no such adjudication the decree remains a decree without jurisdiction and cannot operate as *res judicata*. **KRISHNA KISHORE DE v ANARAYAN KSHETRI (1920)** *I L E 47 Calc 770*

17 ——— non joinder of all heirs of mortgagor—Decree for proportionate amount against defendants on record. All heirs of mortgagor not made parties—Suit if liable to be dismissed for non joinder of parties. A mortgage suit in which all the heirs of the mortgagor were not made parties had been dismissed by the lower Courts for non joinder of parties. Held that the plaintiffs were at the least entitled to a decree for a proportionate share of the mortgage money as against the defendants who were on the record. Even if it be assumed that the persons who had been left out could if joined have successfully urged the plea of limitation that would not afford a defence in favour of the persons who had been joined as parties within the prescribed time. *Imam Ali v Bajinal Ram Sahi I L R 33 Calc 613*; *c 10 C W N 551 (1906)* followed. **HAN CHANDRA ROY v MAHAMED HUSEIN** *25 C W N 584*

18 ——— Of land comprising air land by U P—Proprietor Decree for sale of property with all actual and reputed rights as detailed in the mortgage—Sale if passed air land—Act IX of 1883 s 42. A person whose proprietary rights in land comprised air land mortgaged his entire interest therein including the rights in the air land. In the decree for sale upon the mortgage the parties agreed that the properties scheduled in the decree for sale instead of including the cultivating rights in air should comprise the property with all actual and reputed rights as detailed in the mortgage. Held that in the face of the decree it was not open to the mortgagor to urge that the rights of the mortgagee to sell the air lands were taken away by the decree. **GULABSIKH I. DIWAN BARADUR BALLABUDAS (P C)** *25 C W N 938*

19 ——— Successive mortgages—Suit by first mortgagee without impleading puisne mortgagee—Purchaser at mortgage sale may set up first mortgage as shield in puisne mortgagee's suit—Puisne mortgagee's right to be placed in the same position in which he would be if he had been impleaded. Under r 10 of Or XXIV of the Civil Procedure Code (which has repealed s 89 of the Transfer of Property Act) an owner of a property who is in the right of a first mortgagee and of the original mortgagor as acquired at a sale under the first mortgage is entitled at the suit of a subsequent mortgagee who (not having been made a

MORTGAGE—contd**MISCELLANEOUS—contd**

party in the first mortgagee's suit) is not bound by the sale or the decree on which it proceeded, to set up the first mortgage as a shield. *Het Ram v Shadi Lal (1) Watru Mal v Durga Kunwar (?) and I ammalalinga Mudali v Chidambara Chetty (3)* referred to. But in such a case the puisne mortgagee (plaintiff) also is entitled to be put in the position which he would have occupied had he been made a party to the first mortgagee's suit. After two mortgages had been effected by the owner of certain properties the first mortgagee sued on his mortgage and purchased the property without impleading the second mortgagee. Later on his successor in interest executed another mortgage in favour of the plaintiff. Subsequently the second mortgagee sued on his mortgage without impleading the plaintiff and in that suit the then owners recovered from the second mortgagee the amount of the first mortgage (which they set up as a shield) but as they failed to redeem the second mortgagee the property was sold and purchased by the latter. In plaintiff's suit to enforce plaintiff's mortgage against the property in the hands of the second mortgagee. Held that the amount of the first mortgage had been wrongly taken away by the owners the same being then subject to the mortgage of the plaintiff and that therefore in this suit unless the defendant paid to the plaintiff that amount with interest plaintiff was entitled to get a decree for sale of so much of the estate as would realise that sum and for the rest on condition the plaintiff paid defendants the amount of the decree on the second mortgage. **MUSAMMAT SUKHI v MURSHI (HUFAN SADFAR KHAN)** *28 E W N 283*

MORTGAGE BOND

See ATTESTING WITNESS

I L R 48 Calc 61

See EXECUTION OF DECREE

I L R 45 Calc 580

See LIMITATION ACT (IX of 1908) SCH I

ARTS 132 to *I L R 39 Mad 981*

See MORTGAGE

See RECEIPT *I L R 42 Calc 546*

Attestation—Scribe signature and attestation by validity of—Transfer of Property Act (IV of 1882) s 59. Where no mark seal or thumb impression of the mortgagor appears on a mortgage deed the scribe who executes the document for and on behalf of the mortgagor is not competent to attest his own signature as an attesting witness. *Shamu Patter v Abdul Kadir Ranihan I L R 35 Mad 607* *L R 39 I A 218* referred to. **UPENDRA CHANDRA BHADRA v KURUM (HAND DE (1918))** *I L R 48 Calc 522*

Transfer—Absence of

notice to mortgagor—Payment to mortgagee by mortgagor after transfer without notice thereof—Payment in full settlement of debt—Effect of payment—Receipt by mortgagee necessary for registration—Registration Act (XVI of 1908) s 17 (b)—Civil Procedure Code O XXI s 33—Memorandum of objections whether necessary—Transfer of Property Act (IV of 1882) s 130 principle of Payment by the mortgagor to the mortgagee after but without notice of a transfer of the mortgage must in the absence of collusion be allowed to the mortgagor as against the transferee. Where such payment was accepted by the mortgagee in

MORTGAGE BOND—contd

full settlement of the debt due the mortgagor is entitled to get credit as against the transferee not only for what he actually paid but for the whole mortgage debt. Where a receipt by the mortgagor in terms only discharges a mortgage debt it does not fall under s 17 (b) of the Registration Act and is admissible in evidence though it was not registered. Where in a suit for sale instituted by the transferee of a mortgage bond against the mortgagee and mortgagor a decree was passed against the latter but on appeal by him the decree against him was reversed the Appellate Court had power under O XXI r 33 Civil Procedure Code to pass a decree against the mortgagee who was a respondent to the appeal even though the plaintiff had not filed an appeal or memorandum of objections. *NEELMANI PATRAIK MUSAOKI SUNDUVU BEHARU* (19-0) 1 L R 43 Mad 803

MORTGAGE BY KARNAVAN

See MORTGAGE 1 L R 37 Mad 420

MORTGAGE DEBT

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 11 47 1 L R 37 Bom 41
See TRANSFER OF PROPERTY ACT (IV OF 1952) s 90 1 L R 34 Bom 540

Mortgage debt of movable or immovable property. Under the Hindu as under English law a mortgage is treated as personal or movable property the land being considered merely a pledge or security for the money lent. *SURESH MISHRA & MOHESH PANI MISHRA* (1910) 20 C W N 142

MORTGAGE DECREE

See APPEAL 1 L R 41 Cal 418
See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 13 104

s 48 1 L R 39 Mad 570
O XXXIV 1 L R 40 Mad 989

See COURT FEES 4 Pat L J 181

See DANDA PAT FILE OF 1 L R 40 Cal 710

See DECREE 3 Pat L J 478

See EQUITABLE MORTGAGE 1 L R 53 Cal 824

See EXECUTION OF DECREE 1 L R 40 Cal 704

See INSOLVENCY 1 L R 42 Cal 72

See MORTGAGE. 1 L R 48 Cal 69

See SALE IN EXECUTION OF DECREE. 1 L R 44 Cal 524

See SPECIFIC RELIEF ACT s 12 3 Pat L J 182

decree nisi—

See DEKKHAN AGRICULTURE & PASTURE ACT (XXII OF 1879) s 13B 1 L R 42 Bom 47

When personal decree will be given

as well—

See CIVIL PROCEDURE CODE 1908 O XXXIV r 6 6 Pat L J 106

Held upon construction of the mortgage decree sought to be executed

MORTGAGE DECREE—contd

that the direction as to payment of interest at the rate stipulated in the bond up to the date of payment referred not to the date fixed by the preliminary decree for payment but to the date of actual realisation of the money. *PADHIKA MOHAN GHOSH & BROJENDRA KUMAR SAHA* 14 C W N 125

I (a) ——— Mortgage decree II also money decree and if decree holder may be allowed to execute against other property before exhausting security—CIVIL PROCEDURE CODE 1908 s 73 O XXXIV rr 5 6 and O XXI rr 10 17 13—*Transfer of Property Act (II of 1882) s 90* Where the holder of a mortgage decree applied to Court for an order to be allowed to execute the mortgage decree as a money decree by attachment of some other property or for the passing of a supplemental decree for the purpose but at the same time reserving his rights under the mortgage decree on his giving an undertaking not to take any steps as against the mortgaged property till he has exhausted the other property. *Held* that such an order could not be made having regard to O XXXIV rr 5 and 6 of the Code of Civil Procedure. *Hart's Tara Prasanna Mukherjee* 1 L R 11 Cal 718 commented on. A decree passed in a mortgage suit and directing the realization of the decretal amount from the mortgaged property and if insufficient from the defendant personally is a mortgage decree and not a money decree. *Fasil Houdadar v Krishna Handoo Poy* 1 L R 75 Cal 540 *Lal Behary Singha v Habib* 1 Pat L J 76 Cal 166 *Kartick Nath Pandey v Jugg Nath Pann Murari* 1 L R 24 Cal 295 referred to. A person who has taken a mortgage decree should not be allowed to treat it as a money decree and to execute the decree against other properties without exhausting his remedies in respect of the security under his decree. It is only after sale of the mortgage security that a decree for the balance due on the mortgage may be given if it was recoverable from the mortgagor personally and his other property and the decree may be executed as an ordinary money decree. *Copal Das v Ali Mohammed* 1 L R 10 All 6 *Raja Kishan Chakraverty v Indra Varman Das* 10 C W N 567 1 L R 33 Cal 420 referred to. *SIRJA KUMAR KAPFORMA v PRANADA SIVDAREE DEBI* (1913) 17 C W N 1069

— Application for order absolute —*Transfer of Property Act (II of 1882) s 85 and 89—Successive applications within three years of each preceding application—Last application within twelve years of decree if barred—Ind an Limit Act (II of 1905) Art 151 152 153—I claim any decree executable by me—CIVIL PROCEDURE CODE (ACT OF 1908) s 48* A decree for sale was passed in a mortgage suit on the 7th October 1911 and an application for order absolute was made on the 6th April 1904 subsequent applications were made in 1904 1910 and 1912 all within three years of the immediately preceding application. Notices were sent to the judgment-debtor in each of the applications but the latter were all dismissed without the relief prayed for being granted; the last application was made on the 1st April 1911 the judgment-debtor objected that the application was barred by limitation as more than

MORTGAGE SALE

See CONTRIBUTION 14 C W N 361

MORTGAGE SUIT

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXXIV r 1

O XXXIV r 1 L R 43 Bom 575

O XXXIV r 6 2 Pat L J 538

See COMPROMISE 1 L R 42 Calc 801

See JURISDICTION 1 L R 42 Calc 116

See RES JUDICATA 2 Pat L J 313

See MORTGAGE

See MORTGAGE DECREE

2 Pat L J 118

d cree in—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 47 O XXXIV r 10

I L R 39 Mad 488

failure of to deliver possession—

See TRANSFER OF PROPERTY ACT (IV OF 1842) ss 6b (a) AND (d) 67 68 (c)

I L R 41 Mad 259

Parties—

See CIVIL PROCEDURE CODE 1908 O XXXIV r 1

6 Pat L J 840

1 Preliminary decree

—Payment out of Court if may be proved though not certified to oppos passing of a decree absolute—

Civil Procedure Code (Act V of 1908) O XXXIV r 2

O XXXIV r 8 Payment in pursuance of a preliminary decree in a mortgage suit if not made in Court must be certified under O XXXIV r 2

failing which the Court has no discretion except to follow the statutory form of the decree when no payment has been made into Court as mentioned in O XXXIV r 5 unless there has been adjustment made under O XXXIV r 2 of the Civil Procedure Code PIRAN BIBI v JITHAPPA MONTU MUKHERJI (1917)

21 C W N 920

2 Plea of payment—

Onu nature of—Evidence Act (I of 1872) s 114—

Shifting of onus—Trial Judge's estimate of testimony value of in doubtful cases In a suit to enforce a mortgage bond in which the defence sought to prove that the debt had been discharged by payments endorsed on the bond, the trial Court on a review of the evidence held that the endorsements were fictitious and decided in favour of the plaintiff but the High Court on appeal was of opinion that the plaintiffs had failed to discharge the burden which rested on him to prove his case and dismissed the suit Held by the Judicial Committee that though the initial burden of proof rests on the appellant in such a case as this both on general grounds and by reason of the provisions of s 114 of the Evidence Act this burden is one which shifts easily as the evidence developed and their Lordships did not attach much importance in this case to the question on whom the initial onus lay That the evidence in this litigation taken as a whole was of such a character and so full of doubtful statements that it could only be weighed adequately by the Judge who had seen the witnesses and the balance of probabilities in this case also being in their Lordships' opinion on the side of the conclusion reached by the trial Judge the judgment of the High Court was reversed and that of the trial Judge was restored JAYDAL LAL v BEGANI (1915)

22 C W N 937

MORTGAGE SUIT—contd**3 Mortgagee related**

to mortgagor—Bond executed in consequence of mortgage becoming aware of the demand by another creditor of mortgagor for repayment of his dues—Mortgage bond whether fraudulent Where the defendants Nos 1 to 3 executed a mortgage bond in favour of the plaintiff for Rs 16 000 due to the latter in consequence of the latter having come to know that defendant No 4 another creditor of the defendants Nos 1 to 3 was pressing for payment and thereafter defendant No 4 obtaining a decree against defendants Nos 1 to 3 purchased the mortgage properties and then the plaintiff brought the present suit to enforce the security whereas the defendant No 4 contended that the mortgage was fraudulent Held that because the plaintiff was related to defendant No 2 and was aware of the fact that defendant No 4 was demanding his dues from defendants Nos 1 to 3 and was bringing pressure to bear upon them was no reason why the plaintiff should not require the defendants Nos 1 to 3 to secure the repayment of the money due to him RASH MOHAM SHAH v KRISTODIS RAY (1918)

22 C W N 982

4 On bond executedby defendants Nos 1 and 2 for selves as executors and as certificated guardians of defendants Nos 3 to 6—No permission obtained from Court to mortgage—Intention of testator to pay off his debts by sale of his properties and not by another mortgage—Defendants Nos 1 and 2 whether bound by the mortgage bond—Power of the *Larta* of a joint Hindu family as guardian of minors appointed under Guardians and Wards Act (VIII of 1890)—Whether the adult male member of a joint Hindu family entitled to borrow what he thinks necessary for the joint family In a suit upon a mortgage bond executed by defendants Nos 1 and 2 for selves as executors to the estate of their father and as certificated guardians of their four minor brothers defendants Nos 3 to 6 it was contended on behalf of defendants Nos 3 to 6 that they were minors at the date of the mortgage bond that the defendants Nos 1 and 2 did not obtain sanction of the Court for the mortgage and that therefore the mortgage was not binding upon them Held that the intention of the testator being that his debts should be paid off by sale of the two mahals and not by another mortgage there was an implied restriction on the power of the defendants Nos 1 and 2 to mortgage the property There being no permission of the Court the defendants Nos 1 and 2 had no power to mortgage as executors under the will That if the *Larta* of a joint Hindu family chooses to apply under Act VIII of 1890 for being appointed as guardian of a minor and has been appointed as such guardian he comes under the control of the Court and cannot exercise the power of a *Larta* to mortgage without previous sanction of the Court Held that the defendants Nos 1 and 2 as adult male members of a joint Hindu family were entitled to borrow what they considered necessary for joint family expenses provided the minors had been actually benefited by money borrowed UPENDRO NATH DAS v SHRI KUMARI DEBI (1916)

22 C W N 634

5 Suit for redemption

not a party to the mortgage suit against purchaser at the Mortgage suit—Mortgage—Suit for declaration of title and recovery of possession by the purchaser of equity of redemption was not the

MORTGAGE SUIT—contd

purchaser at the mortgage sale if maintainable when plaintiff not a party to the mortgage suit— Such suit allowed to be framed as a suit for redemption. Where the plaintiff purchased a mortgaged property from the mortgagor in execution of a money decree and subsequently the mortgagee brought a suit against the original mortgagor without making the purchaser a party and in execution of the mortgage decree purchased the mortgaged property and then sold it to another from whom the plaintiff sought to recover possession of the mortgaged property on declaration of his title. *Held* that the plaintiff by virtue of his purchase acquired only the right to redeem the mortgage and was not entitled to recovery of possession of the mortgaged property after the mortgage sale had taken place. The fact that he was left out of the mortgage suit did not nullify the mortgage decree but left unaffected his right to redeem and he was entitled to possession upon redemption. It was not necessary for the mortgagee to sue again on his mortgage and he was not bound to deliver up possession to the plaintiff till the redemption of the mortgage. The case was remanded to the District Judge so that a decree might be made in favour of the plaintiff as if it was framed as a suit for redemption. **SHEIKH KALU SHARIF v. AFRAY CHABAN KARPOKAE** 25 C W N 253

6. — *All heirs of mortgagor not made parties effect of a mortgage suit in which all the heirs of the mortgagor were not made parties had been dismissed by the Lower Court for non joinder of parties.* *Held* that the plaintiffs were at the least entitled to a decree for proportionate share of the mortgage money as against the defendants who were on the record. Even if it had been assumed that the persons who had been left out could if joined have successfully urged the plea of limitation that would not afford a defence in favour of the persons who had been joined as parties within the prescribed time. **HARCHANDRA ROY v. MAHAMED HUSSEIN** 25 C W N 594

7. — *Second mortgagee not made party to suit by first mortgagee—First mortgagee a purchaser of mortgaged property on foot of mortgage contract or amount decreed.* An order under s 80 of the Transfer of Property Act 1882 for the sale of the mortgaged property has the effect of substituting the right of sale thereby conferred upon the mortgagee for the right under the mortgage and the latter rights are extinguished. Where a first mortgagee obtained a decree for sale upon his mortgage in a suit in which he did not make the second mortgagee a party and purchased the property at such sale. *Held* in a suit by the second mortgagee upon his mortgage that the first mortgagee purchaser had no greater rights than any stranger would have had who had purchased the property under the mortgage decree and paid cash for it and the latter was entitled to set up only the amount of the decree made in his suit. **LALA MATHU MAL v. MUSAMMAT DURG A KUMAR** 25 C W N 397

8. — *Claim of title adverse to mortgagor by representative of deceased mortgagor.* Substituted on record—If should be entertained. *Held* that such a plea could not be entertained without altering the scope of the suit and should be tried by separate suit. **KALIDAS POY v. GIRINDRA MOHAR BAK HI** 25 C W N 192

MORTGAGE SUIT—contd

9. — *Separate suits by holder of independent mortgages over same property to obtain separate decree for sale on each—Mortgage—Holder of two independent mortgages over same property if can institute separate suits to obtain a separate decree for sale on each of them—Civil Procedure Code (Act 1 of 1908) Or II r 2 (1)—s 11 Ex p 4—Transfer of Property Act (1 of 1882) s 61—Decrees made in such suits how to be given effect to.* There is nothing in the Code of Civil Procedure or in the Transfer of Property Act to prevent the holder of two independent mortgages over the same property who is not restrained by any covenant in either of them from obtaining a decree for sale on each of them in a separate suit subject however to the reservation that he cannot sell the property twice over nor sell it under the second decree subject to the first. The right course to follow in such circumstances is to direct that the property be sold free of both charges whether in execution of the decree on the first mortgage or of the decree on the second mortgage and that the balance of the sale proceeds after payment of incidental expenses be applied in discharge of the dues on the first mortgage and the second mortgage one after the other the residue if any to stand to the credit of the holder of the equity of redemption. **BELU v. ASIRBADI MANDAL** 25 C W N 129

10. — *After the hypothecated property was sold in execution of a decree for money the mortgagee instituted a suit for the realisation of his dues against the mortgagor as also the purchasers of the equity of redemption.* The latter contested the claim on the ground that the mortgage bond was not a bona fide document and was not properly executed. *Held* that if an action to enforce a mortgage security is contested by the mortgagor and execution is admitted by or proved against him the onus lies upon him to prove that the recital as to the payment of consideration for the deed which he executed is untrue. **KRISHNA KUMAR DE v. SREENATH RAOPANDITANATHA (HONDWILLI)** 25 C W N 842

11. — *Mortgage suit—Mortgagor's estate taken over by Court of Wards after preliminary decree—Decree absolute for sale paid against Court of Wards preventing the mortgagor—Plea of estate thereafter—Release not shown to have had retrospective operation—Refusal of Government to produce correspondence leading to release—Decree absolute if so and mortgagor.* A preliminary decree was made in a suit for sale of mortgaged properties on 1st June 1910. On 21st July 1910 the Court of Wards declared the mortgagor a disqualified proprietor and assumed superintendence of his estate under United Provinces Act IV of 1910. On 21st February 1916 a decree absolute for sale was passed again by the Court of Wards representing the mortgagor on the application of the mortgagee. On 19th September 1917 the estate of the mortgagor was released from the superintendence of the Court of Wards and an order of the Local Government which was made under the direction of the Central Government for reasons of State. The correspondence which passed between the two Governments upon the matter was not produced and its production could not be compelled by Court. *Held* that since the Local Government acted within its powers in putting the Court of Wards in charge of the mort-

MORTGAGE SUIT—contd

gagor's estate and it could not be presumed until the contrary was shown that the order of release operated retrospectively. That the Court in India was therefore right in holding that the decree absolute bound the mortgagor. **NARINDRA BHADUR SINGH v THE OUDH COMMERCIAL BANK** (P C) 26 C W N 326

MORTGAGED PROPERTY

See MORTGAGE

See SALE IN EXECUTION OF DECREE.]

sale of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 73 101

I L R 39 Mad 570

See MORTGAGE I L R 38 Cal 913

MORTGAGEE

See ADVERSE POSSESSION

I L R 44 Cal 425

See CIVIL PROCEDURE CODES 1882 s 317 1908 s 66

I L R 35 Bom 342

See COMPANY I L R 47 Cal 901

See DECREE I L R 34 Bom 260

See DEKKAN AGRICULTURISTS RELIEF ACT (XVII OF 1879)

I L R 40 Bom 483

See LIMITATION ACT (IX OF 1908) SCH. I

ARTS 132 75 I L R 39 Mad 981

See MORTGAGE I L R 38 Mad 548

See NORTH WESTERN PROVINCES PEST ACT (VII OF 1881)

I L R 37 All 444

See PUISNE MORTGAGEE

I L R 40 Mad 77

See RECEIVER I L R 47 Cal 418

See TRANSFER OF PROPERTY ACT (IV OF 1882)—

ss 60 AND 61 I L R 38 Mad 667

s 67 I L R 40 Mad 77

s 73 14 C W N 186

s 83 I L R 39 Mad 579

s 101 I L R 38 Bom 369

dispossession of—

See USUFRUCTUARY MORTGAGE.

I L R 38 Mad 903

in possession—

See MORTGAGE I L R 38 All 411

See SALE FOR ARREARS OF REVENUE.

I L R 44 Cal 573

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 60 AND 61

I L R 38 Mad 310

Position of when different persons become entitled to different positions of equity of redemption—

See MORTGAGE I L R 47 Cal 223

MORTGAGEE—contd

holding two mortgages—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 61 83 AND 99

I L R 38 Mad 927

if a creditor—

See MORTGAGE BY MORTGAGEE

I L R 38 Mad 1071

prior and subsequent—

See CIVIL PROCEDURE CODE 1882 s 317

I L R 33 All 382

See MORTGAGE

I L R 33 All 388 370

purchase by—

See MORTGAGE

See SALE FOR ARREARS OF REVENUE.

I L P 40 Cal 89

right of to redeem property—

See MORTGAGE I L R 41 Mad 403

right of to sue for sale—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 58 (a) AND (d) 67 68 (c)

I L R 41 Mad 259

right of, to an order for sale—

See TRANSFER OF PROPERTY ACT s 67

I L R 34 Bom 482

right of to exonerate—

See MORTGAGE I L R 40 Mad 968

right of to pay rent—

See MORTGAGE I L R 44 Cal 448

suit for possession by—

See DEKKAN AGRICULTURISTS RELIEF ACT (XVII OF 1879)

I L R 35 Bom 204

title of—

See REGISTRATION

I L R 41 Cal 972

to remain in possession as long as fruit trees on the land—whether a clog or redemption—

See TRANSFER OF PROPERTY ACT 1882 s 60

I L R 45 Bom 117

whether a Hindu widow—

See HINDU LAW I L R 45 Bom 105

with possession right of, to recover

rent—

See MADRAS LOCAL BOARDS ACT (V OF 1854) s 73

I L R 39 Mad 269

1. Leasehold property—

Mortgagee is entitled to pay rent in preserve property from being lost. The mortgagee is entitled to preserve mortgaged property from being lost for non payment of rent. Where rent is thus paid after the preliminary decree and before the final decree the money paid for rent should in the final decree be added to the mortgage money found due in the preliminary decree. **ALLAHABAD BANK Ltd v MATI LAL BARMAN** (1916)

I L R 44 Cal 446

2. Right of mortgagee to

and trespasser—Transfer of Property Act (IV OF 1882) s 63. The provisions of 63 of the Transfer of Property Act 1882 are designed for the purpose of indemnifying a mortgagee against any disturbance of his enjoyment of the property. They are provisions of an enabling nature but they do not

MORTGAGEE—contd

preclude a mortgagee who has been disturbed by a person claiming without title from suing the trespasser according to the general law and claiming as against him a declaration of title and recovery of possession. There is nothing in the law to debar a mortgagee from asserting his right against a trespasser alone without claiming the indemnity which s 69 empowers him to claim from the mortgagor. *BECHU SAHU v ARJUN SAHU*

3 Pat L J 162

3 ————— A prior mortgagee has a paramount claim outside the controversy of a suit on a subsequent mortgage unless his mortgage is impugned. *RADHA KISHOR v KHURSHED HOSSEIN*

25 C W N 417

MORTGAGOR

See ADVERSE POSSESSION

I L R 44 Cal 425

See MORTGAGE

————— dispossession of after mortgage—

See ADVERSE POSSESSION

I L R 39 Mad 811

————— In possession duty of, to pay public charges—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 65 (c)

I L R 39 Mad 959

————— personal execution against—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 73 100

I L R 39 Mad 570

————— redemption suit by—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) ss 366 371

I L R 40 Bom 248

MORTGAGOR AND MORTGAGEE

See ADVERSE POSSESSION

I L R 37 Mad 545

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 11 47

I L R 39 Bom 41

See LIMITATION I L R 46 Cal 111

See LIMITATION ACT 1908 s 19

I L R 45 Bom 934

See MORTGAGE

See TITLE I L R 37 Cal 239

————— Mortgagor retaining possession of mortgaged property and a rent note executed to mortgagee—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 47 D XXXIV s 14

I L R 45 Bom 174

————— Tenant under a mortgagee—Adverse possession against mortgagee—

See ADVERSE POSSESSION

I L R 45 Bom 661

————— Subsequent mortgagee redeeming prior mortgagee—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 74 I L R 45 Bom 1112

I L R 45 Bom 1112

1 ————— Suit to redeem—Decree obtained by mortgagee for a claim independent of

MORTGAGOR AND MORTGAGEE—contd

the mortgage—Mortgagee purchasing the equity of redemption in execution of the decree—Leave to bid not obtained—Irregularity of practice—Sale not a nullity In 1888 plaintiffs mortgaged the property in suit with possession to defendant No 1 In 1897 the defendant brought a suit against the mortgagor for a claim independent of the mortgage and in execution of the decree obtained therein the equity of redemption was sold and purchased *benami* by the defendant In 1913 the plaintiffs sued to redeem and recover the property The trial Court held that the purchase by the defendant mortgagee was valid until it was set aside and not having been set aside in execution proceedings was binding upon the plaintiffs The lower Appellate Court reversed the decree holding that the mortgagee purchased the property without leave to bid and therefore the mortgagor could disregard the sale and redeem On appeal to the High Court *Held* reversing the decree that the disregard of the statutory provision that leave to bid should be obtained by a judgment creditor was a mere irregularity of practice and was not a fundamental breach of trust which nullified the apparent effect of the Court sale *GANESH NARAIN v GOPAL VISINU* (1916)

I L R 41 Bom 357

2 ————— Redemption—Lasting improvements made by mortgagee—Right to recover costs of improvements—Transfer of Property Act (IV of 1882) ss 63 72 and 76 In a redemption suit a mortgagee is entitled to recover from his mortgagor the reasonable and proper costs incurred in making lasting improvements *HENDERSON v ASHWOOD* [1894] A C 150 approved *PER VARTY J*—In allowing costs of improvements the Court must naturally be on its guard against extravagant or unfounded claims It should inquire strictly into the *bona fides* and fairness of the claim in each particular case *NIJALIN GAFFA v CHANBASAWA* (1916)

I L R 43 Bom 111

3 ————— Mortgage with possession—Profits to be enjoyed in lieu of interest—Amount to be realized by sale of property—Suit to recover amount with interest by sale of property—Interest cannot be allowed—Transfer of Property Act (II of 1882) ss 53 67 and 68 The property in suit was mortgaged with possession to the plaintiff Under the terms of the mortgage the profits were to be enjoyed in lieu of interest and if after the stipulated period the principal amount was not paid it was to be recovered without interest by sale of the mortgaged property The plaintiff never got possession of the property After the stipulated period he sued to recover the principal amount and interest from the date of the mortgage to the date of suit by sale of the mortgaged property *Held* that the plaintiff was entitled only to recover the principal amount by sale of the mortgaged property as under the terms of the mortgage bond the property was a security only for the amount borrowed and not for interest There is nothing in ss 53 67, and 68 of the Transfer of Property Act which enables a mortgagee to make a claim to interest which is not given to him by the mortgage bond. *MANICKCHAND MAGANCHAND v RANGAPPA KOTRAPPA* (1920)

I L R 45 Bom 523

MORTGAGOR AND MORTGAGEE—concl'd

4 ————— Discharge of debt—Oral arrangement—Mortgagee in possession as full owner for more than twelve years after arrangement for discharge of debt—Suit by mortgagor after twelve years to redeem—Bar—Adverse possession of mortgagee—Proof of nature of possession Where under an oral arrangement between the mortgagor and the usufructuary mortgagee the latter retained possession of a portion of the mortgaged property in full ownership in satisfaction of the mortgage debt and enjoyed it as full owner for more than twelve years after the arrangement on a suit being instituted by the mortgagor to redeem the property more than twelve years after the arrangement. *Held* that the mortgagee had acquired by adverse possession an absolute title to the property and that the mortgagor's right to redeem the property was barred by limitation. *Usman Khan v Dazanna* (1914) 1 I R 37 Vol 545 *Coimbatore v Mulla* 1 P A No 20 of 1915 (unreported) and *Varada Pillai v Jeeravathammal* (1910) 1 I R 43 Mad 244 (P C) followed. *Ariya puthira v Muthulomaranam* (1911) 1 I R 37 Mad 423 dissented from. *Kandasami Pillai v Chinnappa* (1911) 1 I R 44 Mad 253

MOSQUE

See MAHOMEDAN LAW—PARDONMENT
1 I R 43 Cal 1085

See MAHOMEDAN LAW—MUTAWALLI
1 I R 38 Mad 491

See MAHOMEDAN LAW—PELIGIOUS OFFICE

See SUMMARY SETTLEMENT ACT (BOM ACT VII of 1863)
1 I R 43 Bom 583

Mosque property suit for—*Jente of Court—Civil Procedure Code* (Act I of 1908) O I r 8—Failure to obtain permission before institution of the suit—Its effect—Objection for want of such permission is fatal to the suit. There is no doubt that the proper course is to obtain permission under O I r 8 before the suit is instituted but there is nothing in the rule to show that if it is not so done it cannot be granted afterwards. The mere fact that the leave of the Court was not obtained before the institution of the suit should not result in the dismissal of the suit. Permission under O I r 8 can be granted subsequent to the filing of the suit. The objection under s 30 of the old Civil Procedure Code which corresponds with O I r 8 of the present Code is not one affecting the jurisdiction of the Court. *Pernale v Rodrigues* 1 I R 21 Bom 784 *Chennu Venon v Krishnan* 1 I R 25 Vol 329 *Srinivasa Chariar v Faghara Chariar* 1 I R 23 Mad 28 *Baidro Bharti v Dir Gur* 1 I R 2 All 269 followed. *Jan Ali v Pam Vath Kundul* 1 I R 8 Cal 37 *Lutfunnissa Bibi v Narayan Bibi* 1 I R 11 Cal 33 referred to. *Oriental Bank Corporation v Gobind Lal* 1 I R 9 Cal 604 dissented from. *Dhyanput Singh v Paresi Dass Singh* 1 I R 21 Cal 180 distinguished. *Ahmed Ali v Abdul Majid* (1916) 1 I R 44 Cal 258

MOTHER

————— power of to alienate minor's property—

See MAHOMEDAN LAW—MARRIAGE
1 I R 45 Cal 878

MOTHER—concl'd

————— power of to refer dispute to arbitration—
See MAHOMEDAN LAW—GLADIAN

1 I R 47 Cal 713

————— removal by—
See KIDNAPPING 1 I R 41 Cal 714

MOTOR VEHICLES

See CONTRACT FOR SALE
1 I R 45 Cal 481

See MOTOR VEHICLES ACT

See NEGLIGENCE 1 I R 38 Bom 552

————— in Madras—
See MADRAS MOTOR VEHICLES ACT 1907

————— liability of owner of—
See LICENSEE 1 I R 38 Bom 552

————— Liability of owner for the acts of his driver—*Bengal Motor and Cycle Act* (III of 1903) s 3 and 4—Use of motor car with permission of the owner to convey his friends in his absence—*Rules* 20 The owner of a motor car who expressly or impliedly permits his car to be used or driven by his servant is if it is so used or driven as to contravene rule 20 of the rules framed under the Bengal Motor Car and Cycle Act (III of 1903) himself liable therefor under r 4 and s 4 of the Act though he was not in the car at the time and had given his servant general directions to observe the regulation speed unless the latter has used it improperly for his own purposes. *Somer et v Wade* (1914) 1 Q B 574 *Somer et v Hart* 12 Q B D 360 *Collman v Mills* 66 L J Q B 170 and *Commissioner of Police v Cartman* [1906] 1 Q B 645 referred to. *Thornton v Emperor* (1911) 1 I R 38 Cal 415

2 ————— Motor vehicles Act (VIII of 1914)—Rules framed thereunder by Governor in Council—rr 3 and 19—Liability of owner of taxi-cab for rash and negligent driving by his servant. The owner of a motor vehicle is liable under Part II s 3 of the rules framed by the Governor in Council under s 11 of the Indian Motor Vehicles Act (VIII of 1914) for breach of s 19 by his licensed driver. Where the driver of a taxi cab negligently drove the same into a drain causing injury to the passenger in the car. *Held* that the owner of the taxi cab was liable to prosecution and punishment under s 10 of the Act read with the aforesaid rr 3 and 19 for the act of his driver. *Thornton v Emperor* 1 I R 38 Cal 415 followed. *Baidya Nath Bose v Emperor* (1917) 1 I R 45 Cal 430

3 ————— Motor car if a carriage within the meaning of the by-law—*Bye law* if repealed by implication by a framed under s 11 sub s 2 (f) and (g) of the Indian Motor Vehicles Act. The petitioner was convicted under the law No 10 framed under cl (18) of s 59 of the Calcutta Municipal Act on the finding that a motor car belonging to him was left in a public street unattended. *Held* that carriage as defined in cl 3 of s 3 of the Calcutta Municipal Act means any wheeled vehicle with springs or other appliances acting as spring and a motor car is clearly such a conveyance and is therefore a carriage within the meaning of Bye law No 10. That there is no repugnance between the bye law in question and s 24 framed under s 11 sub sec 2 cl (1) and (i) of the Indian Motor Vehicles Act 1914

MOTOR VEHICLES—con d

and the former has not been repealed by implication by the latter. *Held* as to the contention that the Rule must be taken to have repealed the bye law because the punishment which may be inflicted for contravention of the two provisions are not identical.—That the principle recognised in *Henderson v. Sterner* 11 C.B. 618 (1873) and *Attorney General v. Lord* 9 M. & L. 8 (1841) namely that where the punishment or penalty is altered in degree but not in kind the later provision is considered as superseding the earlier one has no application because the offences are not identical. **THE MANAGER INDIAN MOTOR TAXI CAB CO. LTD. v. CORPORATION OF CALCUTTA** 25 C.W.N. 21

MOTOR VEHICLE ACT (VIII OF 1914)

Ss 3-19—

See **MOTOR VEHICLES**

I L R 45 Calc 430

— ss 8 and 11—Driving licence—Obligation on owner of license to carry it about with him. *Held* on a construction of s 8 of the Indian Motor Vehicle Act 1914 that the implication of the section is that the driver of a motor vehicle must carry his driving licence about with him so as to be able to produce it there and then when its production is demanded by a police officer. **EMPEROR v. MADAN MOHAN NATH RAJNA**

I L R 43 All 126

— s 11—

Held that there was no repugnancy between bye law 10 framed under s 559 (8) of the Calcutta Municipal Act r 24 under this section and the former has not been repealed by the latter. **THE MANAGER INDIAN MOTOR TAXI CAB CO. LTD. v. CORPORATION OF CALCUTTA** 25 C.W.N. 21

MOURASI MOKURARI KABULIYAT

— Stipulation in for payment of rent partly in cash and partly in kind with statement of the money value of the portion payable in kind and declaring the total rent as the amount made up by the two—Rent if to be taken and fixed in perpetuity at such amount. *See Rent* **ASHUTOSH MUKHOPADHYA v. HARAN CHANDRA MUKHERJEE** (1919) 23 C.W.N. 1021

— Mourasimokurari is creating a heritable and transferable tenancy at a fixed rate of rent.—Agreement by successors in interest to pay an enhanced rate of rent if destroys the character of the original tenancy or creates a new tenancy.—Votation of contract. Where a mourasimokurari has created a transferable permanent and heritable tenancy at a rate of rent fixed in perpetuity and the successors in interest of the tenant by an agreement consented to pay rent at an enhanced rate and a decree for rent was obtained by consent on this basis. *Held* that the circumstance that one of the terms of the lease was altered by agreement of parties namely that the rent originally fixed was increased did not destroy the tenancy. It cannot be said that there was a supersession of the original tenancy or that there was a novation of contract. The consent decree for rent at an enhanced rate did not give the tenant a fresh start in all respects nor did the alteration of rent necessarily destroy the transferable character of the tenancy. *Smil*.—Though the enhancement was made by consent of the parties the

MOURASI MOKURARI KABULIYAT—contd

enhancement should be deemed to have been made subject to the original agreement if the rent was not enhanceable. **JINATH GHOSH v. SURESH NATH DAS** 28 W.N. 657

MOVEABLE PROPERTYSee **ATTACHMENT BEFORE JUDGMENT**

I L R 46 Calc 717

See **HINDU LAW—WIDOW**

I L R 48 Calc 100

See **MORTGAGE** I L R 38 Mad 16

— attachment of—

See **JURISDICTION** I L R 46 Calc 520See **SANCTION FOR PROSECUTION**

I L R 47 Calc 741

— hypothecation of—

See **ADMINISTRATION**

I L R 45 Calc 653

See **MORTGAGE (MOVEABLE)**

I L R 1 Lah 422

— suit to recover—

See **PRESIDENCY SMALL CAUSE COURTS**

ACT (XV OF 1882) s 19 CL (5)

I L R 37 Mad 219

— transfer of—

See **DECREE ASSIGNMENT OF**

I L R 37 Mad 227

— wrongful seizure of—

See **LIMITATION ACT (IX OF 1908) SCH.**

I ARTS 29 (2) AND 120

I L R 38 Mad 972

MUAFISee **AGRA TENANCY ACT (II OF 1901)**

s 150 I L R 40 All 658

s 154 158 I L R 40 All 60

s 154 177 I L R 41 All 318

s 158 I L R 39 All 689

s 153 167 I L R 41 All 37

See **PRE-EMPTION** I L R 38 All 260**MUAFIDAR**

— mortgage by—

See **N.W.P. AND OTHER LAND REVENUE**

ACT (XIX OF 1873) ss 146 148 167

I L R 35 All 190

MUKHTEARSee **LEGAL PRACTITIONERS ACT 1879**

s 12 14 I L R 40 All 1073

s 13 I L R 42 All 28

s 14 I L R 41 All 269

See **LIMITATION ACT 1908** s 5 Sch 1

Art 44 I L R 38 Bom 94

See **LEADER**

1 — Application for reinstatement after a lapse of years.—Dismissal from the roll on conviction of an offence implying moral turpitude.—Deliberate omission to disclose the facts of enhancement of sentence and of an order directing his pronouncement for making a false affidavit.—Power of the High Court to reinstate a legal practitioner after disbarment.—Grounds of reinstatement.—The High Court has power when a legal practitioner has been dismissed for misconduct of any description in the widest sense of the term to re-admit him after a lapse of time if he satisfies the Court that he has in the interval conducted

MUKHTAR—contd

himself honourably and that no objection remains as to his character and capacity *King v Greenwood I W Black 222 Anonymous Case 17 Beav 475*. In re Smith unreported cited in 17 Beav 477. In re Robins 34 L J Q B 121. In re Pyke I New Pr Ct Ga 330. In re Pyke 6 B & S 703 40 L J Q B 121. In re Pyke 34 L J Q B 230 6 B & S 707. In re Brandreth 60 L J Q B 501. In re Barber 19 Beav 378 followed *Ex parte Frost I Chitty 558 note*. In re Handan, Dowl Pr Ct 970. In re Garbell 18 O B 403. In re Poole L R 4 O P 350. In re Abinash Chandra Moitra I L R 37 Cal 173. In re Chanda Singh 11 O L J 438 14 O W N 521 and Smith v Justices of Sierra Leone 7 Moo P C 174 referred to. In re Lamb 23 Q B D 477 distinguished. Where a mukhtar was struck off the roll on conviction of kidnapping a minor girl under s 303 of the Penal Code under circumstances of an aggravated character implying moral turpitude and applied after seven years for resp catively but deliberately omitted to disclose the facts that the High Court had enhanced his sentence and had also directed his prosecution under s 193 of the Penal Code for making a false affidavit in the course of a proceeding in revision the application for reinstatement was rejected. In re ABIRUDDIN AHMED (1910)

I L R 38 Cal 309
15 O W N 357

2 ————— Authority to practise in the Courts of Magistrates and Sessions Judges—Limitation of authority—Necessity of permission of the Court in each particular case—Grounds of permission—Criminal Procedure Code (Act V of 1898) s 4 (r) 340—Practice Under s 4 (r) and 340 of the Criminal Procedure Code a mukhtar is subject to the permission of the Court in each particular case authorised to practise both before Magistrates and Sessions Judges. There is no general rule that mukhtars should be allowed to appear in every case in the Courts of Magistrates and that they should not be permitted to appear in any case in the Courts of Session. The Magistrate and the Judge must decide in each case whether he will permit a mukhtar to appear. Though it is not desirable that mukhtars should be permitted to appear in Sessions Courts where their appearance is unnecessary or where there is no reason for their appearance the question is one which must be decided independently in each case and no general rule can be laid down. It depends largely on whether the accused is in a position to employ a vakil or pleader and whether he elects to do so. But the defence of an accused should not be shut out merely by the fact that he is represented by a mukhtar. *ISHAN CHANDRA BHUT v PATENOR* (1911) I L R 38 Cal 486

3 ————— It is incumbent on a mukhtar to take his instructions direct from his client. If therefore he takes them from an agent he must ascertain that the agent is duly empowered. A mukhtar is liable to be punished when he has acted in violation of his duty in circumstances which show gross negligence on his part even though he may not be guilty of fraud. In re LEAKUT HUSSAIN MUKHTAR 2 Pat L J 115

MUKTESAR

> c CIVIL PROCEDURE CODE (Act V of 1908) s 92 I L R 42 Bom 742

MULGENI LEASE

Death of mulgeni tenant without heirs—No escheat of tenant's rights to Government—Lapse of tenant's rights to lessor. The rights of a mulgenidar do not escheat to Government on the death of the last owner dying with out heirs but revert to mulgar from whom the mulgeni was acquired. A mulgeni tenure differs in its incidents from an ordinary permanent lease. *Sonet Koor v Himmat Bahadur I L R 1 Cal 391* distinguished. SECRETARY OF STATE FOR INDIA v SHITARAMAPPA (1918)

I L R 42 Mad 327

Covenant against alienation—Breach—Assignment—Validity of. In the case of mulgeni leases in Kanara executed prior to the Transfer of Property Act an assignment of the lease by the lessee in breach of his covenant not to assign is perfectly valid. *Parameshri v Vitappa Shanbaga* (1903) I L R 26 Mad 157 explained. *Tamaya v Timapa Ganpaya* (1833) I L R 7 Bom 261. *Basarat Ali Khan v Manavalla* (1909) I L R 36 Cal 745 and *Promode Ranjan Ghose v Aswini Kumar Nag* (1914) 18 G W N 1133 followed. *Per SESHAGIRI AYYAR J*—The same principle would apply even in the case of a mulgeni lease executed subsequent to the Transfer of Property Act. *Udipi SESHAGIRI v SESHAGIRI* (1920) I L R 43 Mad 503

MULGENI TENURE

See LANDLORD AND TENANT

I L R 34 Mad 231

MULTIFARIOUSNESS

See CIVIL PROCEDURE CODE (1908) O I & 3 I L R 38 All 406

MULTIFARIOUS DOCUMENT

See STAMP DUTY I L R 37 Cal 629

MUNICIPAL ACTS

See UNDER THE VARIOUS PROVINCES

MUNICIPAL AFFAIRS AT ADEN

See ADEN SETTLEMENT REGULATION VII (1900) s 13 I L R 40 Bom 446

MUNICIPAL ASSESSMENT

Held that in assessing tax upon persons under cl (c) of s 8 of the Bengal Municipal Act both the circumstances and the property referred to in the section must be within the Municipality in question. *DEU NARAYAN DUTT v CHAIRMAN OF THE LARDUPUR MUNICIPALITY* I L R 39 Cal 141

MUNICIPAL BOARD

See CRIMINAL PROCEDURE CODE s 578 I L R 36 All 513

See LIMITATION ACT (XV of 1877) SCH II ARTS 2 61 62 and 120

I L R 30 All 491
See N W P AND OUDH MUNICIPALITIES ACT (XV of 1883) s 10

I L R 35 All 308
See REGULATION (V of 1896) s 83 AND 141 I L R 37 All 220

See UNITED PROVINCES MUNICIPALITIES ACT (I of 1900) s 147

I L R 32 All 620
I L R 36 All 183

MUNICIPAL BOARD—contd.

- ss 57 1a2 I L R 35 All 329
 s 128 (4) (i) I L R 35 All 24
 s 14 15 I L R 35 All 227
 See UNITED PROVINCES MUNICIPALITIES
 ACT (U P Act II of 1916) s 40
 I L R 33 All 644
 ss 261 AND 263 I L R 42 All 435
 ss 298 AND 318 I L R 42 All 234

— powers of—

- See UNITED PROVINCES MUNICIPALITIES
 ACT (I of 1903) s 83
 I L R 35 All 375

— suit against—

- See UNITED PROVINCES MUNICIPALITIES
 ACT (II of 1916) s 326 (4)
 I L R 41 All 162

— suit against member of—

- See UNITED PROVINCES MUNICIPALITIES
 ACT 1900 s 49
 I L R 33 All 540

MUNICIPAL BYE-LAWS

- See UNITED PROVINCES MUNICIPALITIES
 ACT (II of 1916) ss 209 210
 I L R 39 All 386

— must be in accordance with the Act—

- See PUNJAB MUNICIPAL ACT 1911
 I L R 2 Lah 239

MUNICIPAL COMMISSIONER

- See BOMBAY CITY MUNICIPAL ACT (BOM
 III of 1883) s 297
 I L R 36 Bom 403
 s 303 I L R 34 Bom 593
 s 377 I L R 34 Bom 346
 s 390 I L R 34 Bom 344

— powers of—

- See LAND ACQUISITION
 I L R 44 Bom 797

MUNICIPAL CONTRACTOR

- See UNITED PROVINCES MUNICIPALITIES
 ACT 1910 s 92
 I L R 33 All 614

MUNICIPAL CORPORATION**Chairman—General**

Committee—Building plans refusal of sanction of—
Calcutta Municipal Act (Beng III of 1899)
 ss 375 377—Action for mandamus or damages
 whether maintainable—*Specific Relief Act (I of 1877)* s 45 Where plans for building, have been rejected by the Chairman and the General Committee of the Calcutta Municipal Corporation no suit is maintainable to have the plans approved or for damages. If the Chairman and General Committee have acted honestly and within their authority their decision cannot be reviewed by any Court. If the plans have been rejected *malafide* the only remedy is by an application under s 45 of the *Specific Relief Act* for an order to compel the Chairman and the General Committee to hear the matter in the manner provided by law. *D. S. v. Bromley Corpora. on (1905)* 1 K. B. 179 and *Smith v. Chertsey Rural Council (1897)* 1 Q. B. 678 followed. *London and North Western Railway v. Westminster Corpora. on (1904)* 1 Ch. 759 referred to. *Prasad Chunder De v. Corporation of Calcutta (1913)*

I L R 40 Calc 836

MUNICIPAL COUNCIL

adverse possession
against—Nature of Adverse possession—Right to a pial—Pial over a drain—Right of Municipality to street drains etc—Nature of the right—Right of Government—Adverse possession against Government—Length of possession—Pial an encroachment or obstruction to drain street etc—Right of municipality to remove encroachment even when right to site of pial barred—No injunction against Municipal Council—Against right to remove obstruction—Th. Madras District Municipalities Act (II of 1831)—Indian Limitation Act (XV of 1877) Art 146 A—Amending Act (VI of 1900)—Declaration. A person can acquire a title to the site of a pial over a drain in a street vested in a municipality by adverse possession against the municipality for the prescriptive period which was 12 years before the art 146 A of the Indian Limitation Act (XV of 1877) was passed in 1900 under Act VI of 1900. The right of a Municipal Council to the street and the drains is not a mere right of easement but is a special right of property in the site previously unknown to law but created by statute. Although it is not open to the municipality to give up the rights of the public by any act of their own that would not affect the capacity of a person in adverse possession to acquire rights which would affect the public. The question whether possession has been adverse or not does depend upon the needs or requirements of the owner but on the character of the occupation of the person in possession. Ejective or unimportant act of possession would not be sufficiently effective to make the possession adverse. Even if the Municipal Council had no right to the possession of the space above the drain but only a right of user for the discharge of its functions with respect to the drains still the plaintiff as the person in possession of the pial would have a right to it against all but the true owner which was the Government in this case but as against the Government the plaintiff had not established a title as he had not been in adverse possession for sixty years. Although the plaintiff had acquired a title to the site of the pial by adverse possession as against the Municipal Council the right of the latter to the drain under the pial had not been affected and the Council was entitled to remove the pial as an encroachment or obstruction under s 168 of the Madras District Municipalities Act. The prayer of the plaintiff for an injunction against the Municipal Council could not therefore be granted nor could the prayer for declaration of title be granted as it was only incidental to the substantial relief asked for namely an injunction which was refused. *Suncaram Ayyar v. The Municipal Council of Madura*, 1 L. R. 25 Mad 635 followed. *Rolls v. Ventry of St George the Martyr Southwark* 14 Ch. D. 785 at pp 735 and 796. *Municipal Council of Sydney v. Young (1898)* 4 G. 457 and *Midland Railway v. Wright (1901)* 1 Ch. 735 referred to. *Rasaweswara Swami v. The Bellary Municipal Council (1911.)* 1 L. R. 38 Mad. 6

MUNICIPAL COUNCILLORS**— election of—**

- See BOMBAY CITY MUNICIPAL ACT
 (III of 1883 AS AMENDED BY BOMBAY
 ACT V of 1903) ss 33 AND 34
 I L R 34 Bom. 659

MUNICIPAL COURTS

jurisdiction of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 86 I L R 38 Mad 635

MUNICIPAL ELECTION

See BOMBAY MUNICIPAL ACT 1888

ss 33 34 I L R 34 Bom 659

See MUNICIPALITY I L R 24 All 649

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900) s 187

I L R 35 All 450

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916) ss 19 to 26

I L R 41 All 646

invalidity of—

See RIGHT OF SUIT

I L R 36 Mad 120

rules for regulation of—

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900) s 187

I L R 35 All 578

1 ——— Bengal Municipal Act (III of 1884) ss 6 15 103 and 105—Voter qualification of—Illegal levy of Income tax and payment of Municipal rate effect of—Owner meaning of—Property acquired by father with contribution from son A person whose income is below the taxable minimum but who submits to the levy of the tax does not thereby acquire the statutory qualification contemplated by s 15 of the Bengal Municipal Act Similarly a person who is not legally liable to pay Municipal rate but pays it does not become entitled to become a voter by the mere fact of such payment unless it is proved to have been made by him as a person legally liable to satisfy the Municipal demand. An

owner for the purposes of the Municipal Act includes not only an owner in the actual occupation of the holding but also an owner entitled to receive rent from the occupier or otherwise. It also includes a manager or agent or a trustee for any such person. Where a house was purchased in the name of the father and the major portion of the consideration money was paid by the son out of joint funds belonging to himself and his brothers and further the expenditure on subsequent extensive alterations and additions were similarly defrayed by the son out of the said funds and the son was occupying the house while the father was living abroad. Held that the son having a substantial interest in the property should be treated as owner in the ordinary acceptance of that term and he being the manager or agent of the father could also be treated as owner and he was therefore liable under s 103 of the Municipal Act to pay the rates assessed on the holding. Held further that where the son being in possession of the house paid the municipal demands with his own money it could not be said that such a payment was made by a person neither liable nor competent to make it under the provisions of the law he being an occupier was such liable to pay the rates under s 103 of the Bengal Municipal Act. NARENDRA NATH SINHA v. NAGENDRA NATH BISWAS (1911) I L R 38 Cal 501

■ ——— Claims applications and objections of voters notice of—List of voters Calcutta Municipal Act (Beng III of 1899) Sch

MUNICIPAL ELECTION—contd

IV rr 8 and 9—Extension of time by Chairman power of for giving such notice—Specific Relief Act (I of 1877) s 15 sub s (c)—Mandamus Under rr 8 and 9 of Sch IV of the Calcutta Municipal Act 1899 written notice of all claims objections and applications referred to therein must be given to the Chairman on or before the 1st January immediately preceding each general election and the Chairman has no power to extend the time beyond such date. Such notices must be lodged with the Chairman of the Election Department and a lodging of such notices with the Secretary is not a proper lodging as required by the terms of the Act even though the Secretary resides in the same building as the Corporation has its office unless it can be shown that the Chairman had authorised the private residence of the Secretary to be used as a place where such notices could be lodged. The omission of a statutory officer to perform his public duties as to settlement of the election roll in the manner provided by the Act is a forbearance to do some thing that is not consonant to right and justice within the meaning of s 45 of the Specific Relief Act 1877 and therefore if the Chairman has not performed his statutory duties the Court will issue an order in the form of a mandamus. In the matter of R. C. SENG (1912)

I L R 39 Cal 598

3 ——— Representation of ■ questions for voting power—Calcutta Municipal Act (Beng III of 1899) ss 37 38 and Sch IV rr 9 and 10—Any one individual person's meaning of—Specific Relief Act (I of 1877) s 45—Practice—Appeal right of In r 9 of Sch IV of the Calcutta Municipal Act of 1899 the expression any one individual person is controlled by the expression association of individuals immediately preceding and the selection for the representation of the several associations indicated in the rule is limited to the individuals composing the associations. A rule was obtained by a candidate for election as Commissioner of a certain ward calling upon the Chairman of the Corporation of Calcutta to show cause why he should not prepare and publish the revised list of voters for the ward under r 10 of Sch IV of the Calcutta Municipal Act by rejecting applications filed by a second candidate to have his name entered in the list as the representative of certain associations and a copy of the rules was served on the second candidate who together with the Chairman appealed and heard case. The Plea was made absolute. NATH C SENG I L R 39 Cal 754

4 ——— Election Roll—Qualifications of voters—Sitting Commissioner as candidate for election—Objections to voter's claims to be on Election Roll—Chairman's decision refusing to expunge names of voters from the Roll—Jurisdiction of the High Court to interfere—Occupier—Specific Relief Act (I of 1877) s 45—Calcutta Municipal Act (Beng III of 1899) ss 3 (30) 47 and Sch IV rr 3 & (7). The sitting Commissioner for one of the wards in the Calcutta Municipality who was one of the candidates for election as a Commissioner for that same ward at the forthcoming Municipal election and who was also a voter on the list of voters in respect of another ward objected that the names of various persons should not be entered and retained on the Municipal

MUNICIPAL ELECTION—*contd*

Election Roll for the ward for which he was a candidate. The Chairman of the Corporation having heard the objections refused to expunge those names from the Election Roll. *Held* that the High Court had jurisdiction under s. 4 of the Specific Relief Act to interfere in this matter. *In re Vishu C. Sen* 1 L. P. 39 Cal. 754 and *In re Pomes Chandra Sen* 16 C. N. 47 followed. *Held* also that to make a person who occupied certain premises and who was entitled to the owner's vote in respect thereof entitled to a vote as occupied in respect of the same premises he must either pay rent to the owner or be liable to pay rent. *Held* also that voters must give written notice of their claims whether they sign the notice or not to the Chairman of the Corporation under the provisions of r. 8 (i) of Sch. IV of the Calcutta Municipal Act prior to 1st January immediately preceding each general election. It was upon the persons objecting to the votes to prove that the voters had not complied with the provisions of the Act or the rules. *Held* also that the only persons to whom r. 3 of Sch. IV of the Calcutta Municipal Act applied were persons who were actually liable for the rates in respect of the six months specified therein. *Held* also that persons occupying flats or portions of houses used as flats which were not separately assessed as such in the records of the Corporation were not associations of individuals within the meaning of s. 37 of Calcutta Municipal Act. *Held* also that the word occupier in s. 37 (2) (i) (c) and in s. 37 (2) (i) (a) of the Calcutta Municipal Act meant an occupier in the ordinary sense and not as defined in s. 3 (39) of that Act and the only person who fell within s. 37 (2) (i) (c) was a person who occupied a building separately numbered and valued for assessment. *In re SUBENDRA CHANDRA GHOSH* (1918) 1 L. R. 45 Cal. 9-0

5 ————— Calcutta Municipal Act s. 36 Sch. 5 = 2—Specific Relief Act (I of 1877) ss. 45-50—Public officer failure of to exercise a discretion—Nomination paper—Description of the candidate—Rai Bahadur of sufficient description—Delay in presenting the petition effect of—Infructuous order whether ought to be passed. The appellant sent in his nomination paper on the 4th March 1918 in which he was described as Rai Bahadur and it was also stated that he was Voter No. 679. On the 10th March a list of nominated candidates was published. On the 18th March judgment was delivered by the Appeal Court in the election case of Narendra Nath Mitter. On the afternoon of the same day the applicant (respondent in this case) applied to the Chairman of the Corporation to reject the nomination paper of the appellant on the ground that the nomination paper did not contain the description of the appellant. The Chairman declined to entertain the application on the ground that it was too late. On the morning of the 19th March a petition was presented by the applicant before Chaudhuri J. and a rule was issued on the appellant returnable at 4 P.M. on the same day to show cause why his name should not be expunged from the list of nominated candidates and the rule was made absolute. In pursuance of this the appellant's name was taken out of the list. On the 20th which was the day fixed for election the respondent being the only nominated candidate was elected commissioner. This appeal was filed on the 20th March and came on for hearing on the

MUNICIPAL ELECTION—*contd*

21st after the election had taken place. *Held* that an order overruling the decision of Chaudhuri J. would be infructuous for the appellant's name had been expunged from the list of nominated candidates the election had taken without the inclusion of the appellant's name in the list of candidates and the Appeal Court had in this appeal no power to set that right and so the appeal must be dismissed. The Court's order ought to have been limited to a direction to the Chairman of the Corporation to exercise his jurisdiction and to hear and determine the application which had been made to him and which he had refused to entertain on the ground that it was too late. The Court will in all cases regard its exercise of the extraordinary jurisdiction as discretionary and subject to considerations of the importance of the particular case or of the principle involved in it of delay on the part of the applicant and of his merits with respect to the case in which the interference of the Court is sought. Should other special causes appear for or against the Court's intervention due weight is to be given to them regard being always had to the principles already enumerated. *MANT LAL NAHAR v. MOWDAD PAHANAN* (1918)

W. N. 951

6 ————— Nomination paper—Description of candidate—Approvers—Calcutta Municipal Act (Beng. III of 1899) Sch. V r. 2 (a) (d)—Practice—Affidavits—Civil Procedure Code (Act I of 1908) O. XXI r. 27—Specific Relief Act (I of 1877) s. 45. A candidate for election as Municipal Commissioner sent to the Chairman by way of his nomination paper three nomination forms gummed together under cover of and attached to a letter by a clip. The letter contained a description of the candidate. The first form contained the name of the candidate and his number on the electoral roll as also the names of his proposer, his seconder and eighteen approvers one of whom was the seconder and another the name of a firm. The second and third forms contained some names of approvers but did not contain the names of the candidates his proposer or seconder. *Held* that the four documents could not be taken together as one nomination paper and that the nomination was invalid. A nomination paper should be self-contained and complete. The first form did not contain a description of the candidate and reference could not be made to the covering letter for the purpose. Out of the list of approvers on the first form the names of the firm and of the person who was also the seconder should be excluded and the deficiency could not be made up by reference to the second and third forms which were not complete by themselves owing to the absence therein of the names of the candidate his proposer and seconder. Certain affidavits prepared for but not used at the hearing before the Court of first instance on objection held to be inadmissible on appeal. *NARENDRA NATH MITTER v. RADHA CHARAN LAL* (1918) 1 L. R. 48 Cal. 119

7 ————— Preparation of list of voters—Election Poll finally of—Nomination paper—Sitting Commissioner as candidate for election—Objection to rival candidate's nomination—Qualifications of voters—Application to declare nomination paper inoperative—Power of High Court to interfere—Calcutta

MUNICIPAL ELECTION—*contd*

Municipal Act (Beng III of 1899) ss 56 57 (2) (c) 47 54 Sch IV I Persons objecting to the final publication of the Election Roll should take steps to prevent the publication before the Election Roll is finally published according to the rules. In an application to have it declared that the nomination paper of a rival candidate for election as Commissioner be rejected and declared inoperative on the ground that some of the approvers to the nomination were not entitled to vote. *Held* that the Court could not alter the Election Roll at that stage. *The Queen v Tuquell L R 3 Q B 701* relied upon. *Ando Lal Bose v The Corporation for the Town of Calcutta I L R 11 Cal 275* and *Chairman of Giridih Municipality v Suresh Chandra Maumdar 12 C W N 709* referred to. *AMULYADHAN ADDY In the matter of* (1918)

I L P 46 Calc 132

8 ————— *Infringement of Rules effect of—Onus of proof—Estoppel—Bengal Municipal Act (Beng III of 1884) ss 10 69* The infringement of a rule of election framed by the Local Government under ss 15 and 69 of the Bengal Municipal Act of 1884 does not necessarily invalidate the election unless the rule is mandatory in character. P 17 of the election rules framed by Local Government under ss 15 and 69 of the Bengal Municipal Act of 1884 for the Dacca Municipality is not mandatory. The party who maintains the validity of an election notwithstanding the infringement of the rule must satisfy the Court that the result of the election was not affected by the error or irregularity. The Court will uphold an election if it is satisfied that the result has not been affected by infringement which actually took place. But an election will be avoided even if the tribunal be satisfied that there is reasonable ground to believe that a majority of electors may have been prevented from electing the candidate they preferred. Decisions in England and the United States of America on election are not binding upon Indian Courts. English and American decisions referred to as illustrative. *R S Ramanujulu v Parthasarathy Aiyengar (1915) M W N 290 17 M L 2 331* approved. Estoppel cannot be pleaded where statutory requirements are disobeyed with full knowledge by the officers entrusted with the discharge of public duties. *SIAM CHAND BASAK v CHAIRMAN DACCA MUNICIPALITY (1919)*

I L N 47 Calc 524

9 ————— *Bengal Municipal Act (Beng III of 1884) s 15—R 6 and 11 framed by Local Government of ultra vires—Civil Courts jurisdiction of* The provisions of s 15 of the Bengal Municipal Act (Beng III of 1884) authorise the Local Government to frame rules in all matters necessary to the proper conduct of elections. P 6 and 11 made by the Government are *intra vires*. The Government by rule may require the preparation of a register of voters and entry in the register in the case of persons duly qualified to vote under s 15 of the Act or the rules framed thereunder is to be regarded not so much as in it is a qualification but as the evidence upon which the polling officer must proceed and the result is conclusive for this purpose. I 6 read with rr 6 7 9 and 10 in effect allows 15 day's notice by residents of the published re-

MUNICIPAL ELECTION—*contd*

gister and 30 days for the adjudication on claims and objections in the first instance by the Chairman and on appeal by the Magistrate and within the said 30 days and not less than 15 days before the election the register as amended by the revising authorities must be republished. The periods allowed by r 6 for inspection and for adjudication on claims and objections appear to be reasonable and should be sufficient in the generality of cases. The interval of 15 days between the republication and election is intended to give electors a further opportunity for the rectification of possibly accidental errors. P 11 read with r 9 has the effect of closing the register 15 days before the date of election. The proviso to r 11 gives qualified electors a further opportunity of substantiating their claims. There is no basis for the contention that the proviso to r 11 applies only to the rectification of the register for the purpose of by election. In view of the finding that the Chairman acted in contravention of the rules the provisions of s 15 of the Civil Procedure Code (Act V of 1908) of s 42 of the Specific Relief Act (I of 1877) and of the 2nd proviso to 10 of the Act under consideration on the Civil Courts have jurisdiction to entertain this suit. *ATUL HUGL THE CHAIRMAN MANICKTALA MUNICIPALITY (1920)*

I L P 48 Calc 378

MUNICIPAL LAW

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM III OF 1901) s 42

I L P 40 Bom 166

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 115 I L P 40 Bom 569

1 ————— *Removal of structures—Compensation—Declaration—Specific Relief Act (I of 1877) s 42—Calcutta Municipal Act (Beng III of 1899) ss 341 617* Upon the Corporation of Calcutta giving notice under the Calcutta Municipal Act 1899 s 341 to the owner of a building requiring him to remove a fixture attached thereto so as to project over encroachment or obstruct any public street or land the payment of compensation provided for in the case of a fixture erected before June 1st 1863 is not a condition precedent to its removal or its demolition under s 40 sub s (3) the compensation is assessable by the Court of Small Causes under s 617 and not in a suit. If however the Corporation declines to admit the owner's right to compensation a Subordinate Judge has a discretionary power under the Specific Relief Act 1877 s 42 to make a declaration that the fixture was erected before June 1st 1863 and that the owner was entitled to compensation. *JOSEPH v CALCUTTA CORPORATION*

L P 43 I A 243

2 ————— *Foads which rest in the Municipality—Public when they have a right to go over private pathway—Difference between roads vested in the Municipality and others as regards Municipality's rights—Bengal Municipal Act (Beng III of 1881) ss 30 31* Under s 30 of the Bengal Municipal Act as amended by recent legislation private pathways do not rest in the Municipality. *Chairman of the Howrah Municipality v Akhetra Krishna Bitter I L P 33 Calc 1990* followed. *Asim d Landhu Das Gupta v*

MUNICIPAL LAW—contd

Kishori Lal Goswami (1911) S A Nos 458 and 838 of 1909 (unrep.) and Kamal Kamini Debi v Chairman Housrah Municipality (1909) S 1 No 2134 of 1907 (unrep.) derived from The Municipality may however have control over such a pathway if the public have a right to go over it as provided for in s 31 of the Bengal Municipal Act. The difference between roads vested in the Municipality and other roads is that in the former case the Municipality is responsible for lighting watering watering and clearing the roads and in the other case the Municipality has only the power of control to prevent the road from becoming a nuisance or the rights of the public from being interfered with. *CHAIRMAN HOWRAH MUNICIPALITY v HARIDAS DATTA (1911) I L R 43 Cal 10*

MUNICIPAL OFFENCE

See UNITED PROVINCES MUNICIPALITIES ACT (II of 1916) s 307
I L R 40 All 569

— prosecution for—

See UNITED PROVINCES MUNICIPALITIES ACT (II of 1916) ss 180 186
I L P 39 All 482

MUNICIPAL OFFICER

— dismissal of—

See DISTRICT MUNICIPAL ACT (Bom III of 1901) ss 2 46 and 16,
I L R 39 Bom 600

MUNICIPAL RULES

See GENERAL CLAUSES ACT (I of 1904) s 23
I L P 34 All 392

MUNICIPAL TAXES

See MORTGAGE I L P 38 Mad 18

MUNICIPALITY

See BOMBAY BEGAL CALCUTTA AND MADRAS MUNICIPAL ACTS

See MUNICIPAL BOARD

See MUNICIPAL COMMISSIONERS

See MUNICIPAL ELECTION

See CRIMINAL PROCEDURE CODE (ACT V of 1898) s 195
I L R 37 Bom 265

See PUBLIC DRAIN

I L R 44 Cal 689

See RAILWAYS ACT (IX of 1890 AS AMENDED BY ACT IX of 1896) s 7
I L R 41 Bom 291

— adverse possession against—

See MADRAS DISTRICT MUNICIPALITIES ACT (IX of 1884) s 163
I L P 38 Mad 456

— sale by—

See RIGHT OF SUIT
I L P 36 Mad 373

Election—Fraud—

Petition against elected member on ground of per-

MUNICIPALITY—contd

sonation of voters—Limitation—Fresh instances of personation allowed to be pleaded after expiry of time for filing petition. An elector on the roll of a municipality filed a petition under the rules framed in that behalf by the Local Government against a successful candidate in a municipal election alleging various instances of personation of voters for which the opposite party was stated to be legally responsible. The petition was filed within the time limited by law. Held that it was competent to the Court in which such petition was presented to allow the petition to be amended by the addition of fresh instances of personation. *NAWAB KHAN v MUHAMMAD LAMIN (1912) I L R 34 All 649*

— Assessment principle of—

— Circumstances meaning of—Onus of proving value of circumstances and property—Mergal Municipal Act (Beng III of 1884) ss 85 116

— Evidence Act (I of 187) s 106. The word circumstances in s 85 of the Bengal Municipal Act is equivalent to means. Assessment according to that section must be made according to the means and property within the municipality. The burden of proving the value of the circumstances and property within the municipality is on the municipality. *Chairman of the Giridih Municipality v Sri Chandra Meemdar I L R 35 Cal 859* referred to. *DEB NARAYAN DUTT v CHAIRMAN BARUPORE MUNICIPALITY (1913) I L R 41 Cal 168*

— Roads which rest in—Under 30 of the Bengal Municipal Act private footpaths do not rest in the Municipality. *CHAIRMAN HOWRAH MUNICIPALITY v HARIDAS DATTA*
I L R 43 Cal 130

— Parties—Bengal Municipal Act (Beng III of 1884) ss 6 (3) 103—Holding splitting of—Valuation—Assessment

Where in a suit the claim is directed against the Municipality as such and no damages are claimed against the chairman and vice chairman and other officers of the Municipality for any wrong done by them personally the only proper defendant in the suit is the chairman of the Municipality in whose name only the Municipality can properly be sued and the addition of the vice chairman and other officers of the Municipality as parties defendants to the suit is not in order. The splitting of a holding held under one title and surrounded by one set of boundaries into two separate holdings and separate valuation and assessment thereof is not justified under the Bengal Municipal Act. Where after the general quinquennial assessment of such a holding lands included in the premises became for the first time liable to the imposition of rates and taxes. Held that the Municipality could not rely on the valuation and assessment of the holding under s 103 of the Bengal Municipal Act. Held further that in the circumstances of the case the plaintiff was liable to taxation in respect of the portion of the premises which was found by the Civil Court to fall within the municipal limits and that the fact that subsequently it retro the remaining portion of the premises became liable to taxation by reason of the extension of the municipal limits made no difference as regards the liability of the plaintiff. *TARAPADA MAJUMDAR v SATISH CHANDRA SHAHA (1919) I L P 46 Cal 784*

MUNICIPALITY—contd

Rules framed by Local Government under s 290 of the Bengal Municipal Act of ultra vires—Water connection of municipality can cut off for non payment of costs of water meter—Bengal Municipal Act (Beng III of 1884) ss 290 291 292 293 295 297 Rr 4 9 and 24 (e) framed by the Local Government for the Chittagong Municipality under s 290 of the Bengal Municipal Act 1884 are intra vires and do not conflict with ss 290 and 297 of the same Act. The Municipality is therefore entitled to compel the occupier or owner of a house to pay for cost of water meter to measure the amount of water consumed in the house or to cut off water supply for non payment of the same. NAGENDRA LAL DAS v THE CHAIRMAN CHITTAGONG MUNICIPALITY (1919) I L R 47 Cal 426

MUNIM

See PAKKI ADAT BY IFM.
I L R 39 Bom 1

MUNICIPAL

See PROVINCIAL SMALL CAUSE COURTS Act (IX of 1887) s 35
I L R 37 All 450
I L R 39 All 357

See SANCTION FOR PROSECUTION
I L R 39 Cal 774

Jurisdiction of—

See ADOPTION I L R 37 Cal 860
See EXECUTION OF DECREE
I L R 47 Cal 1100

sale by—

See RATHABEE DISTRIBUTION
I L R 46 Cal 64

MUSLIMAN WAKF VALIDATING ACT (VI OF 1913)

See MAHAMMADAN LAW (WAKF)
I L R 40 Mad 116
I L R 41 All 1
See WAKF I L R 43 Cal 158

s 3—

See WAKF VALIDITY OF
I L R 43 Cal 158

Construction of Statute—wh ther effect retrospective—Wakf—Mahomedan Law The Mussalman Wakf Validation Act 1913 has no retrospective effect and consequently the old law applies to wakfs created before the passing of that Act. AMIRBI v ALIZADIRI (1914)
I L R 39 Bom 563

Preamble and s 3 4—

See MAHOMEDAN LAW—WAKF
I L R 41 All 1

MURDER

See AUTREFOIS ACQUIT
I L R 41 Cal 1072

See PENAL CODE (ACT XLV OF 1860)
ss 37 302 304
I L R 35 All 506 560

ss 299 301 I L R 39 All 161

ss 300 305 I L R 35 All 329

MURDER—contd

s 300 OL (3) I L P 41 Bom 27
s 302 I L R 40 All 360

Committed during a dacoity—

See PENAL CODE ss 390 396
I L R 2 Lah 472

Violent and determined attack by a number of persons regardless of the consequences on another causing other injuries and severe ruptures of a healthy spleen—Intent to cause death or such bodily injury as the offender knows to be likely to cause death—Penal Code (Act XLV of 1860) ss 300 (1) (2) and 302 A body of six persons attacked another with cattle goods in a violent and determined manner inflicting sixteen wounds on his body and causing several and severe ruptures of his spleen and so caused his death. The person attacked was a strongly built man of 35 years of age and his spleen was in a healthy state—Held that such acts committed by several persons on one in such a manner apparently regardless of the consequences and with such results warranted the interference that the acts were done by those persons with the intention either of causing the death of the person attacked or such injuries as the offenders knew to be likely to cause his death and that the offence amounted to murder. ELEM MOLLA v EMPEROR (1907)
I L R 37 Cal 315

Information of to police

—Disposal by Magistrate without examination of complainant or witnesses An information of murder was lodged with the police and the Sub Divisional Magistrate before whom the police report was placed on a perusal of the police papers but without any examination of the complainant or any of his witnesses refused process on the ground that the case was one in which no jury would convict. Held that it was the duty of the Magistrate to examine the complainant and the witnesses he wished to produce and the order made was liable to be set aside as improper. FAZLAR RAHAMAN v ABDAR RAHMAN (1918)
23 C W N 392

Circumstantial evidence

—No ground for imposing lesser sentence If the Court is satisfied beyond reasonable doubt that the accused is guilty of murder and the circumstances require the imposition of the death penalty the fact that the conviction is based on circumstantial evidence is not a reason for passing the lesser sentence allowed by law. PUBLIC PROSECUTOR v PARAMANDI (1921)
I L R 44 Mad 443

MUSCOORAT AND NANKAR RIGHT

See NAVIGABLE RIVER
I L R 46 Cal 390

MUSHAA

See MAHOMEDAN LAW—GIFT
I L R 38 Cal 518
15 C W N 328

MUTALIK DESAI VATAN

See BOMBAY HEREDITARY OFFICES ACT 1874 s 15 I L R 44 Bom 237

MUTATION OF NAMES

See ARBITRATION I L R 33 All 389

MUTATION PROCEEDINGS

See FALSE EVIDENCE

MUTAWALLI

I L R 33 Cal 368

See CIVIL PROCEDURE CODE (1908)

s 92 I L R 37 All 86

See MAHOMEDAN LAW—MUTAWALLI

See MAHOMEDAN LAW—WAKF

See WAKF

appointment of—

See MAHOMEDAN LAW—WAKF

See MAHOMEDAN LAW—ENDOWMENT

I L R 48 Calc 13

I L R 47 Calc 866

appointment of a minor as—

See ELECTION I L R 40 Mad 941

lease by—

See MAHOMEDAN LAW—WAKF

I L R 47 Calc 592

suit by for possession—

See MAHOMEDAN LAW—ENDOWMENT

I L R 47 Calc 866

mortgage executed by—

See MAHOMEDAN LAW—ENDOWMENT

I L R 3 Calc 179

suit for the office of—

See MAHOMEDAN LAW—ENDOWMENT

I L R 37 Calc 263

MUTH

nature object and custom of—

See HINDU LAW—ENDOWMENT

I L R 43 Calc 707

MUTT

See HINDU LAW—ENDOWMENT

See MUTH

appointment of successor—

See ISSUE 25 C W N 145

1 Head of a mutt
whether trustee or life tenant of mutt properties. It cannot be predicated of the head of a mutt as such, that he holds the mutt properties as a life tenant or trustee. The question must be determined in each case upon the conditions on which they were given or which may be inferred from the long established usage and custom of the institution. *Giyana Sambandha Pandara Sannadhi v Kandasami Tambaran* I L R 10 Mad 375 referred to *Vidyapurna Tirthaswami v Vidyandhi Tirthaswami* I L R 27 Mad 435 referred to *Kailasam Pillai v Nataraja Thambiran* (1909) I L R 33 Mad 285

2 Improper alienation of mutt properties by the head of the mutt—Suit by disciples under O I r 8 Civil Procedure Code (Act V of 1908) to set aside the alienation and for possession to be given to the head of the mutt for the time being whether maintainable—Limitation—Limitation Act (IX of 1908) Arts 120 131 and 144 applicability of. The disciples of a mutt have sufficient interest within O I r 8 of the Civil Procedure Code to maintain a representative suit not only for a declaration of the invalidity of an improper alienation of the mutt properties by the head of the mutt but also for a decree directing possession to be given to the head of the mutt for the time being. It is immaterial whether the head of the mutt be a trustee or only a life tenant. The suit being one for possession the article of the Limitation Act applicable is not 120 but Art 131 or 144 according as the head of the mutt is a trustee or only a life tenant and the right to sue for possession

MUTT—contd

arises from the date of the alienation or when possession begins to be adverse. Possession which is adverse to the institution is equally adverse to the plaintiffs who sue on its behalf. *Chidambaramatha Thambiran v Nallasiva Mudaliar* (1917) I L R 41 Mad 124

3 Lease in perpetuity of mutt properties validity of—Right of successors to dispute whether void or voidable—Confirmation by immediate successor—Right of the latter a successor to repudiate the same—Suit to set aside if necessary—Limitation Act (XV of 1877) Arts 142 and 144—Nature of the estate of a matathipathi (head of a mutt) of an absolute estate or a tale for life—Local Boards Act (V of 1884) ss 63 66 and 73—The Madras Revenue Recovery Act (II of 1864) ss 33 and 42—Sale for arrears of road cess—No notice to inamdar but to tenant—Sale irregular not with out jurisdiction—Suit to set aside sale—Limitation Act (XV of 1877) Art 12—Revenue Recovery Act (II of 1864) s 59. The head of a mutt made an alienation by way of a lease in perpetuity in 1872 of some lands which had been granted as inam for the support of the mutt and died in 1890 his immediate successor in the office received the rent reserved by the old lease from the lessees and transferees from 1893 and treated the occupants under the old lease as the tenants until his death in 1908 the latter's successor in office brought the present suit in 1908 to set aside the lease and recover possession of the inam lands from the defendants who were sub lessees or assignees from the original lessee and from the fifth defendant who was a purchaser in a revenue sale of some of the inam lands which were sold in May 1902 for arrears of road cess due under the Local Boards Act (V of 1884) Held that the suit was not barred by limitation except as regards the lands which were sold in revenue sale. A permanent lease is in excess of the powers of the head of a mutt. An alienation by the head of a mutt is not necessarily void and of no effect but is good for the life time of the alienor. A matathipathi (head of a mutt) is not a tenant for life but is in the position of one who though in a certain sense owner in fee simple yet in many respects has only the powers of a tenant for life. An alienation by the head of a mutt is voidable by the alienor's successors in very much the same way that an alienation by a Hindu widow in excess of her powers is voidable by her successors. The successors of a matathipathi cannot validate a case of his predecessor so as to bind his successors. He validates the lease only for the period during which he holds the office or avoid it altogether. *Abhiram Govaram v Shyamala Charan Dandi* I L R 36 Calc 1903 *Narasaya Upada v Venkataramana Bhaktia* 23 Mad L J 760 *Vidyapurna Tirthaswami v Vidyandhi Tirthaswami* I L R 27 Mad 435 and *Kailasam Pillai v Nataraja Thambiran* I L R 33 Mad 285 followed. The corpus of the mutt property is inalienable except in special circumstances but the income subject to the upkeep of the mutt is at the absolute disposal of the matathipathi (see *Vidyapurna Tirthaswami v Vidyandhi Tirthaswami* I L R 27 Mad 435) Where owing to the failure of the holders of a portion of the inam lands to pay the local cess due under the Local Boards Act (V of 1884) the Revenue officers sold some of the inam lands without giving notice of the proceedings

MUTT—contd

to the head of the mutt as the defaulter but notice was given to the tenant in occupation of the lands the sale was regular but not one held without jurisdiction and was consequently liable to be set aside but the suit to set aside the same was barred as not brought within the time allowed by s 59 of the Madras Revenue Recovery Act (II of 1864) or Art 12 of the second Schedule of the Limitation Act (XV of 1877) *Ramachandra v Pitchaikanni* I L R 7 Mad 434 *Chinnasami Mudali v Tirumalai Pillai and the Secretary of State for India* I L P 25 Mad 572 *Malkarjun v Nishari* I L R 25 Bom 337 and *Bijoy Gopal Mukerji v Krishna Mahishi Deb* I L P 34 Cal 329 referred to *Per SADASIVA AYYAR J.*—The position of a matathipathi is not analogous to that of a Corporation sole under the English Law because there is this fundamental distinction namely whereas the properties belonging to an English Bishop (a Corporation sole under the English Law) including his savings from the revenues of the benefice devolve upon his legal representatives or heirs the savings of matathipathi devolve upon the succeeding matathipathi. The procedure laid down by the Revenue Recovery Act (II of 1864) has been incorporated into the Local Boards Act by s 76 of the latter Act but the substantive provisions in the Revenue Recovery Act (ss 32 and 33) that the sale for the recovery of arrears of land revenue frees the land from all incumbrances and from all favourably rented leases do not apply to a sale under the Local Boards Act. See *Ramachandra v Pitchaikanni* I L R 7 Mad 434 and *Chinnasami Mudali v Tirumalai Pillai and the Secretary of State for India* I L R 25 Mad 572. **MUTUSAMIER v SASE SREEMETHRANITHI SWAMINAR** (1913)

I L R 33 Mad 350

4 ————— *Dharmapuram Adhinam Pandarasannadhi* of Junior Pandarasannadhi—Mode of appointment of nomination by will—Ordination—Abishegam effect of—Nature of the office—Removal of junior from office grounds of—Power of Pandarasannadhi to remove junior if at pleasure or for good cause—Notice of charges necessary for—Dismissal without notice or opportunity for defence validity of—Compromise decree nature and effect of—Suit for setting aside necessity for—Limitation for such suit—Compromise decree partly illegal effect of—Decree if void altogether The Pandarasannadhi or the head of the Dharmapuram mutt has no power to dismiss at his pleasure the junior Pandarasannadhi of the mutt from his office though he can do so for good cause but a dismissal directed by the former without giving the latter any notice of the charges alleged against him (or an opportunity for making his defence thereto) is wholly void and inoperative in law. The nomination and ordination of a junior Pandarasannadhi is the customary mode of providing for the line of succession in mutts. The position of a junior Pandarasannadhi during the lifetime of the senior is analogous to that of an adjutor with the right of succession and the Canon law a right of which he cannot be deprived except for grave cause. Where an office is held at pleasure the incumbent may be removed even on charges of misconduct without any opportunity of being heard in his defence because he is removable at pleasure without any misconduct at all but in all other cases the objection of want

MUTT—contd

of notice can never be got over. *Rea v Chancellor and Master of the University of Cambridge* 1 Str 557 followed. A consent decree is binding on the parties and their representatives until it is set aside just as much as if it had been passed after contest. *Fatch Chand v Narasing Das* 22 O L J 383 and *In re South American and Mexican Company Ex parte Bank of England* (1895) 1 Ch 37 followed. A suit to set aside a compromise decree will be barred after three years from the date of the decree. An illegality in a compromise decree in so far as it restrains the Pandarasannadhi from removing the junior in case of any future misconduct is not a ground for setting aside the decree altogether in a suit instituted for that purpose. *Kearney v Whitehaven Colliery Co* (1893) 1 Q B 760 referred to *Per SESHASIVA AYYAR J.* Where a suit is brought in a representative capacity the legal representative must show that the estate devolved on him the estate in this connection is not the estate which the decedent had but the estate which he represented that is the estate which he laid claim to. Mutts are not voluntary associations or brotherhoods or proprietary clubs. A person who has been appointed as a junior Pandarasannadhi to whom abishegam has been duly performed acquires a status which is not lost unless he is removed from his office for good cause. An ascetic who holds an office like that of a head of a mutt or a junior Pandarasannadhi does not incur forfeiture of his office by reason of his immorality but is liable to be removed from his office on proof of his immoral conduct. In a suit by a junior Pandarasannadhi against the head of a mutt disputing the validity of his dismissal from his office it is competent to the head of the mutt to enter into a compromise which does not affect the usage of the institution whereby the senior Pandarasannadhi recognizes the title of the junior under his original appointment as subsisting and admits that his removal was invalid as the grounds of dismissal were not justifiable. A decree in accordance therewith is not illegal. *TIRUVAMBALA DESIKAR v MANICKA VACHANA DESAI* AR (1915) I L R 40 Mad 177

5 ————— *Sanyasi—Simple money debts incurred by head for necessities of the Mut—Suit against successor—Liability of mutt properties—Personal liability of the debtor—Lay trustee executor or administrator analogy of* In a suit to recover a simple money debt incurred by the sanyasi head of a mutt for the necessary purposes of the mutt the properties of the mutt can be made liable whether the suit is brought during the lifetime of the incumbent who incurred the debt or his successor. Cases of debts incurred by lay trustees of religious or charitable institutions executors or administrators distinguished. *Shankar Bharati Dams v Venkataiah* (1855) I L P 9 Bom 409 followed. *LAKSHMINARAYANA THIRTHA SWAMINAR v PADAYAVENDRA RAO* (1910) I L R 43 Mad 495

MUTUAL CONSENT

S PCT II E LAW—MARRIAGE

I L P 30 Cal 492

MUTUALITY

—WALSH—

See SUPPLEMENTARY PERFORMANCE

I L R 40 Cal 492

N

NAIKIAS

Adoption—Adoption of daughter by a Nair—Adoption of a girl—Will—Contraction—(1) to the adopted daughter as persona designata. One Sundra a Nair (a professional prostitute) adopted her near relative Hira as her daughter. She next made a will whereby she bequeathed the bulk of her property to Hira. In the will Hira was referred to at some places by her name and as others as adopted daughter. On Sundra's death Hira claimed Sundra's property as her adopted daughter and also as persona designata under Sundra's will. Held that Hira could not succeed as an adopted daughter because Sundra being a Nair could not validly adopt a daughter to herself. *Mallappa Nair v. E. M. Nair* 1 L R 4 Bom 566 followed. *Janku v. Mahalinga* 1 L R 11 Mad 393 dissenting from. Held further on construction of the will that Hira was entitled to succeed as persona designata under Sundra's will for Hira was not to take the property as being the adopted daughter but she was the adopted daughter and was to take the property because she was the special object of Sundra's bounty. *Hira Nair v. Radha Nair* (1917) 1 L R 37 Bom 116

NAPYA TENURE

—mortgage of—

See BHAGDARI AND NAPTAPARI ACT
(Bom V of 1862) 3
1 L R 35 Bom 42

NATIVE INDIAN SUBJECT OF HIS MAJESTY

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 188
1 L R 41 Bom 667

NATIVE STATE

See LIMITATION ACT (IX of 1908) Sec I ART 182 CL 5 (5) AND (6)
1 L R 32 Bom 420

NATTUKOTTAI CHETTIES

See LIMITATION ACT 1908 Sec I ART 182 CL 5
1 L R 43 Mad 629
See PRESIDENCY TOWNS IN OLVENCY ACT 1900 s 115
1 L R 43 Mad 747

NATURAL SON

See HINDU LAW—STRIDHAN
1 L R 43 Calc 844

NAVIGABLE RIVER

See FISHERY 1 L R 42 Calc 489

—dry lands formed through recession
—whether can be assessed or revenue

See PUBLIC NAVIGABLE RIVER
24 C W N 639

—test for determining whether a
river is a public Navigable River

See FIVE BEDS 24 C W N 809

The Law of the Madras Presidency as to Rivers and Streams certainly differs from the English law and it is quite possible that it recognises some proprietary right on the part of government in the water

NAVIGABLE RIVER—contd

—test for determining whether a
river is a public Navigable River—contd

flowing in rivers and stream *TPASAD ROW*
THE SECRETARY OF STATE FOR INDIA

1 L R 40 Mad 886

Pennell's Map of inland waterways—Zemindar status of whether proprietors under Moghul Rule—Cession of Burdwan Midnapore and Chittagong effect of on emindari right—Fifth Report of Select Committee of House of Commons—Mussourat and Bankar Zemindar's chartered rights—Permanent Settlement whether bed of river Damodar included in—Bergal Regulation XIX of 1816 s 9—Fishery, exclusive right of presumption from—Bergal Alluvion and Diluvion Regulation XI of 1825—Churn principle of resumption of—Public domain gain from—Middle thread principle of as to right to bed of river—Rules as to construction of boundaries—Revenue whether Government entitled to a cess on Churn farming within the Burdwan emindari—Water duties—Doul baridat—At the date of the Permanent Settlement of Bengal (1793) the River Damodar was not a navigable river i.e. one in which boats could ply throughout the year. Rennell's Map of inland navigation appearing in his Atlas which was published by authority of the East India Company does not require to be proved. Prior to 1760 A.D. the zamindar or chahla of Burdwan was settled with the Maharaja's ancestors not by parganas but as a whole. They were not mere revenue agents of the Puling Power for the principal zamindars of Bengal had clearly a title to their estates. Under the treaty of 1760 Burdwan Midnapore and Chittagong were ceded to the East India Company subject to the rights of the zamindars which were expressly reserved by the Sanad executed to give effect to the treaty and accepted by the East India Company. The farming out of the revenues of Burdwan by public auction for three years in 1760 did not put an end to the rights of the Maharaja's predecessors for a scrupulous regard seems to have been paid to the then Maharaja's chartered rights of Mussourat and Bankar etc. At the time of the Permanent Settlement the bed of the River Damodar in so far as it flowed through the chahla or zamindari of Burdwan formed a part of the estate permanently settled with the Maharaja's predecessors. Regulation XIX of 1816 s 9 provides only for cession in relation being paid not for reduction of the land revenue. Although an exclusive right of fishery does not of itself pass the right to the soil in the bed of the river still when the terms of a grant are unknown or uncertain it is a matter of inference that the plaintiff has a certain right in the river the bed of which is claimed by the Bengal Alluvion and Diluvion Regulation of 1825. Churn in non navigable river is a title of the permanently settled zamindar resumed for before the Permanent Settlement of Government resumed the right of gain from the public domain. *V. Fokam datta v. B. C. Fokam datta* and *Prasad Fok v. B. C. Fokam datta* 1 L R 40 Mad 886. The law of the country is applicable when flowing with the proprietors' lands. Middle thread principle. *Chander Choud v. B. C. Fokam datta*

NAVIGABLE RIVER—concl'd

— test for determining whether a river is a public Navigable River—concl'd

Tagore v Jado Lal Mullick 5 C L R 97 referred to Where property is bounded by a road or river the boundary even if given as the road or river is the middle of the road or river as the case may be *Commissioners for Land Tax for the City of London v Central London Railway Company* [1913] A C 361 and *Attorney General for British Columbia v Attorney General for Canada* [1914] A C 153 referred to The assessment of the Government revenue on the riparian mouzabs of the Burdwan zemindari was imposed not only in the mouzabs but also on the adjoining half of the bed of the river and Government is not entitled to assess further revenue on *churs* forming therein **SECRETARY OF STATE FOR INDIA v BHOY CHAND MAHATAF** (1918) I L R 46 Calc 390 24 C W N 872

NAZARANA

S e MORTGAGE I L R 35 Bom 371

NAZIR

— appointment of, as guardian—
See GUARDIAN I L R 38 Calc 783

NECESSARIES

See CONTRACT ACT (IV OF 1872) s 63
I L R 32 All 325

NECESSITY FOR ALIENATION

See HINDU LAW—ALIENATION
See HINDU LAW—LEGAL NECESSITY

NEGLIGENCE

See BANKER AND CUSTOMER
I L R 36 Bom. 455

See BOMBAY DISTRICT MUNICIPAL ACT
(BOM III OF 1901) ss 50 54
I L R 35 Bom 492

See CARRIERS I L R 40 Calc 716
I L R 41 Calc 80
I L R 47 Calc 1027

See CONTRIBUTORY NEGLIGENCE
I L R 37 Bom 575

See GAS COMPANY 14 C W N 158

See HORSE 19 N W N 916

See MORTGAGE I L R 43 Calc 1052

See PENAL CODE (ACT XLV OF 1860)—
s 304 I L R 42 All 272
ss 337 338 I L R 39 Bom 523

See RAILWAY COMPANY
I L R 37 Bom. 1
I L R 39 Bom 191

See STEAMSHIP COMPANY
I L R 47 Calc 6

See TORT
See VENDOR AND PURCHASER,
I L R 35 Bom 269

NEGLIGENCE—cont'd

— Cau ing death—
See PENAL CODE s 304
I L R 42 All 272

— indemnity against—
See COMMON CARRIER
I L R 38 Calc 23

— Liability of landward for—
See AORA TENANCY ACT (II OF 1901)
ss 164 166 I L R 40 All 246

— of agent damages for—
See TRANSFER OF PROPERTY ACT (IV OF
1882) s 6 (e), I L R 38 Mad 138

— of Government Servant—
See TORT I L R 39 Mad 351

— of municipality—
See BOMBAY IRRIGATION ACT 1879
I L R 18 Bom 116
See TORT I L R 41 Mad 538

— of servants—
See JUDICIAL DESCRIPTION
4 Pat L J 381

— of servants of Public Works Department—
See TORT I L R 39 Mad 351

— Railway accident—*Railway Company—Breach of statutory duty—Injury to passengers with arm outside carriage window—Contributory negligence—Contractual obligations* The fact that the door on a moving train is open is evidence but not conclusive proof of negligence on the part of the Railway Company. Where there is a statutory obligation any breach of it which causes an accident is conclusive against the defendant apart from special proof of negligence. But the breach must in itself be the cause of the accident and the rule does not extend so far as to exclude the defence of contributory negligence. In view of the contractual relations between the parties a Railway Company is not liable for injuries caused to any part of a passenger which is outside the carriage in which he is travelling provided that such injuries could not have been received had the passenger remained inside the carriage. The application of the rule that where there is negligence on both sides the negligence of the person who had the last chance of averting accident is the efficient cause thereof must be restricted to cases where the danger was apparent to both or at least one of the parties before the accident actually happened. **DULLABJI SAKHIDAS v G I P RAILWAY CO** (1903) I L R 34 Bom 427

BUT see CONTRIBUTORY NEGLIGENCE
I L R 37 Bom 575

— Suit against Tramway Company
—*Passenger entering car while in motion—Contributory negligence* T brought an action against the Tramway Company claiming damages for injuries sustained by him by reason of the Company's negligence. T alleged that while attempting to board a stationary tramcar the car was suddenly started at a signal given by the conductor and the footboard tilted and slipped sideways from beneath T's foot in consequence of which T lost his balance was thrown to the ground and his

NEGLIGENCE—contd

right foot was injured *Held* dismissing the suit that the footboard was not loose and that the fall was due to his attempting to enter a car while in motion and was not due to any fault or defect in the fixity of the board *Per curiam*—Whether there is a bye law or there is not a bye law to that effect the fact remains that if a passenger chooses to attempt to enter or leave a moving car he does so at his own risk. It is no what a prudent or a reasonable man should or would do and if he does it and sustains injury while in the act of so doing it would be an accident or a misfortune for which the defendant company would in no way be liable **TENLUGI JAM RAJ v BOMBAY ELECTRIC SUPPLY AND TRAMWAYS COMPANY LTD (1911)**

I L R 35 Bom 478

Driving motor car at excessive speed

—*Injury to bare licensee being driven in car*—

—*Liability of car owner*—*Quantum of damages*

The defendant was driving a party of relatives and friends (including the plaintiff) in his motor car from Deolali to Igarpuri. The road at one point turned somewhat abruptly to the left and crossed the lines of the Great Indian Peninsula Railway by means of a level crossing after the level crossing the road turned abruptly to the right. The defendant who was driving his car at an excessive speed drove over the crossing at the time that a train was there due. Though it got over the crossing safely the car failed to take the abrupt turning to the right and jumping an embankment rushed into a paddy field below. The occupants of the car with the exception of the defendant were thrown out with much violence and the plaintiff received such grave injuries as would render him a cripple for the rest of his life. The plaintiff sued to recover damages caused to him by the defendant's negligence. *Held* that putting the skill and caution exigible from the defendant at the very lowest he was grossly and culpably negligent that he was liable in damages to the plaintiff and that in assessing damages the same principles should be applied whether the person who had incurred the liability was a private individual or a wealthy company **SORABJI HOFMUSJI v JAMSHEDJI NERWANJI (1914)**

I L R 38 Bom 552

Public authority breach of statutory duty by causing injury—when cause of

action arises—*Bengal Local Self Government Act (III of 1885) ss 20 and 146*—*Bengal Municipal Act (III of 1884) ss 29 and 363*—*Bihar and Orissa General Clauses Act of 1917 s 4 (2)*—*Suit against District Board or Municipality—Limitation* The words anything done under this Act in s 146 of the Bengal Local Self Government Act 1885 and in s 363 of the Bengal Municipal Act 1884 include omissions. Where personal injuries are caused by a negligent act or omission of defendant a fresh cause of action does not arise whenever the damage suffered becomes aggravated without any fresh act or omission in the part of the defendant. In such a case the plaintiff is entitled to compensation not only for the damage actually visible at the time when the suit is instituted or at the time of the trial but also for such consequential damage as may reasonably be expected to arise in the future from the wrongful act or omission complained of. But if a suit for damages for the wrongful act or omission has been decided or has become barred no fresh cause of action

NEGLIGENCE—concl

accrues to the plaintiff on the development of the consequential damage. **S 146 of the Bengal Local Self Government Act** does not include a suit against a District Board as a body corporate as distinct from a suit against the members of such Board and therefore a suit against a District Board may be instituted more than three months after the cause of action arises. But a suit against a Municipality must be brought within the period of limitation prescribed in s 363 of the Bengal Municipal Act 1884 **ALLAN MATHEWSON v CHAIRMAN OF THE DISTRICT BOARD OF MANERHUM**

I Pat L J 359

—*Railway Company—Derailment of train—Removal of rail—Onus of proof—Discharge of onus* The respondent was injured by reason of a train of the appellants in which he was a passenger leaving the line and being wrecked and he sued the appellants for damages for negligence. The immediate cause of the accident was the removal of a rail which the appellants pleaded had been effected maliciously by some person for whom they were not responsible. *Held* that the onus of proof that the respondents' injuries were not due to the appellants' negligence was upon the appellants but that upon the evidence they had discharged that onus. Judgment of the High Court (**SANDERSON C J** dissenting) reversed. **EAST INDIAN RAILWAY COMPANY v KIRKWOOD (1919)**

I L R 48 Calc 757

NEGOTIABLE INSTRUMENT

See **BILLS OF EXCHANGE**

See **HUNDI**

See **NEGOTIABLE INSTRUMENTS ACT (XXVI of 1881)**

See **NOTE OF HAND 14 C W N 414**

See **PROMISSORY NOTE**

See **SHARES I R 46 Calc 331 342**

—*Party to suit on—Limitation Act s 22—Amendment by adding party cannot relate back to date anterior to application to add party* A suit on a negotiable instrument must be instituted in the name of the person who on the face of the instrument is entitled thereto or by a holder deriving title from him. Where the suit is instituted in the name of a wrong person the Court has power under O I s 10 (1) to amend the plaint by bringing the proper party as plaintiff. Such person cannot be brought on the record as from the day the suit was instituted. The amendment will relate back to the most to the date on which the application to be added as plaintiff was made and if such application was made after the right to sue was barred by limitation such amendment should not be allowed. In suits of this kind a mistake to be corrected under O I s 10 (1) must be corrected before the limitation period of the suit expires. **Seelamma v Channappa I L R 90 Mad 467** referred to **SUBBARAYA IYER v VAITHINATHA IYER (1909)**

I L R 33 Mad 115

—*It may be transferred by registered deed as gift*—**XXXI of 1881 s 46 47 48**—*Transfer of Property Act (II of 1882) s 123—Mode in which transferee may enforce his rights—Evidence Act (I of 1857) s 5—Coral evidence to prove deed of gift to be donatio mortis causa* When the holder of a Government Promissory Note

NEGOTIABLE INSTRUMENT—contd

purported to transfer it to another by a registered deed of gift. *Held* that though there was no endorsement and delivery as contemplated by the Negotiable Instruments Act there was a valid transfer of the document as a chattel and the transferee was entitled to it and to the property referred to in it. [How such a voluntary transferee is to enforce recognition of his title and payment of the note not decided.] Delivery of the property is not necessary where the gift is by a registered instrument. Oral evidence is not admissible to prove that a document which in terms is an out and out gift was really meant to be a *donatio mortis causa*. **BENODE KISHORE GOSWAMI v ASHUTOSH MUKHOPADHYA (1912)**

16 C W N 666

In favour of Agent—In favour of A as agent of B—Endorsement by A simpliciter in C—No prima facie title to C If a negotiable instrument executed in favour of A as the agent of B is endorsed by A simpliciter (i.e. without describing himself as the agent of B) to C the endorsement cannot in the absence of any evidence to show that A was intended to be the beneficial owner of the note convey in this country any title to C so as to enable C to sue the person or persons liable on the note. **Muthar Sahib Maraiyar v Kadir Sahib Maraiyar I L R 28 Mad 244** referred to **VEERAIYAN CHETTIAR v POORUSWAMI CHETTIAR (1913) I L R 36 Mad 362**

In favour of several—Discharge by one of several payees validity of *Held* by the Full Bench (THE CHIEF JUSTICE dissenting) that one of several payees of a negotiable instrument could give a valid discharge of the entire debt without the concurrence of the other payees. **ANNAPURNAMMA v ALAKAYYA (1913)**

II L R 36 Mad. 544

Hundi—Whether by mercantile usage at Delhi oral acceptance is binding—What constitutes a mercantile usage *Held* that by mercantile usage at Delhi a drawee who has accepted a hundi orally is liable on the instrument. *Held* also that to establish a mercantile usage it is enough if the usage appears to be so well known and acquiesced in that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract. **Juggomohan v Manickchand 7 Moo I 263 282 P C** referred to **PANNA LAL LACHMAN DAS v HAREGOPAL KULBI I AM I L R 1 Lah 80**

Accompanied deposit of title-deeds—Endorsement of negotiable instrument without transfer of equitable mortgage by registered instrument—Right of endorsee to enforce the mortgage The endorsee for value of a negotiable instrument the amount of which had been secured by a mortgage by deposit of title deeds cannot claim to enforce the mortgage in the absence of a registered instrument conveying the mortgage right to him. **Perumal Immal v Perimal a/c (19-1) I L R 41 Mad 196** dissentient from **THE NATAL CITIZENS v BALAKRISHNA MURTHY (1921) I L R 44 Mad 885**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)

ss. 4 and 28—

See NOTE OF HAND 14 C W N 414

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—contd

ss 4 and 80—Certain person whether manager of a bank is—Interest whether enlargement of time is good consideration for promise to pay—Promissory note where suit on should be instituted A promissory note payable to the manager of a bank is payable to a certain person within the meaning of the Negotiable Instruments Act 1881 s 4 s 80 being an enabling section is no bar to the recovery of interest which the debtor subsequently to the execution of a promissory note agrees to pay in consideration of the creditor not pressing his demand immediately. A suit on a promissory note is properly instituted at the place where payment is to be made. **MAHANTH DAXODAR DAS v BENARES BANK LTD**

I Pat L J 536

ss 11 and 6—Cheque Bill of Exchange—Banker—Local Boards Act (V of 1884) ss 54 144 to 147—Government Treasury whether a banker—Power of Local Board to make or issue negotiable instruments—Implied power—Rules and Forms under the Act—Local Fund Code s 549—Indorsee of an order of District Board whether holder in due course A Local Board is impliedly empowered under the Local Boards Act (V of 1884) to make endorse or accept negotiable instruments as such a power can be inferred from the rules and forms made by the Governor in Council under s 144 cl (16) of the Act and contained in the Local Fund Code which have the force of law under s 147 of the Act. A Government Treasury in which a District Board deposits its money under s 54 of the Act and issues orders for payment out which are respected by the former is not a Bank. **Foley v Hill (1848) 2 H L Cas 28** at p 43 and **Hainlas Union v Wheehright (1875) L R 10 Exch 183** followed. An unconditional order in writing for payment of money to or to the order of a person issued by a District Board on the Government Treasury is not a cheque under s 6 but is a bill of exchange under s 5 of the Negotiable Instruments Act and a bond fide indorsee for value of such an order is entitled to payment as a holder in due course. **RAMIA SWAMI PILLAI v SANKARALINGAM AYYAR (1920) I L R 43 Mad. 816**

s 13—

S SHARES I L R 46 Calc 331 342

s 16—Endorsement what constitutes—Holder in due course—Bill payable on demand when overdue S 16 of the Negotiable Instruments Act does not lay down any specific form of words for an indorsement. A promissory note payable on demand was executed on 18th December 1901. On the 12th September 1904 the payee received the amount due on the note from one S and the following was indorsed on the note by the payee.

I have this day received from you the sum of _____ due for principal and interest and I as signed this note to you with power to recover the amount due and I by showing the same. No demand for payment was made before the 12th September 1904. *Held* that S was an indorsee of the promissory note that the promissory note was not overdue on the date of indorsement and that S was entitled as holder in due course to sue on the note. **SIVARAMAKRISHNA IYATTAR v MAYA GALAGANI MOHUN MOHIDEY (1909)**

I L R 33 Mad 54

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—contd

§ 22—*Hundi payable after six months*—Due of maturity—Liability of endorser—Held (i) that a bill of exchange which is not expressed to be payable on demand at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable and (ii) that a hundi drawn in the customary form that is expressed to be payable after so many days does not require to be presented for acceptance in order to render liable thereon the payee who had endorsed it in favour of a third party GANGA PRASAD v HIRA LAL (1916)

I L R 39 All 86

§ 26 ET 28—

See HUNDI SUIT

I L R 46 Cal. 663

Agent meaning of—Hundi or promissory note drawn or made by a trustee of a charity—Personal liability of trustee—Liability of charity property and other members of the family—Signature of trustee with vilam of charity prefixed effect of—Liability of non-executants—A person drawing a hundi or bill of exchange or making a promissory note as trustee of a temple or of a charity is personally liable on such bill or note—Rule of English Law as to bills drawn or notes made by church wardens overseers and others who describe themselves in their official capacities applied English and Indian cases reviewed—Agent referred to in ss 7 and 28 of the Indian Negotiable Instruments Act means the agent of a person capable of contracting within the meaning of s 26 and when the agent is not liable the principle is—A person drawing a bill or making a note as trustee of a temple or charity is not acting on behalf of such a principal and cannot claim the benefit of s 28—When the agent of a Chetti firm is executing a negotiable instrument prefixes the firm's vilam that is a well understood indication that he is acting only as an agent and has been so recognized by the Courts but when a man signs as trustee prefixing the charity vilam there is on the face of the document no clear indication that he contracts for any one else but him self PALANIAPPA CHETTIAR v SHAN MUGAM CHETTIAR (1918)

I L R 41 Mad 815

§ 27—Promissory note executed under the authority of a marksman but not marked by him—Validity of—Contract Act (IX of 1872) s 26 applicability of—The law of Agency as stated in s 226 of the Indian Contract Act is applicable to Negotiable Instruments and a promissory note executed by a person under the authority of a marksman is valid though the marksman has not affixed his mark thereto BALAYIA v SUBBAYYA (1917)

I L R 40 Mad 1171

§ 28—Promissory note by agent without any indication of execution as agent—Personal liability of executant—Unless an executant of a promissory note clearly indicates therein either by an addition to his signature or otherwise that he executes it as agent of another or that he does not intend thereby to incur personal responsibility he is liable personally on the promissory note according to s 28 of the Negotiable Instruments Act—Merely describing one self in the note as the holder of a power of attorney from another does not show that the power included a power to

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—contd

§ 28—contd

sign promissory notes or that the note was signed in pursuance of the power—Applicability of English Law on the subject considered KONETTI VAIKKER v GOPALA AILAR (1913)

I L R 38 Mad 482

§ 28 A—

See PROMISSORY NOTE BY GUARDIAN OF MINOR I L R 39 Mad 915

§ 30 47 59 74 94—Hundi payable to bearer—Surety—Contract of suretyship only between surety and creditor—Right of surety against principal debtor—Indian Contract Act (IX of 1872) s 16 140 141 145 69 and 70—Right of holder not being holder in due course—Delivery of hundi payable to bearer effect of—Holder right of A per on who becomes a surety without the concurrence thereto of the principal debtor gets as against the latter only the rights given by ss 140 and 141 of the Indian Contract Act (IX of 1872) and not those given by s 145—Such a person cannot invoke in his favour the aid of ss 69 and 70 of the Act—Hodgson v Shaw s My K 183 referred to—A person obtaining by payment after dishonour by the drawee delivery of a negotiable instrument payable to bearer acquires the rights of a holder thereof and can under s 59 of the Negotiable Instruments Act (XXVI of 1881) recover from the drawer the amount due thereon on proof of presentment and notice of dishonour as required by ss 74 30 and 94 of the Act—Gajapathy Krishna Chandra Deo v Srinivasa Chariu Appeal No 25 of 1909 referred to—Nanal Rom v Mehin Lal I L R 1 All 487 distinguished—MUTHU RAMAN v CHIVVA VELAYAN (1916) I L R 30 Mad 865

§ 32 43—

See ARBITRATION I L R 2 Lah 335

See BILL OF EXCHANGE

I L R 41 Bom 586

§ 43—

See C I F CONTRACTS

I L R 42 Bom 473

§ 47—

See s 30

I L R 39 Mad 885

§ 48—Promissory note making over of without endorsement of constitutes valid transfer of gift—Close in action transfer of—Negotiable Instruments Act scope of—Transfer of Property Act (II of 1882) s 193 130 137—The defendant executed a promissory note in favour of one V who handed over this note without any endorsement to an idol through its pujari and having done so died—The plaintiff the *shebani* of the idol thereupon sued the petitioner for the amount due on the note—Held that although a promissory note to order may be transferred otherwise than by endorsement and delivery as contemplated by s 48 of the Negotiable Instruments Act there was no legal transfer of the promissory note to the plaintiff or the Deity whom the plaintiff represented either as a negotiable instrument or as a choise in action under s 130 of the Transfer of Property Act nor was there a valid gift of the promissory note under s 123 of the Transfer of Property Act—That even assuming that there was a valid transfer the plaintiff was not entitled to sue in his

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*contd*

— s 48—*contd*

own nam It may be generally true that a valid assignment of a negotiable instrument as an action- able claim gives the assigner the rights of the holder subject to equities but this broad propo- sition must be subject at any rate to the qualifica- tion that it is true only so far as it is not inconsis- tent with the special provisions of the Negotiable Instruments Act *Per PICHARDOR J* The object and purpose of the Negotiable Instruments Act is to legalise a system under which claims arising upon certain instruments of a mercantile character can be treated like ordinary goods which pass by delivery from hand to hand But except within the prescribed limits such claims cannot be so treated *ARHOY KUMAR PAL : HAPIDAS BYSACK (1913)* 18 C W N 494

— s 57—

See PROMISSORY NOTE

I L R 41 Mad. 353

— s 59—

See s 30

I L R 40 Mad 965

— s 64 78—*Hundi—Presentation—*

Liability of drawer—Burden of proof Where it is sought with reference to s 76 (d) of the Negotiable Instruments Act 1881 to render liable the drawer of a *hundi*, which has not been presented for pay- ment the onus of proving that the drawer could not suffer damage from the want of presentment is on the party who wants to excuse himself for the non presentation of the *hundi*. *Madho Ram v Durga Prasad I L R 33 All 4* followed *Phul Chand v Ganga Ghulam I L R 21 All 400* distinguished *GAYA DIN v SRI PAN (1917)* I L R 39 All 384

Hundi—Non present-

ment by holder—Liability of drawer—Burden of proof Where a *hundi* has not been presented for payment and the holder is seeking to recover from the drawer it lies on the plaintiff to show that the drawer could not have suffered any loss by reason of the *hundi* not having been presented *NARAY MAL v CHET RAM (1918)*

I L R 41 All 40

— ss 76 (a) 87 93 and 98—*Altering period of paym n of a hundi without consent of all the drawers—Material alteration—Consequence—*

Hundi payable at a specified place—Presentment—Necessity of notice of dishonour In this case the Diamond Jubilee Mills Delhi (the 4th defendant) being in need of money in 1913 the Directors decided to borrow money. Consequently three persons namely Sundar Singh (defendant No 1) Manager of the Company and Pam Singh (defend- ant No 2) and Chhajju Ram (defendant No 3) two of the Directors drew five *hundis* including the *hundi* which is the subject matter of this appeal on the Company (defendant No 4) in favour of the plaintiff firm Gulab Rai Mehr Chand. The *hundis* were drawn on 1st October 1913 and were accepted by the drawee Company on the 4th October who noted it as payable at the Alliance Bank of Simla Limited Delhi. Originally it was payable after 93 days but this was subsequently altered to 63 days under the initials of the Sundar Singh alone. The plaintiff firm enforced the *hundis* to the All n o Bank of Simla Limited which paid the money to the acceptor Company. On the

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*contd*

— s 76 (a) 87 93 and 98—*contd*

due date the *hundis* was dishonoured by the Com- pany and the Bank recovered the money from the plaintiff firm. The plaintiff firm in its turn then brought the present suit to recover the money not only from the acceptor Company but also from the three drawer. It was pleaded *inter alia* that the due dates of the *hundis* as executed were altered without the knowledge of Ram Singh and Chhajju Ram that the *hundis* were never pre- sented for payment and that no notice of dishonour was given to them. The District Judge decreed the claim against all the defendants except Chhajju Ram. Ram Singh then appealed to the High Court claiming exemption from liability and the plaintiff appealed to have Chhajju Ram also rendered liable. *Held* that the alteration in the *hundis* reducing the period of payment was a material alteration within the meaning of s 87 of the Negotiable Instruments Act, and plaintiff having failed to prove that this was done with the consent of Pam Singh and Chhajju Pam or in order to carry out the common intention of the original parties the *hundis* was thereby rendered void as against them and plaintiff could not be allowed to fall back upon the contract as it existed prior to the alteration. *Suffel v Bank of England 9 Q B D 555* and *Wood v Steel 6 Wallis 80* followed. *Held*, also that the fact that the *hundis* had not been presented for payment on due date did not in this case have the effect of non suiting the plaintiff as the *hundis* was expressly payable at the Alliance Bank of Simla and Delhi and neither the acceptor nor any person authorised to pay had attended there during the usual business hours. Presentment was therefore not necessary—*vide* s 76 (a) of the Act. *Held* further that the law embodied in s 93 of the Act requires the holder to give notice of dishonour to the person or persons other than the drawee or acceptor whom he seeks to make liable on a bill and this rule does not admit of any depar- ture except in the cases enumerated in s 93 and as the plaintiff in this case had failed to prove the only exemption relied upon by him viz that the party charged could not suffer damage for want of notice his suit against the drawers must also fail on the ground of want of notice of dishonour. *PAM SINGH : GULAB RAI MEHR CHAND*

I L R 1 Lah 262

— s 80—

See s 4

5 Pat L J 536

See EVIDENCE ACT 19 2 4 90

1 Pat L J 71

See HAND NOTE

2 Pat L J 451

— *Promissory note silent*

about interest oral agreement as to if promissory—Evidence Act (1 of 1872) s 90 (2) Where there was no mention of interest in a promissory note and it was sought by the plaintiff to prove that by a contemporaneous oral agreement it was settled between the plaintiff and the defendant that in- terest would run at the rate of 8 per cent per mensem. *Held* that under s 90 (2) of the Indian Evidence Act the plaintiff was not entitled to prove any such oral agreement as to the rate of interest. Where the defendant admitted in his written statement that he had verbally agreed to pay interest on the promissory note at the rate

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*contd*s 80—*contd*

of 12 per cent per annum s. 80 of the Negotiable Instruments Act (XXVI of 1881) was no bar to the interest being decreed at that rate **LACHMI CHAND JHAWAR v HEMENDRA PRASAD GHOSH (1914)** 18 C W N 1260

s 87—

See s 76 I L R 1 Lah 261

See DIED I L R 38 Mad 748

s 93 98—

See s 76 I L R 1 Lah 261

s 94—

See s 30 I L R 39 Mad. 865

s 98—Want of notice of dishonour

—Whether damage caused by reason of such want of notice—Burden of proof In a suit by intermediate endorsers of a *hundi* against earlier endorsers the court found that the *hundi* had not been presented for payment within a reasonable time and that notice of dishonour was not given. Held that it lay upon the plaintiffs to prove that the defendants could not suffer damage by reason of want of notice of dishonour not upon the defendants to prove that they had suffered damages *Moti Lal v Moti Lal I L R 6 All 78* followed **MADHO RAM v DURGA PRASAD** I L R 33 All. 4

s 118—

See PROMISSORY NOTE

I L R 47 Calc 861

Shah Jog *hundi*—

consideration—Onus probandi—Second appeal—Where lower appellate Court has placed onus on the wrong party The respondent *N M* drew upon himself two *Shah Jog hundis* in favour of the appellant *M R* one on 5th November 1914 payable after 31 days and the other on 9th November 1914 payable after 61 days On 15th December 1914 *N M* brought an action for cancellation of the *hundis* on the ground that they were without consideration A week later *M R* brought a counter action claiming principal and interest on the earlier *hundi*; the period for payment on the second *hundi* had not then expired Both actions were tried together and the first Court held that the onus of want of consideration was on *A M* the drawer and that he had failed to discharge this onus On appeal the Additional District Judge placing apparently the onus of proving consideration on *M R* the drawee held that he had proved consideration on the second *hundi* but not on the first *M R* then presented a second appeal to this Court Held that the *hundi* in dispute is what is called *Shah Jog hundi* i.e. a bill payable to a *Shah* or banker which is similar to some extent to a cheque crossed generally which is payable only to or through some banker and that such a *hundi* satisfies the requirements of a negotiable instrument Held also that under s 118 of the Negotiable Instruments Act there is a statutory presumption in favour of the passing of consideration and that the onus of proving want of consideration was therefore upon the drawer Held further that in cases of this character in which the question of allocation of onus

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*contd*s 118—*contd*

is the most vital question between the parties It is the duty of the Court in Second appeal to rectify a mistake made by the lower Appellate Court in this respect **MADHO RAM v NANDU MAL** I L R 1 Lah 429

s 135—

See BILLS OF EXCHANGE

I L R 48 Calc 584

NEPAL

whether a "Foreign State"—

See EXTRADITION WARRANT

I L R 42 Calc 793

NEW CASE

See PROCEDURE I L R 48 Calc 832

See REMAND I L R 42 Calc 888

NEW CHANNEL

See FISHERY

I L R 41 L A 221

NEW TRIAL

See EVIDENCE I L R 47 Calc 671

See PRESIDENCY SMALL CAUSE COURT

I L R 48 Calc 425

See PRESIDENCY SMALL CAUSE COURTS

ACT (XV OF 1882) s 38

18 C W N 25

application for—

See PRESIDENCY SMALL CAUSE COURTS

ACT (XV OF 1882) ss 9 10

I L R 38 Mad 823

Presidency Small Cause Courts Act 1882 1895 ss 9 38—Notice returnable before Full Bench—Practice in the Small Cause Court of Calcutta—High Court power of to frame rules—Matters of procedure and practice—Calcutta Small Cause Court Rules 92 93 94 and 95 By a notification dated the 9th July 1919 and published in the *Calcutta Gazette* of the 18th July 1919 Part I page 1128 the following rule framed by the High Court under s 9 of the Presidency Small Cause Courts Act 1882 1895 was added to rule 92 of the Rules of Practice of the Court of Small Causes of Calcutta Provided that the Court may if in its opinion no sufficient grounds are shown for the application dismiss it without directing service on the party against whom the application is made Held that the addition to r 92 was not *ultra vires* but that the rule did not contemplate the exercise by one Judge of the Small Cause Court of the powers conferred on the Court by s 38 of the Presidency Small Causes Courts Act 1882 1895 *Madurai Pillay v J. Muthu Chetty I L R 38 Mad 823* referred to *RAM CHANDRA SAGORENULU v ANARCHAND MURALIDHAR In re (19-0)*

I L R 47 Calc 763

NEWSPAPER

See FORFEITURE I L R 47 Calc 190

See PRESS ACT (I OF 1900) ss 3 (1) 4 (1)

17 19 20 20

I L R 39 Mad. 1085

NEWSPAPER COMMENT

— on party under cross-examination —

See *CONTEMPT OF COURT*

15 C W N 771

NEWSPAPER CORRESPONDENT

— statement of —

See *LABEL*

I L R 37 Cal 760

**NEWSPAPERS (INCITEMENT TO OFFENCES)
ACT (VII OF 1908)**

— ss 2 3 —

See *PRINTING PRESS*

I L R 38 Cal 202

— 3 —

Order—Forfeiture of press S 3 of the Newspaper (Incitements to Offences) Act 1908 provides for the making of a conditional order declaring the printing press used for the purpose of printing or publishing the offending newspaper to be forfeited. The section refers to the whole of the press and no order could be made under it limited only to such portions of the press as were employed in printing the offending newspaper. *DROV D KASHINATH PHADKE In re* (1903) I L R 34 Bom 327

Nature of offences under the Act—Incitement to assassination—Incitement—meaning of direct or indirect incitement—General incitement not addressed to particular person—Construction of offensive article. The question of the intention or knowledge of an individual may determine his criminal liability under the ordinary law of abetment by incitement by means of words written or spoken but under the Newspaper (Incitement to Offences) Act no question of the intention of the writer, printer or publisher arises and no personal liability is imputed to any particular person. The order thereunder is not one against any person but is purely restrictive and directed against the use or intended use of a press for the purpose of printing or publishing a newspaper containing any incitement to murder or to any other offence under the Explosives Substances Act (VI of 1930) or to any act of violence. The words any incitement in s 3 (1) of the Newspapers Act include direct and indirect incitement and need not be addressed to any particular person nor expressed in violent and outrageous terms. To incite means to move to action to stir up to stimulate to instigate or to encourage and a newspaper article comes within the scope of s 3 if it is as a matter of fact calculated directly or indirectly to produce that effect. *PER PRINCE J.* There can be no hard and fast canon as to what words or given set of words constitute incitement. It is a question of fact in each case and must usually depend largely on concomitant circumstances. The article must be read as a whole and as far as possible in the sense in which it was read by the section of the public to which it was primarily addressed and also considered with regard to the occasion and place of publication and the class or status of persons likely to be affected by it. I L R 36 Cal 405

NEXT FRIENDSee *CIVIL PROCEDURE CODE* (1908)

O XXXII r 7

I L R 41 All 553

See *CORR.*

I L R 43 Cal 678

NIJ CHASSee *ORISSA TENANCY ACT 1913*

3 Pat L J 475

NOMINATION PAPERSee *MUNICIPAL ELECTION*

I L R 46 Cal 132

NIBANDHASee *HINDU LAW—HEREDITARY PRIESTS*

I L R 45 Bom 94

See *LIMITATION ACT 1877* SCH II ARTS 131 62

I L R 34 Bom 349

See *TRANSFER OF PROPERTY ACT* ss 55 (6) (b) 123

I L R 34 Bom 287

NIMAK SAYAR MEHAL

*Permanent Settlement—Separate grants of amindari and Nimal Sayar over the same village right which pass under—Right of grantee of Nimal Sayar to enter on lands of zemindari for working salt pits—Right of licensee of grantee—Reasonable exercise of right—Cujus est solum ejus est usque ad caelum ad inferos doctrine of application in India—Plaint amendment of—exclusive right to dig salt pits misunderstood and wrongly described in plain as a monopoly. The zemindari in village Mangura was settled on the predecessors in title of the defendant at the Permanent Settlement and at the same Settlement the Nimal Sayar Mehal in the said and other villages (i.e. an exclusive right to collect nitrous earth from the lands in those villages with a view to extracting saltpetre therefrom) was settled by Government on the plaintiff's predecessor. The plaintiff urged that the grant of the Nimal Sayar Mehal entitled her to enter on the land comprised in defendant's zemindari and exercise therein in a reasonable manner the rights vested in her under the grant whilst the defendant a recent purchaser of the zemindari right contended that the grant in question conferred on the plaintiff the right to collect the revenue only if and when saltpetre happened to be manufactured and that she had no right to come on the land except by the leave and license of the defendant much less to authorize others to utilize the nitrous soil for the collection of saltpetre. Held that what passed under the grant of the Nimal Sayar Mehal were not rights of this precarious character. That the Nimal Sayar Mehal was no part of the assets of the zemindari and that the zemindari and the Nimal Sayar Mehal were separately settled by the Government as it was open to it to do in disregard of the doctrine of English real property *cujus est solum ejus est usque ad caelum et ad inferos* *Gooroo Pershad Doss v Bishnu Charan Heyra* 1 Sel Rep 337 (Old Ed) 1811 and *Bygnauth v Deen Dyal* 2 Sel Rep 133 referred to *The Bengal Government v Nawab Zafar Hussain Khan* 5 Moo I A 467 distinguished. That the grant of the Nimal Sayar Mehal carried with it the means reasonably necessary for its enjoyment. *Prerogative of Saltpetre* 12 Coke Rep 12 referred to. That by virtue of plaintiff's rights as owner of the Nimal Sayar Mehal she her agents, servants and workmen, lessees and licensees were entitled to enter on the land of the village and to exercise an exclusive right to dig for saltpetre but so that this be done with as little inconvenience and prejudice as possible.*

NIMAK SAYAR MEHAL—contd

to the defendant as the owner of the village and that the ground be made and left as commodious to the defendant as it was before. Plaintiff whose claim of exclusive right to work saltpetre was erroneously described in the plaint as a monopoly was allowed in Second Appeal to amend her plaint and formulate her claim in happier and more precise language. As the plaint in its original form occasioned the prolongation of the suit the plaintiff though successful was ordered to pay costs throughout. **GOLAP CHAND v JANKI KUAR (1913)** I L R 41 Calc 286 17 C W N 1195

NOABAD

See LAND ACQUISITION ACT 1894

18 C W N 531

Khas Mehal—Taluk
a tenure—Non permanent taluk—Sale for arrears of revenue—Purchaser's title—Beng Act VII of 1865 s 12—Cause of action A Noabad taluk is a tenure the land being khas mehal land of Government. Where it was found that the tenure in question was not a permanent tenure the purchaser thereof at sale under Act XI of 1859 acquired it in the same estate in which it was held at the time of the last settlement as provided by s 12 of Bengal Act VII of 1868. **GAUGADAS SEAL v THE SECRETARY OF STATE FOR INDIA (1916)** 20 C W N 636

Whether a permanently settled taluk A Noabad taluk may or may not be a permanently settled taluk. **ASIRAF ALI v KARIM ALI (1918)** 22 C W N 1025

Noabad lands settlement Right of Government in respect of such lands. Since the Government stands in the same position as an ordinary zemindar in respect of Noabad lands which it has a right to settle with whomsoever it likes. **NAZIR AHMED CHOWDHURY v SECRETARY OF STATE** 26 C W N 913

NOLLE PROSEQUI

See CRIMINAL PROCEDURE CODE s 437
16 C W N 983

See JURISDICTION OF CRIMINAL COURT—
I L R 40 Calc 71

NOMINATION OF JUNIOR OR SENIOR

See BARRISTER I L R 44 Calc 741

NON AGRICULTURAL LAND

See RECORD OF RIGHTS
I L R 46 Calc 441

NON AGRICULTURAL TENANCY

Held that non agricultural tenancies created by the Dowry before the Transfer of Property Act are not heritable or transferable. **MAHOMED AYE JUDDIN MEA v PRODLOT KUMAR TAGORE** 25 C W N 13

NON APPEALABLE CASE

See SUMMARY TRIAL
I L R 43 Calc 280

NON APPEARANCE.

Plaintiff—Non appearance of one of the plaintiffs effect of Civil Procedure Code (Act V of 1908) O IX rr 8 10 12

NON APPEARANCE—contd

Reading together rr 8 and 10 of O IX Civil Procedure Code it seems that r 8 provides for the case where a single plaintiff or all the plaintiffs if there are more than one do not appear and r 10 provides for a case when there are more plaintiffs than one and one or more of them appear and others do not appear. In a suit on a mortgage bond for sale where one of the two plaintiffs did not appear in person in spite of Court's order nor showed cause but the Court proceeded with the trial of the suit and decreed the claim in favour of both the plaintiffs. Held that there was nothing illegal in the decree. **KULENDRA KISHORE POY v RAI KISHORE SHANU (1920)** I L R 48 Calc 57

NON COMPOUNDABLE OFFENCE

Contingency executed in consideration of complainant withdrawing prosecution. Suit to set aside same after prosecution withdrawn if lies. **BIJDESHARI PRASAD v LERU PAJ SAHU (1916)** 20 C W N 760

NON CONFESSORIAL STATEMENTS

See MISDIRECTION I L R 45 Calc 557

NON FEUDATORY ZAMINDARS OF CENTRAL PROVINCES

See ACT OF STATE
I L R 39 Calc 615

NON JOINDER

See CIVIL PROCEDURE CODE O O J
PR 9 and 13

See MORTGAGE I L R 35 All 247

See MORTGAGE SUIT 25 W W N 594

See PARTIES I L R 33 All 272

See RIGHT OF WAY 25 C W N 249

of causes of action—

See CIVIL PROCEDURE CODE (1908)
O II R 2 I L R 41 All 583

of parties—

See CIVIL PROCEDURE CODE 1908 O
XXXXX s 1 I L R 35 All 484

Suit for rent—Heirs of the original tenant not in possession of the holding if necessary parties Where after the death of the original tenant a suit was brought against some of his men who were in possession of the holding and against whom a previous decree was obtained for arrears of rent accrued due during the period of latter's occupation. Held that the suit was not defective by reason of the non joinder of the other heirs. **MEHARAJ MANDAL v JOGENDRA DATTA DE (1920)** I L R 48 Calc 518

NON-JUDICIAL STAMP

See STAMP ACT (II of 1899) s 52
14 C W N 1101

NON OCCUPANCY HOLDING

See NON OCCUPANCY PARLAT

Non-occupancy raiyats holding sale of in execution of money decree—Raiyats' right to raise question of non transferability. A non occupancy raiyati holding was sold in execution of a money decree whereupon the judgment debtors objected on the ground of non

NON-OCCUPANCY HOLDING—contd

transferability The *pattah* of the land prohibited any kind of transfer without the consent of the landlord and gave the landlord the right of *khas* possession in case any such transfer took place. *Held* that if the terms of the lease gives the landlord a right of re entry in the case of a transfer without his consent that may raise a question between the purchaser if any at the Court sale and the landlord but does not clothe the raiyat with a right to object to the sale. *LELOO JUMA v PAJANI KANTA CHOWDHURY* (1918)
22 C W N 793

heritability of—In the absence of a custom to the contrary a non occupancy raiyat's interest is heritable. *KALEU GABRI v JANOLI CHOUDHARI*
1 Pat L J 273

NON-OCCUPANCY RAIYAT

See CHOTA NAAGPUR LANDLORD AND TENANT PROCEDURE ACT s 8
14 C W N 297

See EJECTMENT 1 L R 40 Calc 858

See LANDLORD AND TENANT
1 L R 37 Calc 709

See NON OCCUPANCY HOLDING

See NON OCCUPANCY RIGHT

Holding over after term of holds on from year to year—Ejectment Under the Bengal Tenancy Act there is no raiyat who holds from year to year and if the tenant is a non occupancy raiyat who does not hold under a lease for a term he cannot be ejected under the provisions of cl. (c) of s 44. *JOTIRAM KHAN v JONAKI NATH GHOSH* (1914)
20 C W N 258

Khamar land—Statute—Headings of Chapters—Bengal Tenancy Act (VIII of 1885) Ch XI s 45 and Sch III cl 1 (a) A tenant of a khamar land is not a non occupancy raiyat. The heading of a chapter in a statute may be looked at for the purpose of interpreting a section in the statute. *DWARKANATH CHAUDHURI v TAPAZAR RAHAMAN SARKAR* (1916)
1 L R 44 Calc 287

Under registered lease
Meaning of—*Jote* meaning of—*Mahal* meaning of—That a non occupancy raiyat who has been admitted to occupation of the land under a registered lease is liable to be ejected on the expiry of the term of his lease but it being found that the defendants were not admitted into occupation of the land by the *labuliyats* it was necessary to determine whether the defendant in each case was in occupation as tenant of the particular lands in respect of which he subsequently executed his *labuliyat*. That the description in the *labuliyat* without right *jote mahal* was not clear to show that the defendants admitted that the plaintiffs were raiyats. That the words without right standing alone might mean that the plaintiffs were owners of a non occupancy *jote* but the word *jote* does not necessarily mean the interest of a cultivator and the word *mahal* is not used in connection with the interest of a raiyat. That the statement in the lease as to the purpose of the tenancy and the fact that the tenancy was treated all along by Government as non occupancy *jote* was in favour of the plaintiffs but not conclusive against the defendants. *RAJANI KANTHA MUKHERJEE v ASHUTOSH ALI* (1916)
21 C W N 188

NON OCCUPANCY RIGHT

Heritability—Bengal Tenancy Act (VIII of 1885) ss 5 cl (2) 90 cl (3) 44 82 The holding of a non occupancy raiyat is heritable. *Karim Chowkidar v Sundar Bera* 1 L R 24 Calc 207 overruled. *Lakhan Narain Das v Jaynath Panday* 1 L R 34 Calc 516 referred to. *MINAPORE ZEMINDARY COMPANY Ltd v KRISHIKESH GHOSH* (1912)
1 L R 41 Calc 1108

Acquisition of an raiyat land—Ejectment of tenant of raiyat land limitation for—Bengal Tenancy Act (VIII of 1885)—ss 4 5 20 44 45 and 116 180 and Sch III Art 1 (a)—Construction of Statutes reference to heading of Chapter Held (CHAPMAN and JEWALA PRASAD JJ dissenting) that a suit by a landlord to eject a tenant of raiyat lands on the ground of the expiration of the term of his lease is governed by Art 1 (a) of Sch. III to the Bengal Tenancy Act 1885 and the operation of Art 1 (a) is not excluded in such a case by s 116. Per CHAMBER, O J—Chapter VI of the Bengal Tenancy Act 1885 applies to tenants of proprietors private lands except where such land is held under a lease for a term of years or where it is held under a lease from year to year and such tenants may acquire non occupancy rights in the land within the meaning of the Act. Per CHAPMAN J—The classification of tenants in ss 4 and 5 is not intended to be scientific and precise. These sections should be applied with a reasonable amount of elasticity. A tenant of raiyat land may possibly be classified as a tenure holder but he is not a non-occupancy raiyat. Raiyat land is not raiyat land although the zamindar may lose his right in it by treating it as if it was raiyat. But if he lets it for a term or from year to year it remains his own and the tenant of it is not a raiyat. Per MULLICK J—Although the definition of raiyat in the Act is not exhaustive yet the classification of the various classes of raiyats in s 6 is exhaustive. Both occupancy and non occupancy right can under certain circumstances be acquired in raiyat lands. A cultivator may be a settled raiyat of raiyat lands but as such he has no rights. The position of a tenant of proprietors private lands under the present law is as follows—The landlord can make successive enhancements of rent but the tenant can no longer take advantage of s 13 of the Bengal Tenancy Act 1885 or s 14 of the Bengal Tenancy Act 1889 on the tenant's failure to pay an arrear of rent he can only be ejected after a decree although it was otherwise before the passing of the Bengal Tenancy Act 1885 and a suit for ejectment of the tenant on the expiry of his lease must now be brought within six months instead of twelve years as formerly. A non occupancy raiyat whose lease has expired is liable to ejectment under the general law as a trespasser. Art 1 (a) of Sch. III is applicable to every suit in which it is sought to eject a non occupancy raiyat and is not confined to suits under s 44. Per JEWALA PRASAD J—The classification of tenants in s 4 is not exhaustive. The provisions of the Act barring the acquisition of non occupancy rights in proprietors private lands do not cease to apply when a tenant of such lands holds over after the expiry of his lease. S 51 lays down that where a tenant holds over the conditions under which he held the land in the last preceding agricultural year shall be presumed to continue. Per CHAPMAN and JEWALA PRASAD JJ (MULLICK J contra)—The

NON OCCUPANCY RIGHT—contd

Reading of a chapter of an Act may be used to extend the meaning of a section which follows it
JANKI SINGH v. MAHARATH JAGANNATH DAS
 3 Pat L J 1

NON PERFORMANCE OF WORK.

See **BARRISTER I L R 44 Cal 741**

NON RIPARIAN OWNER

—right of, to the flow of river water—

See **EASEMENTS ACT (V OF 1882) s 2 (c)**
 AND 17 (c) I L R 42 Bom 238

NON TRANSFERABLE HOLDING

See **LANDLORD AND TENANT I L R 43 Cal 878**

See **OCCUPANCY HOLDING :**

1 ——— Question of transferability of arries between vendor and vendee and between vendee and co sharer landlords Plaintiffs who had purchased certain shares in an alleged non transferable holding partly in execution of a mortgage decree against one tenant and the rest by private alienation from another having sued for partition the sons of one of the former opposed the suit on the ground that they had been recognised as tenants of the whole holding by one of the co sharer landlords whilst the plaintiffs also were found to have obtained recognition from some of the co sharer landlords The District Judge gave the plaintiffs a decree for an interest proportionate to that of the co sharer landlords who had recognised them Held that no question of transferability of the holding arose in the case and the plaintiffs in this suit were entitled to get all the interest they purchased from their vendors
RAJAN ALI v. DINA NATH SRAHA (1915)
 19 C W N 1305

2 ——— Mortgage of—Purchase of holding by co sharer landlord in execution of decree for his share of rent—Money decree—Question of transferability of arries In a suit to enforce his mortgage by the mortgagee of an occupancy holding against co sharer landlords who since the date of the mortgage purchased the holding in execution of a decree for their share of the rent the question of transferability does not arise
CHANDI PRASAD SETH v. GOUD CHANDRA DEB (1915)
 19 C W N 1307

3 ——— Non transferable raiyat holding—Sale in execution of money decree—Purchaser allowed by raiyat to take a portion of the holding—Surrender by raiyat of whole holding—Raiyat continuing in occupation—Purchaser if may be ejected Where a purchaser (in execution of a money decree) of a non transferable raiyat holding being resisted by the raiyat by arrangement with the latter was given a portion of the holding the raiyat retaining the rest and subsequently the raiyat expressly surrendered the whole holding to his landlord though it appeared that even after such surrender he went on occupying the portion retained by him under the arrangement That the surrender being obviously illusory the original tenancy subsisted and protected the purchaser from ejection by the landlord
NORO KISHORE SARA v. DHANANJOY SARA (1916)
 20 C W N 610

NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873)

— s 70—Penal Code (Act XLV of 1860) s 496—Cutting walls of canal—Mischief—Penal Provisions of the Canal Act not exclusive of the Indian Penal Code Held (i) that s 70 of the Northern India Canal and Drainage Act 1873 does not bar the prosecution of an accused person under any other law for any offence punishable under the Canal Act (ii) that it is an act of wilful mischief punishable under the Indian Penal Code for any person to make a breach in the wall of a canal
EMPEROR v. BANSI (1912)
 I L R 44 All 210

— s 70—See **PENAL CODE (ACT XLV OF 1860) s 430 I L R 41 All 599**

— s 70 (4)—Authorised distribution—Whether it includes the internal distribution made by a village community One P S mortgaged 14 bighas of his land to B S According to arrangement in the village every man was allowed to use the water from the canal for a period of one ghara (24 minutes) for every seven bighas of land B S wanted to take his turn but P S prevented him The former then presented a complaint and P S was convicted by a magistrate of an offence under s 70 (4) of the Canal and Drainage Act On appeal the District Magistrate acquitted P S holding that the distribution of water with which P S interfered was not an authorised distribution within the meaning of s 70 (1) of the Act The Government appealed to the High Court from the order of acquittal It was admitted that that Canal authorities distribute the water between the different villages but that the internal distribution in any village was left to the proprietary body of that village and was accepted by the authorities Held that the internal distribution in the village was not an authorised distribution within the meaning of s 70 (4) of the Canal and Drainage Act as it had never been formally approved or sanctioned by any Canal authority the latter having merely accepted the distribution made by the villagers
CROWN v. PAKHAR SINGH (1912)
 I L R 1 Lah 604

NORTHERN INDIA FERRIES ACT (XVII OF 1878)

— s 22—Ferry—Illegal toll taken by servants of lessee—Lessee him self not responsible Held that the lessees of a ferry could not be held responsible under s 29 of the Northern India Ferries Act 1878 for the taking of unauthorised tolls by their servants when they were not present and took no part in the extortion
Queen Empress v. Tyaal Ali I L R 41 Bom 493 distinguished.
EMPEROR v. BHARAT LAL (1911)
 I L R 34 All 146

NORTH WESTERN PROVINCES AND OUDH ACTS

See **ODDH ACTS**
 See **UNITED PROVINCES ACTS**

— 186—III—See **PUBLIC GAMBLING ACT**

— 1863—I—See **ODDH ESTATES ACT**

NORTH-WESTERN PROVINCES AND OUDH ACTS—contd

1873—VIII—

See NORTHERN INDIA CANAL AND DRAINAGE ACT XIX—

See NORTH WESTERN PROVINCES AND OUDH LAND REVENUE ACT

1878—XVII—

See OUDH LAND REVENUE ACT

1876—XVIII—

See OUDH LAWS ACT

1878—XVII—

See NORTHERN INDIA FERRIES ACT

1891—XII—

See NORTH WESTERN PROVINCES PEST ACT

1893—XV—

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT

1899—III—

See UNITED PROVINCES COURT OF WARDS ACT

1900—I—

See UNITED PROVINCES MUNICIPALITIES ACT

1901—II—

See AGRA TENANCY ACT

1901—III—

See UNITED PROVINCES LAND REVENUE ACT

1903—I—

See BUNDELKHAND ENCUMBERED ESTATES ACT

1904—I—

See GENERAL CLAUSES ACT

1910—IV—

See UNITED PROVINCES FOREST ACT

NORTH-WESTERN PROVINCES AND OUDH LAND REVENUE ACT (XIX OF 1873)

ss. 146 148 167—Proprietor—

Mortgage by muafidar—Sale of mahal for default in payment of Government Revenue—Rights of purchaser and mortgagors of muafi. Where certain muafidars whose rights as such accrued before the year 1870 and were not shown to have been created by the zamindars of the mahal in which the muafi land in question was situate executed a usufructuary mortgage of such land thereafter the mahal was sold for default in payment of Government revenue it was held that the rights of the mortgagors were not extinguished in favour of the purchaser. *KANWAR SING & JEWALA PRASAD (1913) I L R 35 All 190*

s. 191 (g)—Act (Local) No 111 of 1899

(L P Court of Ward Act) ss 2 (2) 8 9 and 31—Act (Local) No 11 of 1912 (L P Court of Wards Act) ss 10 and 11 (c) proviso (1)—Disqualified proprietor—Competence of disqualified proprietor to make a will. A person who has been declared to be a disqualified proprietor on his own application under the provisions of s 191 (g) of

NORTH-WESTERN PROVINCES AND OUDH LAND REVENUE ACT (XIX OF 1873)—contd

s 194 (g)—contd

the North Western Provinces Land Revenue Act, 1873 is not disqualified thereby at any rate after the passing of the United Provinces Court of Wards Act 1899 from making a will. *MUHAMMAD ISMAIL KHAN & HAMIDA KHATUN I L R 42 All 509*

s 205B—

See OUDH LAND REVENUE ACT (XVII OF 1876) ss 173 174

I L R 38 All 271

NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1893)

s 10—United Provinces Municipalities Act (I of 1900) s 187—Municipal Board—Election—Suit to set aside election—Jurisdiction of Civil Court—Limitation Act (IX of 1908) Sec 1 Art 120 Held that an order of the Government directing that a particular municipal election held in the year 1911 should be conducted according to certain rules passed in 1884 and not according to the rules passed in *pari materia* in 1910 which superseded those of 1884 was *ultra vires* and that inasmuch as the rules of 1884 did not apply and the election was not held under the rules of 1910 a suit would lie in a civil Court to contest the election irrespective of anything contained in either set of rules the period of limitation applicable to which was that prescribed by Art 120 of the first schedule to the Indian Limitation Act 1908. *Gur Charan Das v Har Sarup I L R 34 All 391* referred to *RACHUNANDAN PRASAD & SUREO PRASAD (1913) I L R 35 All 308*

s 130—Breach of rule made under cl (e) of s 100—Not ce In order to render a person liable to punishment for breach of a rule made under cl (e) of s 130 of the Municipalities Act (Local I of 1900) by reason of the continuance of sale or exposure for sale of certain specified article upon any premises which were at the time of the making of such rules used for such purposes it is necessary that six months notice in writing should have been served upon him in the manner provided by law and conviction in the absence of such notice is bad in law. *FIREBOR & GRIMMAN (1916) I L R 58 All 455*

NORTH WESTERN PROVINCES RENT ACT (XVIII OF 1873)

Held that this Act and the succeeding Act VII of 1891 rendered void the terms of any will in existence on the date on which they were passed contrary to the act. *MAHADEO MISER & DIROPAL PANDE I L R 41 All 356*

NORTH WESTERN PROVINCES RENT ACT (XII OF 1881)

Mortgage of occupancy hold ng—Relinquishment—Rights of mortgagor. An occupancer tenant mortgaged his occupancy holding at a time when the Rent Act of 1880 was in force. In the year 1911 he entered into an agreement with his zamindars to relinquish his rights with the object of defeating the rights of the mortgage. Held that the relinquishment was

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—contd

ineffectual as against the mortgagee *Jangopal Narain Singh v Uman Das* 8 Ill L J P 695 approved *BEH KUMAR LAL v SURE KUMAR MISRA* (1915) I L R 37 All 444

Sale of amindari—Agreement to relinquish ex proprietary right in air land—Void contract In 1899 one R D the widow of a Hindu who had died heavily in debt sold most of her husband's property to his principal creditor D S. By the terms of the sale deed the vendor agreed to hie a relinquishment of her ex proprietary rights in the air lands and the vendee agreed to certify to the Civil Court full satisfaction of the claim under his decree. No thing however was done to carry out this agreement until 1901 when D S executed a document in favour of P D in which was stated that the parties had come to an agreement that P D was to file her relinquishment and in consideration thereof D S would file in certificate of satisfaction of his Civil Court decree and further bound him self to pay to R D a monthly allowance of P 5 for the rest of her life which was to be a charge on the property transferred by the sale deed of 1899. Held on suit by P D to recover arrears of her maintenance allowance from the transferees of the property which purported to have been charged with its payment and from D S personally that the arrangement between the parties was merely a device to get round the provisions of the Rent Law and that the suit would not lie. *Moti Chand v Brahmavallab Khan* I L R 39 All 173 referred to. *PATAN DEVI v DURGAS SHANKAR DAS* (1911) I L R 39 All 645

Occupancy holding—Will—Attempt to dispose of occupancy holding by will Held that the North Western Province Rent Act No XVIII of 183 and the succeeding Act No XII of 1881 render void the terms of any will in existence on the date on which they were passed if those terms contravened the prohibition against transfer by will which was thereby enacted. *MAHADEO VISIT v DIPKAL PANDE* (1910) I L R 41 All 356

Occupancy tenant—Leasfructuary mortgage of holding—Relinquishment by mortgagor in favour of zamindar Where a mortgage with possession of an occupancy holding had been made by the tenant before the coming into force of the Agra Tenancy Act 1901. Held that the tenant mortgagor could not defeat the rights of the mortgagees by surrendering the holding to the zamindar. *CHHIDDU v SURE MANGAL SINGH* (1916) I L R 39 All 186

NOTE OF EVIDENCE

See SUMMARY TRIAL I L R 48 Calc 280

NOTE OF HAND

Where a hand note recited a loan and the liability of the executant to repay it but there was no covenant that the repayment would be made to the plaintiff or to his order. Held that it was not a negotiable instrument under the Negotiable Instruments Act s 4 or s 3 of the Negotiable Instruments Act would not therefore apply to such a hand note. Illustrations cannot control the plain

NOTE OF HAND—contd

meaning of the words of a statute. Illustration (b) of s 4 of the Negotiable Instruments Act not relied on. *SATYA PRITA GOSWAMI v GOBINDO MONOH RAY CHOWDRI* (1909) 14 C W N 414

NOTICE

See AGREEMENT I L R 41 All 417

See ARBITRATION I L R 47 Calc 29 951

See ARREST OF SHIP I L R 42 Calc 85

See BOMBAY CITY MUNICIPAL ACT (1888) ss 379 3/9A I L R 36 Bom 51

See BOMBAY CODE OF WAPES ACT 1805 s 14 I L R 44 Bom 493

See BOMBAY LAND REVENUE CODE 1819 s 83 I L R 45 Bom 303

See CIVIL PROCEDURE CODE 1908 s 80 I L R 40 Bom 541

s 437 I L R 40 All 416

O XII s 22 I L R 43 All 411

O XXI s 16 I L R 36 Bom 58

O XXI s 89 I L R 37 Bom 387

O XXIII s 1 I L R 42 Bom 155

See COMPANY I L R 36 Bom 564

See CONSTRUCTIVE NOTICE

See CRIMINAL PROCEDURE CODE s 88 43 I L R 35 All 78

437 I L R 40 All 416

See DEKKAN AGRICULTURAL RELIEF ACT 1819 s 10 I L R 45 Bom 87

See EJECTMENT I L R 44 Calc 272

See EXECUTION OF DECREE I L R 38 Calc 482

See HINDI SHAH JOO I L R 39 Bom 513

See INSOLVENCY I L R 42 Calc 72

See INSOLVENT I L R 47 Calc 254

See LAND ACQUISITION ACT (1 of 1894) s 9 I L R 20 All 534

See LIMITATION ACT (IX OF 1908)—s 98 SCH I ART 47 I L R 38 Mad 432

SCH I ART 12 A I L R 45 Bom 45

SCH I ART 18^a CL (6) I L R 42 Bom 553

See MUNICIPAL ELECTION I L R 38 Calc 598

See NOTICE OF DISHONOUR

See NOTICE TO QUIT

See NOTICE OF UTI

See N W P AND OUDH MUNICIPALITIES ACT (X OF 1900) s 132 I L R 33 All 455

See PROSECUTION I L R 37 Calc 545

See PUBLIC DAMAGES RECOVERY ACT 10 31 I L R 45 Calc 496

NOTICE TO QUIT—contd

revance *Lal Malomed Sarlar v Jagir Sheikh*
 13 C W N 913 referred to *BHUBAN MOHAN*
GURU : SHEIKH BADA (1910)
 I L R 40 Calc 766

NOTIFICATION

See **FORFEITURE** I L R 41 Calc. 466

See **REVENUE SALE** L R 45 I A 205

defect in—

See **SALE FOR ARREARS OF REVENUE**
 I L R 42 Calc 897

publication of—

See **REVENUE SALE**
 I L R 41 Calc. 276

See **SALE FOR ARREARS OF REVENUE**
 I L R 46 Calc 255

**By decree holder to the Court of
payment—**

See **EXECUTION OF DECREE**
 I L R 43 Calc 207

NOTIFIED AREA

Leases of government land in—
 See **REGISTRATION ACT (XVI OF 1908)**
 11 17 90 I L R 36 AL 176

NOVIATION

See **CONTRACT ACT** 18,2 s 62
 I L R 2 Lah 323

See **LIMITATION ACT** 1908 Art 95
 I L R 37 Bom 158

NOVELTY

See **DESIGN** I L R 45 Calc 606

NUISANCE

See **BOMBAY CITY MUNICIPAL ACT** 1888—
 s 377 I L R 34 Bom 346
 ss 379 AND 380
 I L R 10 Bom 81

See **BOMBAY DISTRICT MUNICIPALITIES**
ACT 1901 s 151
 I L R 44 Bom 738

See **CALCUTTA MUNICIPAL ACT** s 3
 15 C W N 100

See **EASEMENT** I L R 39 Calc 59
 I L R 42 Calc 46

See **PENAL CODE** ss 114 283
 I L R 35 Bom 363

See **RAILWAYS ACT** s 190
 25 C W N 603

**Hindus making noises to interfere
with worship of Muhammadans—**

See **SPECIFIC RELIEF ACT** 1877 s 53
 I L R 1 Lah 140

Calcutta Municipal Act, s 632—
 * Nuisance building sanctioned by Municipality
 if may be—Nuisance if must be public—Building
 in contravention of regulations if to be proceeded
 against only under s 449—Partition decree effect of

NUISANCE—contd

The term nuisance in s 632 of the Calcutta Municipal Act does not refer only to nuisance affecting the public generally. It applies as well to nuisances affecting an individual. The mere fact that the Municipality could have proceeded against a building erected contrary to the building regulations under s 449 of the Act does not preclude the Municipal Magistrate from interfering with it under s 632 at the instance of the person whose house has been deprived of light and air by the building. If a building is a nuisance it is no answer in a proceeding under s 632 to say that the Corporation had sanctioned it. Whether erected with or without sanction or in contravention of the building regulations or not any person residing in Calcutta affected by it can move the Magistrate and it is within the jurisdiction of the Magistrate to pass an order under s 632 if in his discretion he is so advised. A partition decree previously passed which purported to specify the easements reserved to the portion which fell to the complainant cannot be held to override the provisions of the Calcutta Municipal Act which is directed to provide for public sanitation among other public considerations. *BRAGWAN DAS v PASH BEHARI MULLICK* (1909)

14 C W N 637

Public and private nuisance—
 Erection of a high wall on one's own land very close to another's dwelling house—Likelihood of injury to the health of the inmates of the adjoining tenements and of the public inhabiting the neighbourhood by the propagation of disease—Propriety of order of partial demolition—Feasibility of other remedial measures—Calcutta Municipal Act (Beng III of 1899) s 632. The words any nuisance in s 632 of the Calcutta Municipal Act mean any nuisance as defined in s 3 (90) thereof. The definition though wider than that of a public nuisance at the common law does not extend to the inclusion of all private nuisances. *Dhagwan Das v Rash Behari Mullick* 14 C W N 637 explained. The erection of a wall however high on one's own land very close to the dwelling house of a neighbour in order to prevent him from acquiring a right of easement is not in itself a nuisance under the Calcutta Municipal Act but where the evidence shows that it is or is likely to be injurious to the health of the resident of the adjoining tenements and of the public inhabiting the neighbourhood by propagating the seeds of consumption and typhoid it becomes a nuisance under the Act. Where however the only matter which causes a wall to be a nuisance is not its height but the accumulation of filth at the bottom and want of space to clear the drainage between it and the adjacent house the Magistrate instead of ordering its reduction in height should consider whether the nuisance cannot be abated by the adoption of other remedial measures. The use of the Act for the purpose of interfering in any way with the rights of private ownership beyond the limited powers given to the Corporation by it for the necessary protection of the public and the enforcement of proper sanitation is much to be deprecated. *KHAGENDRA NATH MITTAL v DUTTA DEBA NARAYAN DUTTA* (1910)

I L R 33 Calc. 296

Legal nuisance—Erect on of for e stable when a nuisance—Easements Act (I of 1882) s 15—Degrees of nuisance—Value of expert

NUISANCE—could

medical evidence in case of nuisance—Consideration of policy or abstract public rights outside the scope of inquiry—License from the Municipal Sanitary authorities for erection of stables = defence in an action for nuisance—Specific Relief Act (I of 1877)—Relief by injunction as well as damages—Plaintiffs suing as trustees interested in reversion and as residents—Civil Procedure Code (Act V of 1908) O I R 1 Prior to the year 1903, the first plaintiff was absolutely entitled to and possessed of a piece of land with a house standing thereon situate at Thakurdwar Road Bombay. By an Indenture of Settlement dated the 12th of January 1903 the first plaintiff conveyed the said property to herself and her husband the second plaintiff upon trusts for the benefit of herself and her husband and their issue. The defendant was the lessee for a period of 21 years commencing from 1st of January 1911 of an open piece of land adjoining the property of the plaintiffs and situate on the eastern side thereof. The said piece of land was formerly used for many years and as the defendant alleged for nearly a century for tethering bullocks and keeping bullock carts up to the year 1908 when such user terminated. In October 1913 the defendant erected a block of stables parallel to the length of the plaintiffs house and at a distance of about 20 to 35 feet therefrom for the accommodation of 75 horses to which was added another block for the accommodation of 15 hack carriages. The plaintiffs complained that the stables erected by the defendant rendered their house uncomfortable and unhealthy and constituted a serious nuisance. They also alleged that in consequence of the nuisance the tenant on the first floor vacated the same and that the plaintiffs and their family suffered in health and were obliged to remove to another house. The plaintiffs sued in their double capacity as trustees interested in the reversion and as actual residents praying for a perpetual injunction to restrain the defendant from the continuance or repetition of the said nuisance and for damages in the sum of Rs 1221 for nuisance caused up to the date of the suit or in the alternative for a sum of Rs 15,000 as damages for the depreciation in value of the plaintiffs property by reason of the said nuisance. The defendant denied that the stables were a nuisance in law and pleaded without prejudice to his afore-said contention—(a) that the nuisance complained of had been acquired by him as an easement (b) that the stables were erected in accordance with the bye laws of the Bombay Municipality and the license of using them as stables was granted to him after the said premises were inspected and due inquiries made by the Municipal Commissioner and the Health Officer of Bombay and (c) that the plaintiffs were not entitled to sue in their double capacity. Held (i) that under the Indian Easements Act whatever easement may have been acquired by the owners of the land to cause a nuisance to the adjacent servient tenement by the tethering of bullocks on the vacant land admittedly came to an end in the year 1908 i.e. considerably more than two years before the nuisance complained of came into existence and before the date of the suit (ii) that the nuisance complained of by the plaintiffs was totally different from the nuisance which previously existed and on general principle the defence of easement could not be sustained (iii) that if the nuisance alleged it was no answer to say that the defendant

NUISANCE—could

had conformed to the latest requirements of the Municipal Sanitary authorities and had done everything in his power and taken all reasonable precautions to prevent its existence (iv) that the stables erected by the defendant, having regard to their size and their distance from their dwelling house of the plaintiffs constituted a nuisance (v) that having regard to the comprehensive language of O I R 1 of the Civil Procedure Code of 1908 there could not be any objection to the plaintiffs suing in their double capacity and that the plaintiffs were entitled to obtain relief by way of injunction and damages. A legal nuisance is rather an evasive shifting and intangible thing hard to be pinned down by a verbal definition. It must always be conditioned by time and place and circumstances and the Court shall have regard to the station in life of the plaintiff and his family and the locality and the nature of the nuisance complained of. *Walter v Selfe & De G & Sm 315 322 and Sturges v Bridgman 11 Ch D 850* referred to. Where the nuisance was of the kind to injure the health or seriously imperil the life of those complaining of it the Court would not hesitate to prevent it by way of injunction but where the nuisance went no further than to diminish the comforts of human life there would always be a question whether the Court would proceed against him who causes that nuisance by injunction or compensate the sufferer in damages. In the absence of statutory enactments no general considerations of mere policy or rather abstract public rights can be allowed to prevail against what the law recognizes and always has recognised as the legal rights of the individual. *The Attorney General v The Town Council of the Borough of Birmingham & W F 817* referred to. *BAL BHAIJI & PEROSHAW JIVANJI (1915)* I L R 40 Bom 401

— Sale of fish in railway shed—and its effects in prohibited quantities resulting in attraction of crowds impeding of business and rendering the place offensive—J N Highways Act (IX of 1890) s 190 (b) Where the Railway authorities prohibited the sale in their special delivery shed and its precincts of fish below certain quantities but the unauthorized sales went on and attracted large crowds obstructed the transaction of business for which the shed was intended impeded the removal of fish therefrom and more particularly rendered the place offensive. Held that such sales amounted to a nuisance and that the petitioners having persisted in contributing to it were guilty under s 120 (b) of the Railways Act (IX of 1890). *DROKI SINGH & EMBERSON (1921)* I L R 48 Cal 1042

NULLITY OF DECREE

See DECREE I L R 39 Bom. 11

NULLITY OF MARRIAGE

See DIVORCE I L R 48 Cal 283

NUMBERS

See TRADE NAME IMPROVEMENT OF I L R 41 Bom. 42

NUCLEO PRO TUNC

See AFFIDAVIT 14 C W N 750

O

OATH

See OATHS A 7

Prescription as to due administration—

See UNITED PROVINCES EXCISE ACT (IV of 1910) s 60

I L R 88 All 575

OATHS ACT (V OF 1840)

See CRIMINAL ACT (XIX OF 1841) ss 3 & 14

I L R 84 Bom 115

OATHS ACT (X OF 1873)

See PERS JUDICATA

I L R 36 Mad. 287

s. 4—

See CRIMINAL ACT XIX OF 1841

I L R 84 Bom 115

See JUDICIAL PROCEEDINGS

I L R 37 Cal 52

s. 5—

See WITNESSES I L R 45 Cal 720

ss 5, 6 & 13—

See APPEAL I L R 41 Cal 406

Evidence Act (I of 1872) s 118—Evidence—Statement of witness not

recorded on oath—Capacity of child of tender years to testify The fact that a Court has advisedly refrained from administering an oath to a witness is not sufficient by itself to render the statement of such witness inadmissible. But a Court should only examine a child of tender years as a witness after it has satisfied itself that the child is sufficiently developed intellectually to understand what it has seen and to afterwards inform the Court thereof and if the Court is so satisfied it is best that the Court should comply with the provisions of s 6 of the Indian Oaths Act in the case of a child just as in the case of any other witness. *Queen Empress v Maru* I L R 16 All 707 dissented from. *EMPEROR v DRASTI PAM* (1915) I L R 38 All 49

When in a trial for murder the Sessions Judge deliberately abstained from administering an oath or affirmation to the only eye witness to the murder on the ground that she was only 6 or 7 years of age held that the evidence was admissible. *Queen Empress v Maru* I L R 10 All 207. *Queen Empress v Lal Sahai* I L R 11 All 183 and *Queen Empress v Virapurmal* I L R 16 Mad 105 dissented from. In every case where a witness is competent within the meaning of s 118 of the Evidence Act 1872 the provisions of ss 5 and 6 of the Oaths Act 1873 should be complied with. The omission of the Judge to examine accused under s 342 of the Criminal Procedure Code after the witnesses for the prosecution have been examined and before he is called on vitiate the trial. *FATU SANTAL v THE KING EMPEROR* 6 Pat L J 143

ss. 5 and 13—Evidence admissibility of where witness not sworn The evidence of two children aged eight and six years was admitted against an accused person without the children having been sworn or affirmed. Held that in view of s. 13 Indian Oaths Act the failure to

OATHS ACT (X OF 1873)—contd

ss 5 and 13—contd

administer oath or affirmation did not render the evidence inadmissible. *Queen Empress v Virapurmal* I L R 16 Mad 105 (PARKER J) followed. *Queen Empress v Maru* I L R 10 All 207 dissented from. Per CURRIAM s 5 of the Oaths Act is imperative and if a Court holds that a person may lawfully give evidence it is the duty of the Court to administer oath or affirmation to that witness. *PERCHIA V ENKADU* (1913) I L R 38 Mad. 550

ss 9 & 10—Principal and agent—

Agent holding power of attorney to conduct suit for principal—Power of agent to agree to suit being decided according to statement on oath of defendant A lady who was plaintiff in a suit gave to her husband a special power of attorney to conduct the case in her behalf as he should deem fit. He was authorized to compromise or withdraw the suit to refer it to arbitration and to nominate arbitrators and finally the plaintiff said that every step that he might take in the conduct of the case was to be considered as having been taken by herself. Held that the husband had power to take action under ss 8 & 9 and 10 of the Oaths Act 1873. *Sadashiv Raygar v Maruthi Vishal* I L R 14 Bom 455 dissented from. *WASI UZ ZAMAN KHAN v FAIZA BIRI* (1915) I L R 88 All 181

ss 9 & 11—Special oath—Inadmissibility of special oath in proceedings under s 14 and 15 of the Village Police Act (Bombay Act VIII of 1867) ss 9 to 11 of the Indian Oaths Act 1873 are not applicable to proceedings before a Village Police Patil under ss 14 and 15 of the Bombay Village Police Act 1867. *Queen Empress v Murari Gokuldas* (1888) 13 Bom. 389 followed. Per SHAH J. The proceedings before the Police Patil under ss 14 and 15 of the Village Police Act (VIII of 1867) are essentially criminal proceedings and the same rule which applies to criminal proceedings ought to apply on general grounds to proceedings before the Village Patil so far as the effect of any special oath is concerned. *EMPEROR v CHIMAN* (1900) I L R 45 Bom 86

s 13—

See APPEAL I L R 41 Cal 406

See UNITED PROVINCES EXCISE ACT (IV of 1910) s 60

I L R 35 All 575

Omission to administer oath or affirmation Where in a case under s 304 Indian Penal Code a girl was examined as a witness without oath or affirmation the trial Judge being of opinion that she was too young to take oath or give affirmation. Held that on the authority of the Full Bench in *Queen v Sarda Bhoyta* 15 B L R 291 (F.B.) (1874) the omission to administer an oath or affirmation even if intentional would be cured by s 13 of the Oaths Act and the evidence of the child was admissible. *KING EMPEROR v SASHI BHUSAN MAITY* 23 C W N 787

s 13—

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s 13—

See APPEAL I L R 41 Cal 406

See CIVIL P R 2—

1908 O XLI 39

See CROSS

OBLIGATION

See GIFT WITH OBLIGATION

I L R 42 Bom 93

OBSCENE PUBLICATION*Religious poem of spiritual and allegorical character based on an incident narrated in a sacred book of great antiquity and dealing with the acts of divine beings—Work not calculated to deprave or corrupt morals—Penal Code (Act XLV of 1860) s 292—Finding of facts*

The test of obscenity is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands such a publication might fall. It in fact the work is one which would certainly suggest to the minds of the young of either sex or even to persons of more advanced years thoughts of a most impure and libidinous character its publication is an offence though the accused has in view an ulterior object which is innocent or even laudable. *Reg v H. M. L. R 3 Q B 360 Steele v Brannan L R 7 C P 261 Queen Empress v Parashram Ieshant I L R 20 Bom 193 Emperor v Hari Singh I L R 28 All 100 Empress v Indarman I L R 3 All 837* followed. A religious or classical work does not become obscene within s 292 of the Penal Code simply on account of its containing some objectionable passage because the tendency of such publications is not to deprave or corrupt morals. If objectionable passages in a religious book are extracted and printed separately and they deal with matters which are to be judged by the standard of human conduct as where they relate to immoral acts of human beings and the tendency of such publication is to deprave and corrupt those whose minds are open to immoral influences the publication may not be justified though the passages form part of a religious book. Where however a story which appears objectionable is taken from a religious book and printed separately but it relates to beings whose conduct is not to be judged by the standard of human beings it is not an obscene publication as it would not on account of its religious character raise immoral thoughts in the minds of persons who believe in the divinity of beings whose acts and conduct are described in the story. Where a poem was published in the Urya language containing a story complete in itself so far as it goes of the dalliances of Radha and Krishna who were described as divine personages and their acts as supernatural the latter being represented to be a boy of five taken from the Urya *Haribans* a very sacred book of the Uryas the incidents and sentiments being the same as and the language not more objectionable than that of the original and it was in itself an old religious book of a spiritual and allegorical character which had often been published and registered without exception taken and which was apparently intended for Hindus who form the vast majority of the Uryas and I believe in the divinity of Radha and Krishna and I do not consider their doings as immoral. Held that the publication was not obscene within the meaning of s 292 of the Penal Code. *KHERODE CHANDRA ROY CHOWDHURY v EMPEROR (1911)* I L R 39 Calc 377

OBSTRUCTION

See CALCUTTA POLICE ACT (BENG IV OF 1860) s 66 (4) 22 C. W. N 455

OBSTRUCTION—contd

See FUTURE I L R 48 Calc. 602

See MUNICIPAL COUNCIL

I L R 38 Mad 6

See PENAL CODE—

Ss 114 283 I L R 85 Bom. 363

S 283 I L R 38 Mad 305

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See CRIMINAL PROCEDURE CODE ss 133 138 139 14 C W N 544

See PUBLIC PATHWAY

I L R 44 Calc 61

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OCCUPANCY HOLDING

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Ss 11 et seq I L R 35 All. 474

S 20 I L R 32 All. 623

I L R 35 All. 405

I L R 40 All. 814

I L R 43 All. 547

S 20 (2) I L R 33 All. 186

I L R 37 All. 278

I L R 43 All. 547

S 21 I L R 33 All. 799

S 22 I L R 32 All. 314

I L R 34 All. 419

I L R 37 All. 7 888

I L R 38 All. 325

I L R 42 All. 663

E 34 I L R 40 All. 300

Ss 79 AND 95 I L R 35 All. 299

Ss 95 167 I L R 36 All. 48

See CIVIL AND REVENUE COURTS.

I L R 35 All. 464

See CIVIL PROCEDURE CODE O XX

r 18 I L R 36 All. 461

See ESTOPPEL I L R 34 All. 533

I L R 39 Calc 513

See JURISDICTION (CIVIL AND REVENUE COURTS) I L R 42 All. 491

See LANDLORD AND TENANT I L R 44 Calc 164

See MANDADARI TENURE I L R 34 All. 155

See MORTGAGE I L R 39 All. 539

See N W P RENT ACT (XVIII of 1873).

I L R 41 All. 356

See N W P RENT ACT (XII of 1881)

I L R 37 All. 444

S 9 I L R 39 All. 186

See ORISSA TENANCY ACT 1898

ss 31 250 3 Pat. L J 351

See PROVINCIAL INSOLVENCY ACT (III of 1907) ss 10 36 43

I L R 39 All. 120

ss. 16 AND 18 I L R 43 Calc. 510

OCCUPANCY HOLDING—contdSee **RIGHT OF OCCUPANCY**See **SUIT FOR CANCELLATION OF DOCUMENTS** I L R 13 All 232

Occupant's right to cut trees

See **FOREST ACT 1885**

s. 5 I L R 45 Bom 111

transfer what amounts to recognition of—

See **BENGAL TENANCY ACT 1885** s. 86

1 Pat L J 414

transfer of a portion of—

See **ENCUMBRANCE**

I L R 46 Cal 591

See **LANDLORD AND TENANT**

I L R 43 Cal 878

transfer of whole—

See **BENGAL TENANCY ACT 1885** s. 161

1 Pat L J 403

transfer of a portion without landlord's consent and subsequent surrender—

See **BENGAL TENANCY ACT 1885** s. 23

100 II W N 727

position of insolvent tenant—

See **PROVINCIAL INSOLVENCY ACT 1907**

s. 16 & 58 I L R 43 All 510

1 ——— **Mortgage—Suit by mortgagee—**
Co sharer landlord who has purchased in execution of money decree if may question transferability of holding A co sharer landlord who has purchased an occupancy holding in execution of a decree of his own cannot resist a mortgagee's suit to enforce his mortgage on the holding on the ground that the holding was non transferable he himself being a purchaser without the landlord's consent taking the whole body of landlords *Ayenuddin Nayya v Sriek Chandra Banerji* 11 C B N 16 followed *Achanulla Sarkar v Salemonessa Bibi* 9 C B N 221 not followed *HARO CHANDRA PODDER v UJESH CHANDRA BHATTACHARJEE* (1908)

14 C W N 71

2 ——— **Transfer—Recognition by landlord—Receipt of rent from transferee as agent of transferor—Acquisition of occupancy right by adverse possession** The receipt by the landlord of rent from a transferee of a holding not on his own account but as an agent of the transferor is not a recognition of the transfer *Nabakumar Deb v Behari Lal Sen* 11 C W N 365 s. 1 L R 34 Cal 902 distinguished *Khoddesam Chatterjee v Rookhnee Bostabee* 15 W R 197 and *Rasamoy Purkait v Srinath Moyra* 7 C B N 137 referred to Case remanded for trial of the question whether the transferee had acquired the right to hold the land as an occupancy raiyat by possession as a raiyat for a period of 12 years and by assertion of his title as such *DEBNARAIN DUTT v BAIDYA DATTA* (MADAN) RAJIT (1909)

14 E W N 68

3 ——— **Non transferability** Question of if may be raised by assignee of holding pending mortgage suit—Consent of landlord obtained subsequently to filing written statement A purchaser of an occupancy holding from the raiyat after a decree for sale has been passed in favour of a

OCCUPANCY HOLDING—contd

mortgagee of the holding but before sale there of is bound by the sale both because a mortgagor and consequently an assignee from him cannot be allowed to deny the mortgagee's title and also by reason of the operation of the rule of *lis pendens* The rule of *lis pendens* is applicable to proceedings to realise the mortgage after the decree for sale The purchaser cannot be allowed to raise the question of non transferability of the holding when in his written statement he stated that his purchase had not been recognised by the landlord by showing that such recognition on the part of the landlord has been subsequently obtained. An occupancy raiyat is estopped from setting up as between himself and a mortgagee of the holding the invalidity of the mortgage *SHAYAMA CHARAN BHATTACHARYA v MOKHDA SUNDARI DEBI* (1911)

15 C W N 703

4 ——— **Transferability—Usage of how established—Usage should be proven up and not growing—Usage after it has grown up may apply to pre-existing tenancies—Bengal Tenancy Act (VII) of 1885) s. 50—Presumption if applies to suit to eject transferee of holding—Misconstruction of written evidence—Second appeal—Civil Procedure Code (Act I of 1908) s. 100** In order to prove a custom or usage of transferability of occupancy holdings what is necessary to prove is that such transfers have been made to the knowledge and without the consent of the landlord and that they have been recognised by him either without the payment of *nazar* or upon payment of a *nazar* also fixed by custom. It is not necessary to prove that the landlord has actually made an objection to a transfer and has been unsuccessful. The usage to be effective must not be a growing usage but one which has already grown up. A usage of transferability after it has grown up affects not merely tenancies created thereafter but also existing tenancies. S. 50 of the Bengal Tenancy Act has no application in a suit for ejectment by the landlord on the allegation that the tenant of a non transferable holding has sold it to the defendant and has abandoned the land as such a suit is obviously not a suit or proceeding under the Bengal Tenancy Act. But even in cases where the section is not directly applicable the Court may act on a similar presumption if the facts justify the necessary inference. Although the misconstruction of a document which is the foundation of the suit or which is in the nature of a contract or a document of title is a ground for second appeal such appeal does not lie because some portion of the evidence is in writing and the Judge in the Court below makes a mistake as to the meaning of it *BUTUL KARIM v SATIS CHANDRA GIRI* (1911)

15 II W N 752

5 ——— **Usufructuary mortgage by tenant—Tenant remaining on land as sub-lessee of portion of holding and paying rent—Abandonment—Ejectment** The execution by a tenant of a mortgage of his non transferable occupancy holding does not by itself amount to an abandonment of the holding because it is only on the assumption that the tenancy continues in operation that the mortgagee can have any subsisting interest in the land. *Aradhna Chandra Datta v Miran Dasgupta*, 10 C B N 499 and *Rank Lal Dutt v Bidhumukhi Das* 10 C B N 19 4 C L J 306 referred to Where an occupancy raiyat executed a usufructuary mortgage of his holding but continued to pay rent to the landlord and remained in possession of a portion of the holding as a sub-

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under the mortgagor *Held* that the landlord was not entitled to treat the raiyat as a trespasser and sue him in ejectment **CHOWDHURY MAHADEO PERSHAD v SHEKH PACHKEPI (1911)**

18 B W N 322

6 ——— Disposition by landlord of raiyat for two years—If extinguishes tenant's title—*Limitation Act 1777 (XV of 1877) s 25—Bengal Tenancy Act (I of 1885) Sec 111 Art 3*—Mortgage of holding to Government for agricultural loan—Sale under Public Demands Recovery Act (Beng I of 1895)—Interest which passes—Adverse possession against mortgagor if adverse to mortgagee. An occupancy raiyat borrowed money from Government for agricultural purposes on the security of his holding but having failed to pay up a certificate under the provisions of the Public Demands Recovery Act was issued for the realization of his debt and the holding was sold. *Held* that only the right title and interest of the raiyat passed under the sale as the Secretary of State for India in Council in adopting the procedure of the Public Demands Recovery Act which does not contemplate the realization of a security must be taken to have abandoned the security. That the Secretary of State for India in Council could enforce the security only by a regular suit. **NANDA KULAB DEB v AJODHYA SAHU (1911)**

16 C W N 351

7 ——— Sale in execution of decree—Consent of fractional landlord—Sale of legal. Where a decree holder's application for sale of an occupancy holding was granted to the extent of a 1/16 annas share upon the finding that co-sharer landlords to that extent had consented to the sale. *Held* that in the present state of authorities the order should be maintained the purchaser purchasing at his peril. **SHAKARUDDIN CHOWDHURY v RANI HEMANGINI DAS (1911)**

16 C W N 420

But see Post

18 C W N 814

2 Pat L J 530

8 ——— Mortgage by raiyat—Subsequent transfer to stranger—Collusive suit by landlord for ejectment and recovery of possession—Landlord if in possession under paramount title—Suit on mortgage—Landlord if necessary party—Transfer of Property Act (IV of 1882) s 35. When it is found that a landlord obtained possession of an occupancy holding alleged to be non transferable by bringing a collusive suit for ejectment against a transferee from the raiyat. *Held* that in a suit by a mortgagee of the holding on his mortgage the landlord would be a proper party his possession of the holding resting on acquisition from the transferee and not on a paramount title. **Jogendra Dutt v Bhuvan Mohan Mitra I L R 33 Cal 475 distinguished PANCHABAN GHOSH v MIR ABDUL MOLIK (1912)**

16 B W N 920

9 ——— Transferability—Bengal Tenancy Act—(VIII of 1885)—Custom and usage proof of—Sale in execution of decree—Landlord's consent on receipt of nazarana. Where no arrears were as a rule paid to the zemindar and on payment of the nazar the purchaser was usually recognised by the landlord. *Held* that it was not evidence of any custom or usage by which an unwilling landlord was bound or evidence that the landlord was compelled to recognise the purchaser on payment of nazar whether he wished to do so or not

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BHOGRATH CHANDRA MANDAL; SITAL CHANDRA SIKHAR (1912)

16 C W N 955

10 ——— Mortgage taken by landlord if evidence of transferability—Assignment of mortgage by landlord to another effect of—Assignment to purchaser of holding if recognition of the purchaser a tenancy. The fact of a landlord himself taking a mortgage of a non transferable holding is by itself no evidence of its transferability. Where however the landlord allowed a purchaser of the holding to take an assignment of his mortgage from him. *Held* that he was stopped from denying that the purchaser had acquired a valid title by his purchase. A mere assignment of the mortgage by the landlord to a third person by itself would not amount to anything more than a representation that the mortgage was valid and could be enforced against the joint. **MAHESHI NARAIN POY v MAHARAJA BAHADUR SINGH (1912)**

17 C W N 70

11 ——— Transfer—Acceptance of rent from transferee—if evidence of validity of transfer—Pleader scope of authority of. The acceptance of rent from the transferee of a non transferable occupancy holding not as transferee but as the agent or representative of the original tenant does not amount to a recognition of the validity of the transfer. **Rhoderam Chatterjee v Buthnee Bostobee I S W R 197 Gour Lal v Bameshwar 6 B I R App 92 Wilson v Radhakrishnan 20 W N 63 Basamoy Purkait v Srinath Moyra 7 C W N 132 relied on Kurani Das v Sajani Kant 12 C W N 639 referred to Baroda Churn Dutt v Hemlata Das 13 C W N 333 Thomas Barslay v Hossein Ali Khan 6 C L J 601 Naba Kumari v Behary Lal 11 C W N 365 I L R 34 Cal 902 distinguished Dnyanjoy Roy v ATA FARMAN (1911)**

17 C W N 166

12 ——— Transfer contrary to local usage of portion of holding, if constitutes forfeiture of tenancy—Surrender of portion of holding—Landlord's right to re enter that portion—Encumbrance created prior to surrender effect of. Where the entire holding of an occupancy raiyat has not been transferred contrary to local usage and custom it cannot be said that there has been a forfeiture of the tenancy. **Rai Kamalewar Persad Singh Bahadur v Maharaja Harbulla Naran Singh Bahadur 2 C L J 369 followed**. Where a raiyat surrenders a portion of his holding to the landlord the landlord is entitled to re enter the portion notwithstanding any subordinate rights which the raiyat may have created upon the particular portion and the mere fact that the landlord was aware of the encumbrance created by the raiyat can not take away his right of re entry. **Badan Chandra Das v Rajeshwari Debya 2 C L J 670 and Rajendra Kishore Adhikari v Chandra Anil Dutt 12 C W N 878 referred to Gagan Chandra Choudhury v Alak Chand Saha (1913)**

17 C W N 699

13 ——— Abandonment—If question of fact—Usufructuary mortgage—Raiyat if necessary party in suit to recover from transferee. Where an occupancy raiyat mortgaged his non transferable occupancy holding by way of an usufructuary mortgage for a certain number of years and the mortgagees continued in possession of the land through their burgadar even after the expiry of the term and the lower Appellate Court found that the raiyat did not live in the village and had cut

OCCUPANCY HOLDING—cont'd

off connection with the holding. *Held* that the evidence amounted to holding that the raiyat had abandoned the jama. The mere execution of an usufructuary mortgage might not be sufficient to establish abandonment whether there has been alienation of a holding or not is principally a question of fact. The conditions prescribed by s. 8 of the Bengal Tenancy Act do not preclude a landlord from entering upon a land abandoned by tenant. The raiyat was not a necessary party to a suit to recover a non transferable holding from the transferees thereof nor would he be bound by the decree in the suit. *MOHAR LAL v. ANANTA MOHAR DAS* (1913) 17 C W N 802

14 ——— Transfer of portion without landlord's consent.—Surrender by original raiyat to landlord.—Landlord if raiyat eject transferee.—Abandonment. After the sale by an occupancy raiyat of a portion of his holding the raiyat may surrender that portion or the whole of the holding to his landlord and s. 87 cl. (7) of the Bengal Tenancy Act is no bar to the landlord accepting the surrender as the interest if any of the transferee which the landlord is not bound to recognise is not an incumbrance. Upon such surrender the landlord may sue to eject the transferee as a trespasser. *Kabir Sardar v. Chandra Nath* 1 L R 20 Calc 590 distinguished. The remedy of the transferee if any is against his vendor. *RAMONI MOHAR RAY v. BHUTIKH KALIMUDDIN* (1912) 17 C W N 1101

15 ——— Transfer by tenant of whole.—Landlord's right to eject transferee.—Disclaimer by original tenant if must be proved.—Original tenant if necessary party.—Custom of transferability.—Nazar pajm nt. In order to entitle a landlord to eject a transferee of the whole of a non transferable raiyat's holding it is not necessary for him to prove as a fact that the raiyat has left the holding and disclaims any interest in it. It is a direct inference from the fact that he has sold the entire holding and given possession of it to the purchaser and distinct repudiation or refusal to pay rent need not be proved. Unless the *nazar* is fixed by custom the landlord is not bound to recognise a transfer upon payment of *nazar*. *Das Lal Karim v. Satish Chandra Giri* 15 C W N 757 756 referred to. In a suit by the landlord to eject a transferee of a non transferable holding the transferor is not a necessary party. *CHAND PRAMANIK v. POMONY MOHAR PATE* (1912) 17 C W N 1105

16 ——— Non transferable occupancy holding whether devisable by will.—Bengal Tenancy Act (VIII of 1885) s. 76 178 sub s. (3) cl. (d).—Heir if estopped by testator as claimant of inheritance under the statute. A non transferable occupancy holding cannot be the subject of a valid testamentary disposition. In the case of a testamentary devise of such a holding the heir at law is not debarred by the doctrine of estoppel from questioning its validity. *Hari Das Bauragi v. Uday Chandra Das* 12 C W N 1056 8 C L J 261 not followed. *ANILYA RATAN SIRCAR v. TABIRI NATH DEB* (1914) 1 L R 42 Calc 254 18 C W N 1290

17 ——— Not transferable by custom or local usage. It can be sold wholly or partially in execution by co sharer landlord.—When raiyat objects to sale. A co sharer landlord is not entitled to sell the whole or part of an occu-

OCCUPANCY HOLDING—cont'd

pancy holding not transferable by custom or local usage in execution of a decree obtained for his share of rent when the raiyat objects to the sale. The Full Bench decision in *Dayamoyi Das v. Annad v. Mohan Roy* 18 C W N 971 by implication holds that the raiyat is entitled to have a sale of the holding in execution of a money decree set aside after it takes place and that the holding cannot be sold in execution of such a decree when the raiyat objects to the sale before it takes place. This view is in accord with the cases of *Durga Churn Mandal v. Kali Prasanna Sircar* 1 L R 26 Calc 77 s. 3 C W N 586 *Sadagar Birkar v. Krishna Chandra Nath* 3 C W N 742 and *Sleikh Jaisp v. Ram Kumar De* 3 C W N 747. The principle deducible from the Full Bench decision is applicable to an involuntary transfer of the whole as well as of a part of the holding. *BADRAN NESSA CHOUDHRANI v. ALAM GAZI* (1915) 19 C W N 814

18 ——— Revenue Sale Law 1859 s. 37.—Occupancy raiyats at fixed rates.—Purchases.—Doctrine of protection.—Its extension. The protection of occupancy raiyats at fixed rates referred to in s. 37 of the Revenue Sale Law (Act XI of 1859) is not one of the ordinary exceptions in that section. It is a proviso expressing the determination of the Legislature that no purchaser shall disturb any of the permanent tenants on the land who are in actual occupation of the soil and are cultivating it. This doctrine of protection has recently been extended to ordinary occupancy raiyats. *Sarat Chandra Roy v. Arman Bibi* 1 L R 31 Calc 725 referred to. *Bhut Nath Das v. Surendra Nath Dutt* 13 C W N 1025 distinguished. *ABDUL GANI CHOWDHURY v. MAHABUL ALI* (1914) 1 L R 42 Calc 745

19 ——— Transferability of part or whole.—Consent of landlord.—Operation of transfer as against raiyat landlord and other persons.—Civil Procedure Code (Act XI) of 1852 s. 244.—Bengal Tenancy Act (VIII of 1885) s. 87. In transfers for value of occupancy holdings apart from custom or local usage (i) The transfer of the whole or a part is operative against the raiyat.—(a) Where it is made voluntarily (b) where it is made involuntarily and the raiyat with knowledge fails or omits to have the sale set aside. A sale is made involuntarily where it is in execution of a money decree but not of a decree founded on a mortgage or charge voluntarily made. (ii) The transfer is operative as against the landlord in all cases in which it is operative against the raiyat provided the landlord has given his previous or subsequent consent. Where the transfer is a sale of the whole holding the landlord in the absence of his consent is ordinarily entitled to enter on the holding but where the transfer is of a part only of the holding or not by way of sale the landlord though he is not consented is not ordinarily entitled to recover possession of the holding unless there has been (i) an abandonment within the meaning of s. 8 of the Bengal Tenancy Act or (b) a relinquishment of the holding or (c) a repudiation of the tenancy. Whether there has been a relinquishment or repudiation or not depends on the substantial effect of what has been done in each case. (iii) The transfer of the whole or a part is operative as against all other persons where it is operative against the raiyat. *DAYAMAL v. ANANTA MOHAR ROY CHOWDHURY* (1914) 1 L R 42 Calc 172 18 C W N 871

OCCUPANCY HOLDING—contd

19 (a) ——— Ejectment—Notice to quit
—The rayats of certain lands in dispute executed a mortgage of their lands and put the mortgagee in possession. Subsequently the mortgagee settled the land with the under rayats. The superior landlord then brought a suit for rent against his rayats and purchased the holding at a sale for arrears of rent. Thereafter the landlord sold permanent rayati to one Meajan who after having taken a lease from the landlord and redeemed the mortgage sold the same to the present Plaintiffs who brought a suit to eject the under rayats. Held that the occupancy still continued to exist after the sale but there had been due notice to quit given. **YAKUB ALI v MEJAN**

I L R 43 Cal 164

20 ——— Receipt of rent by landlord from mortgagee of—Effect of—Recognition. Receipt by the landlord of an occupancy holding with or without protest of rent deposited by the mortgagee as such is a recognition of the rights of the mortgagee and the landlord cannot evict the mortgagee as a trespasser. **MATOOKDHARISHEKUL v JUDIP NANAIN SINGH (1914)**

19 C W N 1319

21 ——— Rights of as to possession against landlord. Plaintiffs Nos 2 and 3 were tenants in respect of one half only of an occupancy holding which was not transferable and the plaintiff No 1 purchased their interest. Held that the plaintiff as purchaser of a share of an occupancy holding was entitled to possession even as against the landlord who had no right to take possession of the property. **PURNA CHANDRA TRIVEDI v CHANDRA MOUNT DASGI (1910)**

20 C W N 588

22 ——— Non transferable—Sale by landlord in execution of rent decree—Under Civil Procedure Code prevented by deposit by purchaser from registered tenant—Withdrawal of deposit by landlord is amount to recognition of purchaser as tenant. Prior to the passing of the Bengal Tenancy (Amending) Act of 1907 a co sharer landlord obtained a decree for rent against the registered tenant of a non transferable occupancy holding in favour of himself and his other co sharer. He took out execution under the Civil Procedure Code and not under the provisions of the Bengal Tenancy Act. The plaintiff who had purchased the holding in execution of a money decree against the registered tenant deposited the decretal amount in Court for payment to the decree holder landlord alleging in his petition that he had acquired a right to the holding by purchase and that he made the deposit to protect his right and reserved his right to realise the amount deposited by him from the former tenant or his heir as the tenants of the holding. The decree was thereupon treated as satisfied and the attachment was withdrawn and the amount deposited was withdrawn by the landlord. Held that upon such deposit the landlord could not as in a case under the Bengal Tenancy Act contest the right of the purchaser to make the deposit and the withdrawal of the deposit did not amount to a recognition of the purchaser by the landlord. **Thomas Barclay v S v Hossain Ali Khan GO L J 601 and Aahira B v Ray v Fulmani Das: 14 O L J 338 391 ditto in bel. SURENDRA NARAIN MAHATA v JAGAL KISHORE GHOSH (1916)**

20 C W N 849

OCCUPANCY HOLDING—contd

23. ——— Non transferable—Whether fresh settlement holder required to serve notice on under-rayat after ejectment of transferee—By landlord—Notice—Bengal Tenancy Act (VIII of 1885) s 49 cl (b). Where a person has obtained settlement of a holding from the superior landlord after the latter had ejected the transferee of the occupancy rayat from the said holding as it was not transferable he was not required to serve a notice to quit on the under rayat under s 49 of the Bengal Tenancy Act in his suit for ejectment. **Nilkanta Chak v Ghatoo Sheikh 4 O W N 667 and Badan v Pajeswari 3 O L J 570** followed. **Lal Mahomed Sarkar v Jagir Sheikh 13 O W N 913** **Amirullah Wahom d v Nazir Mahomed 1 L R 31 Cal 93** **Amirullah Mahomed v Nazir Mahomed 1 L R 34 Cal 104** and **Rajkumath Singh v William Cor 19 C W N 263** distinguished. **JADAB SARDAR v GOBINDA CHANDRA MANDAL (1916)**

I L R 44 Cal 272

24 ——— Hindu Joint Family—Occupancy holding held under joint family not transferable without landlord's consent—Power of karta to recognise transfer. The karta of a joint Hindu family has authority to consent on behalf of the joint family to the transfer of an occupancy holding held by the tenants under the joint family as landlords and not transferable without their consent duly given by themselves or on their behalf. **GOLAFDI MEAH v PURNO CHANDRA DUTTA (1917)**

21 C W N 774

25 ——— Attachment—Objection of rayats—Consent of landlords. A non transferable occupancy holding or a part of it cannot be sold in execution of a decree for money obtained against the rayat when the rayat objects to the sale on the ground of non transferability even if the landlords give their consent to the sale. The above rule does not as expressly laid down by the Full Bench in **Dayamayi v Ananda Mohan Poy Chau dhuri 1 L R 42 Cal 172** 18 C W N 971 apply to a sale held in execution of a decree founded on a mortgage or charge voluntarily made by the rayat. **Balrannessa Choudhary v Nam Gazi 19 O W N 814** referred to. **Ananda Das v Purna Lar Panda 7 O W N 572** **Shalaruddin Choudhary v Rani Hemangini Das 16 O W N 490** commented on. **NABAYANTI NABIN CHANDRA CHAUDHURI (1916)**

I L R 44 Cal 720

26 ——— Gift—Validity of—Revocation of gift—Transfer of Property Act (II of 1885) ss 122 123 126. In cases of transfer by gift of occupancy holdings the question of transferability cannot be raised by the heir of the donor to the prejudice of the donee or his representative in interest. **Rahim Jan Bibi v Imam Jan 17 O L J 173** referred to. Where a gift duly registered and executed is not suspended or made revocable on the happening of any specified event or in any of the cases (save want or failure of consideration) in which, if it were a contract it might be rescinded as provided for in s 126 of the Transfer of Property Act II cannot be maintained that the property comprised in such gift continued to form part of the estate of the donor. The property ceased to be part of the donor's estate and the heir did not succeed thereto by right of inheritance. In cases of transfers for value the title passes from the transferor to the transferee although the validity

OCCUPANCY HOLDING—contd

of the transfer is liable to be questioned by the landlord who is not a party to the transaction and may possibly refuse to recognise the transfer. *Divanji v Anand Mohan Poy Chowdhury* 1 L R 47 Cal 112 followed. *Waters v Beauvoir* 1 Vern 101 referred to. *Misroy v Lord* 4 D 3 F & J 261. *Richards v Debridge* L R 18 E 11. *Amulja Ratan Sircar v Tarini Nath Dey* 1 L R 42 Cal 351 distinguished. *BEHARI LAL GUPTA v SINDHUBALA DAS* (1917) 22 C W N 474

1 L R 45 Cal 434

27 ——— Part of holding bequest of—*if valid—Principle of estoppel and waiver or a quiet title applies* The testamentary disposition of a part of a non transferable occupancy holding like that of the whole holding is invalid and was so held in a suit by the devisee against the rayat's heir at law. *UNESH CHANDRA DUTTA v JOY NATH DAS* (1917) 22 C W N 474

28 ——— Custom of payment of nazar—In order to establish a custom of transferability subject to the payment of a customary nazar the evidence must show that the landlord is bound to recognise when nazar of the amount or at the rate determined by custom is tendered to him. A practice or course of business in a zemindary office according to which a transfer is recognised provided that the amount of the nazar is satisfactory to the landlord is not sufficient. The payment of nazar without more is an indication that the rayat is not transferable without the landlord's consent given on receipt of the nazar. A custom which leaves the amount or rate of nazar indeterminate must be void for uncertainty. *MIRZA HUMAIRA v JOCHHAMOYEE CHAUDHURY RAY* (1918) 22 C W N 929

29 ——— Gomasta's power to sanction transfer—In order to rely on a receipt granted by a landlord's Gomasta as evidence of recognition by the landlord of a transfer of a holding it is necessary for the transferee to show that the Gomasta's duties actually or ostensibly included at least some of the duties of management. *JANKI SAHU v TRAKUR RAO BAHADUR SINGH* 2 Pat L J 231

30 ——— Purchaser of non transferable occupancy holding whether entitled to object to sale of holding—*Code of Civil Procedure (Act V of 1908) s 47 and O XXI r 100* The purchaser of the whole or part of an occupancy holding not transferable by custom is a representative of the judgment debtor and entitled to object under s 47 of the Code of Civil Procedure 1908 to a sale of the holding in execution of a decree for rent. He is therefore not entitled to maintain proceedings under O XXI r 100. *PANCHABATAN HOCHRI v RAM SAGAY SINGH* 3 Pat L J 579

31 ——— Transferability—A 10 anna landlord cannot sell his rayat's occupancy holding in execution of a money decree unless the rayat's occupancy holding is transferable by usage. *MACE PATERSON v DEBIBHUSAN LAL* 2 Pat L J 530

32 ——— Transferability of, in execution of money decree—*Bengal Tenancy Act (I B & O Act II of 1913) s 31 (4)* An occupancy tenant in possession is entitled to object to the sale

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of his holding in execution of a money decree on the ground that the holding is not transferable without the consent of the landlord. *MAHMOUD PADHAN v JAGU JEV* 4 Pat L J 294

33 ——— Transfer of portion of non transferable—Collusive rent suit between landlord and transferor—Deposit of transferee—Suit to set aside fraudulent decree and for recovery of deposit—*Bengal Tenancy Act (VIII of 1885) s 170 (3)*—*Principles governing transfers of non transferable holdings—Fraud* The recorded tenant of a non transferable occupancy holding sold a portion of his holding. Subsequently the landlord brought a collusive suit for rent against the transferor and obtained a decree. The transferee deposited the decretal amount and so is under s 170 (3) of the Bengal Tenancy Act and the deposit was withdrawn by the landlord. In a suit by the transferee to set aside the decree and for recovery of the amount withdrawn. Held (1) that at the time of the deposit it had not been finally decided that the transferee of a portion of a non transferable occupancy holding is not entitled to make deposit under s 170 (3) the plaintiff was justified in adopting the only course at that time open to him to save the holding from sale and the suit was maintainable although there was no privity of contract between the parties. (2) That the deposit should be considered as money paid under terror of inceptive legal proceedings fraudulently directed against the transferee and as such recoverable. (3) That the decree obtained against the recorded tenant was void not only against the latter but was a nullity. (4) That in such a case irrespective of a deposit if the transferee has suffered actual damage by an unlawful infringement of his legal rights the suit would be maintainable. The following principles govern the transfer of the whole or a portion of a non transferable occupancy holding—(a) Where the transfer is a sale of the whole holding the landlord is ordinarily entitled to enter on the holding. (i) (a) Where the transfer is otherwise than by sale of the whole holding and (b) Where the transfer is a part only of the holding whether by sale or otherwise the landlord is not ordinarily entitled to recover possession unless there has been an abandonment within the meaning of s 87 of the Bengal Tenancy Act or a repudiation of the tenancy. (ii) The transferee of a portion of a non transferable occupancy holding has certain interests and legal rights which for certain purposes are limited by the provisions of the Bengal Tenancy Act read with the provisions of the Code of Civil Procedure 1908. (iii) All such transferees have irrespective of the Bengal Tenancy Act and altogether *dehors* that Act certain legal rights which if infringe the Common Law of the land will not be powerless to protect in appropriate cases. (iv) One of such rights is the right to possession. (v) The transferee has even against the landlord until abandonment relinquishment or repudiation take place. (vi) The Common Law imposes an obligation on the landlord to refrain from extinguishing the rights of the transferee by committing a tortious act in conspiracy with a third person. If this obligation is not observed and damage to the transferee results the Common Law may be invoked to indicate the latter's rights. (vii) The period at which damage accrues may vary in different cases but as soon as it does accrue the transferee may immediately institute a suit to attack all fraudulent proceedings between the landlord

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19 (a) ————— Ejectment—Notice to quit—The rayats of certain lands in dispute executed a mortgage of their lands and put the mortgagee in possession. Subsequently the mortgagee settled the land with the under rayats. The superior land lord then brought a suit for rent against his rayats and purchased the holding at a sale for arrears of rent. Thereafter the landlord sold permanent rayats to one Meajan who after having taken a lease from the landlord and redeemed the mortgage sold the same to the present Plaintiffs who brought a suit to eject the under rayats. Held that the occupancy still continued to exist after the sale but there had been due notice to quit given. *YAKUB ALI v MEAJAN*

I L R 43 Cal 164

20 ————— Receipt of rent by landlord from mortgagee of—Effect of—Recognition. Receipt by the landlord of an occupancy holding with or without protest of rent deposited by the mortgagee as such is a recognition of the rights of the mortgagee and the landlord cannot evict the mortgagee as a trespasser. *NAROCKHAPISHEKUL v JUDIP NANAIN SINGH* (1914)

12 C W N 1319

21 ————— Non transferable—Purchaser of share—Rights of as to possession against landlord. Plaintiffs Nos 2 and 3 were tenants in respect of one half only of an occupancy holding which was not transferable and the plaintiff No 1 purchased their interest. Held that the plaintiff as purchaser of a share of an occupancy holding was entitled to possession even as against the landlord who had no right to take possession of the property. *PURNA CHANDRA TAYLOR v CHANDRA MORINI DAS* (1916)

20 C W N 588

22 ————— Non transferable—Sale by landlord in execution of rent decree—Under Civil Procedure Code presented by deposit by purchaser from registered tenant—Withdrawal of deposit by landlord if amounts to recognition of purchaser as tenant. Prior to the passing of the Bengal Tenancy (Amending) Act of 1907 a co sharer landlord obtained a decree for rent against the registered tenant of a non transferable occupancy holding in favour of himself and his other co sharer. He took out execution under the Civil Procedure Code and not under the provisions of the Bengal Tenancy Act. The plaintiff who had purchased the holding in execution of a money decree against the registered tenant deposited the decretal amount in Court for payment to the decree holder landlord alleging in his petition that he had acquired a right to the holding by purchase and that he made the deposit to protect his right and reserved his right to realise the amount deposited by him from the former tenant or his heir as the tenants of the holding. The decree was thereupon treated as satisfied and the attachment was withdrawn and the amount deposited was withdrawn by the landlord. Held that upon such deposit the landlord could not as in a case under the Bengal Tenancy Act contest the right of the purchaser to make the deposit and the withdrawal of the deposit did not amount to a recognition of the purchaser by the landlord. *Thomas Barclay v Hossain Ali Khan* 60 C L J 601 and *Ali, B. v. P. v. Fulvanti Das* 14 C L J 333 391 distinguished. *SURENDRA NARAYAN MAHAJI v JAGAL KISHORE GHOSH* (1916) 20 C W N 849

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23. ————— Non-transferable—Whether fresh settlement holder required to serve notice on under-rayat after ejectment of transferee—By landlord—Notice—Bengal Tenancy Act (VIII of 1885) s 49 cl (b). Where a person has obtained settlement of a holding from the superior landlord after the latter had ejected the transferee of the occupancy rayat from the said holding as it was not transferable he is not required to serve a notice to quit on the under rayat under s 49 of the Bengal Tenancy Act in his suit for ejectment. *Nilkanta Chak v Ghatoo Sherkh* 40 W N 667, and *Badan v Rajeswari* 2 C L J 570 followed. *Lal Mahomed Sarkar v Jagir Sherkh* 13 C W N 913 *Amrullah Mahomed v Vazir Mahomed* I L R 31 Cal 937 *Amrullah Mahomed v Na ir Mahomed* I L R 31 Cal 104 and *Paghwanath Singh v William Cox* 19 C W N 263 distinguished. *JADAB SARDAR v GORINDA CHANDRA MANDAI* (1916)

I L R 44 Cal 272

24 ————— Hindu Joint Family—Occupancy holding held under joint family not transferable without landlord's consent—Power of karta to recognise transfer. The karta of a joint Hindu family has authority to consent on behalf of the joint family to the transfer of an occupancy holding held by the tenants under the joint family as landlords and not transferable without their consent duly given by themselves or on their behalf. *GOLAFDI MEAH v PURNO CHANDRA DUTTA* (1917)

21 C W N 774

25 ————— Attachment—Objection of rayats—Consent of landlords. A non transferable occupancy holding or a part of it cannot be sold in execution of a decree for money obtained against the rayat when the rayat objects to the sale on the ground of non transferability even if the landlords give their consent to the sale. The above rule does not as expressly laid down by the Full Bench in *Dayamayi v Ananda Mohan Poy Chau dhuri* I L R 42 Cal 172 180 W N 971 apply to a sale held in execution of a decree founded on a mortgage or charge voluntarily made by the rayat. *Bairamessa Ghoudhrani v Alam Gazi* 19 C W N 814 referred to. *Ananda Das v Rao Far Panda* 70 W N 572 *Shalruddin Ghoudhry v Rani Hemangini Das* 16 C W N 420 commented on. *NARAYAN NARIN CHANDRA CHAUDHURI* (1916)

I L R 44 Cal 720

26 ————— Gift validity of—Revocation of gift—Transfer of property Act (18 of 1882) ss 123 126. In cases of transfer by gift of occupancy holdings the question of transferability cannot be raised by the heir of the donor to the prejudice of the donee or his representative in interest. *Rahim Jan Bibi v Imam Jan* 17 C L J 173 referred to. Where a gift duly registered and executed is not suspended or made revocable on the happening of any specified event or in any of the cases (save want or failure of consideration) in which if it were a contract it might be rescinded as provided for in s 126 of the Transfer of Property Act it cannot be maintained that the property comprised in such gift continued to form part of the estate of the donor. The property ceased to be part of the donor's estate and the heir did not succeed thereto by right of inheritance. In cases of transfers for value the title passes from the transferor to the transferee although the validity

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o the transfer is liable to be questioned by the transferee who is not a party to the transaction and may possibly refuse to recognise the transfer. *Divyansu v Anand Mohan Poy Chowikury* 1 L R 43 Cal 123 followed *Yillers v Beamant* 1 Fern 101 referred to *Mitro v Lord* 4 D 3 F t J 261 *Richards v Debridge* L R 18 E 11 *Amulga Ratan Sircar v Tarini Nath Dey* 1 L R 42 Cal 234 distinguish *d BEHARI LAL GUPTA v SINDHUBALA DAS* (1917) 1 L R 33 Cal 434

27 ——— Part of holding bequest of—If valid—Principle of estoppel and want of acquiescence if applies. The testamentary disposition of a part of a non transferable occupancy holding like that of the whole holding is invalid and it was so held in a suit by the devisee against the rayats heir at law *UMESH CHANDRA DUTTA v JOY NATH DAS* (1917) 22 C. W. N 474

28 ——— Custom of payment of nazar—In order to establish a custom of transferability subject to the payment of a customary nazar the evidence must show that the landlord is bound to recognise when nazar of the amount or at the rate determined by custom is tendered to him. A practice or course of business in a zemindari office according to which a transferee is recognised provided that the amount of the nazar is satisfactory to the landlord is not sufficient. The payment of nazar without more is an indication that the jotes are not transferable without the landlord's consent given on receipt of the nazar. A custom which leaves the amount or rate of nazar indefinite must be void for uncertainty. *MINA KUMARI v ISCHHAMOYEE CHAUDHURY* (1918) 22 C. W. N 929

29 ——— Gomasta's power to sanction transfer—In order to rely on a receipt granted by a landlord's Gomasta as evidence of recognition by the landlord of a transfer of a holding it is necessary for the transferee to show that the Gomasta's duties actually or ostensibly included at least some of the duties of management. *JANKI SAHU v TRAKUR PAW BANADUR SINGH* 2 Pat L J 231

30 ——— Purchaser of non transferable occupancy holding whether entitled to object to sale of holding—*Code of Civil Procedure (Act V of 1908) s 47 and O XXI r 100*. The purchaser of the whole or part of an occupancy holding not transferable by custom is a representative of the judgment debtor and entitled to object under s 47 of the Code of Civil Procedure 1908 to a sale of the holding in execution of a decree for rent. He is therefore not entitled to maintain proceedings under O XXI r 100. *PANCHARATAN HOSSAIN v PAM SAHAY SINGH* 3 Pat L J 579

31 ——— Transferability—A 16 anna landlord cannot sell his rayat's occupancy holding in execution of a money decree unless the rayat's occupancy holding is transferable by usage. *MAC PHERSON v DESHMUKH LAL* 3 Pat L J 530

32 ——— Transferability of, in execution of money decree—*Orissa Tenancy Act (B d O Act II of 1913) s 31(f)*. An occupancy tenant in Orissa is entitled to object to the sale

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of his holding in execution of a money decree on the ground that the holding is not transferable without the consent of the landlord. *MADHU PADHAN v JAGU JEV* 4 Pat L J 294

33 ——— Transfer of portion of non-transferable—Collusive rent suit between landlord and transferee—Deposit of transferee—Suit to set aside fraudulent decree and for recovery of deposit—*Bengal Tenancy Act (VIII of 1885) s 170 (3)*—Principles governing transfers of non transferable holdings—*Frau*? The recorded tenant of a non transferable occupancy holding sold a portion of his holding. Subsequently the landlord brought a collusive suit for rent against the transferee and obtained a decree. The transferee deposited the decretal amount and costs under s 170 (3) of the Bengal Tenancy Act and the deposit was withdrawn by the landlord. In a suit by the transferee to set aside the decree and for recovery of the amount withdrawn. *Held* (1) that at the time of the deposit it had not been finally decided that the transferee of a portion of a non transferable occupancy holding is not entitled to make deposit under s 170 (3) the plaintiff was justified in adopting the only course at that time open to him to save the holding from sale and the suit was maintainable although there was no privity of contract between the parties. (2) That the deposit should be considered as money paid under terror of inceptive legal proceedings fraudulently directed against the transferee and as such recoverable. (3) That the decree obtained against the recorded tenant was void not only against the latter but was a nullity. (4) That in such a case irrespective of a deposit if the transferee has suffered actual damage by an unlawful infringement of his legal rights the suit would be maintainable. The following principles govern the transfer of the whole or a portion of a non transferable occupancy holding—(i) Where the transfer is a sale of the whole holding the landlord is ordinarily entitled to enter on the holding. (ii) (a) Where the transfer is otherwise than by sale of the whole holding and (b) Where the transfer is a part only of the holding whether by sale or otherwise the landlord is not ordinarily entitled to recover possession unless there has been an abandonment within the meaning of s 87 of the Bengal Tenancy Act or a repudiation of the tenancy. (iii) The transferee of a portion of a non transferable occupancy holding has certain interests and legal rights which for certain purposes are limited by the provisions of the Bengal Tenancy Act read with the provisions of the Code of Civil Procedure 1908. (iv) All such transferees have irrespective of the Bengal Tenancy Act and altogether dehors that Act certain legal rights which if infringed the Common Law of the land will be powerless to protect in appropriate cases. (i) One of such rights is the right to possession which the transferee has even against the landlord until abandonment relinquishment or repudiation takes place. (ii) The Common Law imposes an obligation on the landlord to refrain from extinguishing the rights of the transferee by committing a tortious act in conspiracy with a third person. If this obligation is not observed and damage to the transferee results the Common Law may be invoked to vindicate the latter's rights. (iii) The period at which damage accrues may vary in different cases but as soon as it does accrue the transferee may immediately institute a suit to attack all fraudulent proceedings between the land

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lord and the recorded tenant. Where a person or body of persons inflicts actual damage upon another by the intentional employment of unlawful means even though such unlawful means may not comprise an act which is *per se* actionable then such person or body of persons commits an actionable wrong. Even honest or disinterested motives cannot justify the employment of illegal means. *A fortiori* where it is found that the motives were dishonest and fraudulent the wrong is actionable.

ASAFI SINGH v. RAMKHELANA SINGH

4 Pat L J 115

34 ——— Purchase of, by thikedar effect of—Bengal Tenancy Act (VIII of 1885) s. 22 (3)—Mesne profits power of court to reduce rate agreed upon by parties. A thikdar was not debarred from acquiring occupancy rights by purchase during the period of his *thika* prior to the amendment of s. 22 (3) of the Bengal Tenancy Act 1885 and that section does not prevent him from acquiring occupancy rights by purchase after the period of his lease has expired. Where a thikedar purchases an occupancy holding during the period of his lease he becomes a non occupancy raiyat in respect to the holding purchased and a suit to eject him must be brought within the period of limitation prescribed by sch. III to the Bengal Tenancy Act 1885. Where a lease contains a stipulation that the lessee shall pay mesne profits at a particular rate on failure to give up the lands which form the subject matter of the lease on the expiry of the period for which it is granted the court has power to alter the rate agreed upon.

JOHN PIERPONT MORGAN v. BABU PAMJER PAM

5 Pat L J 302

35 ——— Transferability—Custom of—An occupancy raiyat in a village where no custom of transferability without consent of landlord exists can object to the sale of his holding by an execution creditor who is not his landlord. On an execution sale of portion of holding remainder becomes an entire holding and on its sale it is the sale of an entire holding not a portion only. Where a portion of a holding has been sold in execution of a mortgage decree the tenant is not estopped for denying the existence of the custom of transferability in the case of a sale of the remainder under a money decree.

DEWAN RAM CHOUDHURY v. ATUL MUNDER

11 Pat L J 203

36 ——— Abandonment—*relat amounts to*—Where a tenant having a non transferable right of occupancy sells such right to a third person and having obtained a sub lease from the purchaser remains in possession of the land and cultivates it the landlord (in the absence of repudiation by the tenant of his relation to the landlord as such) is not entitled to recover possession inasmuch as it does not amount to abandonment.

SIRPUNNESSA BIR v. PAMDER PAM

24 C W N 117

37 ——— Transferability—Whether occupancy holding not transferable by usage or custom can be sold in execution of sol. landlord's money-decree—*See* 11 Pat L J 115. *Appl. Cal. and limitations of The sol. landlord of a raiyat is competent to a II in execution of a money decree against the raiyat his occupancy holding even though the holding may be non transferable by usage or custom.*

Bhram II Shail Shikdar v.

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Gopi Kanth Shaha I L R 24 Calc 355 overruled Durga Charan Mandal v. Kali Prasanna Sarkar I L R 26 Calc 727 Sadagar Sycar v. Krishna Chandra Nath I L R 26 Calc 937 Mayed Hossein v. Paghubur Choudhury I L R 27 Calc 187 Gahar Khalupa Bipari v. Kasi Muddi Jamadar I L R 27 Calc 415 Sita Nath Chatterjee v. Atma ram Kar 4 C W N 571 Murulla v. Burulla 9 C W N 972 and Khoda Buz v. Sadu Pramanick 14 C L J 620 commented on Macpherson v. Debibhusan Lal 2 P L J 530 dissented from Narayan v. Nabin Chandra Chaudhuri I L R 44 Calc 720 referred to Ananda Das v. Ruinakar Panda 7 C W N 572 Shakaruddin Choudry v. Hemangini Das 16 C W N 420 and Dwarikanath Pal v. Tarini Sankar Ray I L R 43 Calc 199 approved. The transfer for value of the whole or a part of an occupancy holding apart from custom or local usage is operative as against the raiyat whether it is made voluntarily or involuntarily. Authorities reviewed at length CHANDRA BHADRA HUNDU v. ALA BUX DEWAN (1920)

I L R 48 Calc 184
24 C W N 818

38 ——— Mortgage—Collateral covenant for the protection of a mortgage of occupancy holdings not enforceable. Certain occupancy holdings were mortgaged usufructually with a covenant that if the mortgagor failed to pay or if the mortgagees were dispossessed from the property mortgaged they would be entitled to recover the mortgage money by sale of certain other property of the mortgagor. Held on suit brought on this covenant by the mortgagees after dispossession that the mortgage of the occupancy holdings being itself illegal the covenant fell with it and the plaintiffs could not recover. Ram Pratap Rai v. Ram Phal Teli 18 Indian Cases 9 and Pooran Singh v. Jai Singh 17 Indian Cases 622 referred to. Bajrang Lal v. Ghura Pasi I L R 35 All 237 and Rajendra Prasad v. Ram Jalan Rai I L R 39 All 39 distinguished. TULSHI PAM v. SAT NARAYAN

I L R 43 All. 11

OCCUPANCY RAIYAT

See CENTRAL PROVINCES TENANCY ACT 1898 s. 35 3 Pat L J 88

See LAND ACQUISITION ACT (I of 1894) ss. 23, 49 I L R 40 All 367

See LANDLORD AND TENANT I L R 37 Calc 742

See OCCUPANCY HOLDING

See OCCUPANCY RIGHT

See SURRENDER I L R 43 Calc 605

——— at fixed rates—

See OCCUPANCY HOLDING

I L R 42 Calc 745

——— suit for declaration of status as—

See COURT FEES ACT (VII of 19 0) sec. II Art. 6 7 xi

I L R. 40 All. 358

1 ——— Appointed raiyat of a village occupancy right. The mere fact that a raiyat who has a right of occupancy in his agricultural lands is at the same time a rent-collector of

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the village and is remunerated as such does not deprive him of his right of occupancy. *Durga Prosad Singh v Hari Ram Mahto* (1914)

19 C W N 578

2 ——— *Mortgage of part of upan y holding—Subsequent lease of same while mortgage was yet unregistered—Rights of mortgagees and of occupant.* An occupancy tenant made a usufructuary mortgage of certain plots of land comprised in his occupancy holding. He apparently gave the mortgagees possession but refused to get the mortgage registered and in consequence the mortgagees were obliged to bring a suit to compel registration. Whilst this suit was pending the occupancy tenant leased certain plots covered by the mortgage at a yearly rent for a period of five years. *Held* on suit by the lessor for possession that the plaintiff was entitled to a decree and that he was not bound as a condition precedent to pay off the mortgagees. *Baharan Upadhyay v Uttamgir* I L R 33 All 779 referred to *HABIB ULLAH v MANRUP* (1917) I L R 40 All 229

3 ——— *Settlement while of raiyats holding or of tenure—Statutory presumption—Bengal Tenancy Act (VIII of 1885) s 5 sub s (a)—Suit under s 104 H—Incidents of tenancy.* In a suit under s 104 H of the Bengal Tenancy Act the plaintiff sued for a declaration that he was an occupancy raiyat in respect of certain lands. He based his title on two documents: one was an *amalnami* granted to his predecessor in 1863 which recited that certain mouzabs were allotted with the grantee for bringing them under cultivation and directed the grantee to expel wild beasts clear jungles raise embankments at his own expense carry on cultivation and enjoy the crops thereof and the other document which fixed the rent was executed in 1869 and recited that on the strength of the aforesaid *amalnami* the grantee took possession and had commenced to reclaim jungles raise embankments and cultivate lands. The grantee was further authorised to make settlements with tenants. *Held* that the settlement was of a raiyat holding and not of a tenure. The *amalnami* was expressly granted for the purpose of reclamation and cultivation by the grantee and the regular lease which followed did not indicate any intention to alter the nature of the tenancy. *Held* also that the mere fact that the tenant had sublet his land did not by itself establish conclusively that this status was that of a tenure holder and not that of a raiyat. The test to be applied to determine his status was the intention of the contracting parties. Where the terms of the original grant were known the statutory presumption in s 5 sub s (5) of the Bengal Tenancy Act did not apply where the origin of the tenancy was unknown the mode of use of the land might furnish a valuable clue to determine its original purpose and where it was ambiguous evidence of subsequent conduct of parties might be admissible. *Promotho Nath Kumar v Nilmani Kumar* 14 C L J 33 15 C W N 902 *Promoda Nath Poy v Asiruddin Mandal* 15 C W N 896 *Dama pada Poy v Midnapore Zemindary Co* 16 C L J 30 referred to. *Held* further that in a suit under s 104 H of the Bengal Tenancy Act it was not sufficient for the Court to hold that the entry in the Settlement Roll as to the status of ten was erroneous. The Court must affirmatively

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determine the exact conditions and incidents of the tenancy as also the rent to be settled on such basis. *SECRETARY OF STATE FOR INDIA v DIGAMBAR NAYDA* (1917) I L R 46 Calc 160

4 ——— *Suit for settlement of equitable rent whether lies—Enhancement of rent—Bengal Tenancy Act (VIII of 1885) ss 46 and 158 Chapters V and X.* Defendant was a non occupancy raiyat under a lease for 9 years ending on the 1st Assin 1319. On the expiry of that period the defendant having held over the plaintiff sued for *ghas possession* or in the alternative for fair and equitable rent for the years 1319 to 1322 inclusive. *Held* (1) that so far as the years 1319 to 1321 were concerned during which the defendant was a non occupancy raiyat the plaintiff not having availed him self of the procedure laid down in s 46 of the Bengal Tenancy Act 1885 was entitled to rent at the rate provided in the lease only and (2) that so far as the year 1322 was concerned by which time the defendant had become an occupancy raiyat the provisions of Chapter X and s 158 not being applicable to the case the plaintiff was entitled to sue for enhancement of rent under Chapter V but could not recover rent at an enhanced rate in the present suit. *Per DAYSON MILLER CJ.* Even had the present suit been one for the enhancement of rent it would not have been within the competence of the court to award rent at an enhanced rate for previous years. *DAYAL KUNDU v MALHU PATHAK* 5 Pat L J 406

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See *BENGAL TENANCY*

I L R 48 Calc 460

See *BENGAL TENANCY ACT 1885 s 180*

2 Pat L J 43

See *CHOTA NAAGPUR LANDLORD AND TENANT PROCEDURE ACT s 6*

14 C W N 297

See *LANDLORD AND TENANT*

See *LAND TENURE IN MADRAS*

L R 48 I A 33

See *OCCUPANCY HOLDING*

See *OCCUPANCY RAIYAT*

— acquisition of, by a firm—

See *ENDOWMENT* 4 Pat L J 533

— acquisition of by joint family—

See *HINDU LAW (JOINT FAMILY)*

4 Pat L J 354

— acquisition of, by landholder—

See *MADRAS ESTATES LAND ACT (1908) s 6 SUB S (6) AND s 8*

I L R 35 Mad. 944

— extinguishment of—

See *LANDLORD AND TENANT*

I L R. 37 Calc. 709

— Purchaser of—

See *MADRAS ESTATE LANDS ACT 1908*

ss 54 AND 146

I L R 44 Mad. 43

OCCUPANCY RIGHT—*contd*

—transfer of—

See CENTRAL PROVINCES TENANCY ACT
(XI OF 1898) s 45

I L R 46 Cal 76

1 ————— *Mokuridar* cultivating land for more than 12 years—Protection from eviction Where a *mokurari* tenure was created in 1590 by an under tenure holder in favour of a tenant who went on cultivating the land for 12 years Held in a suit by a purchaser of the under tenure under Act VIII of 1865 that the tenant acquired an occupancy right and retained it even though the *mokurari* right which he had also obtained was extinguished by operation of s 16 of Act VIII of 1865 and the tenant was not liable to be ejected *Nirmadhab v Shivu* 13 W R 110 and *Emam Ali v Ator Ali* 22 W R 133 followed *Jogeshwar Mazumdar v Abed Mahomed Swlar* 3 C W N 13 distinguished *BAJIA CHARAK GOPAI v RAM KANAI DUBEY* (1914)

10 C W N 558

2 ————— Incidents of an other tenancy under the same landlord but in different localities in the occupation of the occupancy *raiyat*—Bengal Tenancy Act (VIII of 1885) 132 The provisions of the Bengal Tenancy Act are applicable to a tenancy for building a shop in a market in which the tenant afterwards came to reside where the tenant has occupancy right on certain *jamas* under the same landlord in a different village from before the acquisition of the tenancy for building the shop *Gulam Mowla v Abdul Souar Mundul* 13 C L J 255 *Protap Chandra Das v Bessessar Pramanick* 9 C W N 416 *Kripa Nath Chakrabutty v Sheikh Anu* 10 C W N 944 and *Harihar Chatterji v Dinu Bera* 14 C L J 170 referred to *BHAKABIRAN BHAGAT v MAHARAJ BAHADUR SINGH* (1915) I L R 43 Cal 195

3 ————— Under *raiyat*—

Ejection—Bengal Tenancy Act (VIII of 1885) ss 4 49 (b) 113 183—Usage or custom An under *raiyat* may by usage or custom obtain a right of occupancy and he is not then liable to ejection after notice to quit under s 49 of the Bengal Tenancy Act *Akhil Chandra Biswas v Hasan Ali Sadagar* 19 C W N 246 referred to *GOPAL MOYDAL v TAPAI SANKHARI* (1918)

I L R 46 Cal 43

4 ————— If may be acquired

by settled *raiyat* as a protected interest A *raiyat* holding at a fixed rent from the inception of the tenancy may subsequently acquire a right of occupancy (e.g.) by continuous occupancy for 12 years so as to be protected by s 160 of the Bengal Tenancy Act *Dhru Nath Daskar v Surendra Nath Dutt* 13 C W N 105 considered *SARDESWAR PATRA v MAHARAJA SIBU BEJOY CHAND MOHAPATRA* 25 C W N 15

5 ————— Transferability of

in Orissa—Sale in execution of mortgage procedure for In Orissa occupancy rights are transferable without the landlord's consent unless it is shown to the satisfaction of the Collector that the landlord has good reason for his objection The correct procedure in cases in which it is desired to put up for sale an occupancy right in execution of a decree on a mortgage is to allow the sale to go through and then for the purchaser to apply to the landlord under s 31 of the Orissa Tenancy Act 1913 for registration of the transfer If the landlord accedes to

OCCUPANCY RIGHT—*contd*

the fee authorised the sale will hold good If he refuses to do so the purchaser should apply to the Collector and the Collector will decide whether there is good and sufficient reason for the landlord's objection *GIRDHARI NAIK v KASHI TENDI*

2 Pat L J 476

OCCUPANCY TENANT

See AGRA TENANCY ACT (II OF 1901)

s 16 I L R 41 AU 223

ss 18 and 88

I L R 43 AU 606

See KROTI SETTLEMENT ACT (BOM I OF 1830)—

ss 9 and 10 I L R 44 Bom 267

ss 33 (c) 40 (a) BR I III VIII

I L R 37 Bom 284

See LANDLORD AND TENANT

I L R 33 AU 335

See OCCUPANCY HOLDING

See SURRENDER I L P 48 Cal 605

OCCUPANT

—Growth of sandalwood trees on occupancy lands subsequent to survey settlement—

See FOREST ACT (VII OF 1878) 75

CL. (c) R 2 I L R 45 Bom 110

OCTROI DUTY

See GENERAL CLAUSES ACT (I OF 1904)

s 24 I L R 40 AU 105

See UNITED PROVINCES MUNICIPALITIES

ACT 1916 s 326

I L R 42 AU 207

—suit for refund of—

See LIMITATION ACT (IX OF 1908) SCH I

ART 2 62 120

I L R 36 AU 555

OFFENCE

See HIGH COURT JURISDICTION OF

I L R 37 Cal 287

See PICTING

I L R 40 Cal 781

See WORKMEN'S BREACH OF CONTRACT

ACT 1850 s 2 I L R 43 AU 281

—brought to the notice of Court in the course of judicial proceeding—

See COURT MEETING OF

I L R 37 Cal 642

—committed in respect of different persons—

See JOINDER OF CHARGES

I L P 38 AU 457

—compounding of—

See CRIMINAL PROCEDURE CODE (ACT I

OF 1898) s 345

I L R 39 Mad 945

—Whether it can be spoken of as a purely personal one—

See INJUNCTION ACT 1875 s 4 (a)

s 3 I L R 2 Ind 1

OFFENCE—*concl*

Whether omission to give rent receipt amounts to—

See BENGAL TENANCY ACT 1882 s 58
I L R 1 J 149

Triable with the aid of assessors—
Conviction of accused of minor offence triable by a jury—

See CRIMINAL PROCEDURE CODE (ACT V OF 1908) s 304
I L R 45 Bom 619

Committed at Sea

See HIGH COURT JURISDICTION OF
I L R 39 Calc 487

OFFENDING MATTER

proof of—

See STATUTE BOOK OFFENCE OF
I L R 38 Calc 202

OFFER AND ACCEPTANCE

See CONTRACT I L R 42 All 187

See CONTRACT ACT 1872 s 2

See LAND ACQUISITION

I L R 44 Bom 797

See REGISTRATION ACT 1908 ss 17 AND 19
I L R 45 Bom 8

Counter proposal does not amount to—

See REGISTRATION ACT (XXI OF 1908) ss 17 & 19
I L R 45 Bom 8

OFFERINGS

See SEBAST I L R 41 I A 267

permanent alienation of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92
I L R 40 Mad 212

Suit by pujari against guravs to recover offerings—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 AND 92
I L R 45 Bom 683

to a temple—*Transferability*—*Transfer of Property Act (IV of 1882) s 6 cl (a)* There are certain rights that cannot be transferred. They are *res extra commercium* for instance sacerdotal office which belongs to the priest of a particular class. Similarly a right to receive offerings from pilgrims resorting to a temple or shrine is inalienable. The chance that future worshippers will give offerings is a mere possibility and as such it cannot be transferred. *Lakshmanaswami Saidu v Pangamma* I L R 26 Mad 31. *Kashi Chandra v Kailash Chandra* I L R 96 Calc 356. *Dina Nath Chuckerbutty v Pratap Chandra Goswami* I L R 27 Calc 30 referred to. *PUNCHA THAKUR v BINDSWARI THAKUR* (1915)
I L R 43 Calc 28

to deity—*Dispute concerning the possession of a temple and its offerings*—*Offerings not profits* arising out of a temple—*Jurisdiction of Magistrate*—*Apportionment of the offerings*—*Criminal Procedure Code (Act V of 1908) s 145* S 145 of the Criminal Procedure Code includes within its scope a dispute concerning the actual possession

OFFERINGS—*concl*

of a temple and the land on which it stands but not one relating to the right to and apportionment of the offerings given by the worshippers. Such offerings are not *profits* arising out of the temple within the meaning of s 140 (2). An order made under s 145 declaring a party entitled to the actual possession of a temple and its offerings is therefore *intra vires* of the temple but not as to the offerings. *Guram Ghoal v Lal Behari Das* I L R 37 Calc 578 referred to. *RAM SARAN PATHAK v RAGHU NANDAN GIR* (1911)
I L R 38 Calc 387

OFFICER

in the Army—

See ATTACHMENT I L R 43 Bom 716

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 CL (2) (b)

I L R 37 Bom 26

OFFICIAL ASSIGNEE

See CIVIL PROCEDURE CODE 1908—

S 80 I L R 37 Bom 243

O XXII n 10

I L R 38 Bom 568

See INSOLVENCY I L R 37 Calc 418

See INSOLVENT I L R 43 Bom 890

See LIQUIDATOR I L R 43 Calc 586

See PRESIDENCY TOWNS INSOLVENCY ACT 1909—

Ss 7 & 86 I L R 35 Bom 473

Ss 38 AND 52 I L R 44 Bom 555

duties and rights of—

See SALE OF GOODS

I L R 40 Calc 523

prospect of litigation with—

See INSOLVENCY I L R 44 Calc 374

right of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXXVIII n 6

I L R 30 Mad 903

sale by—

See INSOLVENCY I L R 42 Calc 72

title of—

See INSOLVENCY I L R 40 Calc 28
I L R 42 Calc 72

verbal orders by—

See INSOLVENCY I L R 42 Calc 58

OFFICIAL CORRUPTION

See CONTRACT I L R 43 Calc 255

OFFICIAL RECEIVER

See PROVINCIAL JUDICIAL OFFICERS (ACT V OF 1907) s 92
I L R 28 Bom 476

See RECEIVER

order of—

See PRINCIPAL JUDICIAL OFFICERS (ACT V OF 1907) s 92
I L R 28 Bom 476

OFFICIAL RECEIVER—concl'd

— order to without notice—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s 40 CL (3)

I L R 39 Mad 593

— whether a Court—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 2 (c) AND (g) 22 46 52

I L R 40 Mad 752

— *Insolvency—Conveyance if necessary to perfect title to land purchased at an auction at the instance of Official Receiver—Transfer of Property Act (IV of 1882) s 54* There is nothing to exempt a conveyance by an Official Receiver in Insolvency from the operation of s 54 of the Transfer of Property Act 1882 **ABDUL HASHIM & AMAN KRISHNA SANA (1919)**

I L R 46 Cal 587

OFFICIAL RECORD

See TEISHKHANA PAPER

I L R 29 Cal 995

OFFICIAL TRUSTEE

See PROBATE I L R 37 Cal 387

— *Probate—Official Trustee's Act (XII of 1864) s 8 10 32* The official Trustee as constituted by Act XVII of 1864 is not entitled by virtue of his office and in his character as Official Trustee and in the name of Official Trustee to obtain a grant of probate *Ashbury Railway Carriage and Iron Co v Riche L R 7 H L 653* referred to **GREY v GHARUSILA DAS (1910)**

I L R 38 Cal 53

OFFICIAL TRUSTEE'S ACT (XVII OF 1864)

See PROBATE I L R 37 Cal 387

— ss 8, 10 32—

See OFFICIAL TRUSTEE

I L R 38 Cal 53

OFFICIAL WITNESS

— privilege of—

See CHARGE I L R 42 Cal 957

OLD WASTE GROUNDS

— ejectment from—

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 (7) 1, 3 AND 157

I L P 38 Mad 183

OMISSION

See CHARGE

I L R 40 Cal 168

— by mistake—

See POWER OF ATTORNEY

I L R 37 Cal 399

— to serve notice—

See EXECUTION OF DECREE

I L R 40 Cal 45

ONUS OF PROOF

See AGREEMENT TO SELL

I L R 38 Bom 446

See PENALTY

25 C W N 409

See EVIDENCE OF PROOF

See CHARGE I L R 40 Cal 168

ONUS OF PROOF—cont'd

See CHAUKIDARI CHAKRAN LANDS

I L R 42 Cal 710

See CONSIGNMENT LOSS OF

I L R 41 Cal 576

See DEATH PRESUMPTION OF

I L R 37 Cal 103

See EJECTMENT I L R 42 Bom 357

See EVIDENCE ACT (I OF 1872)—

s 92 I L R 30 Bom 399

s 110 I L R 45 Bom 789

See EXECUTOR SALE BY

I L R 30 Mad 575

See FORFEITURE I L R 41 Cal 486

See FRAUD I L R 41 Cal 990

I L R 37 All 537

See HINDU LAW—MINOR

I L R 38 Mad 168

See JURY 24 C W N 819

See KASBATH I L R 39 Bom 625

See LANDLORD AND TENANT

I L R 37 Cal 723

See LEGAL NECESSITY

I L R 43 Cal 417

See LIMITATION ACT (IX OF 1908) s 1

APPS 140 141

I L R 40 Bom 239

See MUNICIPAL ELECTION

I L R 47 Cal 524

See NEGLIGENCE I L R 48 Cal 757

See POSSESSION 23 C W N 593

See PRESS ACT (I OF 1910) s 3 (1)

4 (1) 17 19 20 AND 22

See PATRI I L R 30 Mad 1085

25 C W N 108

See RAILWAY COMPANY

I L R 37 Bom 1

See TENT SUIT

I L R 43 Cal 554

See SECOND APPEAL

I L R 2 Lah 249

See WILL I L R 47 Cal 1043

I L R 43 Bom 845

— placed on wrong party—

See NEGOTIABLE INSTRUMENTS ACT

1881 s 118 I L R 1 Lah 429

— In a suit for succession—

See CUSTOMS (SUCCESSION)

I L R 1 Lah 434

— Presumption in favour of continuance of life—

See HINDU LAW (SUCCESSION)

I L R 1 Lah 554

— Hindu Joint Family on member of, to show that his training was not at the expense of the Joint Family—

See HINDU LAW (JOINT FAMILY PRO

PERTY) I L R 2 Lah 40

— In custom case—second appeal—

See PUNJAB COURTS ACT 1918 s 41

See JURISDICTION I L R 2 Lah 187

ONUS OF PROOF—*contd*

That suit not within cognizance of

Court

See JURISDICTION I L R 2 Lah 302

Unoccupied village site—Presumption of title vesting in Government—

See EVIDENCE ACT (I OF 1857) s 110

I L R 45 Bom 789

Suit by Government patta to eject tenant—Claim by tenants to right of occupancy—Facts establishing right of occupancy—Title of plaintiff and service of notice to quit withdrawn—Onus on defendants to prove claim allowed—Second appeal—Judgment of High Court on appeal to deal with fact Civil Procedure Code (1908) s 103. In suits brought by the appellants as Government pattadar against the respondents after due service of notice to quit to eject them from agricultural land in a ryotwari village the respondents pleaded that they had a permanent tenancy or right of occupancy and the appellants a title and the notices purporting to determine the tenancy were not disputed. Held that the onus was on the respondents to prove the existence of their right of permanent occupancy but that it had been established by the evidence that they had been immemorially in possession of the lands and that they had not been proved to have been ever let into occupation by the appellants that they had been paying uniform rate of rent that the lands were reclaimed and brought under cultivation by them that they had made great improvements and carried on cultivation of either of dry or garden crops of their own choice without any interference or objection and that they had for a very long time been sometimes making alienations of wells and lands and the onus of proof had been thereby satisfied. The District Judge had passed decrees in the appellants' favour for possession of all the lands in suit. The High Court was of opinion that the District Court had omitted to determine a question of fact which was essential to the right decision of the suit on its merits and framed issues which it asked the District Judge to decide as to whether the respondents were yearly tenants or had a permanent right of occupancy. These the District Court returned without dealing with them in a satisfactory manner. The High Court on second appeal drew an inference from the respondents' occupancy rights and decided the appeal (dealing with it under s 103 of this Civil Procedure Code 1908) in favour of the respondents. Held that the inference is not in any way contradictory to any finding of fact by the District Court and there being materials from which such inference could be drawn the High Court had jurisdiction under the circumstances to deal with the case under s 103 and make a decree as it had done. SETURATNAM AIYAR v. VENKATACHELA GOUDAN (1907)

I L R 34 Mad (P C) 567

OPIUM

See OPIUM ACT

See OPIUM ACT (I OF 1878) ss 9

I L R 31 All 319

1. Illicit sale of—Proof of the fact of the sale—Presumption from inability to account satisfactorily for opium in absence of evidence of any sale—Opium Act (I of 1878) ss 9, 10. The effect of ss 9 and 10 of the Opium Act 1878

OPIUM—*contd*

is that when once it is proved that the accused has dealt with opium in one of the ways described in s 9 the onus of showing that he had a right to deal with it is placed on him by s 10. But the commission of the act which is the foundation of the particular offence charged under s 9 must be proved before the presumption raised by s 10 comes into operation at all and the presumption cannot be used to establish such act. Where therefore there is no evidence to prove the fact of any sale of opium by a person accused of illicit sale the deficiency is not supplied by the statutory presumption and a conviction of illicit sale is bad. I BHAR CHANDRA SIKON v. EMPEROR (1910)

I L R 37 Cal 581

2. Illegal possession of—Opium Act (I of 1878) s 9 (c) 10—Where possession contrary to the Act without guilty frame of mind—Respective liabilities of owner of boat and crew—Presumption of commission of offence under the Act—

Conveyance—Boat Under ss 9 (c) and 10 of the Opium Act (I of 1878) mere possession of opium without being able to account for its satisfactory apart from any frame of mind is an offence. The owner of a boat in which opium found is in possession of it but not the crew when they are neither owners nor jointly interested with him in any venture as an incident of which possession might be attributed to them. Where the owner of a boat alleged that opium was carried on board by a passenger without his knowledge but there were circumstances disproving his story. Held that as he had not satisfactorily accounted for its possession it must be presumed under s 10 that it was opium in respect of which he had committed an offence under the Act. *Quare* Whether a boat in which opium is carried is a conveyance used in carrying it so as to be liable to confiscation on conviction of the owner under the Act. EMPEROR v. HAMID ALI (1909)

I L R 37 Cal 24

3. Possession by consignee of railway receipt covering contraband opium—Lying undelivered in a railway office—Expediency of interference on revision when accused guilty of importing such opium—Opium Act (I of 1878) s 9 (c) (c) and (e). Per RICHARDSON J. Possession by the consignee of a railway receipt covering a parcel of contraband opium lying undelivered in the railway office under circumstances showing knowledge of its contents constitutes possession of the opium within s 9 (c) of the Opium Act though after its arrival the police tied up the parcel with tape and instructed the Parcels Clerk not to part with it in order to prevent delivery without their cognizance. *Ka. Nath Bania v. Emperor I L R 32 Cal 557 and Ashraf Ali v. Emperor I L R 36 Cal 1016 followed. Kali Charan Mukherjee v. Emperor I L R 41 Cal 537 referred to. Per SHAMS UL HUDDA J. It is very doubtful whether under the circumstances the accused was in possession of the opium within s 9 (c) of the Act. Per CURRIE J. The accused was guilty under s 9 (c) of importing opium and the case was not therefore a fit one for interference on revision. FONG HAY v. EMPEROR (1919)*

I L R 46 Cal 820

OPIUM ACT (I OF 1878)

—ss 3 and 9—

Morphia—whether included in the term Opium. Held that morphia

ORISSA TENANCY ACT (II OF 1913)

ss 3 (4) and (6) and 31—

Mad. Sarbarkari tenure transfer of—Landlord's consent what amounts to—Notification conferring powers of Deputy Collector effect of—Cause of action whether can arise from pleadings If a landlord refuses to register the transfer of a non transferable tenure registration cannot be enforced against him under s 16 (3) of the Oris a Tenancy Act 1913 A landlord is not entitled to claim the mutation fee under s 16 until he has registered the transfer The institution of a suit for recovery of the mutation fee under s 16 does not amount to a consent to the transfer *Held* therefore that where the landlord had not consented to the transfer before the institution of a suit to recover the mutation fee there was at the time the suit was instituted no cause of action *Held* that a mere request by the landlord's servants (who were not shewn to have authority to sanction a transfer) to the transferee for payment of the mutation fee did not constitute a consent to the transfer on the part of the landlord and the latter was not therefore entitled to maintain a suit for recovery of the mutation fee Where a person has been empowered by notification to discharge any of the functions of a Deputy Collector under the Act such person is a Deputy Collector within the meaning of s 3 (4) and (6) and is therefore a Collector within the meaning of that section and has jurisdiction to try a suit for recovery of a mutation fee A cause of action must be antecedent to the institution of a suit and cannot arise from the pleadings themselves **MAHANT GOBIND RAMANUJ DAS v. PANDU DEBENDRABALA DAS**

4 Pat L J 387

s 31—

See S 3

4 Pat L J 387

See OCCUPANCY HOLDING

4 Pat L J 294

S 6 OCCUPANCY RIGHTS

3 Pat L J 476

Transfer of occupancy holding whether fee for registration is payable when landlord's consent is not necessary Whenever an occupancy holding in Orissa is transferred whether the transfer be with or without the consent of the landlord the transferee must apply for registration of the transfer and is bound to pay a fee for such registration **BALMUKUND KAYANGOT v. MURUN JOY IMAHAJ**

5 Pat L J 357

ss 31 and 250—Transfer of occupancy holding non payment of registration fee on—Suit for registration fee—Second Appeal The transferee of an occupancy holding is bound to deposit the registration fee prescribed by s 31 of the Orissa Tenancy Act 1913 and if he fails to do so the landlord may sue for it In such a suit a second appeal lies to the High Court from the order of the lower appellate Court **MURUNJOY IMAHAJ v. SREE JAGANNATH JEU**

3 Pat L J 351

ss 57 235 220 and 221—Incumbrance whether the interest of an under tenant is—Effectment of under tenant's application for relief procedure for an under tenant in occupancy of land is an income tax or will in the meaning of s 11 of the Oris a Tenancy Act 1913 and whether s 220 and 221 constitute the manner in which the incumbrance can

ORISSA TENANCY ACT (II OF 1913)—contd

ss 57, 235, 220 and 221—contd

be annulled by an auction purchaser Where the procedure for the annulment of incumbrances provided by s 221 is not followed and a year is allowed to elapse by the purchaser without taking steps to annul the incumbrance he is not entitled to eject the under tenant under s 57 But if the purchaser takes the prescribed steps to annul the incumbrance and the under tenant refuses to give up possession the latter can be ejected under s 57 **SIRA DAS v. GAJENDRA NATH DAS**

3 Pat L J 112

ss 154 and 332—Nij chas land acquisition of occupancy rights in—Bengal Tenancy Act VIII of 1880 ss 20 and 21—Bengal Pent Act X of 1859 s 7 s 154 of the Orissa Tenancy Act 1913 does not entitle a landlord to a declaration that lands are *nij chas* or proprietor's private lands unless the land was recorded as *nij chas* not only in the Provincial Settlement but also in the settlement between the years 1906 and 1912 That section makes a distinction between the expressions *nij chas* and *nij jole* Where lessees were introduced on to certain land and executed *kabulyats* in May and June 1906 stipulating that on the expiry of the term of their lease they would leave the lands to the *khans* possession of the lessors *Held* that this stipulation amounted to a contract by the lessees that they should not acquire occupancy rights in the land and was binding on them, as at that time there was no provision in force in Orissa which prevented a tenant from contracting himself out of the provisions of ss 20 and 21 of the Bengal Tenancy Act 1855 which were then in force there The provisions of s 232 (a) of the Orissa Tenancy Act 1913 make it clear that the Legislature when they enacted that Act meant to give effect to contracts made between landlords and tenants under which the tenants could be prevented from acquiring occupancy rights in land provided the contracts had been made more than six years before the commencement of the Act **SHEIKH AKBAR ALI v. GOPAL PRASAD CHOL**

3 Pat L J 475

ss 193 and 210—Court having jurisdiction to determine a suit whether Civil Court is—Application to determine rent payable by tenant whether Civil Court has jurisdiction to entertain An ordinary suit for possession of land is not a suit under any part of the Oris a Tenancy Act 1913 The words of the Court having jurisdiction to determine a suit for the possession of land in s 210 include the Civil Court and therefore such a Court has jurisdiction to determine under sub s 1 (d) of that section the rent payable by the tenant **BANAMALI SATPATHI v. CHOUDHURI APARNA MAHAIPATRA**

4 Pat L J 72

ss 204 (2) and (3)—Decision deciding no rent is payable whether appealable to Collector or District Judge—tenants whether person released from payment of rent ceases to be Where in a suit for arrears of rent the Deputy Collector decided that no rent was payable by the defendant for a *sarbarkari* tenure held by the latter *Held* that under s 204 (3) of the Oris a Tenancy Act 1909 the plaintiff should have appealed not to the Collector of the district but to the District Judge **CHAPMAN J. A person does not cease to be a tenant merely because it is an arrangement with his**

ORISSA TENANCY ACT (II OF 1913)—concl'd

s. 204 (2) and (3)—concl'd

landlord be released from the payment of rent
 Gopi Diwal v. RAN CHANDRA SARKAR

2 Pat L J 46

ORPHAN ADOPTION

See HINDU LAW—ADOPTION

I L R 37 Mad 529

See LIMITATION ACT (IV OF 1908) SCH I

ART 18 I L R 37 Bom 513

OSTENSIBLE MEANS OF SUBSISTENCE

See SECURITY FOR GOOD BEHAVIOUR

I L R 39 Cal 456

Conducting the play of
 ring game—Criminal Procedure Code (Act I of
 1898) s. 109 The conducting of the ring
 game is an ostensible means of subsistence within
 the meaning of s. 109 of the Criminal Procedure
 Code Hari Singh v. King Emperor G C I J 98
 referred to BANGLA SHAH v. EMPEROR (1913)

I L R 40 Cal 702

OSTENSIBLE OWNER

See TRANSFER OF PROPERTY ACT (IV OF

1882) s. 41 I L R 34 All 22

I L R 43 All 263

OTTI DEED

See MALABAR TALUQADAR

I L R 39 Mad 918

ODDH ESTATES ACT (I OF 1869)

Will of Taluqdar—A Taluqdar in
 1862 in compliance with the directions issued
 by the Government made a declaration that I
 wish to file this application that after my death
 Umrao Singh the eldest son (sic) my estate
 should continue to my family undivided in
 accordance with the custom of the Pargadda
 and that the youngest brothers shall be entitled
 to maintenance from the Gaddi Nashin Held
 that this was a valid testamentary disposition in
 favour of the eldest son UMRAO SINGH v. LACH
 MAN SINGH

I L R 93 All 344

ss 2 3, s 10 22—Summary and re-
 gular settlements of Odh—Villages settled on grantee
 whose name was entered as owner in Lists 1 and 2 of
 those prepared under s. 8—Taluqdar—Estate
 under s. 2—Impartible property—Kobulhat executed
 by grantee after the time limit specified in s. 3—Suit
 for partition—After acquired properties held to be
 impartible there being no intention shown to incorporate
 them with the impartible property At the summary
 settlement of Odh an order was made on the 5th
 of October 1859 for the settlement of certain
 villages with the ancestor of the parties to these
 appeals who however did not execute his Kobulhat
 until the 13th of October 1859 and so not within
 the time limit specified in s. 3 of the Odh Estates
 Act (I of 1869) namely between the 1st of April
 1858 and the 10th of October 1859 At the regu-
 lar settlement shortly afterwards the grantee
 recovered decrees for possession of other villages
 and subsequently acquired other properties by
 purchase In respect of all the settled villages his
 name was entered in Lists 1 and 2 prepared under
 the statutory provisions of s. 8 of the Act In a
 suit for partition to which the defence was that
 all the property was impartible Held (affirming
 the decisions of the Courts in India) that the grantee

ODDH ESTATES ACT (I OF 1869)—cont'd

ss 2 3 8 10 22—concl'd

(the defendant) was on the construction of the pro-
 visions of Act I of 1869 relating thereto a taluq-
 dar and the villages so settled with him formed
 within the meaning of the Act an estate which
 was impartible and devolvable to a single heir
 On a question whether the delay in executing the
 Kobulhat deprived the taluqa of the character of an
 estate defined in s. 2 of the Act the Judges of
 the Judicial Commissioners Court differed in
 opinion Held in the absence of an express decla-
 ration that non execution within the time specified
 would be fatal to the right given to the grantee by
 s. 3 that no such construction could be put on
 that section but the execution of the Kobulhat
 related back to the date of the settlement namely
 the 5th of October 1859 As to the after acquired
 properties the defendant contended that by the
 custom of the family they became part of the
 original estate and were therefore not subject to
 the ordinary Hindu law of inheritance Held
 (affirming the decisions of both the Courts below),
 that the evidence was insufficient to establish that
 custom that no intention of the taluqdar was
 shown to incorporate the subsequently acquired
 properties with the taluqa as was necessary on the
 authority of the case of Parbati Kumari Debi v.
 Jagadish Chandra Dhabal I L R 29 Cal 433
 453 I R 29 I A 32 98 and that the plaintiff
 was therefore entitled to a decree for his share
 (one half) of such properties as being partible
 JANKI PRAAD SINGH v. DWARKA PRASAD SINGH
 (1910) I L R 35 All 391

ss 2 11 and 16—Transfer by taluqdar
 of part of taluq—Transferer's title based on will of
 deceased taluqdar—Transfer in accordance with will
 —Absence of registration under Act These appeal
 related to lands owned by the taluqdar of Dhan-
 garh who's name was one of those entered in the
 4th list prepared under s. 8 of the Odh Estates
 Act (I of 1869) He died in 1896 leaving a great
 grandson the appellant and three grand sons
 (uncles of the appellant) the respondents and
 having made a will dated the 30th of August 1892
 and registered under s. 13 of the Act by which he
 devised the taluq to the appellant a minor and
 appointed the mother of the boy to be his guardian
 and the first respondent to be manager of the estate
 during his minority The will also provided that
 in case the respondents separated from the appel-
 lant they should receive a maintenance allowance
 in the form of grants of taluqdari villages to be
 selected by the appellant On the death of the
 testator the first respondent entered on the manage-
 ment of the estate in accordance with the directions
 of the will until 1903 when the appellant attained
 his majority and assumed possession and control of
 it the respondents continuing to reside with him
 But in 1910 they separated from the appellant and
 he made grants to them of villages of which muta-
 tion of names took place in 1911 the villages
 declared to be held by the several respondents for
 generation after generation without right of
 transfer s. 16 of Act I of 1869 enacts that no
 transfer otherwise than by gift of any estate or
 any portion thereof or of any interest therein made
 by a taluqdar under the provisions of this
 Act shall be valid unless made by a registered in-
 strument signed by the transferer and attested by
 two or more witnesses By s. 2 of the Act
 transfer is defined as meaning an alienation

3131)
 OUDH ESTATES ACT (I OF 1869) — contd.
 ss 2 13 and 16 — contd.
 In suite to

enter vicos ss 2 13 and 16—could
re over possession of the villages granted to
respondents on the ground (among others) that the
grants were invalid as not having been made by a
registered and attested deed as required by s 16
Held that the respondents right to maintenance
out of the estate was conferred by the will which
imposed on the taluqdar the duty of selecting the
villages from which the maintenance should be
d riverd In making the selection the taluqdar
imposed no additional burden on the estate but
limited and defused in accordance with the will
his burden thereof imposed The selection once
made and accept d could not b. disturb d either
by the taluqdar or the gr a holder and no regis
t red and attested d was required for provisions
of the will followed by the appropriation of villages
and d delivery of possession vesting in the gr a
holders a good and suffi rent till s 16 of Ac
was therefore not applicable Lit S 16 of Ac
DUR SINGH v MAHADEB PRASAD SINGH

• E R.

See MORTGAGE

See TALUQDAR

I L R 34

L L R 34 AU. 620

United 83 ALL 125

as 87 (S) Provinces

demolition of building

Jurisdiction of building
cities Act. Held

7 8 10 22

7 8 10 22-
S HINDU LAW--INHERITANCE

8 10 22- I L R 40 ALL 470

Sec 8 21

L. R. 35

I L R 35 ALL 391

er agent and death of grantee before 1st passed into
1st - Status and rights of grantee - Name of grantee
entered in lists 2 and 2 after his death - Name of grantee
properly aquired - Custom of descent of non taluqdars
- Burden of proof - Presumption of reversion custom
1831 - A Mahomedan and the 17th of October
parties to this appeal, received from the Governor of the
Government a sanad conferring on him the British
proper any right title and possession of the full
taluka of Deogson with a condition that in the
event of you or any of your successors dying in
testate the estate shall descend to th nearest
male heir - i.e. sons - nephews etc according to
the rules of primo nature. He died in 1860 but
his name was entered in lists 1 and 2 of those pre
1 and unit n. 3 of the Oudh Estates Act (1 of
1869). It is that I had acquired to declare 1 hr
to be a permanent heritable and trans
in his estate and was unquestion

PL. L. R. 38 All. 532

ODDH ESTATES ACT (I OF 1869)—contd

—ss. 8 22, sub s (11)—*contd*

dying intestate the estate shall descend to the nearest male heir according to the rule of primogeniture. After the passing of the Oudh Estates Act (I of 1869) his name was entered as a taluqdār in list 1 and in list 5 which was a list of the grantees to whom sanads or grants may have been or may be given or made by the British Government up to the date fixed for the closing of the list declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture. *Held* that the meaning of the word primogeniture in the sanad was the ordinary meaning of the same word in the law of England. On the death of the taluqdār a widow the succession to his estate was contested by his cousin the respondent who would be the heir if the succession was governed by the rule of lineal primogeniture and his uncle who would succeed if it was regulated by nearness of degree. *Held* that the question whether the estates of taluqdars for the purposes of intestate succession must be treated as impartible is settled by authority in the affirmative. *Ran Bijai Bahadur Singh v Jagatpal Singh* 1 L P 18 Cal 111 L P 17 I A 173 and *Jagdish Bahadur v Sheo Parbhat Singh* 1 L P 23 All 369 L R 23 I A 100. The succession therefore to a taluq must be to an impartible estate whether the estate ordinarily devolved upon a single heir as in list 2 of s 3 or whether the succession was to be regulated by the rule of primogeniture as in lists 3 and 5 of s 8. In so far as it describes in the first ten of its sub sections the specific order of heirs preferred to the succession must have force given to it to the effect of standing as a statutory substitute for any line of succession set forth in the sanad. Where sub s 11 of s 22 coming as it does at the close of the long list of specific stages of prescribed succession sets up the rule that in default of any one taking under the previous sub sections there should be preferred such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdars etc are subject it must be construed as being a general relegation of parties to the situation in which they would have been found apart from the Act. In the present case that situation was found in the sanad itself and was also contained, either by way of affirmance or at least by way of narrative in list 5 of s 8 of the Act. While the specific rules of succession in Act I of 1869 must be held to displace this the general reference to what is not covered by those specific rules must include a reference to the rights of parties ascertained in the sanad which was the original title to the property. On these principles and this construction *Held* (affirming the decision of the Court of the Judicial Commissioner) that the succession should be regulated by the rule of lineal primogeniture and not by nearness of degree and that the respondent was entitled to succeed. *DEBI BAKSH SINGH v CHANDRABHAN SINGH* (1910) 1 L R 32 All 599

—s 22 cls 11 14, 15—*Succession to taluq in list 3 under s 5 when specified heir fails*—*Will*—*Limitation* Cl 11 to s 22 of the Act which provides that in default of any descendant specified in the previous ten clauses as heirs upon intestacy to taluqdars or grantees whose names have been entered to the second or third lists pro-

ODDH ESTATES ACT (I OF 1869)—contd

—ss 8 22, cls 11 14 15—*contd*

vided for in cl 8 of the Act the estate is to descend to such persons as would have been entitled to succeed under the ordinary law provides special limitations. When the succession is regulated by cl 11 the simple heir in cases coming under list 2 is the one nearest in succession and may be male or female but under list 3 primogeniture applies. *THAKUR FITLA BAKSH SINGH v THAKUR BITAL SINGH* 25 C W N 721

—s 13—

See S 2

I. L. R. 42 All 422

—ss. 13 14 and 17—*Transfer of immovable property in Oudh—Oral gift inter vivos—Transfer of property Act (I of 1882) s 17—Deed construction of—Whether testamentary or deed of gift inter vivos—Legatee predeceasing testator* Under the Oudh Estates Act (I of 1869) immovable property is not transferable by gift inter vivos other than by registered deed. Although an adopted son is exempt from the operation of s 13 as being one of the special class therein designated a gift to him to be valid must comply with the provisions of ss 16 and 17 of the Act. The two acts of sections not being contradictory of each other. By a deed dated the 5th May 1887 executed by a taluqdār in favour of his adopted son the predecessor in title of the appellant the executant (after stating that he had by a deed of will on 26th May 1883 appointed his adopted son as his successor to the whole of the property and that it had become necessary to alter some of the provisions of that deed) declared that it was written by way of deed of adoption and codicil to a will and that he had made over the whole of the property in suit to his adopted son, and had absolutely and unconditionally relinquished all right and proprietorship as well as ceased interference with the property. In a subsequent clause he described the person in whose favour the deed was made as my adopted son and donee and legatee under the deed dated the 26th May 1883 as well as under this deed

in respect of all my moveable and immovable property which has already been acquired or which may be acquired hereafter during my lifetime or which may come to me by inheritance or to which I may become entitled. *Held* (affirming the decision of the Court of the Judicial Commissioner) that on a consideration of the provisions of the deed and of the circumstances which led up to its execution it was testamentary in character and could not be construed as a gift inter vivos to the appellant's predecessor in title who predeceased his adoptive father. In styling him donee the deed referred simply to what was given him by the deed and codicil. *UDAI PAJ SINGH v BHAGWAN BAKSHI* (1910) 1 L R 32 All 527

—ss 14, 15 and 22—*Oudh taluqdars estates—Succession Primogeniture sanad—Breaking the line of succession* The predecessor of a Hindu Oudh taluqdār was included in list 3 made under the Oudh Estates Act (I of 1869) s 11 as a taluqdār to whom the British Government had granted a primogeniture sanad. The taluqdār died in 1899 having by his will bequeathed the taluq to his mother. Had the taluqdār died intestate the taluq would have descended under s 22 cl (11) of the Act to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe

OUSTER—contd

of all the property held in common equal to the right of each of his companions in interest and superior to that of all other persons. He has the same right to the use and enjoyment of the common property that he has to his sole property except in so far as it is limited by the equal right of his co sharers. Each co owner may at all time reasonably enjoy every part of the common property. It necessarily follows that one co owner has no right to the exclusive possession and use of any particular portion of joint property and if he exercises such rights and excludes his co sharers from participation in the possession he must account to his co sharer for his interest in the part from which he is ousted even though he takes no more than his just share. But the co sharer out of possession cannot complain of the mere possession of the co owner so long as he refrains from setting up any claim to share in that possession. Hence in order to give rise to a cause of action against the co sharer it must be proved that his act has amounted to ouster or else in Where there is an actual turning out or keeping excluded the party entitled to the possession there is an ouster. Any resistance preventing a co sharer from obtaining effective possession is an actual ouster. Such resistance must be clearly and affirmatively shown and is not presumed from equivocal facts which may or may not have been designed to operate as an exclusion. A tenant in common cannot be held liable to his co tenant for damages for use and occupation of the joint property unless there has been waste or ouster. Where one tenant in common occupies part of the joint property without assertion of his title or exclusive title and without claim by his co tenant to be admitted into possession he is under no obligation even to account for he has a right to such occupancy. **DEENDRA NARAYAN SINGHA : NARENDRA NARAYAN SINGHA (1919)**

23 C W N 900**OUTCASTE ?****See HINDU LAW—JOINT FAMILY****I L R 35 Mad. 684****OVERCROWDING OF HOUSE****See BOMBAY MUNICIPAL ACT s 379****379A I L R 36 Bom 81****OVER-HEAD TANK****See MACHINERY I L R 46 Calc 910****OWNER****See BOMBAY CITY MUNICIPAL ACT s 379****379A I L R 36 Bom 81****See MADRAS LAND REVENUE ASSESSMENT ACT (I of 1876) s 2****I L R 28 Mad 1128****liability of—****See BUSTRE LAND****I L R 41 Calc 164****See MOTOR VEHICLES****I L R 45 Calc 470****See RIOTING I L R 39 Calc 834****rights of—****See PUBLIC DRAIN****I L R 44 Calc 689****OWNERSHIP****dispute as to—****See WAJIB UL ARZ****I L R 45 Calc 793****entry of, in record-of rights—****See MAHOMEDAN LAW—ENDOWMENT****I L R 40 Calc 297****public assertion of—****See LIMITATION****L R 48 I A. 197****P****PACHETE RAJ**

Khorphosh grant resumption of—Custom—Grant of putni by Raja after Khorphosh grant in grantee's lifetime—Death of Raja of estate putnidar to resume in grantee's lifetime—Option of heir of grantor to resume in grantee's lifetime—Res judicata—Transfer of Property Act (II of 1882) s 3 On the evidence held that the Plaintiffs had failed to establish that by custom a Khorphosh grant under the Pachete Raj lapses in the grantee's lifetime upon the death of the grantor and the land reverts forth with to the Raj but that there was good grounds for the view that a maintenance grant in the Pachete Raj is for the life of the grantee but is liable to be resumed by the successor of the grantor should the latter die during the lifetime of the grantee. The cases in *Punctum Amari v Gurunarin Deo* 6 Mac Sel Rep 166 *Gurunarin Deo v Unud Lal Singh* 6 Mac Sel Rep 51 and *Anand Lal Singh v Gurood Narayan* 5 Mac I A 18 do not establish the custom as alleged by the plaintiff. Where the grantor of a Khorphosh grant purported to resume the grant in the lifetime of the grantee and then granted a putni in respect of the subject matter to another person and on the grantor's death the putnidar sued to resume the subject matter of the grant from the grantee. Held that it was not a case where s 43 of the Transfer of Property Act could apply since the heir of the grantor was still free to exercise his option to resume or not. If a transferor without title has once become entitled to a valid estate in the land the transferee's equity would attach upon it in the hands of all persons claiming under the transferor other wise than for a legal interest by purchase for value without notice—the heir inclusive. A suit by the putnidar brought in the lifetime of both grantor and grantee for recovery of the property was dismissed the Court expressing the opinion that the Khorphosh grant was not resumable in the grantee's lifetime. Held that the decision did not bar the putnidar's suit to recover possession brought after the donor's death. **CHETA BHADRA SAHENA v PURA CHANDRA CHOUDHURI (1914)** 19 C W N 1272

PADDY**See APPRAISEMENT****I L R 48 Cal 1086****See MORTGAGE I L R 47 Calc 125****suit to recover value of****See LIMITATION I L R 48 Calc 625**

PAIK

— suit to eject —

cc PRABHU I L R 43 Cal 1101

PAKKI ADAT TRANSACTIONS

— defendant's claim from kachchi adat —

cc CONTRACT I L R 42 Bom 224

cc WAGERING CONTRACT

I L R 42 Bom 373

Incident of—Wagering, defence of From about the end of June 1913 the defendant a young man without much experience of business entered into pakkhi adat transactions for the sale of linseed with the plaintiffs who were a firm of Marwar shroffs and merchants in a large way of business dealing as merchants and commission agents largely in cotton and to a small extent in linseed. There was one transaction in connection between the parties and the defendant entered into transactions in linseed to the extent of 4000 tons in all with the plaintiffs which transactions the plaintiffs passed on to various purchasers in 1913 in all between which purchasers and the defendant there was no privity whatever. In the contract made by the plaintiffs with each of the said purchasers there was a term that delivery should not be given to the firm of Narrondas Rajaram & Co a Marwar firm who were in the habit of insisting on delivery and of refusing to settle contracts by the payment or receipt of differences. The plaintiffs subsequently attempted to secure evidence to show that the transactions between themselves and the defendant were genuine transactions and not wagers. They endeavoured to induce the defendant to sign a draft letter prepared by the plaintiffs attorneys in which instructions were given for the purchase of a small part of the 4000 tons of linseed for the sale of which the defendant had entered into transactions with the plaintiffs and ultimately induced the defendant to sign a draft letter acknowledging the correctness of the statements made in a letter of the plaintiffs attorneys to the defendant setting out the plaintiffs version of the transactions between the parties. The plaintiffs further purchased and delivered 300 tons of linseed in part fulfilment of their contracts with the 39 purchasers and as to the balance of 3700 tons the contracts with these purchasers were settled by the payment of differences. It appeared however that the purchase of 300 tons had been effected by the plaintiffs with the view to influence the result of litigation. Held that in view of the fact that the pakkhi adat was not a disinterested broker but a party to the contract whose intention to gamble or otherwise might well be known at the inception of the contract and that there was no privity between the defendant and the 39 buyers from the plaintiffs the existence of such purchasers was only relevant as affording an indication of the plaintiffs intention at the time of their contracts with the defendant but in view of the condition that delivery should not be given to Narrondas Rajaram & Co it appeared that it was not intended that delivery should be given to the 39 purchasers by the plaintiffs and accordingly the said 39 contracts were not a sufficient indication of an intention on the part of the plaintiffs to call for delivery from the defendant

PAKKI ADAT TRANSACTIONS—contd

Held further that on an examination of the business of the contracting parties and of the surrounding circumstances of the case it appeared that the common intention of the parties was that the plaintiffs and the defendant should deal in differences and settle that way and that accordingly the suit must fail. *Bhagwandas & Kany I L R 39 Bom 205* discussed. *BURJORJI RUTTONJI BHAGWANDAS PARASHRAM (1913) I L R 39 Bom 204*

Wagering intention to not negatived—Pakkhi adat position of guarantee—Transactions by Munim—Costs The existence of the pakkhi adat relationship does not of itself negative the existence of an understanding between the adat and his constituent that no delivery should be given or taken under forward contracts and that only differences should be received. *Qua* the client the pakkhi adat is a principal and not a disinterested middle man bringing two principals together. The question which has to be decided is what on the evidence was the common intention of the parties with regard to the settlement or completion of the transactions in dispute. A defendant who has successfully pleaded a lawful defence is entitled to his costs. *Burjorji Ruttonji & Bhagwandas Parashram I L R 38 Bom 201* followed. *CHHOOMAL BALKISSONDAS & JAINA RAYAN KANAIYALAL (1913)*

I L R 39 Bom 1

PAKKI broker—Wagering contracts—Forward contracts of sale and purchase of cotton between a PAKKI ADAT and upcountry constituents—Whether such contracts as contracts of employment or as between principal and principal—Evidence showing differences only to be paid and delivery not to be given or taken—Evidence showing PAKKI ADAT contracting to enter into wagering transactions on behalf of constituents—Difference between a PAKKI ADAT and an ordinary broker—Proper issues in a suit between a PAKKI ADAT and constituent—Bombay Act III of 1865 ss 1 and 2—Indian Contract Act (I of 1872) ss 30-35 and 5; Vic Chap 9 s 1 The plaintiffs alleged that they were employed in Bombay as Pakki brokers (i.e. Pakki Adats) by the defendants doing business in the Berars to enter into forward contracts of sale and purchase of cotton. Under instructions of the defendants who were advised by the plaintiffs about the state of the market from time to time the plaintiffs entered into a number of transactions of sale and purchase of cotton on the defendants' behalf. The accounts between the plaintiffs and the defendants were adjusted from time to time and according to the plaintiffs the defendants' losses at the date of the suit amounted to Rs. 20,27,73 the greater portion of the same relating to differences which resulted from cross contracts. The plaintiffs having said to recover the said amount the defendants contended *inter alia* that the transactions in which they employed the plaintiffs were gambling and wagering transactions and that it was well understood between the parties that no delivery was ever to be given or taken in respect of them and that the plaintiffs were to enter into such transactions only. In support of the said

PAKKI ADAT TRANSACTIONS—contd

contention the defendants relied upon the surrounding circumstances and in particular upon the correspondence between the parties and the actual course of dealing which showed that the transactions were not intended to be anything more than mere debit and credit entries and were to be settled by payment of differences only. The trial Court (BRAMAN J) decreed the plaintiffs' claim and directed an account to be taken holding that the transactions were not wagering contracts and that the plaintiffs merely occupied the position of middlemen or ordinary brokers. The defendants having appealed it was urged on their behalf that the trial Court erroneously allowed the plaintiffs in the course of their reply to alter their case which was that of a *palla* broker (which is the same thing as a *palla adatia*) into one of an ordinary broker. The appellants accordingly asked that they should be allowed inspection of the plaintiffs' ledger and to call for further evidence by cross examining the plaintiffs' witnesses to prove that the plaintiffs in their dealings with third parties were acting as principals and not as middlemen. The appellate Court (SCOTT C J and HEALOV J) came to the conclusion that in the interest of justice and having regard to the facts brought to their notice further evidence should be taken in the case. On fresh evidence being recorded and on further hearing of the appeal — *Held* (reversing the decision of the trial Court) by MACLEOD C J and FAWCETT J — (1) that the correspondence between the parties in which the plaintiffs frequently referred to *satta* dealings and the need of hedging as the market turned against the defendants and the actual course of dealings between the parties established beyond doubt that not only the plaintiffs knew that the defendants were gambling and not speculating but that there was a secret understanding that there was to be no actual delivery of cotton and that all transactions were to be adjusted by paying and receiving differences only. (2) that the evidence in the case further established that a similar understanding prevailed between the plaintiffs and third parties (with whom the plaintiffs dealt for the same *Vaida* and for amounts of produce corresponding with those for which the defendants entered into contracts) that the transactions between them should be closed either before or at the *Vaida* by the payment of differences only. (3) that if the plaintiffs were to be regarded as employed for labour the evidence showed that the parties had entered into transactions knowingly to further or assist the entering into or carrying out agreements by way of wager within the meaning of Bombay Act III of 1865 inasmuch as the plaintiffs were in effect employed by the defendants to make bets on the rise and fall of the cotton market and the plaintiffs having that knowledge encouraged the defendants to give them orders for bets with the result that the plaintiffs made bets in consequence of those orders with the third parties who also knew that in their own transactions they were betting with the plaintiffs. (4) that the mere circumstance that the greater part of the plaintiffs' claim related to differences resulting from cross contracts did not make the contracts less the wagering transactions for where the Court found that when the contracts were entered into there was a secret understanding that only differences were to be paid and received it did not matter much if the parties before the *Vaida*

PAKKI ADAT TRANSACTIONS—concl

agreed to fix their losses or gains than wait till the *Vaida*. The proper issue in a suit by a *palla adatia* against his constituent are—(1) If the contract between the parties is one of employment for reward was it knowingly made to further or assist the entering into of agreements by way of gaming or wagering? (2) If the contract between the parties was as principal and principal was it by way of wagering or gaming? In order to win on the 1st issue the defendants must prove that there was an understanding between them and plaintiffs (i) that they were not only speculating but gambling (ii) that if they ordered the plaintiffs to buy they would never call upon them to give delivery (iii) that if the plaintiffs incurred losses in carrying out their orders they would indemnify them and (iv) that even if the plaintiffs did not contract with third parties in pursuance of their orders differences would be received and paid exactly as if they had. Incidentally it might be arranged that plaintiffs should only enter into wagering contracts with third parties and that would be sufficient to vitiate the contract of employment though it might not be possible to prove that those third parties with whom the plaintiffs contracted were also wagering. On the 2nd issue the defendants would have to prove that there was a common intention only to pay differences. *Per MACLEOD C J*—The only difference between the relationship of a *palla adatia* and his constituent on the one hand and that of a broker personally liable on the other is that the broker enters into orders received and his client on the other is that in the latter case the broker enters into the contract as agent for the client he being personally liable to the person with whom he contracts while the *adatia* does not make the contracts with third parties as agent but as principal the constituent having no right to be brought into contact with the third parties. *Bhagchandras Parasram v Burjorys Ruttonji Bomony (1917) L P 451 A 29 42 Bom 373* distinguished. *Bhagchandras v Kanyis (1905) 30 Bom 205* discussed. *The Universal Stock Exchange Company v Strachan [1896] A C 166* in re *Giles [1899] 1 Q B 794* and *Thacker v Hardy (1878) 4 Q B D 685* referred to. *MANALAL PACHUNATH v RADHAKISSON LAMOTIAN (1920) I L R 45 Bom. 386*

PALA" OR TURN OF WORSHIP

See LIMITATION I L R 48 Cal 455

*Mortgage—Transferrability of palas—Custom—Kalghat Temple—Estoppel of mortgagor even if trustee—Essential attributes of valid custom—Public policy contravention of—Onus probandi—Civil Procedure Code (Act V of 1908) O XXXII—Chattels—Intangible property—Foreclosure of mortgage of—Pledge. Per MOORE JEE J (BEACHCROFT J reserving opinion) A mortgagor even when acting in a public capacity and not for his own benefit is estopped to deny his title and cannot set up as a defence for himself against the mortgagee that the property so mortgaged is trust property which he had no right to mortgage. *Doe v Horne L R 3 Q B 60 61 R R 3 J* followed. This principle is inapplicable where the mortgage is void as contrary to Statute. *Barrow v Ouse 14 Ch D 430* followed.*

PALA " OR TURN OF WORSHIP—contd

Trustees for a public purpose are not by the nature of their office protected from the operation of estoppel as against the assignees of the original parties to the deed in question. *Doe v Horne* L P 3 Q B 760 61 P P 39 *Hicks v Horne* L P 5 Q B 61 and *Higgs v Aspin Tea Co* L P 4 Ex 35 referred to. [View indicated by *Banerjee* in *Mallik v Ramani* 1 C W 4 433 not accepted.] *P. V. MOONERJEE* and *BEACH* *CHOTT J J*. A custom to be valid must have four essential attributes: (i) it must be immemorial (ii) it must be reasonable (iii) it must have continued without interruption since its immemorial origin and (iv) it must be certain in its nature generally as well as in its application to the locality where it is alleged to obtain and the persons whom it is alleged to affect. *Tyson v Smith* 2 Ad & El 405 followed. A custom cannot be enlarged by parol reasoning. *Arthur v Boleyn* 11 Mod 148 *Prady v Gopi Krihas* 1 L P 57 Cal 3 referred to. A custom originating within time of memory even though existing in fact is void at law. *Mayor of London v Cor* L P 3 H L 239 followed. Evidence showing exercise of a right in accordance with an alleged custom as far back as living testimony can go raises the presumption though only a rebuttable one as to the immemorial existence of the custom. *Barford v Smith* 2 Moo & P 129 *Mercer v Denne* [1904] 2 Ch. 534 followed. If the existence of the custom has been proved for a long period the onus lies on the person seeking to disprove the custom to demonstrate its impossibility. If a custom be against reason (i.e. artificial and legal reason warranted by authority of law) it has no force in law. When a custom is said to be void as being unreasonable the unreasonable character of the alleged custom conclusively proves that the usage even though it may have existed from time immemorial must have resulted from accident or indulgence and not from any rights conferred in ancient times. *Salisbury v Gladstone* 9 H L O 69 followed. The period for ascertaining whether a particular custom is reasonable or not is the time of its possible inception. *The Tanistry Case* (1608) *Da v 29* followed. In practice, the Kalghat Temple palas have been transferred during at least 90 years though in a limited market which those alone can enter who are qualified to become shahit by birth or marriage the time when this custom originated being unknown. Proof of the existence of a custom need not be carried back by direct evidence to the year 1773 when the supreme Court was established or even to 1793 when the first Regulations were passed by the Indian Legislature. The customary right to make a sale mortgage gift or lease of a pala in favour of persons within a limited circle (the transferee being under precisely the same obligation to the endowment as the transferor himself) is closely associated with and possibly developed out of the heritable devisable and partible character of a pala. *Janokee v Gopaul* 1 L R 2 Cal 365 referred to. A custom of this description clearly cannot be characterised on any rational grounds as unreasonable or opposed to public policy. Foreclosure as a remedy of the mortgage is not confined to mortgages of land it is equally applicable to mortgages of chattels. *Harris v Hart* 1 Comyn 393 2 Eq Cas Abr 6 followed. A mortgage of intangible property is entitled to foreclose the mortgagor quite as much

PALA " OR TURN OF WORSHIP—contd

as a mortgagee of chattels. *MAHAMAYA DEBI v HARIDAS HALDER* (1914) 1 L R 42 Cal 455

Palas of worship—Whether immovable property—Limitation Act (IX of 1908) Art 130 whether governs suit to enforce mortgage of pala. A turn of worship is not an interest in immovable property. Consequently a suit to enforce a mortgage of a turn of worship is not governed by Art 132 but by Art 120 of the Limitation Act. *NARASHINGA BANA GOSWAMI v PRODHADHAR TEORI* (1918) 22 P W N 894

Palas alienation of apart from the debutter land—Custom proof and validity of—Subdivision of pala validity of—Objection taken in second appeal. Where there was an alienation of a pala or turn of worship only apart from the debutter land and evidence was adduced of instances of alienations along with the debutter land—Held that no custom of alienating the pala or turn of worship apart from the debutter land was established and that such an alienation was unreasonable. *MAHAMAYA DEBI v HARIDAS HALDER* 1 L R 42 Cal 455 20 C L J 183 distinguished. The transfer by a shahit of his turn of worship to two persons in different shares is unreasonable and objection to such a division may be taken for the first time in second appeal. It being a point of law and the respondent not being taken by surprise. *NITYA GOPAL BANERJEE v NAVI LAL MUKERJEE* (1910)

1 L R 47 Cal 890

PALAYAM.

See UNSETTLED PALAYAM

1 L R 41 Mad 749

Unsettled palayam—Alienability—Land held on service tenure—Abolition of service—Police duties of land owner—Effect of sanads. A palayam in the Madura district was held originally on military service tenure and subject to the payment of a tribute to the paramount power. It was contended that it was also held on condition of rendering police service to the State. In support of that contention reliance was placed upon sanads granted in 1797 and 1807 by which the palayagar was bound to protect the inhabitants from robberies and to deliver up murderers and deserters. In 1895 the palayagar mortgaged villages of the palayam for debts incurred by him prior to that date and in 1900 the villages were bought by the mortgagees at a sale under a mortgage decree. No permanent settlement had been made with the palayagar but in 1900 one was made with the alienees. Held that the palayam was not by reason of its tenure inalienable since military service was abolished in the Madura district by a proclamation in 1801 and since even if it could be inferred from the sanads that the palayam was held on a tenure of rendering police service to the State (which it could not) such police duties by land holders were abolished before the alienation and that the alienees obtained a good title. [Judgment of the High Court approved.] *APPAYASAMI NAICKER v MUDAYAPPA ZAMINDARI COMPANY LTD* (1921)

L R 43 L A 100

1 L R 111 Mad (P C) 175

PALMYRA JUICE

— lease of whether lease of the moveable property—

See REGISTRATION ACT (III OF 1877)

s 17 (1) (c) AND (d)

I L R 58 Mad 883

PANCHAYAT

See LABEL

I L R 39 All 561

PANDARASANNADHI

See MUTT

I L R 40 Mad 177

PAPER CURRENCY ACT (II OF 1910)

s 26—

— Promissory note payable to a person or order or bearer legality of—Right of suit on the note A promissory note payable to a person or order or bearer is illegal and void under s 26 of the (Indian) Paper Currency Act (II of 1910) and a bearer cannot be given any decree for money in a suit on such a note *Jetha Parikha v Ramchandra Vishoba* I L R 16 Bom 659 referred to *Obiter* If there is an obligation apart from the one under the note it may be enforced and the fact that the loan and the note are contemporaneous is not conclusive of the non-existence of such an obligation *Shanmuganatha Chettiar v Srinivasa Ayyar & Al* L R 27 and 31 Mad L J 138 referred to *CHIDAMBARAM CHETTIAR v ARYASAWMI THEVAR* (1916) I L R 40 Mad 585

— Hundi payable to bearer validity of—*Bona fide* customer drawing hundi on a bank without money to his credit effect of Where a hundi though drawn in favour of a specified person is made payable to bearer it is void as being obnoxious to s 26 of the Indian Paper Currency Act (II of 1910) unless the hundi comes within the proviso to the section The object of the proviso being to enable *bona fide* customers to operate on actual or intended deposits the fact that the drawer of the hundi had actually no money in the bank does not take the hundi out of the proviso if as a fact he intended to deposit money before presentment *ARUNACHALAM CHETTIAR v NARAYANAN CHETTIAR* (1918) I L R 42 Mad 470

— Hundi payable to bearer—Suit by endorser against endorser—Invalidity of hundi—*Estoppel* if any The endorsee of a hundi which was drawn payable to bearer and which was not saved by the proviso to s 26 of the Paper Currency Act sued to enforce it as against the endorser *Held* that the hundi was invalid according to the section and that the endorser was not estopped from denying the validity of the hundi *Chidambaram Chettiar v Arayasawmi Thevar* (1917) I L R 40 Mad 585 followed The observations of *SESHAGIRI ARYAR J* to the contrary in *Arunachalam Chettiar v Narayanan Chettiar* (1919) I L R 42 Mad 470 held *obiter* and not followed The mere fact that a hundi is drawn on a certain person and that he endorses it to another does not make the drawee a banker within the proviso to the section *ALAGAPPA CHETTY v ALAGAPPA CHETTY* (1921) I L R 44 Mad 157

PARALYSIS

— Testator suffering with—

See WILL

I L R 1 Lah. 173

PARDANASHIN LADY

See ATTENTION I L R 37 Cal 525

See CITT I L R 39 Cal 933

See CITT I L R 38 Cal 783

See MORTGAGE I L R 45 Cal 748

L R 48 I A 270

I L R 47 Cal 175

24 C W N 977

See PRESENTATION OF COMPLAINT

I L R 42 Cal 10

See PROBING I L R 39 Cal 534

See SUFFICIENCY ACT 186 ss 2 AND 31

I L R 43 AU 525

— examination of—

See COMPLAINT I L R 42 Cal 19

See EXAMINATION ON COMMISSION

I L R 45 Cal 492, 697

I L R 48 Cal 443

— execution by—necessity for—caution—

See MORTGAGE 23 W N 285 942

— liability of—

See MORTGAGE I L R 40 Cal 378

1 — Mortgage by in favour of her legal adviser—*Trust* action to be closely scrutinised—*Onus*—*Proof*—that deed was executed to executant and she understood it—*Relations* cognisant of execution—*Inference* that deed properly explained if follows—*Stipulation* in deed to substitute for properties mortgaged partitioned share of estate under partition if inoperative—*Leader* and client relationship if ceases on passing of judgment when the time for appealing has not expired *T* a pardanashin lady and *S* her brother who had been parties in a partition suit with members of their family were presented in that suit by one *R* as their pleader The suit terminated in their favour but before the time for appeal had expired property belonging wholly to *T* was mortgaged in favour of *R* to secure an advance of Rs 1000 of which Rs 473 was said to have been cash and the balance went mainly if not entirely in the discharge of moneys due from *S* A clause was inserted in the bond to the effect that after the partition should have been effected the property awarded to *T* should be substituted for the mortgaged property and it was admitted that the effect of this would be to quadruple the amount of property There were concurrent findings that this clause was not properly explained to the lady but the Trial Court held it to be of no consequence as the clause was inoperative The Trial Judge upheld the deed subject to a reduction of the stipulated interest which he held to be unconscionable being mainly influenced by the consideration that the relatives of the lady must have been aware of the transaction because her brother was a co-signatory of the deed and two of her relatives were the identifying witnesses but the brother was personally interested in carrying through the transaction by which he derived advantage at the expense of the lady and the other relatives generally were taking gross advantage of her unprotected state *Held* that this was a case of the legal adviser to a pardanashin woman acting the part of money lender to her and procuring the execution by her of a mortgage bond to secure its repayment and it was

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difficult to conceive a case in which the Court would be entitled and indeed obliged to examine the transaction with close scrutiny or to insist more sternly on the mortgagee supporting the heavy onus of showing that the client was fully aware of the meaning and effect of the deed and that the transaction was a fair and honest one. That the Trial Judge was in error in holding that in the mortgage bond of 18th Nov 1911 the clause which was clear in its language stipulation for the substitution of T's partitioned properties for the property mortgaged would be inoperative. That in the circumstance the relative of T should in no way have been regarded as the defendants of her interest. **MAHADEVI LAXMI AD v. TAJ BEGUM (1914)** 19 C W N 162

2. — **Execution of mortgage by—Attestation by witnesses**—A mortgage executed by a *pardanashin* lady was attested by her husband and another witness. The husband actually saw the signature being made and the other witness was outside the screen in the same room with the lady and he knew her voice and heard her say 'yes' when the document was explained to her. **Held** that the document was duly attested in accordance with law. **RUKMINI KOERIE v. NIRMALI BAYDAPADHYAYA (1915)** 19 C W N 1203

3. — **Illiterate document executed by and drawn up under her instruction—Document is to be explained—Presumption of knowledge—Registration—Power of attorney—Scope of**—Where a *pardanashin* lady took a loan from another *pardanashin* lady on a mortgage security, had the deed drawn up by her own men under her own instruction and then got it registered through her mukhtar and husband authorised to act on her behalf by a general power of attorney. **Held** that it was not necessary that the contents of the document should have been explained to her after the draft was made but knowledge of the contents was to be presumed specially as the document came from the side of the executant. **Held** also that in second appeal the High Court can make deductions from acts without disturbing the findings of the lower Appellate Court. **Held** also that authority to appear in the Registration office implied authority to appear for all purposes authorised by the Registration Act. **BRUBAN MOHINI DAS v. GAJALAKSHMI DEBI (1914)** 19 C W N 1330

4. — **Plea that promisor was not raised—Decree for specific performance—Court is bound to raise the plea**—In a suit for specific performance of a contract of sale by the widow of a deceased Hindu and his executor there were no pleas taken in defence either that the price agreed upon was inadequate or that one of the promisors was a *pardanashin* lady, and no issue was raised or tried on either of the points. **Held** that neither of these points could be allowed to be raised by them on appeal. The High Court having reversed the decision of the Subordinate Judge on an issue as to payment by the purchaser of a sum of Rs. 1,000 to the vendors. **Held** on the evidence that the decision of the Subordinate Judge was correct and should be restored. **NAROTTAM DAS v. KEDAR NATH SAMANTA (1916)** 21 C W N 665

5. — **Execution of deed depriving herself of nearly all her property—Burden**

PARDANASHIN LADY—contd

of proof—Peguissites to be proved—Concurrent findings on facts that burden had not been discharged—First Court's decision on that point affirmed by Appellate Court—Finding sufficient to dispose of case—A *pardanashin* lady separated from her husband unable to read or write and without independent legal advice created an endowment of practically her whole property by a deed of which she appointed the appellants (plaintiffs) trustees. In a suit for a declaration that the property was *wagf* and for possession of it. **Held** that as they relied upon the deed the onus was on the appellants to show that the nature and effect of it had at the time of its execution been explained to and understood by the executant. **Shambati Koori v. Jago Bibi I L R 29 Cal 749 I L R 29 I A 17** followed. Upon the question whether that onus had been discharged the Appellate Court in India affirmed the decision of the first Court to the effect that it had not but nevertheless allowed an appeal to His Majesty in Council under s. 596 of the Civil Procedure Code (XIV of 1822) on the ground that the judgment of the lower Court had not been wholly affirmed. **Held** that the findings of the Courts below amounted to concurrent findings of fact which could not be disturbed on appeal and there being no substantial question of law the appeal must be dismissed. **Karuppanan Sarias v. Srinivasan Chetti I L R 25 Mad 216 I L R 29 I A 33** followed. **SAJJAD HUSSAIN v. WAHER ALI KHAN (1912)** 11 I L R 34 ALL 455

6. — **Execution of mortgage by**—A mortgage deed was executed by a *Pardanashin* lady the attesting witness being on one side of the *parda* and the lady on the other. Her son took the deed to the lady behind the *parda* and came back with it signed after which it was attested. **Held** the deed was properly attested. **IASI PROSAD v. PAI GUNGA PROSAD** 14 M W N 165

7. — **Suit for cancellation of deed—Nature of proof required—Independent advice not absolutely necessary—Lady of strong will and in the habit of managing her affairs with considerable capacity for business—Undue influence—Natural affection**—In the case of a deed executed by a *pardanashin* lady the law protects her by demanding that the burden of proof shall in such case rest not with those who attack but with those who rely upon the deed and it must be proved affirmatively and conclusively that the deed was not only executed by but was explained to and really understood by the grantor. It must also be established that it was not signed under duress but by the free and independent exercise of her will. **Sajjad Hussain v. Waher Khan I L R 34 All 445 I L R 39 I A 156** followed. There is no absolute rule that a deed executed by a *pardanashin* lady cannot stand unless it is proved that she had independent advice. The possession of absence of independent advice is a fact to be taken into consideration and well weighed on a review of the whole circumstances relevant to the issue of whether the grantor thoroughly comprehended and deliberately and of her own free will carried out the transaction and if upon such a review of the facts—which include the nature of the thing done and the training and habit of mind of the grantor as well as the proximate circumstances affecting the execution—the conclusion is

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reached that the obtaining of independent advice would not really have made any difference in the result then the deed ought to stand. In a suit for cancellation of gift executed by a *pardanashin* lady the facts were that her husband had died long before and her property (consisting of shares in a large number of villages) was managed by the mukhtar with whom she had formed an intimacy the result of which was the birth of two illegitimate daughters one of whom was alive at the date of the deed. The donee was the legitimate son of her mukhtar. The deed was found to be duly executed attested by just the persons who would naturally be called upon for such a purpose and registered in the usual way by the proper officers. The property given was about one half of her estate and there was no question of her being impoverished by giving it. No undue influence was affirmatively proved. It appeared in evidence that the lady was strong minded and had been in the habit for many years of managing her affairs of entering up her accounts and of attending to business matters. *Held* (reversing the decision of the Court of the Judicial Commissioner) that the evidence as to her strength of will and business capacity and the fact that the deed was not in the circumstances of her life in any way an unnatural disposition of her property went far taken together with the other evidence in the case to make it conclusive that the deed was granted by her as the expression of her deliberate mind and apart from any undue influence exerted upon it and that had independent advice been obtained the lady would have acted just as she did. *Mahomed Bakhs Khan v Hossein Bibi*: I L R 15 Cal 684 I L R 15 I A 81 referred to. *KALI BAKSH SINGH v RAM GOPAL SINGH* (1913) I L R 86 AN 481

8 — Executing mortgage for husband's benefit—Proof of intelligent execution—Explanation—Independent advice—Undue influence—Indian Contract Act (IX of 1872) s 16 Where a *pardanashin* lady was induced by her husband to give a mortgage by way of security at a time when she was living with her husband and the evidence was that the document was read and explained to her by the husband in the presence of the mortgagee. *Held* that the Court would not be justified in holding that the mortgage was fairly taken or that the lady executing it was a free agent duly informed of what she was about and the mortgagee must be taken to have been aware of the influences under which the lady came to execute the document. *Held* (without expressing any opinion as to whether s 16 of the Contract Act requires the undue influence to proceed from a party to the suit) that the undue influence which may affect a *pardanashin* lady's understanding of a document may proceed from a third party. *Gireesh Ch Lahorey v Phiroobutty Debi* 13 Moo I A 419 Bank of Montreal v Stuart [1911] A C 120. *In re Coomber* [1911] 1 Ch 723 730. *Kanhaya Lal v The National Bank of India Ltd* 17 C W N 511 referred to. *RAJATANKSHA BIRBI v AMBICA CHABAY GHOSH* (1914) 18 C W N 1133

9 — Deed of trust executed by—Independent advice—absence of it invalidates deed—Free agent intelligent apprehension nature of transaction—Bengali deed containing English text not explained. The Courts should be careful to see that deeds taken from *pardanashin* women

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have been fairly taken that the party executing them has been a free agent and duly informed as to what she was about. It cannot be accepted as a formula conclusive of every case of a deed taken from a *pardanashin* woman that the absence of advice vitiates the transaction. Advice is not in itself essential it is merely a means to secure that which is essential an intelligent apprehension of the transaction. The first and practically perhaps the most important question is was the transaction a righteous transaction i.e. was it a thing which a right minded person might be expected to do? *Mohomed Bakhs Khan v Hossein Bibi* I L R 15 I A 81 92 followed. Where an illiterate *pardanashin* woman transferred her property to her brother and his family by a deed of trust and there was evidence that the idea had originated with her that the draft was prepared according to her instructions and that the deed which was in her vernacular was read over to her and she admitted execution before the *Pemstar* the fact that there was no evidence as to what advice she had had in the matter was not in itself sufficient to invalidate the deed. Where the said vernacular deed contained some English words such as trust committed revocable and there was no evidence that those words were explained to her. *Held* that though it is an infirmity in the case of those claiming under the instrument it is not destructive of their claim under the instrument. *KESHUB LALL PYRE v RADHA RAMAN NUNDY* (1912) 17 C W N 991

10 — Document executed by—Suit for cancellation on the ground of fraud. The plaintiff a *pardanashin* lady executed a conveyance in favour of the defendant the consideration for which consisted of money due on a mortgage bond previously given by her to the purchaser and an additional sum paid at the time of sale. It appeared that on the mortgage bond she wrote with her own hand this bond executed by me is correct and then signed her name. Similarly on the conveyance she wrote this deed of sale which I have executed is true and correct and is admitted and ratified by me and then affixed her signature. She brought a suit for cancellation of the conveyance on the ground of fraud. In the plaint it was alleged that the defendants who were agents of the plaintiff got the mortgage bond and the deed of sale signed by her without the document being read out and explained to her that she did not get any independent legal advice in connection with the documents and did not get any consideration for them. In her deposition the plaintiff stated that she had put her signature on blank sheets which had subsequently been filled up without her knowledge or consent by the defendant and turned into the mortgage bond and the sale deed. *Held* that as the documents undoubtedly bore the plaintiff's signature the burden was upon her to establish that the recitals contained therein were untrue. *BANSPUR PANCHAM DAST* (1914) 20 C W N 638

11 — Person trusted by as manager and managing her properties—but a ting adversely to her interests acts of it bind her fiduciary relationship—Breach of trust—Fraud by fiduciary when may be condoned—Nullity—From arbitration proceedings and award—Limitation if applies to defence—Time for recovery to run from termination of relationship—Award if may be upheld

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as fully arranged. If a Hindu who had separated from his brothers acquired considerable property by money lending and died in 1892 leaving a widow K and several daughters and a daughter's son P by a predeceased wife K who was not a woman of business came under the influence of F a separated brother of H and P managed her properties and K believed that he was acting as her manager until he died in 1903. Shortly after H's death F in collusion with P got up a sham arbitration proceeding which resulted in an award by which the properties left by H were divided up amongst the various members of the family K receiving only a share. The true nature and effect of the proceedings were concealed from her and she was misled and betrayed by F and P both of whom had interests adverse to her and were acting in their own interest. In a suit by another member of the family to enforce in his right under the award a mortgage effected by F from advances made out of properties left by H K denied the plaintiff's title altogether and claimed the entire mortgage money in her right as the widow of H. The High Court held that the arbitration was a sham that it had not been shown that K had any independent advice or understood the effect of the so-called award on her interests and believing that she never knowingly consented to the division of her husband's estate dismissed the suit. *Held* by the Judicial Committee (without dissenting from the conclusions of the High Court) that from the death of K's husband F stood to her in a fiduciary relationship which continued till he died and she was entitled to receive from him a full disclosure of all the affairs which concerned her. That F having betrayed the confidence K reposed in him the question in the case was not whether K knew what she was doing had done or proposed to do but how her intention to act was produced whether all that care and provision was placed round her as against those who advised her which from their situation and relation with respect to her they were bound to exert on her behalf. That fraud such as there was in this case could not be condoned unless there was full knowledge of the facts and of the rights arising out of those facts and the parties were at arm's length. *Huguenin v Baseley* 14 Ves Jun 273 and *Moxon v Payne & Co* App 831 referred to. That the Indian Limitation Act was no bar to her defence and even if she were suing to recover property of which she was deprived by the award time would not run against her until F died. That the award regarded as an award or as a document embodying a family arrangement was a nullity. **SRI KISHAN LAL & KASH MIBO (1916)** 20 C W N 957

12 — Deed executed by—what is proper explanation. Where in the case of a *pardanashin* lady the draft of a deed of English mortgage was interpreted in Bengalee to her by her legal adviser by reading two to four lines at a time and it took about three hours to do so and ten or twelve days afterwards it was executed by her when it was again explained to her by giving out the substance it was held that the deed was duly executed. **SHYAMPEARY DASTA & THE EASTERN MORTGAGE AND AGENCY CO. LD (1917)** 22 C W N 226

13 — Execution of document by—Lack of independent advice effect of—Where

PARDANASHIN LADY—contd

a deed executed by a *pardanashin* lady is challenged on the ground that she had no independent advice if it found that the obtaining of independent advice would not have made any difference to the result the deed ought to stand. **Kali Balsh Singh v Pirm Gopal Singh** 18 C W N 280 referred to. This is a question of fact and in deciding it the nature of the thing done and training and habits of mind of the executant and the proximate circumstances affecting the execution should be taken into consideration. **MUSAMMAT HIRA BIRI v RAMDHAN LAL** 8 Pat L J 465

14 — Duty of disclosure of donee to donor of character of transaction—Failure operates to nullify transaction apart from fraud—Indian Succession Act (X of 1865) sec 331—Person dying a Christian succession to governed by Hindu law when he lived like a Hindu. The parties to a contract may stand in such a relation as (apart from fraud or of conduct partaking of the quality of fraud) may give rise to an obligation on the part of one towards the other failure to fulfil which will be a ground for rescission of the contract and for the consequent remedies. *Docton v Ashburton* 1914 A C 932 referred to. The donee from a *pardanashin* lady stands towards her in such a relation that it is his duty to see that she fully understands the transaction. The release in question in this case was set aside as the duty of disclosure resting upon the donee had not been discharged. Succession to the estate of a person who died a Christian is governed by the Indian Succession Act and cases such as *Abraham v Abraham* (9 M L A 195) and *Radhika Patta Maha Devi Garu v Nilamani Patta Maha Devi Garu* (14 N R P C 33) which preceded the Act cannot be relied on to modify or interpret it. **MUSAMMAT PAMALWATI v KUNWAR DIGHUJAI SINGH (P C)** 26 W N 490

15 — Rules by which court should be guided to determine validity of document—Ful that case of fraud must depend strictly on proof of fraud alleged how far applicable to action brought by a *pardanashin* lady. The plaintiff a *pardanashin* lady sought to have a deed of partition executed by her in favour of her husband's brother immediately after her husband's death cancelled. *Held* that it is well settled that the Court when called upon to deal with a deed executed by a *pardanashin* lady must satisfy itself upon the evidence first that the deed was actually executed by her or by some person duly authorised by her with a full understanding of what she was about to do secondly that she had full knowledge of the nature and effect of the transaction into which she is said to have entered and thirdly that she had independent and disinterested advice in the matter. In cases where the person who seeks to hold the lady to the terms of her deed is one who stood towards her in a fiduciary character or in some relation of personal confidence the Court will act with great caution and will presume confidence put and influence exerted and in cases where the person who seeks to enforce the deed was an absolute stranger and dealt with her at arm's length the Court will require the confidence and influence to be proved intrinsically. In the former class of cases the principle formulated in sec 111 of the Indian Evidence Act applies. **SATISH CHANDRA GHOSH v KALIDASI DAST** 26 W N 177

PARDANASHIN LADY—cont'd

16 ——— Principles which should Guide court—*Independent and competent advice* meaning of—*Necessity of greater caution in cases where person benefited holds fiduciary position—Misrepresentation or fraud proof of not essential—Joint family—Sacrifice if effected by deed of settlement by widow entrusted reversioner with management for a term—Limitation Act (I) of 1908) Art 91 applicability of when Plaintiffs seek possession on declaration that Defendants document of title wholly void—Time from which limitation runs when deed voidable—Karia of joint Hindu family nature and extent of his accountability On the death of a member of a Hindu joint family a deed of settlement was executed by the guardian of the widow who was at the time a minor the effect of which was to place the properties of the minor inherited by her from her husband in charge of her husband's brother who was the reversioner on certain terms After the widow had attained majority a deed of settlement for the life of the widow was executed by her in favour of the sons of her husband's brother who was now dead The widow brought a suit for partition of the joint family properties and for other incidental reliefs on declaration that the last deed of settlement was void and inoperative Held that it is well settled that the Court when called upon to deal with a deed executed by a pardanashin lady must satisfy itself upon the evidence first that the deed was actually executed by her or by some person duly authorized by her with a full understanding of what she was about to do secondly that she had full knowledge of the nature and effect of the transaction into which she is said to have entered and thirdly that she had independent and disinterested advice in the matter *NABAR CHANDRA HUKHFI & NEHU PAMIA DEVI* 28 B W N 517*

PARDON

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 337 to 339

See KING'S PREROGATIVE OF PARDON

——— By Crown ——— If a bar to appeal

See COURT APPEAL

25 B W N 701

——— of appellant pending appeal—

See CRIMINAL LAW I L R 2 Lah 34

1 ——— Forfeiture of pardon—*Proper Court to determine the question of forfeiture—With drawal of pardon by the Court granting it—Power of the Special Bench to reopen the question on a plea of pardon taken at the trial for the original offence in respect of which it was granted—Criminal Procedure Code (Act V of 1898) ss 331, 339* Where an approver to whom a pardon was granted under s 331 of the Criminal Procedure Code by the committing Magistrate resides at the hearing of the case before the Special Bench from his deposition given before such Magistrate the Special Bench can only discharge him but cannot take any action against him for the offence in respect of which he was accorded the pardon If he is proceeded against for the original offence the committing Magistrate who granted the pardon must determine whether he has complied with its terms or not and thereby forfeited the same and the question cannot be reopened at his trial before the Special Bench for

PARDON—cont'd

such offence *Queen Empress v Manik Chandra Sarkar* 1 L R 24 Cal. 492 approved of *Emperor v Kothia* 1 L R 30 Bom 611 and *Kullan v Emperor* 1 L R 32 Mad 173 referred to *King Emperor v Bala* 1 L R 25 Bom 675 disapproved. *EMPEROR v ABANI BHUSAN CHUCKERBUTTY* (1910) 1 L R 37 Cal 845

2. ——— Withdrawal by Magistrate not granting the pardon—*Omission to state grounds of forfeiture—Necessity of formal withdrawal or declaration of forfeiture—Plea of pardon to be raised at the trial—Trial of issues of forfeiture of pardon and guilt of accused—Criminal Procedure Code (Act V of 1898) ss 337 339* Under the present law no formal withdrawal of pardon nor formal declaration of its forfeiture are required If the approver be subsequently proceeded against it is open to him to plead at his trial that the pardon has not in fact been forfeited that he has not violated its condition The two questions of forfeiture of pardon and of his guilt of the offence in respect of which he received the same may be heard and determined together, under the circumstance *Emperor v Kothia* 1 L R 30 Bom 611 *Kullan v Emperor* 1 L R 32 Mad 173 and *Emperor v Abani Bhuvan Chuckerbutty* 1 L R 37 Cal. 845 referred to *EMPEROR v SABAR AZUNJI* (1914) 1 L R 42 Cal. 755

3 ——— Failure of approval to comply with terms of the pardon on examination at the preliminary enquiry—*Forfeiture of pardon—Commitment of approver along with other accused—Joint trial of approver and others—Plea of pardon taken in the Sessions Court—Proper procedure thereon—Trial of question of forfeiture a preliminary issue—Power of Jury to determine the point—Criminal Procedure Code (Act V of 1898) ss 298 (1) (c) 337* Where an approver has forfeited his pardon on his examination at the preliminary enquiry the Magistrate may put him in the dock recommence the enquiry and commit him for trial along with the other accused *Queen Empress v Nathi* 1 L R 27 Cal 137 discussed *Queen Empress v Drij Narain Man* 1 L R 20 All 529 *Emperor v Budhan* 1 L R 29 All 24 *Sullan Khan v King Emperor* 6 All J 961 and *King Emperor v Bala* 1 L R 25 Bom 675 followed When an approver has been committed to the Court of Sessions as an accused he may plead his pardon in bar at the trial and the Judge must first try the issue of forfeiture and take the verdict of the Jury thereon and then proceed with the trial of accused for the offences charged *Emperor v Abani Bhuvan Chuckerbutty* 1 L R 37 Cal 845 discussed *Kullan v Emperor* 1 L R 32 Mad 173 *Alagurami Naicken v Emperor* 1 L R 30 Mad 514 *King Emperor v Bala* 1 L R 25 Bom 675 *Emperor v Kothia* 1 L R 30 Bom 611 and *Emperor v Nathi* 31 Punj Rec 1904 approved *PER BEACROFT J* Under the old law the pardon remained in force until its withdrawal by the authority granting it in consequence of the approver failing to observe the conditions of the pardon but under the present law the result of such failure is that the approver may be put on trial without any formal order of withdrawal or cancellation of the pardon The plea should be taken at the commencement of the preliminary enquiry and considered by the Magistrate If he decides against it or it is not taken before him the approver

PARDON—could

er may raise the plea in the Sessions Court. The Judge ought to try the question of forfeiture as a preliminary issue on evidence limited to the point and take the verdict of the Jury on it before proceeding to try the general issue of the guilt of the accused. The onus of proof of forfeiture is on the Crown. *Queen Empress v. Manil Chandra Sarkar* 1 L. R. 24 Cal. 43 declared obsolete. Where however the Judge tried the question of forfeiture with the Jury after some evidence on the general issue had been recorded—*Held*, that the irregularity had not prejudiced the approver of the other accused. *Sembie*. When the approver deviates from the conditions of his pardon in the Sessions Court he cannot be removed from the witness box and placed in the dock as an accused. *Bha ni Rajbanshi v. Emperor* (1914)

I. L. R. 42 Cal. 856

PARLIAMENT MEMBER OF

*Making contract with Secretary of State for India in Council if forfeits seat—Public service for or on account of which such contract made if comprises public service of the Crown anywhere—Place where such contract made if material—22 Geo. III c. 45 (1782) s. 1—41 Geo. III c. 62 (1801) s. 4—Secretary of State for India if a British Officer and if may discharge duties of His Majesty's other Secretaries of State—21 & 22 Vict. c. 106 Government of India Act 1858 s. 65—Secretary of State in Council if a corporation or a legal personality—3 & 4 Will. IV c. 41 Judicial Committee Act 1833 s. 4—Construction of Statute ejusdem generis latter Act if a surplusage or ex abundante cautela. Sir Stuart Samuel being a member of the House of Commons was partner of a firm which made contracts with the Secretary of State for India in Council for borrowing money on short loan for purchasing India Council Bills and India Treasury Bill for subscribing to India Government loan and for purchasing silver for the purpose of the Indian currency. *Held* that Sir Stuart Samuel forfeited his seat in the House of Commons the contract having been made for the public service of the Crown in India and with one of His Majesty's Secretaries of State b. i. of c. s. 111 c. 45 must be taken to extend to such service and to the Secretary of State for India. The public service required by the Statute need not be one either executed or required within Great Britain or paid for out of any particular fund. The Secretary of State for India in the fullest sense an officer of British Government. A contract is none the less made with the Secretary of State for India that he has to obtain the concurrence of his Council before making it and that he and his Council are designated by s. 65 of the Government of India Act of 1858 (21 & 22 Vict. c. 106) as liable to be sued or to sue on it as a corporate body. Neither the personality of the Secretary of State nor that of his Council is merged in any Corporation by the Statute. Their responsibilities and duties thereunder are separate and sometimes conflicting and it is only for purposes of litigation that they can be treated as though they were but one legal personality. *In the matter of Sir Stuart Samuel* (1913) 17 C. W. N. 735*

PARLIAMENT PROCEEDINGS IN

See LABEL

I. L. R. 37 Cal. 760

PAROL ACCEPTANCE

See TAMR ACT (II of 1869) s. 6

I. L. R. 11 Mad. 340

PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865)

— ss. 3, 6, 8, 9, 14—

See PARSIS

I. L. R. 45 Bom. 146

— s. 31—

See PARSIS

I. L. R. 38 Bom. 615

PARSIS

*Maintenance—The Parsi Marriage and Divorce Act (XV of 1865) s. 31—Sue by a Parsi wife for permanent maintenance without claim for judicial separation—The High Court on its Original Side has no jurisdiction in such suit to pass an order for maintenance. The Bombay High Court on its Original Side has no jurisdiction in a suit between a Parsi husband and a Parsi wife to make an order for permanent alimony whether accompanied or not by any order for judicial separation. The only way in which a Parsi wife is entitled to get a decree for permanent alimony is to file a petition in the Parsi Matrimonial Court and there establish facts coming within s. 31 of the Parsi Marriage and Divorce Act. *GOOLEAR v. BIRRAM RA* (1914) I. L. R. 38 Bom. 615*

*Requisites to validity of a Parsi marriage—Certificate of a requisite of the marriage—Entry of certificate in the marriage register is merely for securing record of marriages duly solemnized—Absence of entry in the register does not affect validity of marriage—Proof of factum of marriage by any relevant evidence in the absence of entry of certificate in the register—Admission of secondary evidence s. 3 of the Parsi Marriage and Divorce Act exhausts all requisites to the validity of a Parsi marriage. The certificate which is to be given and is the Act by the officiating minister after the marriage has been contracted and solemnized is not in itself one of the requisites for a valid marriage under the Act. The provision about entering the certificate in the marriage register being merely intended to secure a proper record of marriages duly solemnized between the Parsees the absence of any entry in register would not affect the validity of the marriage. Where there is no certificate and no entry in the register any other relevant evidence is admissible to prove the factum of marriage. *BAL AYALAT v. KROODAD ARDEYER* (1920) I. L. R. 45 Bom. 146*

PART HEARD SUIT

See EX PARTE DECREE

I. L. R. 41 Cal. 956

See TRANSFER

I. L. R. 39 Cal. 146

PART PAYMENT

See CHEQUE PAYMENT BY

I. L. R. 42 Cal. 1043

— in satisfaction of decree—

See LIMITATION I. L. R. 46 Cal. 29

PARTIAL DECREE

See PETITION OF COURT FEE

I. L. R. 40 Cal. 365

PARTIES

See ADMINISTRATION SUIT
I L R 34 Bom 420

See CHARITABLE TRUST
I L R 48 Calc 124

See CIVIL PROCEDURE CODE 1882 s 368
I L R 32 All 301

See CIVIL PROCEDURE CODE 1909—
s 92 I L R 36 Bom 168
I L R 37 All 296
I L R 40 Mad 110

O IV r 13 I L R 39 All 13

O XXII r 10 I L R 37 All 226

O XXXIV r 1 O I r 9
I L R 35 All 441

O XII r 33 I L R 43 All 85

See EVIDENCE ACT (I of 1872) s 69
I L R 34 All 615

See FRAUD I L R 37 Bom 217

See HINDU LAW—JOINT FAMILY
I L R 32 All 183
I L R 33 All 71
I L R 38 All 393

See LANDLORD AND TENANT
I L R 39 Calc 696

See LIMITATION ACT (IV of 1908) s 22
I L R 39 Bom 723

See MISJOINDER I L R 45 Calc 111

See MORTGAGE I L R 38 Calc 342
I L R 35 All 247
I L R 41 Calc 727

See MUNICIPALITY I L R 46 Calc 784

See PARTITION SUIT
I L R 44 Calc 23

See POSSESSION I L R 47 Calc 907

See PROVINCIAL INSOLVENCY ACT (III of 1907) ss 22 46
I L R 39 All 152

See PUTNI SALE I L R 47 Calc 347

See RECEIVER 14 C W N 853

See RELIGIOUS ENDOWMENTS ACT (XX of 1863) ss 14 AND 18
I L R 41 Mad 237

See SPECIFIC RELIEF ACT (I of 1877) s 42
I L R 37 All 185

See TRANSFER OF PROPERTY ACT s 107
I L R 36 Bom 500

—Sale of joint property to provide funds for litigation

See VENDOR AND PURCHASER
I L R 35 All 273

—acts and conduct of—
See EVIDENCE ADMISSIBILITY OF
I L R 38 Calc 892

—Addition of—
See CIVIL PROCEDURE CODE 1908 O I r 10 (2) AND O XXXIV r 1
I L R 45 Bom 1009

See MORTGAGE I L R 38 Calc 913

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See PERNAND I L R 37 Calc 171
I L P 43 Calc 938

—appeal practice etc—
See CIVIL PROCEDURE CODE 1908 O XXI r 60
I L R 44 Bom 860

—array of—
See HINDU LAW—JOINT FAMILY
I L R 34 All 549 572

See TRANSFER OF PROPERTY ACT (IV of 1882) s 52
I L R 37 Bom 427

—change of—
See JOINT OWNERS
I L R 47 Calc 182

See TRANSFER OF PROPERTY ACT (IV of 1882) s 52
I L R 37 Bom 427

—consent of to jurisdiction—
See EVIDENCE ACT (I of 1872) s 38
I L R 35 Bom 24

—death of—
See ARBITRATION 14 C W N 759

—dismissal on non appearance of plaintiff—Fresh suit on same cause
See CIVIL PROCEDURE CODE 1909
O XVII r 4 I L R 44 Bom 82 767

—examination of—
See CIVIL PROCEDURE CODE 1908 s 107
I L R 39 All 49

—exonerated defendant—
See CIVIL PROCEDURE CODE (ACT V of 1908) s 47 O XVI r 100 101
I L R 40 Mad 984

—In an application for confirmation of sale by auction purchaser
See SECOND APPEAL
I L R 39 Calc 687

—in suit by benamidar to recover possession decree holder not a necessary party
See CIVIL PROCEDURE CODE 1908 ss 47 AND 68 AND O I r 2
I L R 44 Bom 352

—In suit for redemption where parties in possession claim independently of mortgage
See CIVIL PROCEDURE CODE 1908,
O XXXI r 5
I L R 44 Bom 698

—In suit against Talukdar where estate under Settlement Officer as Court of Wards—
See COURT OF WARDS ACT (REV ACT I of 1905) ss 31 32
I L R 44 Bom 986

—Intention of—
See MORTGAGE
I L R 39 Calc 527

—Joinder of—
See CIVIL PROCEDURE CODE 189—
s 30 I L R 32 All 294
s 539 I L R 35 Bom 470

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CIVIL PROCEDURE CODE 1908

O I L R 10 I L R 35 Bom 393

O XXIV R 1

I L R 43 Bom 575

See HINDU LAW—JOINT FAMILY

I L R 37 Bom 340

See LIMITATION ACT 1877 ss 22 23

I L R 34 Bom 91

See PES JUDICATA

I L R 38 Bom 207

Not sui juris—

See PRACTICE

I L R 48 Cal 994

on dissolution of Partnership—

See PARTNERSHIP I B C W N 193

Possessing remote interest—

See PROFIT A LRENDRE

2 Pat L J 323

power of Court to add—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 40 Mad 110

privity between—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 11 I L R 40 Bom 679

rights of—

See LEASE I L R 43 Cal 332

See SECURITY FOR GOOD BEHAVIOUR

I L R 41 Cal 806

substitution of—

See LIMITATION L R 44 I A 218

Sut by Karta of Joint Family—

S s CIVIL PROCEDURE CODE O XXIV R 1 6 Pat L J 640

appeal—whether lies for order on application to be brought on the Record

See CIVIL PROCEDURE CODE (1908) O XLIII R 1 I L R 37 All 272

to conveyance—

See EVIDENCE L R 44 I A 236

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See CRIMINAL PROCEDURE CODE s 195 15 C W N 565

1 ——— Addition of parties—Limitation Act (XV of 1877) s 92—Changing character of defendant after period of limitation for suit has expired—Amendment of Plaint—Civil Procedure Code (Act XII of 1887) ss 39 53 582—Suit against Debtor estate—Expenses necessary for Debtor estate—Indemnity to estate of former sebat by successor—Liability of Debtor estate The parties to this litigation were the descendants of a testator who by his will dedicated immoveable property to the performance of the worship of certain idols and other pious acts and provided for the order of succession to the office of sebat among his descendants The suit was instituted on 20th January 1897 by the respondents as executors of a deceased sebat against the appellant who had been appointed receiver of the debutter estate for money which owing to interference and obstruction by the appellant in the collection of

PARTIES—contd

the rent had not been received by the deceased sebat during his sebatship and for expenses he had consequently been obliged to pay out of his private funds to protect the estate and enable him to perform his obligations as sebat All the other surviving descendants of the testator were made parties and the appellant was sued both in his capacity as receiver and in his personal capacity. After the expiration of the period of limitation prescribed for the suit an amendment of the plaint was made by the Court adding to it a prayer that it might be determined who was the sebat and that the debutter estate should be represented by the person declared to be entitled to the sebatship The appellant was found to be so entitled and was impleaded as sebat—Held affirming the decision of the High Court that the object of the amendment was merely to determine judicially which of the living descendants of the original testator all of whom were already parties to the suit was to be considered sebat It did not alter the character of the suit no amount to the addition of a new defendant within the meaning of s 22 of the Limitation Act (XV of 1877) and the suit was therefore not barred Held also that the estate of the deceased sebat was entitled to be reimbursed all sums properly expended by him in the preservation of the debutter estate (as payment of Government revenue and the like) and in defending his position as sebat which was challenged unsuccessfully by the appellant *Hallers v Woodbridge L R 7 Ch D 504* followed The respondents were also entitled to recover all moneys properly expended by the deceased sebat in performing the obligations imposed upon him by the original testator's will The right of indemnity was incident to the position of a trustee and the liability in respect of that indemnity was the first charge on the trust estate *PEARY MOHUN MUKERJEE v NARENDRA NATH MUKERJEE* (1909) I L R 37 Cal 229

2 ——— Where a landlord sued a transferee of the tenant's rights in ejectment on the ground that the transfer was unauthorised and the defence admitted the transfer but urged that it was not a valid transfer Held that the transfer or who applied to be added as a defendant setting up a contemporaneous agreement for retransfer and alleging that the transaction was really a mortgage by conditional sale and that he was still in possession should have been added as a party defendant by the Court although plaintiff opposed the application in order to avoid a multiplicity of suits and to insure a final determination of the dispute in the presence of all the parties interested The Court does not except in special circumstances force a defendant upon the plaintiff The test to be applied is whether his presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter *Montgomery v Fox* [1895] 2 Q B 371 *McCleane v Giles* [1909] 1 Ch 911 referred to The judgment of the Judicial Committee in *Amir Hassan Khan v Sheo Balkish Singh* I L R 11 Cal 6 does not furnish any test for determining under what circumstances a subordinate Court may be said to have acted illegally or with material irregularity within the meaning of s 115 Civil Procedure Code The High Court is not precluded by the terms of s 115 Civil Procedure Code from interfering with an

PARTIES—contd

order granting or refusing applications for adding parties. *Held* that the High Court ought to set aside the order in the present case refusing the transfer of a application to be made a party as otherwise the result would be a needless multiplicity of suits and possible injury to the petitioner. Scope and operation of s. 115 Civil Procedure Code considered with reference to authorities. DWARKA NATH SEW : KESORY LAL GOSWAMY (1910) 14 C W N 703

3 ———— *Civil Procedure Code (Act V of 1909) O XVIII r 1—Suit allowed to be withdrawn with liberty to bring fresh suit on payment of defendant's costs added plaintiffs if found by order—Deposit of costs after institution but before trial of fresh suit if valid.* Where the Judge having held that the plaintiff who was a member of a joint Hindu family should have joined the other members also as co plaintiffs the plaintiff asked for and was allowed leave to withdraw from the suit with liberty to bring a fresh suit subject to limitation and on condition that he must pay or deposit the defendant's costs before bringing a fresh suit or else the suit shall stand dismissed with costs and the coparceners together instituted a fresh suit but did not deposit the defendant's costs till some time afterwards. *Held* that the suit was not liable to be dismissed so far as any rate as the added plaintiffs were concerned. That as regards the original plaintiff the suit should have been treated as instituted on the date on which the costs were deposited. That the deposit of the costs before the trial of the suit was sufficient compliance with the order in this case. *Abdulla v Ibrahim I I R 1 Cal 965 followed. Harenath v Syed Hosein 10 C W N 8 distinguished. Cori Lal v Lala Nagov Lal (1911) 15 C W N 998*

4 ———— *Manager Joint Hindu Family—Managing members—Suit to recover debt due to members of family in family business—Power of managers to sue alone—Limitation Act (VI of 1908) s. 2—Parties added after expiry of period of limitation.* Where a joint family business has to be carried on in the interests of the joint family as a whole the managing members may properly be entrusted with the power of making contracts giving receipts and compromising or discharging claims ordinarily incidental to the business and where they are so entrusted and empowered they are entitled as the sole managers of the family business to make in their own names contracts in the course of that business and to maintain suits brought to enforce those contracts without joining in the suit with them either as plaintiffs or defendants the other members of the family. *Arunachala Pillai v Vithalinga Mudaliya I L R 6 Mad 27 approved. K P Hanna Isharod v M Narayanan Samayagopal I L R 3 Mad 234. Ramsebuk v Ramdali Koodond I L R 6 Cal 815. Imam ud din v Isildhar I L R 14 All 524 and Alagappa Chetti v Elkan Chetti I L R 18 Mad 33 distinguished.* In this case the original plaintiffs were the managing members of a joint family business of money lending entrusted with the regularly exercising the power of doing everything necessary to carry on the business. In the course of such business they contracted in their own names with the defendants for a loan and on the accounts a balance was struck between the parties on the 9th August 1901. In a suit brought by the managing members on the

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3rd June 1901 and therefore within the period of limitation to recover the amount due the other members of the family were on an objection by the defendants that the suit was improperly constituted joined as plaintiffs on the 22nd August 1901 after the period of limitation for the suit had expired and the defence was set up that under s. 2 of the Limitation Act (VI of 1877) the whole suit was barred. *Held* (reversing the decision of the High Court) that the suit as originally brought was properly constituted that the members of the family subsequently added were unnecessary parties and that the suit was consequently not barred. KISHAN PRASAD : HAR NARAIN SINHA (1911) 1 L R 33 All 2/8

5 ———— *Execution sale—Reversal of sale—Execution purchaser—Transferee from the purchaser—Civil Procedure Code (Act V of 1908) s. 311.* A transferee from the execution purchaser is a necessary party to a proceeding for reversal of the execution sale when such proceeding is commenced after the transfer has been effected. *Bibi Sharfjan v Mahomed Habibuddin 13 C L J 535 and In re Hammer Smith Rent charge & Freehold referred to. MEHARJUDDI BROWNS : TOMMY MAXWELL (1911) 1 L R 39 Cal 831*

6 ———— *Religious Endowment—Suit against the sole surviving member of the committee and the superintendent of a temple—Death of the sole surviving member—Substitution of the adopted son—New committee added as party—Cause of action abatement of—Civil Procedure Code (Act V of 1908) O XXI r 20 O XXII r 10 O I r 10 Religious Endowments Act (V of 1863) s. 14.* A suit brought against the sole surviving members of a committee of management appointed under s. 3 of the Religious Endowments Act 1863 and against the superintendent of a temple for their removal from the committee and from the office of superintendent respectively was dismissed by the District Judge. Pending the appeal the 1st defendant died and his adopted son was brought on the record as a party by the plaintiffs. Subsequently a new committee was appointed and added also as a party and the appeal was proceeded with against the adopted son the superintendent and the new committee. *Held* that the relief against the 1st defendant was purely personal and that the cause of action did not survive against his adopted son. *Held* also that the members of the new committee should not have been added as parties respondents. *Kashi v Sadash Sakharam Shet I L R 21 Bom 279 referred to. Held* further that the suit could not be maintained as against the 2nd defendant alone and that the appeal as now constituted was incompetent. BHIMA POUV : DASARATH DAS (1912) 1 L R 40 Cal 323

7 ———— *Suit to Recover Trust Property—Civil Procedure Code (Act V of 1908) s. 9 O I r 3—Public Religious Trust—Suit to remove a trustee and to recover possession of trust property in the hands of a third party—Joinder of parties—Alienee of trustee.* Where in a suit under s. 92 of the Civil Procedure Code (Act V of 1903) the second defendant who was the alienee of the trust property the subject of the suit contended that the suit should be dismissed as against him on the ground that he was not a necessary party to it. *Held* that there was no reason why having regard to the provisions of

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O I r 3 of the Civil Procedure Code the second defendant should not be made a party to the suit nor why if the decision of the Court is against him he should not be declared to be a true owner of the true property and be directed to convey the property. *Raj S. A. Dhadra v. A. V. Rastogi* 2 C I J 431 and *P. D. D. Mulani v. Chooni Lal Jethi* 1 I L R 33 Cal 459 is distinguished. *Compan v. Sarin* and *Can. C. v. Q. Ladas v. Houlter Brothers* [1910] 2 K R 351 referred to. *ALI HAFIZ v. ABDUL PARIZAD* (1910) I L R 42 Cal 1135

8 ——— Admission of one of the parties to a suit—When a suit is admitted on record against either of the defendants—Id est—If the defendant is not inadmissible—Objection to its admission on appeal for the first time—When several persons are jointly interested in the subject matter of a suit an admission of any one of the persons is receivable not only against himself but also against the other defendants whether they be all jointly suing or sued provided that the admission relates to the subject matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered. The requirement of the identity in the legal interest between the joint owners is of fundamental importance. *Kousulnath Sundari v. Mukta Sundari* 1 I L R 11 Cal 534 *Challin Singh v. Jharo Singh* 1 I L R 19 Cal 995 *Meeyan Matha v. Alimuddi* 1 I L R 44 Cal 100 *Blennisoopp v. Blennisoopp* 11 Bear 134 2 Philp 607 referred to. The admission of one co plaintiff or co-defendant is not receivable against another merely by virtue of his position as a co party in the litigation. If the rule were otherwise it would in practice permit a litigant to discredit an opponent's claim merely by joining any person as the opponent's co party and then employing that person's statements as admissions. Consequently it is not by virtue of the person's relation to the litigation that the admission of one can be used against the other it must be because of some priority of title or of obligation. *Mor v. Royal* 19 Ves 355 *King v. the Inhabitants of Hardwick* 11 East 78 referred to. The Court will not entertain for the first time in appeal an objection that a document which per se is not inadmissible in evidence has been improperly admitted in evidence. *Girindra Chandra Ganguli v. Rajendra Nath Chatterjee* 1 C W N 530 *Pronath Ma umdar v. Durga Tarins Bhowe* 14 C L J 578 referred to. *AMBAR ALI v. LUTTE ALI* (1917) I L R 45 Cal 159

9 ——— Heir of Residuary legatee—Right to sue—Cause of action survival of—Abatement of suit—Letters of Administration application by residuary legatee for grant of—Death of residuary legatee—Substitution of heir of residuary legatee—Contentious matter—Civil Procedure Code (Act V of 1908) O XVIII The right to a grant of administration is a personal right derived from the Court. If on the death of the testatrix the residuary legatee under her will had obtained a grant of administration to her estate with a copy of the will annexed his title would have been derived from the Court and would not devolve on his heir. The heir of the residuary legatee may be the proper person to obtain a grant of administration with a copy of the will annexed but this is not by virtue of any right to administration which he inherited

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from the residuary legatee but by virtue of the fact that as heir of the residuary legatee he is the person entitled to take the share of the testatrix. *Sura Chandra Iyer v. Nani M. M. Bhat* 1 I L R 3 Cal 99 referred to. *HARISHANKAR DATTARMAKAR v. NATH DATTAR* (1918)

I L R 45 Cal 862

10 ——— Tenants in common—If a tenant in common sues—Suit by a tenant in common to recover his share of partition from the other—Offer to a tenant in common to sue for partition—A piece of land was held in common by several persons of whom one was a tenant in common and the other was a tenant in common. The tenant in common offered to sue for partition of the land and the other tenant in common refused to sue. The tenant in common then sued for partition of the land and the other tenant in common was added as a party. The tenant in common was entitled to recover his share of the land without making the other tenant in common a party to the suit. *II* that the tenants in common were not necessary parties and that the plaintiff was entitled to recover by partition the 12th share and also the rent. *NARAYAN BALAKRISHNA v. LAKSHMOYEE* (1917) I L R 42 Bom. 87

11 ——— Procedure and Practice—Addition of third party defendant—Civil Procedure Code (Act V of 1908) s 108 (2) (e) O I r 10 () The second defendant in a suit applied for leave to add a third party as defendant. The plaintiff objected. *II* that the power to add a third party is discretionary but is widely exercised even though the addition may add new issues if however serious embarrassment or inconvenience be caused to the plaintiff the addition is not effected. *Held* also that although in this case no connection between the added defendant and the original defendants serious inconvenience would not be caused to the plaintiff if his position was safeguarded by the following provisions—(i) that the issues between the plaintiff and the original defendant should be tried first (ii) that no delay should take place in the determination of those issues (iii) that if the plaintiff succeeded in obtaining a decree against the original defendants such decree was not to be stayed pending the determination of the issues between the defendants. *BALMUKUND PUA v. BISSENDYAL* (1918)

I L R 46 Cal 48

12 ——— Shebat suit against—Deity if always a necessary party—co shebats if and when all of them necessary parties in a suit under O XXI s 63 Civil Procedure Code—Parties addition of—Limitation—Civil Procedure Code (V of 1908) O VII s 9 sub r () A suit can be properly maintained in the name of the shebat only without making the deity a party thereto where the right to sue is vested in the shebat and it is clear on the plaint that the shebat is sued in his representative capacity. *Jagadindra Nath Roy v. Hemanta Kumar Deb* 1 I L R 32 Cal 123 L R 31 I A 93 and *Kurmonji S. N. S. N. Mandhata v. Wasif Ali Meerza* 19 C B N 1193 referred to. In such a case the failure to make a statement that the defendant was being sued as shebat would not be a defect of party but would merely be a matter which the Court might amend by adding a statement to the plaint that the defendant was being sued in that party

PARTIES—*contd*

cular capacity It would not be adding a new party it would be merely rectifying a simple omission to state the representative character of the defendant. *Jodha Rai v Bardeo Prasad* I L R 33 All 735 referred to Where one of several *shabais* preferred a claim under O XXI r 58 of the Code without any mention of the other *co shabais* and succeeded in it all the *co shabais* are not necessary parties defendants in a suit under O XXI r 63 to set aside the order in the claim case *Bidhu Sekhar Banerjee v Kuladiprasad Debnath* (1919)

I L R 46 Calc 877

PARTITION

See ADMINISTRATOR PENDENTE LITE
I L R 41 Calc 771

See BABUANA GRANT
I L R 42 Calc 582

See CIVIL PROCEDURE CODE 1882 s 396
I L R 32 All 319

See CIVIL PROCEDURE CODE 1909—

s 47 I L R 35 All 243

ss 96 97 I L R 36 All 532

s 144 I L R 42 All 588

O II r 2 I L R 38 All 217

O VII r 7 I L R 43 All 318

O XX r 18 I L R 35 All 159

I L R 36 All 461

O XLV r 13 I L R 42 All 170

See COMMISSIONER OF PARTITION
15 C W N 221

See COSTS I L R 42 Calc 451

See DECREE I L R 40 Bom 118

See ESTATES PARTITION ACT (BENGAL OF 1897) s 7 14 C W N 632

See EVIDENCE ACT (I OF 1872)—

s 44 I L R 33 All 143

s 91 I L R 41 Bom 466

See EXECUTION OF DECREE
I L R 37 All 120

See HINDU LAW—ADIVISION
I L R 40 Calc 966

See HINDU LAW—JOINT FAMILY
14 C W N 221

I L R 35 All 543

I L R 43 Calc 1031

I L R 39 Mad 159

I L R 45 Calc 723

I L R 43 Bom 17

See HINDU LAW—PARTITION

See HINDU LAW—SELF ACQUISITION
I L R 32 All 305

See HINDU LAW—WIDOW
I L R 33 All 443

See JOINT OWNERS
I L R 34 All 113

See LIMITATION
I L R 42 Calc 776

See LIMITATION ACT (I OF 1908) Sch
I Arts 62 120
I L R 37 All 318

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See MAHARAJA LAW—GILT
I L R 36 All 333

See MALABAR LAW
I L R 42 Mad 292

See MORTGAGE I L R 35 Bom 371
I L R 42 All 598

See PARTITION BY COLLECTOR

See PARTITION ACT (IV OF 1903)

See PARTITION AND POSSESSION

See PRE EMBRYON I L R 32 All 567
I L R 33 All 23
I L R 37 All 123
I L R 41 All 426

See RES JUDICATA
I L R 36 Bom 127

See STAMP ACT (II OF 1893) s 15
See I ART 45 (c)
I L R 36 All 137

See TITLE SUIT FOR
I L R 37 Calc 662

See TRANSFER OF PROPERTY ACT (II OF 1882) s 52 I L R 37 Bom 427

See UNITED PROVINCES LAND REVENUE ACT III OF 1901—

s 4 I L R 43 All 45

ss 106 AND 233
I L R 43 All 454

ss 107 111 I L R 35 All 527

ss 107 111 112
I L R 35 All 546

ss 110 111 112
I L R 38 All 115

ss 111 112 I L R 39 All 523

ss 111 (1) (b) I L R 38 All 70
I L R 41 All 211

ss 111 112 233 (1)
I L R 35 All 126
I L R 38 All 307

s 118 I L R 39 All 707

s 233 I L R 42 All 309
I L R 48 All 88

s 233 (f) I L R 33 All 169 440
I L R 38 All 243
I L R 39 All 469
I L R 41 All 696

See VENDOR AND PURCHASER
I L R 42 Calc 56

— between an adopted son and an
aurasa son of a Sudra—

See HINDU LAW—PARTITION
I L R 40 Mad 632

— by Collector—
See CIVIL PROCEDURE CODE (ACT I OF 1908) s 54 I L R 42 Bom 689

See PARTITION BY COLLECTOR

— by grandsons—
See HINDU LAW—PARTITION
I L R 39 Bom 373

— Conversion of suit for ejectment
into one for Partition—

See HINDU LAW—ADOPTION
I L R 38 Mad 57

PARTITION—*contd*

not in accordance with decree—
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See DECREE.

I L R 40 Bom 118

mother's share on partition after
father's death—

See HINDU LAW—INHERITANCE

I L R 34 All 234

of Mines and Minerals—Lease

See LEASE I Pat L J 441

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I Pat L J 270

of Joint Family Property—Manager's
liability to account for mesne profits—

See HINDU LAW—JOINT FAMILY

I L R 44 Bom 179

of Joint Family Property purchased
from a co-parcener—Part profits not allow-
able—

See HINDU LAW—JOINT FAMILY

I L R 44 Bom 621

of Joint Family Property of Sudras—

See HINDU LAW—JOINT FAMILY

I L R 44 Bom 166

Oral Evidence—when admissible
to prove—

See EVIDENCE ACT 1872 s 91

I L R 41 Bom 466

subsequent suit for entire estate—
whether barred—

See SANTAL PARGANAS SETTLEMENT

REGULATION 1872.

6 Pat L J 373

unregistered receipts acknowledging
acceptance of shares—admissibility of, to prove
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See REGISTRATION ACT 1908 ss 17 AND

49 I L R 41 Bom 881

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See HINDU LAW—PARTITION

I L R 43 Cal 1118

See MAJABAR LAW

I L R 39 Mad 317

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See HINDU LAW—JOINT FAMILY

I L R 38 Bom 275

subsequent suit for entire estate—

See SANTAL PARGANAS SETTLEMENT REGU-

LATION 1872 6 Pat L J 373

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partition—Presumption that there has been
a complete partition—

See HINDU LAW I L R 45 Bom 914

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See BENARIDAS I L R 32 Cal 504

See CIVIL PROCEDURE CODE ACT 1908 s 11 I L R 37 Bom. 307

See COURT FEES ACT (VII OF 1870)

SEC II ART 1st (a)

I L R 34 All 182

PARTITION—*contd*

suit for—*contd*

See HUSBAND AND WIFE

I L R 38 Cal 629

See PARTITION SUIT

See U P LAND REVENUE ACT s 227 (1)

I L R 41 All 182

suit for on behalf of a minor—

See HINDU LAW—PARTITION

I L R 41 Mad 442

Whether widow of a Joint Owner
can claim—

See SECOND APPEAL

I L R 2 Lah 348

Appeal—Appeal against prelimi-
nary decree after passing of the final decree After
the passing of the final decree in a suit for partition
no appeal will lie which does not challenge the final
as well as the preliminary decree *Mackenzie v*
Nar Singh Sahai I L R 36 Cal 70 followed
Uman Kunwar v Jarbandhan I L R 30 All
419 distinguished *KURIYA MAL v BISHAMDHAR*
Das (1910) I L R 33 All 225

BUT See CIVIL PROCEDURE CODE 1908 ss 96

AND 97 I L R 36 All 532

Right to—Partition
between owner of fractional share in zemindari
interest and mokararidars in joint possession—
Interest not less permanent because the mokararidars
lease was liable in certain events for forfeiture The
right of partition exists when two parties are in
joint possession of land under permanent titles
although their titles may not be identical *Hemadris*
Nath Khan v Ramani Kanta Poy I L R 24 Cal
575 cited with approval The appellants plaintiffs
in a suit for partition were proprietors of a
mokararidars interest in the property partition of which
was sought and the respondents defendants in the
suit were owners of a fractional share in the
zemindari interest in the same property The
mokararidars lease was in certain contingencies liable
to forfeiture and the High Court held that the
appellants tenure was on that account not suffi-
ciently permanent to support their claim to parti-
tion to which they would otherwise have been
entitled—Held by the Judicial Committee (re-
versing that decision) that the distinction drawn
by the High Court could not be supported The
appellants title was a permanent one though
liable to forfeiture in events which had not occurred
and the rights incidental to that title must be
those that attached to it as it existed without
reference to what might be lost in the future under
changed circumstances *BHAGWAT SAHAI v BIPIN*
BEHARI MITTER (1910) I L R 37 Cal 918

Res Judicata Where
a suit for partition to which all the members of the
family are parties has once been finally decided
it is not competent to a party defendant to such
suit to re open the questions thereby determined
in a fresh suit for a declaration of right as against a
co defendant *Sheik Khoorshed Hossein v Aab*
bee Fatima I L R 3 Cal 551 *Dost Muhammad*
Khan v Said Begam I L R 70 All 81 *Asan*
v Pathumma I L R 72 Mad 494 and *Asidhat*
v Abdullah Hagi Mahomed I L R 31 Bom 21
referred to *PARSOTAM RAO TANTIA v PADMA*
Bai (1910) I L R 32 All 469

PARTITION—contd

Procedure—Partition suit for—Amendment of plaint by order of Court altering nature of suit—Acquiescence by plaintiff—Appeal in disregard of amendment of plaint not barred. It is incumbent on the Court in a suit for partition to come to a clear and definite finding that the plaintiff had title to the property before proceeding further into the case and a Judge on appeal should also observe the same procedure. *Bidhata Rai v Ram Charitar Rai* 12 O W N 37 referred to. If the Judge on appeal finds the question of title to the property in favour of the plaintiff any finding on the question of possession does not debar the Judge from affirming the preliminary decree for partition passed by the first Court does not justify him in remanding the case to the lower Court for retrial. At the hearing of the appeal the Judge held that the plaint should be amended and the plaint was accordingly amended with the acquiescence of the plaintiff so as to alter the nature of the suit. A fresh written statement was filed by the defendant and fresh issues were framed. These facts did not preclude the plaintiff from filing an appeal within the time allowed by limitation if on reflection he thought that the action taken by him in amending the plaint was injudicious. *SHASHI BUSHNATH BEED v JOTINDRA NATH ROY CHOWDHURY* (1911)
12 O W N 38 Cal 681

**Mahomedan co owners—Suit for partial partition—Partition of moveables only asked leaving immovables *iyam*—Suit by *hiss* Where a Mahomedan instituted a suit against his brothers and mother for partition only of the moveables held by the parties in *iyam* but that it appeared the parties had *iyam* immovable properties also.—Held that there is no distinction in principle between partition of joint property under Hindu and under Mahomedan law. That it was inexpedient to allow a suit for partition of a portion only of the joint properties. Plaintiff was given an opportunity to amend the plaint so as to make the suit one for partition of the whole of the joint properties. *FUZEER FAHMAN CHOWDHURY v MAHOMED FAYZUR FAHMAN CHOWDHURY* (1911)
15 O W N 677**

Agreement for partial partition specifically enforceable—Registration Act (III of 1877) s 17 (b) and (h)—Partition deed unregistered affecting portion of property—Admissibility—Part performance equitable doctrine of *specific performance* applied where partition acted upon and improvements effected.—Previous oral agreement not if may be proved.—Evidence Act (I of 1872) s 91—Equities in favour of co sharer who has effected improvements how given effect.—Commissioner of partition—Delegation of judicial power to. A partition deed in respect of property of the value of Rs 100 or upwards compulsorily registrable whether it be treated as a deed by which a partition was effected or as a deed which declared a partition previously effected by the parties. Cls (b) and (h) of s 17 of the Registration Act (III of 1877) may be reconciled if it be held that a document though not admissible as creating an interest in land is receivable in evidence for a collateral purpose namely for the specific performance of the agreement. Where however the defendant in a suit for partition sought to use an unregistered partition deed not for a collateral purpose but to prove that the property covered thereby had ceased to be joint

PARTITION—contd

property the document was inadmissible under s 49 of the Registration Act. Other evidence in support of the transaction was excluded by s 92 of the Evidence Act because the written instrument was not collateral to but of the very essence of the transaction. Where under an arrangement which was embodied in an unregistered partition deed the parties continued for many years in separate possession of portions of the joint property and the defendant during this time spent money in repairs on the portion allotted to him. Held that assuming that the partition deed was preceded by an oral agreement for partial partition it was not specifically enforceable by suit. That for this reason and also because the equities arising in favour of the party who made the improvement could be given effect to in the partition decree so that he might not suffer by reason of the agreement having been acted upon or the other party take advantage of the improvements made by him the equitable doctrine of part performance had no application to the case. Although there may be a partial partition of joint property by private arrangement there cannot be a partial partition by suit. Although a co tenant who has spent money in improvement of the joint property may not be entitled to call upon his co sharers to compensate him for the expenditure yet he has a defensive equity which is enforceable in the event of a partition. It is in recognition of such equitable right that to the co owner who has made the improvements is assigned that portion of the property on which the improvements have been made the division being made on the basis of the unimproved value. The determination of the question whether certain properties are the joint properties of the parties or the exclusive properties of any of them cannot be delegated by the Judge to the Commissioner for partition. *UFENDRA NATH BANERJEE v UMESH CHANDRA BANERJEE* (1910)
15 O W N 375

**Property not capable of division.—Partition Act (IV of 1893)—Plaintiff if may sue for sale of share by defendant at a valuation.—All shareholders to bid for property. When the nature of the property jointly owned by the plaintiff and the defendant is such that a division of it amongst them cannot reasonably or conveniently be made the plaintiff has not the right to claim that the defendant should be compelled to transfer his share to the plaintiff at a valuation merely because he happened to have possession of the property at the commencement of the action. The proper course is to direct a sale of the property amongst the co sharers and it should be given to that shareholder who offers to pay the highest price above the valuation made by the Court. *Hussain v Ganes* 1 L R 10 Cal App 294 and *Pill v Jones* 5 App Cas 651 followed. *Baerunta Kumar Ghose v Mo v Lal Ghose* 15 O W N 555 distinguished. *HEBENDRA NATH BHATTACHARJEE v HARI DAS BHATTACHARJEE* (1910)
15 O W N 552**

Property not convenient for division.—Partition Act (IV of 1893)—If lot built on by co sharer not convenient for division—Partition of land—Court a discretion to refuse partition and to allow the party in possession to buy the other party out.—Equity. The defendants in a suit for partition had built a dwelling house on a plot of 7 co tals of land without opposition from the plaintiff who was

PARTITION—contd

a stranger and owned only a 1st share in it and in an adjoining plot of 1 bigha 6 cottahs. The lower Appellate Court finding that it would be very inconvenient for all parties concerned if the plots were divided by metes and bounds allowed the defendants to buy up the plaintiff's shares at a proper valuation. *Held* that whether s. 4 of Act IV of 1893 applied to the case or not it is a well known principle of equity which must be adopted in all partition cases that when it is inconvenient to divide a property that property must be left in the possession of the person in occupation and the other person who cannot conveniently get actual possession compensated. A tank covering one bigha in which plaintiff owned a 1st share was left joint the lower Appellate Court holding that it was not convenient to divide it. The High Court affirmed that decision. *BASANTA KUMAR GHOSH v. MOH LAL GHOSH* (1907)

15 C W N 555

Private partition—Estates Partition Act (Bengal) of 1897 s. 99—Private partition amongst proprietors—Tenancy in common—cessation of—Putndar of separated share is bound by subsequent division by Collector. S. 99 of the Estates Partition Act (Bengal) of 1897 does not apply when the estate partitioned by the Collector had already been privately partitioned amongst the proprietors and the proprietors were holding their shares of the lands in severalty and not in common tenancy as contemplated in that section. A putndar in possession of a separately allotted portion of such estate is not thereafter affected by the subsequent partition by the Collector. *Hriday Nath Saha v. Mohabatannessa Bibi* I L R 20 Cal 285 applied. The fact that the Government was not bound to recognize the private partition for purposes of revenue does not affect the question. *ABDUL LATIF MIAN v. AMANUDDIN PATWARI* (1911) 15 C W N 428

Appeal—Appeal against preliminary decree—Final decree passed since the appeal—No appeal against final decree. *Held* that an appeal against the preliminary decree in a suit for partition cannot be heard if after the filing of such appeal the final decree has been passed and no appeal is preferred against that decree. *Juriya Mal v. Bishambar Das* I L R 32 All 275 referred to. *NARAYAN DAS v. BALGOBIND* (1911)

I L R 33 All 528

See Also DECREE I L R 37 All 29

Partition suit—abatement of—Civil Procedure Code (Act V of 1908) O I s. 10—Limitation (Act IX of 1908) Art. 112—Death of a party—Abatement—Application to set aside the abatement—Limitation of sixty days—In a partition suit all parties should be before the Court—Inherent power of the Court to add a party at any stage of the suit for the ends of justice. On the 5th April 1892 the plaintiff obtained a decree for partition and died in October 1893 leaving him surviving a minor son who attained majority in February 1907. At a very late stage of the execution proceedings the son made an application on the 10th April 1910 for the issue of a commission to effect partition according to the rights declared in the partition decree. *Held* that as soon as the Civil Procedure Code (Act V of 1908) came into force the suit abated so far as regarded the applicant's father who was a party

PARTITION—contd

and the application to set aside the abatement by adding the applicant as the legal representative of the deceased not having been made within sixty days under Art. 171 of the Limitation Act (IX of 1908) the application was time barred. *Held* further that in a partition suit all the parties should be before the Court and that there was nothing in the Civil Procedure Code (Act V of 1908) limiting or affecting the inherent power of the Court to make such orders as might be necessary for the ends of justice. *LAKSHMICHAUD REWA CHAUD v. KACHUBAI GULABCHAND* (1911)

I L R 35 Bom 893

—Instruments of partition—meaning of—Undivided brothers—Instruments of partition—Partition—Stamp Instruments whereby co-owners of any property divide or agree to divide it in severalty are instruments of partition. One of three undivided brothers agreed to take from the eldest brother the manager of the family as his share in the family property moveable and immoveable a certain cash and bonds for debts due to the family and passed to the eldest brother a document in the form of a release. Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money. A question having arisen as to whether for the purpose of stamp duty the said two documents were to be treated as releases or instruments of partition. *Held* that the documents were instruments of partition. *In re GOVIND PANDURANG KAMAT* (1910)

I L R 35 Bom 711

Final decrees passed during pendency of appeal—Cross objections filed against final decree—Appeal against preliminary decree maintainable. Where the plaintiffs in a suit for partition had preferred an appeal from the preliminary decree and had also in the defendant's appeal from an final decree filed cross objections it was held that there was no bar to the hearing of the plaintiffs' appeal against the preliminary decree. *Kuriya Mal v. Bishambar Das* I L R 32 All 275 and *Narayana Das v. Balgoind* s. 411 L J 604 distinguished. *MURAMAD AHMED HUSAIN KHAN v. JALALUDDIN HUSAIN* (1912)

I L R 34 All 493

Decree awarding shares effect of Appeal—Death of a sharer leaving daughters—Decree for partition final—Severance effected by the decree can be displaced only by a legal decree in appeal. In a suit for partition the first Court passed a decree awarding to the sharers their respective shares. While an appeal against the decree was pending one of the sharers died leaving two daughters. Thereupon a question having arisen as to whether the shares of the surviving sharers were liable to be increased owing to the death of the sharer pending the appeal. *Held* that the pendency of the undecided appeal did not detract anything from the vitality or the force of the existing decree. Although the decree was under appeal it was not the less a final decree of a competent Court. The decree once made there and then determined the legal status or relation of the parties and the severance of interest so effected by the decree at the moment it was

PARTITION—contd

pronounced could be displaced only by a legal decision in appeal. *Salharam Mahadev Dange v Hari Krishna Dange* I L R 11 Bom 113 explained *MAHADEV LAXMAN v COVIND PARASH RAM* (1912) I L R 36 Bom 550

Agreement for—Consideration—

*Bona fide claim for separate allotment for marriages of one brother's daughters—Agreement at or before partition to allot—Execution of promissory notes by each brother for his share of the amount—Previous suit for partition—Subsequent suit on promissory note—S 43 Civil Procedure Code (Act VII of 1882) no bar—Causes of action distinct—An agreement made between parties to a partition by which one brother was to pay money for the marriages of his brothers' daughters whether it is made before the partition and subsequently embodied in the deed of partition or made at the time of partition is an enforceable contract as the agreement by the father of the daughters to other terms of the partition is sufficient consideration. A claim at the time of partition for the allotment of a separate sum of money out of the general funds for the performance of marriages of the daughters of one of the brothers to a partition is not altogether unfounded according to Hindu law. Even otherwise an agreement to allot would be binding on the persons agreeing as one of the terms of a bona fide compromise constituting a settlement between the members of a family if there was a bona fide claim for the same at the time of partition. If an agreement to pay a certain sum made by the other brothers at the time of partition becomes split up into various agreements by the execution of separate promissory notes by the other brothers each for his share the obligation to pay the amounts of the promissory notes is distinct from the obligation to observe the other terms of the partition so that a suit first brought for partition against all the brothers (S 43 Civil Procedure Code Act XIV of 1882) does not bar the institution of a subsequent suit for the sum due from one of the brothers under the promissory note. Cause of action meaning of explained *ANAN v Raman* I L R 16 Mad 335 *Sesha Ayyar v Krishna Ayyangar* I L R 24 Mad 98 *Um d Dholchand v Pir Sahib Jiva Uyan* I L R 7 Bom 134 *Sundar Singh v Bholu* I L R 20 All 322 and *Moro Pashunoth v Balaji Trimbal* I L R 13 Bom 45 followed *Appasami v Ramani* I L R 9 Mad 979 and *Sharmagum Pillai v Syed Gulam Ghose* I L R 27 Mad 116 distinguished *Premnath Mukerji v Bushnath Prasad* I L R 29 All 266 discredited from *PER CURIAM*. If several promissory notes are executed for portions of the same debt each promissory note creates a cause of action and this would be so even if it be assumed that a suit might be instituted for the whole debt on the original cause of action. *ANANTANARAYANA Iyer v SAVITHRI AMMAL* (1913) I L R 36 Mad 151*

Partition suit—Misjoinder

of causes of action and parties—*Prejudice—Res judicata amongst co-defendants—Civil Procedure Code (Act I of 1908) s 11*. A suit for partition determines the shares of the co-sharers amongst themselves and each co-sharer whether a plaintiff or defendant claiming a separate block for himself may prove his share and get a block for it. Where the causes of action in respect of different items of property the subject

PARTITION—contd

matter of a suit for partition appeared to be different and the parties concerned in the claim to one such item appeared to be less numerous than those concerned in the claim for the other item the joining of them in one suit caused misjoinder of parties and causes of action. But such misjoinder of causes of action and parties did not entitle the appellant (who raised this point in his written statement) to have the decree set aside particularly as the misjoinder had not prejudiced him and as if the two separate suits had been brought on the separate causes of action they would probably have had to be tried together. Where a co-sharer of the present plaintiff had sued to have his title declared to a taluk and the plaintiff and the defendant appellant had been made co-defendants and the decision was that there had been a binding private partition confining the interests of each co-sharer to the allotment received by his or her predecessor and that that was not merely an informal division for convenience of possession. Held that though the question of a previous partition was one which not only might and ought to have been but actually was made the ground of defence in the former suit within the meaning of s 11 Explan IV Civil Procedure Code and though the present plaintiff was acting in that suit in the same interest as her co-plaintiff it was impossible to hold that in the suit in which she and the appellants were co-defendants there was a conflict of interest between them and that the judgement defined their rights and obligation inter se. The case accordingly did not come under the rule relating to *res judicata* among the defendants as laid down in *Gurdeo Singh v Chandrika Singh* I L R 36 Calc 193. *SARODA PRASAD POY CHAUDHURY v KAILASH BASHINI GUPTA* (1914) 17 C W N 128

Leasehold interest purchased

in execution allotted to one co-owner—*Tenancy of the others if subsists—Bengal Tenancy Act (VIII of 1819) s 19—Registration and notice if necessary*. Where upon partition amongst co-owners a share of a taluk purchased in execution on behalf of all the co-owners fell into the share of one of them. Held that the liability of the other co-owners to pay rent to the landlord of the taluk ceased. *Prasanna Loomar Sinha v Ram Coomar Ghose* I L R 16 Calc 649 *R D Mehta v Godadhar Rai* I L R 37 Calc 655 *I C W A 83 Promatha Nath v Kallu Prasanna* I L R 23 Calc 744 referred to. S 11 of the Bengal Tenancy Act the operation of which is confined to transfers by sale gift or mortgage does not apply to a case of transfer by partition which does not therefore require to be registered and notified as contemplated by s 12. *PAV DHONE DHUR v SARUP CHANDRA SEXT* (1917) 17 C W N 313

Infructuous suit for partition no bar to a second suit for the same purpose.—In the year 1905 the plaintiff brought a suit for partition of a house held in joint tenancy. The suit was compromised the defendant agreeing to transfer his rights to the plaintiff for a consideration and was accordingly dismissed. The compromise however was not given effect to and thereafter the plaintiff brought a second suit for partition. Held that as soon as the defendant failed to carry out the compromise the parties were relegated to their rights as they

PARTITION—contd

existing prior to the compromise. The right to bring a suit for partition unlike other suit is a continuing right incidental to the ownership of joint property and the second suit was therefore not barred. *Narainallah v. Mujib* 1 L P 13 All 309. *Bish Sur Das v. Ram Prasad* 1 L P 25 All 6. and *Mrdai v. Moha*. *Mondal v. Lalit Lal Nath Mondal* 10 C II 153 followed. *Culland Lal v. Manni Lal* 1 L P 33 All 119 not followed. *McKENJI v. ARZAL Bhu* (1914) 1 L II 37 All 155

Suit for 1/2 lies without including the whole of the joint properties in the suit—Principle for Courts to follow in such cases—Bengal Agra and Assam Civil Courts Act (XII of 185) s 37. The plaintiffs and the defendants were the joint proprietors of a certain pargana which was partitioned by the Collector. At the time of the partition certain lands which were jungle or submerged were excluded from the partition and kept joint. The plaintiff brought three suits to have the joint lands partitioned. Held that it cannot be said that the general rule is that a joint owner cannot claim a partition of the joint property without bringing the whole of it under partition. The rule to be applied is much more elastic and what the Court has to consider in cases of this kind under s 37 of the Bengal Agra and Assam Civil Courts Act 1857 is justice equity and good conscience. *HEM CHANDRA CHOWDHURY v. HEMANTHA KUMARI DEBI* (1914)

19 C W N 356

Suit for—if maintainable without proof of actual or constructive possession—Possession by co sharer when may be adverse—Evidence necessary to establish adverse possession by co tenant—Ouster of co tenant how may be effected to create adverse possession—Land Registration Act registration of name under effect of if necessarily implies possession—Partition as distinguished from ejectment—Costs in partition suit before preliminary decree when defendant successfully contests plaintiff's claim for partition. The plaintiff sought partition of an estate of which he claimed to own one anna share by purchase. He alleged that after his purchase he had his name registered under the Land Acquisition Act in place of his vendor and was in possession since the date of his purchase. The lower Court found that the plaintiff was in possession of his share and made a preliminary decree for partition. The defendants appealed. Held that although as a general rule the possession of one co tenant is not deemed adverse to the other co tenants the existence of the relation of co tenancy does not preclude one co tenant from establishing an adverse possession in fact as against the other co tenants and though the co tenant enters in the first instance without claiming adversely his possession afterwards may become adverse. In order to render the possession of one co tenant adverse to the others not only must the occupancy be under an exclusive claim of ownership in denial of the rights of the other co tenants but such occupancy must have been made known to the other co tenants either by express notice or by such open and notorious acts as must have brought home to the other co tenants knowledge of the denial of their rights. The evidence to show adverse possession by one co tenant must be much clearer than between

PARTITION—contd

strangers to the title and the hostile intent of the co tenant in possession must be shown by an unequivocal conduct. The ouster of the other co tenants in order to render the possession adverse need not be by violent or intimidating expulsion or repulsion nor need notice of the adverse holding be actually brought home to the other co tenant by personal or formal communication but it is sufficient if the contrary is not proved that the circumstances show that such knowledge may reasonably be presumed. Held that the registration of the name of a person under the Land Registration Act is some evidence of possession but the weight to be attached to this fact must depend upon the circumstances of each case. The fact that the plaintiff was able to get his name substituted in the place of his vendor does not necessarily show that he is in possession of any share of the estate. That the plaintiff having failed to prove that he had possession actual or constructive of any share of the disputed property was not entitled to maintain a suit for partition. That the remedy of the plaintiff was by a suit for joint possession and partition and on the plaintiff in a suit so framed court fees must be paid *enfore*. That partition is not a substitute for ejectment because partition implies an existing joint possession and enjoyment to be converted into possession in severalty. That although ordinarily in a suit for partition pure and simple the parties have to bear their own costs of the suit up to the stage of the preliminary decree the plaintiff must in this case pay the costs of the defendants who have successfully contested his claim for partition. *LOKE NATH SINGH v. DRAKESHWAR PRASAD NARAIN SINGH* (1914)

20 II W N 51

Suit for if maintainable by a lessee of mining rights against lessor's co-owners—Partition of underground mines and mineral so possible—Partition (Act IV of 183), s 2. According to the English authorities it is clear that a lessee for a term of years must maintain a claim for partition. There is no reason for holding that a different rule prevails in India. The authority of *Mukunda Lal Pal Chaudhuri v. Lehuram* 1 L P 90 Cal 379 has been much shaken by the decision of the Full Bench in *Hemadri Nath Thakur v. Ramani Kant Roy* 1 L P 24 Cal 375 s c 1 C II 405. *Healon v. Dearden* 24 Bear 147. *Bhagrat Sahai v. Repin Behari Mitter* 1 L R 37 Cal 913 s c 14 C II 969 and *Baring v. Wash* 1 V & B 551 referred to. There may be no special difficulty in effecting a partition of the underground mines and minerals but in case any such difficulty arises the power to order a sale of under s 2 of the Partition Act of 1893 may be exercised. *LALIT KISHORE MITRA v. THAKUR CHANDRANI SINGH* (1916)

20 C W N 1306

Previous partition suit—It led by third party against present defendants and the vendor of the plaintiff—Issue regarding the share of the plaintiff's vendor being subject to other defendants' mokurari raiti but expunged—Final decree in the previous partition suit passed on the basis of the mokurari interest and allocation made thereunder—Decree of res judicata to present suit—Explanation II of s 11 C P Proc Code (Act II of 1908). In a previous partition suit instituted by Y against the present plaintiff's vendor T and the present defendants etc. it was

PARTITION ACT (IV OF 1893)—contd**—ss 1 & 3—contd**

visions of the Partition Act 1893 apply to the partition amongst co owners of such right But an order for sale of the mortgagee right's under s 2 of the Partition Act will not be valid unless based upon the request of a party or parties interested to the extent of one moiety or upwards *BANKE LAL v SHANTI PRASAD* (1913)

I L R 35 All 387

—s 4—

See PARTITION I L R 45 Cal 873

Suit for partition—Undertaking by defendants to purchase plaintiff's share in the subject matter of the suit Where the defendant to a suit for partition by metes and bounds has definitely undertaken according to the provisions of s 4 of the Partition Act 1893 to purchase the share of the plaintiffs in the property sought to be partitioned he cannot be permitted to refile from his undertaking and the court is bound to direct a sale *ILIAS AHMAD v BULAQI CHAND* (1917)

I L R 39 All 672

PARTITION AND POSSESSION**—suit for—**

See CIVIL PROCEDURE CODE (ACT V OF 1908) O I R 3

I L R 40 Mad 365

PARTITION BY COLLECTOR

See JOINT ESTATE I L R 43 Cal 103

See PARTITION

PARTITION DECREE

See NUISANCE 14 C W N 637

PARTITION DEED

See STAMP ACT (II OF 1899) SCH I ART 50 I L R 38 All 56

PARTITION SUIT

See COURT FEES

6 Pat L J 663

See PARTITION

See PRACTICE (20) I L R 44 Cal 28

—claim for future profits—

See VESPE PROFITS

I L R 44 Bom 954

Plaintiff a purchaser from minor co parcener—Fresh sale deed subsequently obtained after attainment of majority—Whether defect in title cured—Practice and procedure The plaintiff who was a purchaser from a minor co parcener sued for partition of the family property The minor co parcener who was made a party defendant after the attainment of his majority passed a fresh sale deed in plaintiff's favour during the progress of the suit It was contended that the plaintiff being a purchaser from a minor had no right to sue and that the defect in title was not cured by the new sale deed obtained —Held the suit was maintainable *PER MACLEOD C J*—It seems to me therefore that it is purely a matter of form which could have been cured equally well by the trial Judge by

PARTITION SUIT—contd

maling Waman [See the minor] = party plaintiff instead of continuing him as a defendant and by then directing partition of the property *V H V NARHAR & SHRIRAM RAOHUNATH* (1920)

I L R 45 Bom 983

PARTNER**—Death of—**

See PARTNERSHIP BUSINESS

I L R 48 Cal 908

—liability of incoming partner—

See TRADE MARK I L R 40 Cal 814

—Payment by—

See LIMITATION ACT 1909 ss 10 AND 20

I L R 37 Mad 148

I L R 41 Mad 427

—Suit by for partial settlement of accounts—

See PARTNERSHIP

I L R 2 Lah 351

PARTNERSHIP

See ARKARI ACT (BOM V OF 1874) ss 16 43

I L R 37 Bom 320

See APPEAL

I L R 42 Cal 914

See CIVIL PROCEDURE CODE (1908) O I R 4 & I L R 39 All 551

See CONTRACT ACT (IV OF 1872)—

—45

I L R 32 All 638

—261 2nd

I L R 42 Mad 116

See HINDU LAW—JOINT FAMILIES

I L R 43 All 118

See PARTNERSHIP ACT

—acknowledgment of liability or payment by partner—

See LIMITATION ACT (IV OF 1908) s 1 (-) 19 AND 20

I L R 37 Mad 148

I L R 41 Mad 427

—agreement to enter into—

See CONTRACT ACT (IV OF 1872) s 93

I L R 40 Bom 22

—dissolution of—

See CIVIL PROCEDURE CODE (1908) s 16 (a) (d)

I L R 41 All 513

See COURT FEES ACT (VII OF 1870) SCH II CLS 3 & 4

I L R 32 All 517

See MIRROR I L R 42 Cal 225

See SOLICITOR'S LIEN FOR COST

I L R 39 Bom 434

—Suit for dissolution in British Indian Courts—Partnership business carried on outside Jurisdiction of court—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 20

I L R 45 Bom 1223

—Suit for dissolution of by a partner who has been guilty of misconduct—

See CONTRACT ACT 1872 s 234

I L R 1 Lah 6

PARTNERSHIP—*contd.*

winding up of—

See APPEAL I L R 42 Calc 914

1 ———— Arbitration—Accounts—Managing partner's liability of—Onus—Reference to arbitration of claim of firm against co partners by one partner when binds firm—Reference after suit for dissolution One partner is not competent without special authority to bind the firm by a submission to arbitration *Administrator General v Official Assignee I L R 30 Mad 467* distinguished *Pam Parose v Kallu Mal I L R 30 All 135* *Duttobhoy v Vallu I Bom L R 55* approved The liability of co partners to account and how and to what extent it is discussed *HAZI MAHAMMAD AKBAR v DHARMA NATH SIKKAR (1910)* 14 C W N 1108

ON APPEAL 18 C W N 1025

2 ———— Accounts—Money received after dissolution—Partner whose remedy for general account is barred may sue to recover share of it if received after dissolution A partner whose remedy against his co partner for a general account is barred can recover his share of a particular item of a set received after the dissolution of the partner hip if it be open to the defendant co partner to ask the Court to take accounts with a view to show that the plaintiff had received more than his share in the partner hip assets *Sokkanadha Vanni Mundar v Sokkanadha Vanni Mundar I L R 35 Mad 341* followed *THIRUVENKATA MUDALIAR v SADAGOPA MUDALIAR (1910)* I L R 34 Mad. 112

3 ———— Adjustment of account—Final adjustment not signed—Pleadings want of precision in if material—Limitation—Cross demands in partner ship a count—You cause of action from adjustment—Limitation Act (IX of 1908) Sch I Art 64 11, and 170 When parties had agreed on the 2nd April 1904 that a settlement of partnership accounts between them should be made upon a certain basis and the final adjustment took place on the 10th August 1906 and entries to that effect were made in the books on that date but not signed by the parties in a suit brought in on the 16th April to recover the amount due on such adjustment—Held that it was an adjustment which gave rise to a fresh cause of action as from date and whether it was Art 110 or Art 120 of the Limitation Act that applied the suit was not barred When the plaint did not specify the day on which the adjustment took place but approximately indicated the time and proof was furnished of exact date at the hearing—Held that there was nothing in the pleadings which should prevent the Judge from arriving at any conclusion on the evidence adduced as to the date *JALIN SINGH SRIVALL v CHOONEE LALL JONTUNY (1911)* 15 C W N 882

4 ———— Representative carrying after partner's death—Contract Act (IX of 1872) s 253 (10)—Partnership business carried on after death of partner on the assumption of representative continuing as partner—Widow of deceased a pardana hin lady not taking any part in business and not examining accounts—Accountability of working partners—Accounts to commence from beginning of partnership if accounts not settled—Partnership money diversion of—Accounting with interest or profits—Remuneration to working

PARTNERSHIP—*contd.*

partner—Balancing of accounts effect of Where on the death of a partner the business was carried on on the assumption that his widow was a partner Held that the conduct of the parties showed that there must have been a contract between the original parties that the partnership would not be dissolved by the death of a partner within the meaning of cl (10) of s 253 of the Indian Contract Act but should be continued with the representative of the deceased as a partner The mere balancing of account in a book of account does not itself constitute an account stated much less does it constitute an account settled which the parties cannot reopen In a general account of partner hip dealing the time from which the account is to be in the commencement of the partnership unless some account has since that time been settled by the partners in which case the last settled account will be the point of departure Where one of the partners having the right to examine the partnership accounts did not for a long time exercise the right Held that unless a fraud was established purchases and sales in respect of the business by the working partners should not be challenged but they were bound to account for sums withdrawn from the partnership business and apply for purposes unconnected therewith with the profits realised therefrom or with interest at the option of the partner demanding the account Where one of the partners wilfully leaves the others to carry on the partnership business unaided the Court may upon dissolution decree an allowance in favour of the partner who had carried on the business alone *GOKUL KRISHNA DAS v SASHIVRAH DASI (1911)*

18 N W N 299

5 ———— Accounts—Partnership accounts—Banking concern joint—Deposit by a partner payable with interest—Suit to recover deposit if maintainable—Suit if maintainable when suit for dissolution and accounts previously instituted—Civil Procedure Code (Act V of 1908) s 10 Where it was arranged between the mother and guardian of plaintiff a minor partner of a banking concern and his co partners that each of the partners would be entitled to draw a certain fixed monthly allowance from the bank for personal expenses but the minor's allowance was by arrangement not taken out but permitted to accumulate with interest in the bank and in a suit for dissolution and accounts by the plaintiff he applied for an order on the Receiver appointed in the suit to pay the amount of the deposit with interest but the decision of the Court being adverse he instituted a fresh suit for the recovery of deposits with interest less one third the proportion recoverable from himself as a partner but the suit was dismissed and pending an appeal from the order of dismissal the plaintiff obtained an order of the High Court in revision directing an account to be taken of the amount alleged to be in deposit if plaintiff's appeal should fail Held that the suit was rightly deemed as barred by the provisions of s 10 of the Civil Procedure Code as the matter in issue in the suit was directly and substantially in issue in the previously instituted suit To stay the suit according to the strict language of s 10 until by the decision of the previous suit the matter would be res judicata was needless Obiter Though on general principles the claim of a partner against a joint banking

PARTNERSHIP—contd

subject to any agreement between the parties interest is payable on money paid or advanced by one partner for partnership purposes beyond the amount of capital which he had agreed to subscribe. That the respondent who claimed the benefit of the profits which accrued from the sums advanced to the partnership business by the defendant was bound in justice to make an allowance for interest on those sums to the partner. **GORINDA CHANDRA BASAK v HARIDAS BASAK (1915)** 20 C W N 634

14 — Partner borrowing for partnership purposes—Promissory note executed by two of three partners—No indication in promissory note of execution on behalf of partnership—Liability of the partner who was not a party to the note. A promissory note was executed by two out of three partners of a firm for money then advanced to the executants for purposes of the firm. The promissory note did not contain any indication that it was executed on behalf of the firm. In a suit on the note by the promisee. *Held* that even the third partner who did not execute the note was liable. *Per* SRINIVASA AYYANGAR J (obiter). An endorsee of the note cannot recover against the partner not executing the note. **Karmali, Abdulla v Karimji Jiraji** 1 L R 39 Bom 261 followed. **Somasundaram v Krishnamurthy** 17 Mad L J 196 and **Muthu Sastrigal v Iyengarotha Iyandhara Sannadhi** 26 Mad L J 19 distinguished. **SHANMUGATHA CHETTIAR v SRINIVASA AYYAR (1916)** 1 L R 40 Mad 727

15 — By manager of joint Hindu family with strangers—Right of other members of family to institute suits in respect of partnership. A contract of partnership entered into by the manager of a joint Hindu family with strangers does not ipso facto make the other members of the family partners and not being partners the other members whether divided or undivided cannot institute any suit in respect of partnership (e.g.) a suit for dissolution of partnership. **Solankanadha Iyannimundar v Solkanadha Iyannimundar** 1 L R 28 Mad 344 and **Ramanathan Chetty v Yegannappa Chetty** 30 Mad L J 241 approved. **Joopoodi Saranya v Lalshmanaswamy** 1 L R 36 Mad 185 distinguished. **GAYATRI v VENKATARAMAN (1917)** 1 L R 41 Mad 454

16 — Boat—co owners of—Employment of boat to earn freight—Partnership in freight—Suit for dissolution whether maintainable. 8 379 Indian Contract Act (IX of 1872). Where the co owners of a boat employ it to earn freight they become partners in respect of such earnings and a suit for dissolution of such partnership is maintainable although the plaintiff being only a co owner is not entitled to a decree for the sale of the boat employed by the partnership. **VANAMATI SATTIRAJU v BOLLAPRADEA PALLAN RAJU (1918)** 1 L R 41 Mad 939

17 — Death of one partner leaving a minor son—Suit by surviving partner against minor for rendition of accounts—Procedure. One of two partners in a specific business who was alleged to have been the managing partner died leaving him surviving a minor son. The other partner sued the minor as his father's representative for rendition of accounts and for payment of what might be found due to him (the plaintiff). *It* that it was maintainable (but the proper

PARTNERSHIP—contd

procedure was for the Court to direct both sides to produce their accounts and thereafter to pass a decree for whatever sum might appear to be due from one party to the other. **SHANKAR LAL v RAM BABU (1918)** 1 L R 40 All 448

18 — Dissolution—Right to sue for where it cannot be carried on except at a loss—Clause in partnership agreement stating date agreed upon for termination of partnership—Contract Act (IX of 1872) ss 252 254 sub s (6)—Right to protection of Court on equitable grounds—Direction of Court to grant dissolution. The defendants (respondents) a firm of contractors had undertaken the construction of the new Alexandra Dock in Bombay and they required for the work a large supply of granite and other stone. For that purpose they formed a partnership with the plaintiff (now represented by the appellants) for the quarrying and supplying the required materials. By cl 4 of the deed of partnership it was agreed that the working of the quarries and the partnership should continue until the supply of granite or other stone for the construction of the dock was completed and that the partnership should then terminate and be wound up. The plaintiff finding after a time that the partnership could not be carried on except at a loss brought a suit for its dissolution and for an account before the supply of granite and stone had been completed and the defendants contended that the suit was premature. *Held* (reverting on this point the decision of the appellate High Court which had set aside that of the trial Judge) that notwithstanding the terms of cl 4 the plaintiff was entitled on the ground alleged and under the circumstances of the case to have a dissolution under sub s (6) of s 254 of the Contract Act (IX of 1872). There was nothing in s 253 of that Act to constitute a bar to such a suit. A partner's claim to a decree for dissolution rested in its origin not on contract but on his inherent right to invoke the Court's protection on equitable grounds. In spite of the terms on which the rights and obligations of the partners might have been regulated and defined by the partnership contract. There was no ground for questioning or disturbing the discretion given by the Act and exercised by the original Court in making a decree for dissolution in the plaintiff's favour. **PERUMUTHU SIVASUBRAMANIAM v PRINCE (1917)** 1 L R 42 Bom 380

19 — Contract—whether one of partnership or service—Grounds for dissolution—accounts. Upon the construction of the document in question the relation between the parties was held to be that of partners and not master and servants. Refusal and neglect on the part of any one to perform the duties undertaken by him would give to any other partner the right to apply for dissolution but for dissolution by agreement the consent of all is necessary. The fact however that certain partners deliberately ceased to perform their duties would be taken into consideration in taking accounts. **W. KRISHNAMA CHARIAR v A SANKARA SAH (1918)** 25 C W N 314

20 — Death of one partner—Liability of surviving Partner for profits made in the business subsequent to the death of the deceased partner. Where on the death of one partner the surviving partner continued the business. *Held* that he was liable to give to the representative of the deceased partner a share in the profits of the business which may have accrued subsequent to the

PARTNERSHIP—cont'd

death of the deceased partner *Brown v Tait* (15 1) Jacob 254 later v *Finn* 13 Ch D 833
Crawshaw v Collins 10 Ves 216 1 Jac & Wa 267
Halkote v Hulme 1 Jac & Wa 12. *Alfred*
Musaji Salchji v Haslim Ibrahim Salchji 1 I P
 4. Cal 914 referred to *MAHOMED KAMEL v*
HAJI HEDAYETULLA (19-1) I L R 48 Cal 806

21 ——— *Suit by a partner for a partial settlement of account during the continuance of the partnership* Plaintiff one of the partners of a partnership entered into on 20th October 1913 for 3 years sued on 13th October 1915 for a settlement of the partnership accounts from 15th June 1914 to the 15th June 1916 alleging that the partnership had been put an end to on the latter date by defendant's conduct. It was found by the High Court that the partnership had not been dissolved and the question was whether the plaintiff was competent to sue for a partial settlement of accounts for the season 1914-15. *Held* that the general rule as applied in India is that if the account is sought in respect of a matter which though arising out of a partnership business or connected with it does not involve the taking of general accounts the Court will, as a rule give the relief applied for. It will be for the Court to determine under what circumstances it will be equitable to order a partial account having regard to the rights of the parties under the contract *Fairbairn v Neilson* (3 Hares Report 38.) followed *Karris Venkata Reddy v Kollu Varnaswamy* (1 L R 22 Mad 78) *Raghubar Dayal v Sheoramlal* (1 All L J P 94) and *J P Singhal v Law of Partnership in British India* pages 344-346 referred to. *Held* also that considering that prior to the 15th June 1914 the accounts were rendered daily and dividends distributed daily but after that date the defendant's agent stopped giving of the accounts daily and the payment of dividends and that written demands sent by plaintiff to the latter were left unheeded the plaintiff was justified in bringing the present suit for partial settlement of accounts. *HAJI MAL MELA PAM v KIRPA PAM BIRJ LAL*
 I L R 2 Lah 351

22 ——— *Limitation—Disolution—Assets received by partner—Right to sue for share—Taking accounts—Indian Limitation Act (XI of 1908) Sch I art 106—Indian Contract Act (IX of 1872) sec 65* If a partnership has been dissolved and accounts have been wound up the mutual rights and obligations of the partners therein being discharged and an asset which has been forgotten or treated as valueless afterwards falls in on ought to be divided between the partners in proportion to their shares in the partnership. But if no account has been taken the proper remedy of a partner in respect of an asset so received is to have an account taken if his right to sue for an account is barred by limitation he cannot sue the partner who has received the asset for a share of it. *Mervanji Hormuji v Pustomji Burjorji* (1892) 1 L R 6 Bom 6 S *Soklanadha Vannimundar v Soklanadha Vannimundar* (1906) 1 L R 28 Mad 314 and decisions following them disapproved. *Observations in Knox v Gye* (1971) L R 5 H L 636 explained. *GOPALA CHETTI v VEDATARANAVATTAR* (19-) I L R 45 Mad (P C) 378

PARTNERSHIP ACCOUNT*See* PARTNERSHIP

—suit for—

See LIMITATION ACT (XV of 1877)

I L R 38 Mad 185

Duty of each partner to discover all documents—Arbitration reference of dispute with customer to by one partner—Others if bound—Question if one of law—Agreement to refer not originally binding becoming binding by acquiescence or acceptance of benefit—Question if should be allowed to be taken for the first time on appeal—Partner charged with entering into agreement to refer negligently and improperly—Measure of damages—Onus of proof For the purpose of working out a partnership decree each party to the action is bound to produce and discover all documents in his possession relating to the partnership and an application by the plaintiff for discovery of documents in the possession of a defendant in such an action ought not to have been refused. *Held* that the decision of the High Court in so far as it was of opinion that the accounts taken by the Commissioner (and affirmed by the trying Court) were not properly taken or supported by evidence and must be investigated afresh was correct. A sum of money paid by a customer as the result of a reference to arbitration in which the legal personal representatives of a deceased partner were no parties having been brought into the partnership accounts the latter who did not dispute the item in the first Court for the first time on appeal contended that not being parties to the reference they were not bound by it. *Held* that the question whether the legal personal representatives of the deceased partner were bound by the agreement to refer and by the award was not a simple question of law to be decided without reference to the facts of the case or any evidence which might have been available if it had been raised at the proper time and the contention should have been rejected as having been put forward at too late a stage. An agreement to refer not originally binding might become binding later on by the acquiescence of the party or his acceptance of benefit thereunder. *Held* further that if the legal personal representatives of the deceased partner were not bound by the award they would not be entitled to relief on the footing that it was binding but had been negligently and improperly entered into. That if relief could be given on this footing the difference between the amount originally claimed against the customer and the amount paid by him under the award would not necessarily be the measure of damages nor could the onus of proving that it was any less sum be thrown on the person accused of negligent and improper conduct. *Haji Mahomed Albar v Duarka Nath Sarkar* 14 C W N 1106 reversed in part. *DWARKA NATH SARKAR v HAJI MAHOMED ALBAR* (1914) 18 C W N 1025

—*Suit for partnership accounts—Limitation Act (IX of 1908) Art 106—Specific assets realised within period of limitation* If a suit for general partnership accounts and a share in partnership profits is itself barred the plaintiff in such a suit cannot be allowed to proceed speculatively against any and every partnership asset which may have been realised by the defendant after dissolution and within the period of limitation. *Mervanji Hormuji v Ru torji*

PARTNERSHIP ACCOUNT—contd

Burgers I L R 6 Bom 628 distinguished. Ahmed SULEMAN v BRAGWANDAS VISRAM AND CO (1909) I L R 34 Bom. 515
Limitation Act (IX of 1938) Sch I Art 106—Money received by partner after dissolution of partnership—Suit by other partner for recovery of share therein if maintainable after suit for general accounts barred—Position where an item falls in after accounts squared off—Fresh cause of action It is contrary to the policy of the Legislature to allow a partner whose right to sue for a general partnership accounts has been barred by limitation to sue for his share of specific payments received from debtors by one partner subsequently to the dissolution of the partnership permitting the latter by way of set off to claim what may be found due to him upon taking the partnership accounts If a partnership has been dissolved and the accounts have been wound up and each partner has paid what he has to contribute to the debts of the partnership and received his share of the profits the mutual rights and obligations having been thus all discharged and then it turns out afterwards that there was some item to the credit of the partnership which was either forgotten or treated as valueless by reason of the supposed insolvency of the debtor or for any other cause which item afterwards becomes of value and falls in it ought to be divided between the partners in proportion to their shares in the original partnership. If on the other hand no accounts have been taken and there is no constant that the partners have squared up then the proper remedy when such an item falls in is to have the accounts of the partnership taken and if it is too late to have recourse to this remedy then it is also too late to claim a share in an item as part of the partnership assets K GOPALA CHETTY v T G VJABANRA ACHARIAR 28 C W N 977

PARTNERSHIP PROPERTY

See PARTNERSHIP I L R 43 Cal 733

PARTY

See RES JUDICATA I L R 36 Bom 189

PART PAYMENT

See LIMITATION ACT (IX of 1908) s 20

PART PERFORMANCE

See AGREEMENT TO TRANSFER 24 U W N 463

See COMPROMISE I L R 42 Cal 801

See ESTOPPEL

See TRANSFER OF PROPERTY ACT 1882 ss 41 AND 48 I L R 40 AIR 187

See UNIVERSITY LEADERSHIP I L R 41 Cal 518

Doctrine of applicability of Plaintiff sued for joint possession of land on declaration of her title She claimed it as heir to her father The defence to the effect that the Plaintiff's father had exchanged the land in suit for some other land with the defendant's vendor was found to be established Held that on the equitable doctrine of part performance the Plaintiff could not question the validity of the exchange

PART PERFORMANCE—contd

on the ground that it had not been effected by a registered document. That this doctrine has been applied by the Courts in recent judicial decisions without reference to the question whether the right to claim specific performance was or was not subsisting 25 C W N 905

PASSENGER

See CONTRIBUTORY NEGLIGENCE I L R 34 Bom. 427

PASSING OFF ACTION

See TRADE MARK I L R 17 Cal 204

PASTURE LAND

See Pasturage

See MADRAS ESTATES LAND ACT (I of 1903) s 3 I L R 18 Mad 738

*Tenancy—if permanent—Chakravarna Holdings—Occupancy right acquisition of in—Using land for purposes of cultivation if waste—Remedy of landlord—Forfeiture—Landlord and Tenant Act (X of 1859) s 6—Bengal Tenancy Act (VIII of 1885) s 5 (2)—Notices—Service—Transfer of Property Act (IV of 1882) ss 106 108 (a) 111 (g) The question being whether certain holdings situated in the tract known as Chakravarna or pasture lands in Mouzah Barantpur in Zillah Purnea were permanent tenancies it was proved that sales by private treaty and by auction through Court of such holdings were frequent that cases of ejectment were uncommon that such holdings frequently passed to the heirs of the deceased tenants and that mutation of names in the zamindars' shariat had been frequently allowed sometimes on payment of *na arana* and sometimes without Held that the proper inference to be drawn from these circumstances was that the tenants had a permanent right in the holdings and were not liable to ejectment on notice Per Doss J.—That assuming that the lands were settled with the tenants only for the purpose of grazing cattle the tenants had acquired a right of occupancy in the lands before the Bengal Tenancy Act came into force under s. 6 of Act X of 1859 Fitz Patrick v Wallace 11 W R 231 followed*

That it was not reasonable to hold that at the inception of the tenancies it was intended by the parties that the lands were never to be used for cultivation, and the tenants were rayats within the meaning of s. 5 sub s (2) of the Bengal Tenancy Act Per RICHARDSON J.—The tenants had failed to prove that the lands were left for purposes of cultivation or that they had acquired occupancy right therein. That by using the lands intended for grazing for purposes of cultivation the tenants did not incur forfeiture SAEIKH LATIFAR PAHA MAN v A H. FORBES (1909) 14 C W N 372

PASTURE RENT

—recovery of—

See MADRAS ESTATES LAND ACT (I of 1903) s 3 I L R 38 Mad. 738

PASTURAGE

Right of—Unassessed Government Waste—Right of pasture on not to exclude owner's right to possession—Acts necessary to obtain prescriptive title There are no statutory provisions

PASTURAGE—contd

in the Madras Presidency as in Bombay with reference to the grazing rights of villagers over adjoining Government waste. The right of pasture on unenclosed waste cannot exclude the owner's right to possession and enjoyment of the property over which such a right may exist. *Ram Saran Singh v. Birga Singh* 1 I. L. R. 19 All. 172 referred to *Secretary of State for India v. Mathambhai* 1 I. L. R. 14 Bom. 213. A distinction guided *CORJALA PICHU NAIDU v. VALLER VEERIAN* (1910) 1 I. L. R. 34 Mad. 53.

Suit for declaration of and for injunction—Here thirty years' prescription of enough—Presumption of right. In a suit for declaration that the plaintiffs who were cultivating tenants had a right of pasture over certain lands and for an injunction on the landlord to remove fences etc. therefrom the finding of the lower Appellate Court in decreeing the suit was that the land had been lying unoccupied from time immemorial and the villagers have been grazing their cattle here for more than 30 years. Their user was open and peaceful without interruption and should be in the circumstances of this case presumed to be as of right also. Held that this finding was not sufficient to establish the plaintiffs' right of pasture over the land in suit. It being a customary right it must be reasonable and it would be unreasonable to hold that no land over which cattle had grazed should ever be brought under the plough. *SYED ALI v. SARJAN ALI* (1913) 18 C. W. N. 735.

PATELKI SERVICE

See BOMBAY LAND REVENUE CODE (BOM. ACT V OF 1879) s. 902
1 I. L. R. 45 Bom. 894

PATENT

See INVENTION AND DESIGNS ACT (V OF 1888) s. 29
1 I. L. R. 41 All. 68

PATENTS AND DESIGNS ACT (II OF 1911)

See INVENTIONS AND DESIGNS ACT
See PATENT

s. 62, 64, 67—

See DESIGN 1 I. L. R. 45 Cal. 606

PATERNAL AUNT

See HINDU LAW—GUARDIAN
1 I. L. R. 23 Mad. 1125

PATILKI VATAN

See VATAN 1 I. L. R. 37 Bom. 81

PATKUM PARGANAS—

See BENIADI PATTAN
6 Pat. L. J. 687

PATNA HIGH COURT

Calcutta High Court decision of binding upon Patna High Court until dissented from by Full Bench. The decision by a Divisional Bench of the Calcutta High Court is binding upon the Patna High Court until dissented from by a Full Bench. *HARDIAN MESSER v. SYED MOHAMED* (1916) 20 C. W. N. 983.

PATNA HIGH COURT RULES

See HIGH COURT RULES AND ORDERS
Legal tie of—Letters
Patent of the Patna High Court cl. 29—Code of

PATNA HIGH COURT RULES—contd

Civil Procedure (Act V of 1908) ss. 122, 193, 194 and 125—Failure to furnish list of papers to be inserted in paper book—whether order dismissing appeal for default is appealable to His Majesty in Council. The rules of the Patna High Court 1916 are not *ultra vires*. No appeal lies to His Majesty in Council from an order of the High Court dismissing an appeal on failure of the appellant to prepare and deliver a list of the papers to be inserted in the paper book in accordance with rule 8 of Chapter IX of the Patna High Court Rules 1916. *RAJENDRA KISHORE v. RAJKUMAR KAKAKHTA NARAYAN SINGH* 5 Pat. L. J. 719.

—Ch. IV, r. 15—

See PRIVY COUNCIL, APPEAL TO
11 Pat. L. J. 114

—Ch. V, r. 3—Held that a question as to convenience of procedure is not a question of law within the meaning of this rule. *HITENDRA SINGH v. MAHARAJA SIR RAMESHWAR SINGH*
6 Pat. L. J. 293

—Ch. VI, rr. 11 and 16—

See LETTER PATENT 4 Pat. L. J. 695

—Ch. VI, r. 5—

See SUBSTITUTION OF PARTIES
5 Pat. L. J. 256

Appeal by person not a party to the suit. Held that r. 5 applied only to a person who seeks to appeal in order to establish his claim as a Beneficiary and not to any other claim. *SYED AHMED NAVAT v. SYED ABRAH HUSSAIN*
11 Pat. L. J. 43

—Ch. VII, r. 2—Limitation extension of time—Limitation Act (IX of 1908) s. 12. An absolute period of limitation of 30 days having been prescribed by Ch. VII, r. 2 of the Patna High Court Rules 1916 that period cannot be extended by virtue of any of the provisions of the Limitation Act 1908 relating to the extension of the periods of limitation prescribed by that Act. *DEOKI LAL v. RAMANAND LAL*
5 Pat. L. J. 701

—Ch. VIII, rr. 34—

See LETTER PATENT (PAT.)
4 Pat. L. J. 695

—Ch. IX, r. 8—

See ANTE
5 Pat. L. J. 719

PATNI

See PUTNI

PATNI LEASE.

See PUTNI

PATNI TALUQ

See PUTNI TALUQ

—Patni Tenure.

See PUTNI TENURE.

—Patnidar—

See PUTNIDAR

PATTA

See MADRAS ESTATES LAND ACT (I OF 1908) ss. 54 AND 58 CL. (c)
1 I. L. R. 33 Mad. 626

PATTA—contd

See UNDEF RAIYAT

I L R 33 Cal 278

tender of—

See MADRAS ESTATES LAND ACT (I OF 1909)

I L R 37 Mad 549

Suit to enforce acceptance of—Zamindari land converted into wet with Government water—Consideration failure of—Enhancement—Rent Recovery Act (VIII of 1865) s 11 Certain dry zamindari lands were converted into wet by the use of water from a channel constructed and maintained solely by Government. Held that there was no consideration for the zamindar to levy enhanced rent notwithstanding stipulation for enhancement should the land be cultivated as wet. The conditions laid down in the Rent Recovery Act (Mad VIII of 1865) s 11 not being present the zamindar was precluded from levying enhanced rent. **SRIJAY PATAI MALLIKARJUNA PRASADA NAIDU v SUBBAYYA** (1913)

I L R 36 Mad 4

PAUPER

See CIVIL PROCEDURE CODE 1908 SCH I

O XXV R 1 I L R 38 Bom 415

See PAUPER SUIT

appeal by—

See CIVIL PROCEDURE CODE 1908

O 44 r 1

suit by—

See CIVIL PROCEDURE CODE 1908 s 47

AND O XX 4 Pat L J 166

Next friend of a pauper minor if to prove his own pauperism. **ANANDIAO v SECRETARY OF STATE** (1910)

23 C W N 955

PAUPER PLAINT

See STAMP DUTY I L R 33 All 469

PAUPER SUIT

See CIVIL PROCEDURE CODE (1882)

s 411 I L R 34 All 223

See CIVIL PROCEDURE CODE 1908—

s 115 I L R 32 All 623

O XXVIII

Second application—where the previous one was rejected for want of schedule of property—

See CIVIL PROCEDURE CODE 1908 O 37

RR 25 AND 15 I L R 1 Lah 151

Application to sue as—Disqualification—Subject matter of suit—Cause of action—Civil Procedure Code (Act I of 1909) O XXVIII rr 1 2 and 5 A mortgagor applied for permission to institute a suit as a pauper for the setting aside of a sale of the mortgaged property by the mortgagee with an alternative claim for damages. The mortgagee admitting there was a surplus due to the applicant after the mortgage debt had been satisfied paid it into Court and contended that the applicant was not a pauper and that the applicant disclosed no cause of action. Held that the applicant was a pauper within the meaning of the Explanation to

PAUPER SUIT—contd

O XXVIII r 1 of the Civil Procedure Code (Act I of 1909) but that the allegations contained in the application did not disclose a cause of action. **Dwarkanath v Madhavrai I L R 10 Bom 207** not followed. **FATMABAI v Dossabhai Rustomji Umrigar** (1909)

I L R 34 Bom 63

Application for leave to sue in forma pauperis—Civil Procedure Code (Act I of 1908) O XXVIII rr 4 5 7—Scope of enquiry—Power of the Court under s 4—Witnesses to be examined on the question of pauperism only—No evidence except evidence of the applicant on the merits of the claim permissible in an enquiry under O XXVIII of the Civil Procedure Code the Court cannot take evidence (except the evidence of the applicant himself) on the merits of the claim. P 4 expressly gives power to the Court to examine the applicant regarding the merits of the claim and the property of the applicant so that there is no doubt that the applicant himself can be examined not only with reference to the question of his pauperism but also with reference to the merits of his claim. It is open to the Court to consider not only the statements made in the plaint but also the statements made in his examination by the applicant before determining whether his allegations disclose a cause of action as laid down in cl (d) of r 5 of O XXVIII. But the Court cannot examine other witnesses for deciding the question of limitation or any other question than the pauperism of the applicant. The evidence to be taken under r 7 is confined to the evidence which may be adduced by the applicant in proof of his pauperism and any evidence which may be adduced in disproof thereof as laid down in r 6. **Kamrakh Nath v Sundar Nath I L R 20 All 299** **Dulari v Vallabhadras Pragn I L R 13 Bom 126** and **Dawab Bahadur of Moorsheedabad v Harihar Chandra Acharye 13 C L J 593** followed. **JOGEENDRA NARAYAN RAY v DURGA CHARAN GUHA THAKURTA** (1918)

I L R 30 Cal 651

PAY AND PENSION

See SECRETARY OF STATE FOR INDIA

I L R 38 Cal 318

PAYMENT

See BILL OF COSTS

I L R 43 Cal 517

See SALE OF GOODS

I L R 45 Cal 23

I L R 42 Bom 18

By Debtor—

See ACCOUNT—

I L R 41 Cal 839

plea of—

See MORTGAGE I L R 37 All 426

to some only of the Trustees—

See TRUST I L R 39 Mad 597

under compulsion of law—

See DEPOSIT COURT

I L R 43 Cal 269

PAYMENT INTO COURT

See CIVIL PROCEDURE CODE 1908—

ss 47 73 O XXI R 5

I L R 36 Bom 156

PAYMENT INTO COURT—contd

See CIVIL PROCEDURE CODE 190 —
O XXI No. 80 AND 81.

I L R 45 Bom 1094

See TRANSFER OF PROPERTY ACT (I of 1882) s 63 I L R 22 ALL 142

Cal—Sut to set aside sale—Sut decreed on plaintiff paying into Court certain amount—Mortgagee from plaintiff paying the money to save the sale from being set aside—Assignment of plaintiff's interest—Mortgagee paid off—Application by mortgagor to withdraw the money paid into Court—Mortgagee cannot be allowed to withdraw unless on an application by one of the parties—One Banulal for himself and as guardian of her son Banemiyal and daughter Lutlalal sold the property in suit to one Mahomed Banemiyal and Lutlalal brought a suit to set aside the sale and it was decreed that the plaintiffs should on paying into Court a certain sum of money within six months take into possession their shares of the property on partition and that in default of payment the suit should be dismissed—One Dattatraya who was a mortgagee from Banemiyal paid the decretal amount into Court on the 22nd August 1918 to save the suit from being dismissed—On the 16th September 1918 Banemiyal sold the remaining interest in the property to one Ismail—Subsequently on the 3rd October 1918 Dattatraya's mortgage was redeemed and on the 4th October 1918 he applied to the Court to withdraw the amount—This application was opposed by Ismail—The Subordinate Judge made an order allowing Dattatraya to withdraw the money paid into Court—Held setting aside the order that though the money was produced by Dattatraya it was paid into the credit of the proceedings and could only be dealt with an application made in the regular course by one of the parties and that Ismail could be heard as he was the person in whose favour interest was created by the plaintiffs—ESMAIL ALLABAKHIA v DATTATRAYA PANCHANDRA (1920) I L R 45 Bom 967

PAYMENT TOWARDS DEBT

See LIMITATION I L R 44 Calc 567

PECUNIARY SUFFICIENCY

See SURETY I L R 44 Calc 737

PEDIGREE.

See EVIDENCE ACT (I of 1872) s 32

I L R 27 All 600

Question of pedigree—Plaintiff and his witnesses not directly cross examined on the case raised by defendant—Court if should accept such case—Plaintiff's case believed by trial Court—Reversal by High Court on such basis if correct—Where the question was whether plaintiff A was the legitimate son of Muhammad Sher Khan by his wife Musammatal Munna and A himself and his witnesses gave evidence that he was but the only question put to them in cross examination was whether Muhammad Sher Khan had a woman named Sandana in his keeping as a mistress and when witnesses for the defendants were being examined some attempt was made to prove that A was the son of another person of the name of Muhammad Sher Khan who had a mistress named Sandana and the trial Court believed A's case which was supported by strong and straightforward evidence on the record.

PEDIGREE—contd

and as to the case of the defendants held that the whole story was a pure concoction and was unworthy of credit—Held agreeing with the trial Court that the High Court on appeal was not justified in dismissing the plaintiff's suit on the view that it was quite possible that the real truth was that the defendant was the son of Musammatal Sandana who was kept by Muhammad Sher Khan having been influenced thereto by the fact that the suit was being financed by a co-plaintiff in whose favour A had executed a deed of sale in respect of a moiety of the property claimed and in accordance with which the litigation was being financed—ABDEL AZIZ v TASHABUL HUSSEIN (1917)

21 C W N 573

PENAL ASSESSMENT

levy of—

See MADRAS LAND ENCROACHMENT ACT (III of 190) s 35 14

I L R 33 Mad 674

Right of Government to levy—Interference with possession—Possession short of the statutory period is a sufficient basis for a suit for a declaration of title—Specific Relief Act (I of 1877) s 40 Per CURRIE—The Government has no right to collect penal assessment from a person in possession of land simply on the ground that he is not the legal owner of the land but such right is conditional on the land being communal—Per ABDUR RAHIM J (ALYIA J dissentante)—A person in possession of land even though for less than 12 years would under s 42 of the Specific Relief Act be entitled to a declaration that he is in lawful possession as against a wrong doer who interferes with his possession—ISMAIL ARIF v MAHOMED GHOS I L R 20 Cal 335 applied—HANMANIRAY v Secretary of State for India I L R 25 Bom 237 distinguished—Kousonada Rayar v Siharanga Pillai 2 Mad H C 171 referred to—The levying of penal assessment on land if not justified amounts to unlawful interference with possession—ATTA PARAJI v SECRETARY OF STATE (1919)

I L R 37 Mad 298

PENAL CODE (ACT XLV OF 1860)

Effect of on previous Penal Laws

See CONTEMPT OF COURT

I L R 41 Calc 173

Preamble and ss 1 2 5 499—

See DEFAMATION I L R 48 Calc 338

Chaps XII and XVII—

See CRIMINAL PROCEDURE CODE (ACT V of 1893) s 318

I L R 33 Mad 552

ss 7 27 243—

See COUNTERTENET COIN

I L R 44 Calc 477

s 8—

See PILDER I L R 44 Calc 290

s 21—Illegal gratification taking of by a public servant—Public servant unpaid apprentice if not a public servant within the meaning of s 21 of the Indian Penal Code—MAHENDRA PRASAD v EMPEROR (1910)

15 C W N 319

ss 22, 403—Criminal misappropriation—Movable property—Letter addressed to one

PENAL CODE (ACT XLV 1860)—*contd*ss 22 403—*contd*

person retained by another. A letter addressed to H was handed by a postman to W who was at the time in a room in the occupation of H. W read the letter and put it on a table in the room and left it there. H took the letter and subsequently attempted to file it as an exhibit attached to an affidavit made by him in a suit for judicial separation between H and his wife for the purpose as he afterwards stated of strengthening Mrs W's case and of improving his own position. The Court however refused to receive the letter. Held that in the circumstances H could not be convicted of dishonest misappropriation of property with respect to his retention of the letter. *Quere* Whether the letter could be regarded as moveable property within the meaning of s 22 of the Indian Penal Code. *EMPEROR v HARRIS* (1917) I L R 40 All 119

ss 23 24 463 to 465—

See FORGERY I L R 43 Calc 421

ss 24 25 463 464, 471—

See FORGERY I L R 38 Calc 75

s 27—

See COUNTERFEIT COIN

I L R 44 Calc 477

ss 29 30 464 467 and 474—*Forgery*
—Document meaning of—Valuable security—In complete document—Material alteration of incomplete document effect of. An agreement in writing which purported to be entered into between five persons was signed by only two of them. It was altered by the addition of some material terms by the accused who was one of the two executants without the consent or knowledge of the other executant and was not signed by the other parties to the agreement. The accused was in possession of the instrument which was altered by him. Held by OLDFIELD J (on a reference under s 429 Criminal Procedure Code owing to difference of opinion between SADASIYA AYYAR and PHILLIPS JJ) that the accused was guilty of the offence of forgery of a valuable security under s 467 or of being in possession of a forged document under s 474 of the Indian Penal Code. The instrument though not signed by all the parties thereto fulfilled the requirements of the definition of a document in s 29 of the Code. The document was a valuable security because it imposed an obligation on the actual executants and an option on the others and there was no express or implied condition precedent to be found in the document or established by independent evidence that the document was to be inoperative against the executants until all the parties executed it. It is open to the accused to plead and to prove that the alterations were not made fraudulently or dishonestly, because they represented what accused in good faith believed to be the truth and intended to use to support what in good faith he claimed or might claim. *Que v Empress v Syed Musauin I I P* All 403 *Queen Empress v Sheo Dyal I I P* 7 All 429 *Que v Ali Khan Perhai 2 All P* H C R 202 and *Manickia Isari v Emperor* (1915) Mad W 278 referred to *P. J. v Turpin* C A 80 disapproved *P v Bingley* (1871) R d P 419 referred to *R v Lee 3 Cox 89* and *R v Harper 7 Q B D 78* followed. *RAMASWAMI AYYAR v THE KING EMPEROR* (1917) I L R 41 Mad 589

PENAL CODE (ACT XLV OF 1860)—*contd*

s 30—

See MAGISTRATE POWER OF

I L R 38 Calc 63

ss 30 467—Valuable security
—Forgery—Incomplete documents bearing forged signature of executant. Two documents were found in the possession of the accused each bearing a signature which purported to be that of one Bindhyachal but which in fact was a forged signature. One document was intended to be filled up as a promissory note the other as a receipt but the spaces for particulars of the amount the name of the person in whose favour the document was executed the date and place of execution and the rate of interest were not filled in. An one anna stamp was affixed to each but it was not cancelled in any way. Held that these documents nevertheless purported to be valuable securities within the meaning of the definition contained in s 30 of the Indian Penal Code. *QUEEN EMPRESS v RAMASAMI I L R 12 Mad 49* referred to *EMPEROR v JAWAHIR THAKUR* (1916) I L R 38 All 430

ss 30 and 471—Forged document—User whether filing with plaintiff amounts to—Valuable security whether paper or which an account is written in. The filing of forged documents with a plaintiff is user of them within the meaning of s 41 of the Penal Code. A document whereby a person acknowledges himself to be under a legal liability is a valuable security within the meaning of s 30. *INDU JALANA v THE CROWN 3 Pat L J 386*

s 34—Several persons acting with a common intention. s 34 does not create a distinct offence but lays down a principle of liability and when two or more persons join actively in and as a result on a 3rd person they are directly responsible for the injuries caused to the extent to which they had a common intention to cause these injuries and what their common intention was must be gathered from the circumstances. *FORZULAN v THE KING EMPEROR*

25 C W N 24

ss 34 109 114—

See ATTEMPTED ACQUITT

I L R 41 Calc 10:2

ss 34 109 487—Forgery—Abetment of forgery—Abetment by conspiracy—Conspiracy at Cambay foreign territory—Consequent forgery committed in British India—Trial in British India of the foreigner who conspired to forge at Cambay and who was in Cambay when the forgery was committed in British India—Jurisdiction. The accused was a subject of the Camtaya State. He lived there and traded with his business partner. He conspired with A at Cambay and sent B to a professional forger at Umroth (a place in British India) with instructions to instigate the latter to forge a valuable security. To facilitate the forgery the accused sent his library book with A. In pursuance of A's instigation the forgery was committed at Umroth. On these facts the accused was charged in a Court in British India with the offence of abetment of forgery under ss 167 and 109 of the Indian Penal Code. The trial Judge referred to the High Court the question whether the accused not being a British subject was amenable to the jurisdiction of his Court. Held that the Court in British India had jurisdiction to try the accused for the accused's offence was not wholly complete.

PENAL CODE (ACT XLV OF 1860)—*contd*ss 34 103 46—*contd*

within Cambray limit but having been initiated there was continued and completed within the British territory of Umreth. Where a foreigner starts the train of his crime in foreign territory and perfects and completes his offence within British limits he is triable by the British Court when found within its jurisdiction. S 34 of the Indian Penal Code provides not only for liability to punishment but also for subjection of a comparator to the jurisdiction of a Court though he conspires at a place beyond the jurisdiction. *EMPEROR v CHHOTALAL BANAR (1911)*

I L R 36 Bom 524

ss 37 302, 304—

1 ——— *Murder—Culpable homicide not amounting to murder—Fatal assault with lathis by three persons acting in concert* Three persons brothers attacked with lathis a fourth against whom they bore a grudge and beat him with great severity so that he died shortly afterwards. His skull was badly fractured and numerous other injuries were inflicted upon him. It did not appear which injuries were caused by which of the assailants but the evidence showed that they were acting in concert and intended to cause such bodily injury as was likely to cause death. *Held* that all three assailants were guilty of murder. *King Emperor v Subbappa Chunnappa 10 Bom L R 301 and King Emperor v Kanhai I L R 35 All 379 followed Emperor v Bhole Singh I L R 29 All 287 Queen Empress v Duma Baidya I L R 19 Mad 453 Gouridas Vamasudra v Emperor I L R 36 Cal 659 Empress v Dharam Pasi All Weekly Notes (1887) 26 Dhan Singh v King Emperor 9 All L J 180 distinguished. EMPEROR v RAM NEWAZ (1913)* I L R 35 All 506

2 ——— *Murder—Culpable homicide not amounting to murder—Fatal assault with lathis by several persons acting in concert* Five men—members of the same family—assaulted an unarmed man and beat him with their lathis. They knocked him down and continued beating him with the result that he died then and there. Another man who came to the rescue of the first was also knocked down and beaten by the same five men with a similar result. *Held* that all five men were in each case guilty of the offence of murder. *Dhan Singh v King Emperor 9 All L J 180 disented from EMPEROR v HANUMAN (1913)*

I L R 36 All 560

s 39—

See s 290 I L R 84 Mad 92

ss 40 and 79—*Madras Forest Act (V of 1882) offence under—Justification plea of not available* The plea of justification provided by s 79 of the Indian Penal Code (XLV of 1860) is available only for an offence punishable by the Penal Code and not for offences punishable by any special or local law and hence the belief of the accused that he was justified in his act does not exculpate him from punishment for his guilt under s 21 of the Madras Forest Act. *Emperor v Kasi in Sub 14 Bom L P 575 disented from In re Penchul Pettis 9 Mad L T 216 followed Re Lewis (1913)* I L R 38 Mad 73

ss 52 191 193—*Perjury—Verdict of a court of appeal for execution containing a statement*

PENAL CODE (ACT XLV 1860)—*contd*ss 52 191 193—*contd*

fact untrue—Good faith A man cannot be convicted of perjury under s 193 of the Indian Penal Code for having acted rashly or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true. It must be found that he made some statement which he knew to be false or which he believed to be false or which he did not believe to be true and this finding should be arrived at independently of the definition of good faith in s 52 of the Code. *EMPEROR v MUHAMMAD ISHAQ (1914)* I L R 36 All 362

ss 59 304 (1)—*Culpable homicide not amounting to murder—Sentence of transportation for fourteen years if legal—Sentence by High Court—Interference by Privy Council—Substantial injustice* Whilst s 304 (1) and s 59 of the Indian Penal Code authorise a sentence of transportation for life they do not empower a Court to impose a sentence of transportation for a term of years exceeding the maximum term for which a sentence of imprisonment can be imposed namely ten years. Where the High Court passed a sentence of transportation for fourteen years upon the accused who had been convicted under s 304 (1) of the Penal Code. *Held* that the sentence not being authorised by law the Privy Council must hold that there was substantial injustice for the sentence might involve the incarceration of the accused during many years without legal authority. *Re Dillei L R 12 App Cas 459 461 (1887) referred to SATYAPUREDDI CHIVAYYA DORAI v THE KING EMPEROR* 25 W N 514

s 62—*Sentence—Forfeiture of property—Offences in respect of which forfeiture is a available penalty* *Held* that s 62 of the Indian Penal Code which empowers a Court to order in certain cases the property of a convicted person to be forfeited to the Crown should ordinarily be applied in cases of crimes against the State or affecting the safety of the public generally. *EMPEROR v GAYAPRASAD (1914)*

I L R 36 All 395

See ACT XVI OF 1911 s 4

s 64—

See CALCUTTA MUNICIPAL ACT ss 374 376 15 C W N 806

ss 71 147 149 and 325—

See CRIMINAL PROCEDURE CODE s 106 (3) I L R 33 All 48

ss 71 147 149 and 325—

See SENTENCE 3 Pat L J 641

ss 71 353—

one act constituting two offences—

See GENERAL CLAUSES ACT 1897 s 26 I Pat L J 373

ss 71 147 323—*Criminal Procedure Code ss 35 and 235—Separate convictions for rioting and causing hurt* Where several persons being on their trial on a charge of rioting it appears that some of them have also committed the offence of causing simple hurt under s 323 of the Indian Penal Code there is no legal objection to charging such persons under that section and convicting them of and sentencing them for such offence as well as for the offence of rioting. *EMPEROR v KATWAR PARI (1917)* I L R 39 All 623

PENAL CODE (ACT XLV 1860)—contd

— s 75—

See PRACTICE I L R 44 Bom 325

Criminal Procedure Code (Act V of 1898) s 565—Whipping Act (II of 1909) s 3—Sentence of whipping only passed on accused—Order to accused to notify his residence—Validity of the order s 565 of the Criminal Procedure Code (Act V of 1898) must be strictly construed. The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict. It cannot be made where the Court instead of passing that sentence passes a sentence of whipping. EMPEROR v. FULJI DITIA (1910)

I L R 35 Eom 137

Previous conviction by a court in a Native State—Held that the provisions of s 75 of the Indian Penal Code cannot be applied when the previous conviction is one passed by a Criminal Court in a Native State. BAKAVEL v. KING EMPEROR 48 PUNJ REC 61 Cr I followed. EMPEROR v. BHAWAR I L R 42 All 136

s 76—Evidence Act (I of 1872) s 105—Question whether act done by accused falls within general exceptions—Evidence—Presumption—Pleading. Where an accused person has raised pleas in consistent with a defence which would bring his case within one of the general exceptions in the Indian Penal Code he cannot in a trial set up a case based upon the evidence taken at his trial that his act came within such general exception. Circumstances which would bring the case of an accused person within any of the general exceptions in the Indian Penal Code can and may be proved from the evidence given for the prosecution or to be found elsewhere in the record but there must be evidence upon which such circumstances can be found to exist and when they are not shown to exist the Court is not competent to assume more particularly when the pleas taken are inconsistent with such assumption that such circumstances might have existed or that doubt may arise in consequence of such a supposition and the accused ought to be given the benefit of the doubt. QUEEN EMPRESS v. LIMAL I L P 21 All 122 referred to. EMPEROR v. WAJID HUSSAIN (1910)

I L R 32 All 451

— ss 76 78 342—

See WROUGHT CONFINEMENT

I L R 47 Cal 818

— s 78—

See s 40 I L R 38 Mad 772

See s 107 N Pat L J 129

See WROUGHT CONFINEMENT

I L R 47 Cal 818

— ss 79 141 147 342—

See RIOTING I L R 48 Cal 78

s 80—Plea of accident—Onus on accused—Criminal case—Motive for committing offence—Criminal Procedure Code (Act V of 1898) s 342—Written statement filed by accused—Framing of accused by Court. Per CHITTY J. If the accused puts forward a substantive defence of accident within the purview of s 80 Indian Penal Code it is incumbent upon him to prove it. Where the evidence as to the deed is sufficiently convincing it is immaterial to consider with what motive it was done. Per LEACHCLOTH J. There

PENAL CODE (ACT XLV 1860)—contd

— s 80—contd

is no provision in the Code of Criminal Procedure for the making of a written statement by an accused in the Sessions Court and the practice of refusing to answer questions and of putting in a written statement is a pernicious one. KING EMPEROR v. DWILAKHA CHAUDHA MUKHERJEE (1916)

19 C W N 1043

— ss 81 83—Offence of rape committed by a boy under fourteen—Presumption. Held that the presumption of English law against the possibility of the commission of the offence of rape by a boy under the age of years 14 has no application to India. EMPEROR v. PARAS PAM DUBE (1915)

I L R 37 All 187

s 84—Exemption from criminal responsibility on account of unsoundness of mind. A person whose cognitive faculties are not so impaired as to make it impossible for him to know the nature of his act or that he was doing what was wrong or contrary to law is not exempted from criminal responsibility under s 84 Indian Penal Code. QUEEN EMPRESS v. KADER LAJER KHAN I L R 23 Cal 803 referred to. The burden of proving unsoundness of mind rests on the accused. KING EMPEROR v. PAM SUNDAR DAS (1919)

23 C W N 621

— s 86—Interpretation of—Drunkenness—Knowledge and intent. Per AYLING J. Ordinary drunkenness makes no difference to the knowledge with which a man is credited and if an accused knew what the natural consequences of his act were he must be presumed to have intended to cause them. Per TILLY J. — s 86 Indian Penal Code must be construed strictly. It provides that the intoxicated person shall be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated but it does not provide that he shall be dealt with as if he had the same intent. Re MANDEV GADABA (1914)

I L R 38 Mad 479

— s 90—

See s 366

I L R 42 Bom 391

Consent obtained on misrepresentation illegal—Penal Code (Act XLV of 1860) s 366—Kidnapping a girl with such consent obtained from guardian. The offence of kidnapping consists in taking or enticing a minor out of the keeping of the lawful guardian of such minor without the consent of such guardian. If a minor is taken with the consent of the guardian and subsequently married improperly without the consent of the guardian to any person such improper marriage would not by itself amount to kidnapping. A consent given on a misrepresentation of a fact is one given under a misconception of fact within the meaning of s 90 Indian Penal Code and as such is not useful as a consent under the Penal Code. A misrepresentation as to intention of a person (in stating the purpose on which the consent is asked) is a misrepresentation of a fact within the meaning of s 3 of the Evidence Act. Per COMAN. Equally useless as a defence is a consent obtained by a fraud or coercion. I v. Hopkins. Car d Mor v. of Jelaad. I Jalaad (1913)

I L R 36 Mad 453

— s 95—

See CRIMINAL PROCEDURE CODE ss 435
AND 439 I L R 43 All 497

PENAL CODE (ACT XLV 1860)—contd

— s 97—

See EVIDENCE ACT (I of 1872) s 105
I L R 40 All 284

— ss 97 99—*How search by Police*

of r—General search—Search for specific article—Criminal trespass—Right of private defence—Code of Criminal Procedure (Act I of 1893) ss 433 437 165 and 91—District Magistrate power of to order further inquiry after discharge Every person has a right subject to the restrictions contained in s 99 of the Indian Penal Code to defend property whether moveable or immovable of himself or of any other person against any act which is an offence falling within the definition of criminal trespass. The law does not empower a police officer to search an accused person on a house for anything but the specific article which have been or can be made the subject of summons or warrant to produce. A general search for stolen property is not authorised and the law cannot be got over by using such an expression as "stolen property relevant to the case" as the law requires the mention of specific things. Where one of the accused in resisting such a search pushed the Sub Inspector and the latter ordered two constables to climb on his roof and break into the house whereupon the villagers assumed a threatening attitude and threatened to cut them to pieces if they entered the house and this empty threat was sufficient to prevent the Police from committing the trespass. *Held* that the accused had not exceeded the right of private defence and were rightly discharged and there was no ground for further enquiry. **PRANEHAJI v KING EMPEROR (1912)** 16 C W N 1078

See SEARCH BY POLICE OFFICERS

I L R 41 Cal 261

— ss 99 147—*Right of private defence*

—Rioting—Trespass—Wrongful possession for 14 hours—Repelling trespass by force if any offence Where the opposite party erected some huts stealthily at night on a plot of land of which the petitioners were in peaceful possession and it was alleged that the opposite party were in possession of the land for about 14 hours and the petitioners at break of day on coming to know of this took the earliest opportunity to exercise their own right of private defence and came to the spot armed to turn out the opposite party who were found by them still engaged in erecting more huts and there was a free fight between the parties and the petitioners did not inflict more hurt than was necessary for defending themselves. *Held* that the petitioners were not guilty of rioting and that in the circumstances of the case the petitioners had no time to have recourse to the public authorities and they were entitled to their right of private defence. **CHANDULLA SHEIKH v THE KING EMPEROR (1912)** 18 C W N 275

— ss 99 147 148 and 326—

See PRIVATE DEFENCE

3 Pat L J 653

— ss 99 103—

See PRIVATE DEFENCE—RIGHT OF

The resistance must only be sufficient to overcome the force employed by the attacker. **RAM PRASAD MANTON v KING EMPEROR** 4 Pat L J 289

PENAL CODE (ACT XLV OF 1860)—contd

— ss 147 323—

See RIOTING I L R 39 Cal 896

— ss 99 147 323 353—

See SEARCH WITHOUT WARRANT

I L R 38 Cal 304

— ss 99 353—*Assault—Public servant acting under colour of office and in good faith—Right of private defence* Where the petitioner was convicted under s 303 of the Penal Code of having assaulted a Civil Court peon when executing a writ of delivery of possession of a share in a tank by ordering some fishermen to cast their nets in the tank and catch fish for the decree holder as provided in the writ. *Held* that whatever mistake there might be in the procedure of the Munsif in giving the direction in the writ the petitioner had no right of private defence under s 99 of the Penal Code against the peon who was a public servant acting under colour of his office and in good faith. **PREO LAL MUKHERJI v THE KING EMPEROR (1913)** 18 W N 548

— ss 100 325—*Gracious Hurl—Private defence—Plea cannot be set up in cases of deliberate fight* The right of private defence cannot be successfully invoked by men who voluntarily and deliberately engage in fighting with their enemies for the sake of fighting as opposed to the case where men are reluctantly forced to use violence in order to protect themselves from violence offered to them. **EMPEROR v BECHUR ANOR (1915)** I L R 40 Bom 105

— ss 107 108 109 116 161—

See ABETMENT OF AN ABETMENT

I L R 48 Cal 607

— ss 107 108 121 124A—*Waging of war abetment et—Sedition* The accused published a book containing eighteen poems of which four were the subject matter of the charge. The general trend of the poems charged as well as the remaining ones in the book evinced a spirit of blood thirstiness and murderous egotism directed against the Government conveyed the urgency of taking up the sword and made an appeal of blood thirsty incitement to the people to take up the sword form secret societies and adopt guerilla warfare for the purpose of rooting out the British rule. *Held* that the accused committed the offence of abetting the waging of war (s 121 of the Indian Penal Code) by the publication of the poems charged. *Held further* that the Court was entitled to look into the poems other than those forming the subject matter of the charge for the purpose of finding out the intention of the writer and the design of the publication. *Per CHANDAVARKAR J* Under the Indian Penal Code the waging or levying of war and the abetting of it are put upon the same footing by s 121 that is the abetting of waging of war is under the Code as much an offence of treason as the waging of war itself. The word "abetment" is defined in s 107 of the Code and one of its meanings as given there is "instigating any person to do anything. This meaning is not excluded by anything that occurs in s 121. The general law is laid down in ss 107–120 of the Code. According to it to constitute the offence of abetment it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence should be caused." This applies to the abetment of the waging of war.

PENAL CODE (ACT XLV OF 1860)—contd

ss 107 108 121 124A—contd

again t the King as much as to the abetment of any other offence under the Code. The only difference created between the former offence and other offences is that while under the general law as to abetment a distinction is made for the purposes of punishment between abetment which has succeeded and abetment which has failed s 121 does away with that distinction so far as the offence of waging war is concerned and deals equally with an abettor whose instigation has led to a war and one whose instigation has taken no effect whatever. And that for this simple reason that such a crime more than any other must be sharply and severely dealt with at its very first appearance and nipped in the bud with a strong hand. *Per HEATON J* Under s 107 of the Indian Penal Code there may be an instigation of an unknown person. The word abet as used in s 121 of the Code has the same meaning as is given to it by s 107. The abetment meant by 121 is not necessarily confined to abetment of some war in progress. There may be and usually is, instigation of rebellion before rebellion actually begins. That kind of instigation is under the Code abetting waging war against the King. So long as a man only tries to inflame feeling to excite a state of mind he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war. **EMPEROR : GANESH DAMODAR SALAFKAR (1910)**
I L R 34 Bom 394

ss 107 342 and 79—If *rongal* confinement—Abetment whether advice amounts to—Code of Criminal Procedure (Act I of 1898) s 59—bona fide arrest by private person—Prisoner not taken to nearest police station effect of Advice per se does not necessarily amount to instigation within the meaning of the first clause to s 107 of the Penal Code. Instigation necessarily connotes some active suggestion or support or stimulation to the commission of the act itself. Advice amounts to instigation only if it was meant actively to suggest or stimulate the commission of an offence. A bare finding that the accused must have advised the arrest of the complainant is not sufficient to support a conviction for abetting the offence of wrongful confinement. Where a constable went into a shop and demanded the loans of a certain cooking utensil and on being refused beat the shopkeeper and another constable stood outside throughout the proceeding and shouted *maro maro* held that the latter was guilty of abetting not only the beating but also the attempt to extort and was therefore liable to arrest under s 59 of the Code of Criminal Procedure 1898. Where a private person on bona fide makes an arrest under s 59 of the Code of Criminal Procedure 1898 but takes the prisoner to the Magistrate instead of to the nearest police station he is protected from a charge of wrongful confinement by the provisions of s 79 of the Penal Code. **PAGNEVATH DISS : THE KING EMPEROR**
5 Pat L J 129

ss 108—

See s 107 I L R 34 Bom 394
I L R 48 Calc 607

s 108 Expl 4 ss 109 and 116—

Abetment of an offence—Instigating another to an

PENAL CODE (ACT XLV OF 1860)—contd

s 108 Expl 4 ss 109 and 116—
contd

Magistrate to accept a bribe—s 161 The words when the abetment of an offence is an offence in Expl 4 s 108 Indian Penal Code do not mean when an abetment of an offence is actually committed. They mean when the abetment of an offence is by definition or description an offence under the Code that is when an abetment of an offence is punishable under s 109 or s 116 or some other provision of the Code then the abetment of such abetment is also an offence. **SPIRAL CHAMAPPA : KING EMPEROR (1918)**
22 C W N 1045

s 109—

See s 34 I L R 44 Bom 524

See s 741 I L R 43 Bom 561

See s 361 I L R 44 All 664

See s 494 I L R 39 Calc 409

See APPET BY PRIVATE PERSON
I L R 41 Calc 17

See ALTFEROS ACQUIT
I L R 41 Calc 1072

See CRIMINAL PROCEDURE CODE s 403
I L R 40 Bom 97

ss 109 116 120B—

See MISDOINDER OF CHARGES
I L R 42 Calc 1153

ss 109 120B 420—Abetment by

conspiracy—Indian Evidence Act (I of 1872) s 10

The accused V was a loader of the E I Railway

Company. The case for the prosecution was that

when making out the weights in the consignment

notes he entered a weight less than the actual

with the result that the railway company

received a sum less than they were entitled to

and the other accused who were a firm of mer-

chants paid as consignees of goods illegal grati-

fication to V for this fraudulent work. It ap-

peared that the name of M signed by himself

appeared in one of the note books of the firm of

D and J and the *jama kharach* of the firm showed

the payment of certain sums to accrue to M.

The accused were tried and convicted by the Deputy

Magistrate under ss 120B 420 420 100 161

161 109 Indian Penal Code but the Sessions

Judge in appeal being of opinion that the con-

vicition under s 120B could not stand on the

ground that the offences were committed before

that section came into force took into considera-

tion only the direct evidence against M of making

the endorsement of false weight and finding this

to be insufficient acquitted all the accused. Held

that the Sessions Judge rightly held that the con-

vicition under s 120B Indian Penal Code could

not stand by reason of the fact that the offences

were committed before that section came into force

but he entirely omitted to notice that this was im-

material as the law of abetment includes abetment

by conspiracy which was distinctly charged before

the Magistrate under ss 400 109 Indian Penal Code

That being so the circumstantial evidence of con-

spiracy to defraud the railway company was to be

considered. That under s 10 of the Evidence Act

the note books and *jama kharach* of the firm of

D and J could be used as evidence of abetment

by conspiracy against V. **KING EMPEROR**
MAHOMAT ROY (1910) 20 C W N 292

PENAL CODE (ACT XLV OF 1860)—*contd*s 121A—*contd*

conspira y indirect—Acts of co conspirators before and after entry into conspiracy if admissible and for what purpose—Members of revolutionary so iety not a tainted with its real object if guilty of conspiracy—Arms find of after arrest and pending prosecution of conspirator if evidence Overt acts may properly be looked at as evidence of the existence of a concerted intention and in many cases it is only by means of overt acts that the existence of the conspiracy can be made out But the criminality of the conspiracy is independent of the criminality of the overt act *Heyman v R* L R 8 Q B 302 12 Cox C C 383 *O Connell v R* 11 Cl & F 155 1 Cox C C 413 and *R v Duffield* 5 Cox C C 404 431 referred to The prosecution is not obliged to prove a conspiracy by direct evidence of the agreement to do an unlawful act If the facts proved are such that the jury as reasonable men can say that there was a common design and the prisoners were acting in concert to do what is wrong that is evidence from which the jury may suppose that a conspiracy was actually formed *R v Brown* 7 Cox C C 412 followed Where it appeared that certain members of a society found to be revolutionary were not acquainted with the real object of the society not having been admitted to its secrets it was held that it would not be proper to convict such members under s 121A of the Indian Penal Code The criminality of a conspiracy lying in the concerted intention once reasonable grounds are made out for belief in the existence of the conspiracy amongst the accused the acts of each conspirators in furtherance of the object are evidence against each of the others and this whether such acts were done before or after his entry into the combination in his presence or in his absence Conspirators are not thereby necessarily subjected to punishment for everything done by their fellows but acts done prior to the entry of a particular person into the combination are evidence to show the nature of the concert to which he becomes a party whilst subsequent acts of the other members would indicate further the character of the common design in which all are presumed to be equally concerned *R v Murphy* 8 O & P 297 310 *R v Reads* 6 Cox C C 134 *R v Stenson* 12 Cox C C 111 *O'Keefe v Walsh* 21 P 631 relied on If arms were collected and secreted in furtherance of a conspiracy before the activities of the associates had been brought to an end by their arrest the fact that they were discovered after the arrest and after prosecution had been started against them would not make the evidence of the find inadmissible at the trial *PULIN BEHARY DAS v KING EMPEROR* (1911) 16 C W N 1105

16 C W N 1105

4 — *Possession of objectionable books if proof of guilty intention* The mere circumstances that a book of an objectionable character is present in the library of an individual or an association does not justify the inference that the teachings of the books are approved and adopted by persons who have access to it The mere fact that books of a distinctly revolutionary character were found in the library of an association and were now and then read by some of its members would not conclusively show that the object of the society was revolutionary *Emperor v Nani Gopal Lal C W N 594* followed

PENAL CODE (ACT XLV OF 1860)—*contd*s 121A—*contd*

R v Watson 2 Starkie 116 147 32 Howell St Tr 354 East on pleas of the Crown p 119 referred to The presence of seditious literature of this description written by members of the society would however be an important element in furnishing a clue to their tendencies and designs *Per HARRINGTON J* The utmost that can be said of persons in whose library are found books which are calculated to excite hatred against the English is that they approved of literature of that nature and even that assumption would not in all cases be a just one But the presence in the library of a *Samity* of violently revolutionary literature (some of them written in the hands of a member of the *Samity*) urging the destruction of the English and exulting persons who had murdered English people justified the inference that the members of the *Samity* were imbued with the sentiments those documents expressed *PULIN BEHARY DAS v KING EMPEROR* (1911) 16 C W N 1105

ss 121A, 123—*Conspiracy to wage war against the King and concealing existence of conspiracy in furtherance thereof*—Joint trial for both offences if legal *Per Curiam* When persons engaged in a conspiracy within the meaning of s 121A of the Penal Code in furtherance of their object conceal the existence of the conspiracy from the authorities a charge under s 123 of the Penal Code may be legally joined with one under s 121A *Barindra Kumar Ghose v King Emperor* 1 L R 37 Calc 467 14 C W N 1114 followed *PULIN BEHARY DAS v KING EMPEROR* (1911) 16 C W N 1105

ss 121 and 124A—

See S 107 I L R 34 Bom 378 394

s 124A—

See S 111 I L R 34 Bom 378

See CRIMINAL LAW I L R 2 Lab 34

See PRESS ACT 1910 s 3

I L R 43 Mad 148

See SEDITION I L R 88 Calc 214 253

I L R 39 Calc 522, 606

Press Act (XXV of 1867) ss 4 and 5—*Declaration made by owner who took no part in managing a printing press*—*Publication of a seditious book at the press*—*Sedition—Intention* The accused made a declaration under Act XXV of 1867 s 4 that he was the owner of a press called The Atmaram Press Beyond this he took no part in the management of the press which was carried on by another person A book styled EL Shloki Gita was printed at this press It was a book that all to a large extent with metaphysical philosophy and religion. It also contained seditious passages scattered among discussions of religious matters It was not shown that the accused ever read the book or was aware of the seditious passages it contained The accused was convicted of the offence punishable under s 121A of the Indian Penal Code 1860 as publisher of the book On appeal *Held* by CHANDAYARKAR J that the cumulative effect of the surrounding circumstances was such as to make it improbable that the accused had read the book or that he had known its seditious object and that the evidence having thus been evenly balanced and equivocal, reasonable doubt arose as to the guilt of the accused the benefit of which should be given to

PENAL CODE (ACT XLV OF 1860)—contd

Out of six accused persons three found to have a common object different from that set out in the charge—*Legality of conviction of any of the six accused*—Court a duty in cases where near relatives want to compound cases. Six accused persons were convicted under S 147 Indian Penal Code and sentenced to 15 days imprisonment. In the charge the common object was stated to be to assault the complainant. During the pendency of the case the complainant wanted to compound the case but the Magistrate did not allow him to do so. In his judgment he found that three of the accused assaulted the complainant and the other three accused went to snatch away the cattle of the complainant in common object with that of the other accused persons. *Held* that there being a difference between the common object found by the Magistrate in the case of three of the accused persons there were not five persons that shared in the common object set out in the charge and the ingredient of an offence under s 147 I.P.C. was wanting. Therefore the conviction under sec 147 against all the accused must fail. **AMINULLAH & EMPEROR 26 C W N 534**

ss 147 148—*Rioting with common object of obstructing measurement of khas mahal land—Acquittal in the absence of affirmative proof of Government's possession of the disputed land—Onus of proof of prosecution in criminal case*. The petitioners were convicted of rioting with the common object of causing obstruction to measurement and demarcation of khas mahal land by a Kanango and a khas mahal Tahsildar. *Held* (on a consideration of the evidence) that the question of possession of the disputed land was not one upon which a definite opinion could be expressed on the materials on the record but was eminently one for the Civil Court to determine. That the burden of proving the charge substantially as drawn lay on the prosecution and if it was not established affirmatively that the land on which the alleged riot took place was in the actual possession of the Government the charge as alleged was not proved and the petitioners were not guilty of rioting with the common object stated in the charge. **PANCHANAN BOSE & KING EMPEROR (1919) 23 C W N 693**

ss 147 149 and 353—

See *BENGAL SURVEY ACT 1871*
2 Pat L J 18

ss 147 323—

See *APPELLATE COURT*
I L R 38 Cal 293

See *CUMULATIVE SENTENCES*
I L R 40 Cal 511

ss 147 323 and 353—

See *CRIMINAL PROCEDURE CODE 1898*
s 43 3 Pat L J 565

ss 147 325 and 149—

See *RIOTING* I L R 41 Cal 43

ss 147 332—

See *MAGISTRATE JURISDICTION OF*
I L R 39 Cal 37

PENAL CODE (ACT XLV OF 1860)—contd

ss 147, 353—

See *PIOTING* I L R 41 Cal 836

ss 147 426 447—*Obstruction to public way by building a wall—Pulling down the wall in bona fide exercise of the right of public way no offence*. The complainant built a wall obstructing a public way. Immediately after this the accused who were members of the public in the bona fide exercise of their right of way pulled down the wall. *Held* that the accused were not guilty either of rioting or of mischief or of criminal trespass (ss 147 426 and 447 of the Penal Code). **Pe DHARMALINGA MUDALI (1914)**

I L R 39 Mad 34

ss 147 447—*Pioting—Criminal trespass—Charge of rioting with common object of taking forcible possession of complainant's land and assaulting him—Absence of charge under s 447 of the Penal Code—Conviction of criminal trespass propriety of—Criminal Procedure Code (Act V of 1908) s 238*. When the petitioners who were charged under s 147 of the Penal Code with rioting with the common object of taking forcible possession of complainant's land and of assaulting him and others were convicted of criminal trespass under s 441 of the Penal Code without any charge being framed against them or without being called upon to plead to a case of trespass. *Held* that the conviction was illegal. If the common object had been to commit criminal trespass the conviction under s 447 of the Penal Code without a charge having been framed against the accused might have been legally valid but the common object stated in the charge did not make out a case of trespass. In a case of trespass before a conviction is obtained the prosecution must establish on the part of the trespasser an intention to commit an offence or to intimidate insult or annoy any person in possession of the property on which the trespass has been committed. **Queen v Salamul Ali 73 II P Cr 69 referred to ARIF MANSUR & EMPEROR (1913) 18 C W N 992**

s 148—

See s 141 17 C W N 1132

See s 147 18 C W N 275

23 C W N 693

See *PRIVATE DEFENCE*

3 Pat L J 653

4 Pat L J 289

ss 149 149 304 328

See *CRIMINAL TRESPASS*
I L R 41 Cal 667

ss 148 324 and 328—

See *COMMON OBJECT* 2 Pat L J 541

s 149—

See s 71 I L R 40 All 49

See *BENGAL SURVEY ACT 1871*
Pat L J 18

See *CRIMINAL TRESPASS*
I L R 41 Cal 662

See *PIOTING* I L R 41 Cal 43

See *SENTENCE* 3 Pat L J 641

1 Charge under s 35 read with s 149 Conviction under s 238 of Penal Code not applicable Where the accused were charged and convicted by the Magistrate

PENAL CODE (ACT XLV OF 1860)—*contd*s 182—*contd*

1 *Transfer*—*Unfounded allegations against the trying Magistrate made by an accused person in an application for transfer of his case* Held that an accused person who in support of an application for the transfer of the case against him to some other Magistrate makes unfounded and defamatory allegations against the trying Magistrate cannot be prosecuted in respect of such allegations under s 182 of the Indian Penal Code *Queen v Daria Khan* 2 A B P H C Rep 128 and *Queen Empress v Su bayya* 1 L R 12 Mad 401 referred to *EMPEROR v MATAN* (1910) 1 L R 33 All 163

2 *Information to police that informant suspected the persons named as offenders of amounts in giving false information* Where a person in whose house a theft took place informed the police that he suspected two persons whom he named as the perpetrators of the crime Held that this did not amount to giving false information within the meaning of s 182 Indian Penal Code *ANANDA MOHAN DUTTA v KING EMPEROR* (1917) 22 C W N 478

3 *Giving false information to the Deputy Superintendent of Police in the course of a departmental inquiry in reply to questions* The petitioner sent a letter to the Deputy Inspector General of Police alleging that the Sub Inspector of Sadhaura and other persons were looting the people and that he was ready to prove it. This was sent on to the Superintendent of Police for recording the petitioner's statement and for necessary action and the Superintendent passed it on to the Deputy Superintendent for taking statements. The latter recorded the statement of the petitioner who made allegations as to bribes having been taken by the Sub Inspector and mentioned among others a bribe of Rs 500 taken from one M S. In respect of this statement the petitioner was convicted by the Lower Courts of an offence under s 182 of the Penal Code. Held that the statement of the petitioner to the Deputy Superintendent of Police in the departmental inquiry was information within the meaning of s 182 of the Penal Code notwithstanding that it was made in answer to questions. *Queen Empress v Ramji Sayabarao* (1 L P 10 Bom 124) followed *Mangu v Cronin* (227 P L R 1914) distinguished and partly disapproved *Chinna Pamana v Emperor* (1 L R 31 Mad 506) distinguished *Payan Kuti v Emperor* (1 L R 20 Mad 640) referred to. Held also that as the Deputy Superintendent of Police was competent to make an inquiry into the petitioner's allegations against the Sub Inspector and the petitioner knew that his allegations were likely to lead the Deputy Superintendent to make such an inquiry which would be calculated to cause annoyance to the Sub Inspector, his conviction under s 182 was justified. *Queen v Persannan* (1 L P 4 Mad 241) distinguished. *PANNA LAL v CHOWD* 1 L R 11 Lah 410

ss. 182, 193—*Complaint—Statement made to the Magistrate as head of the police and not as a Magistrate* P appeared before a District Magistrate and made a statement in which he accused a certain police officer of having beaten him and demanded a bribe of him and locked him up in the police bungalow. He stated however that he did not wish to make a complaint but only desired that an inquiry should be made. Never

PENAL CODE (ACT XLV OF 1860)—*contd*ss 182 193—*contd*

theless the Magistrate examined P on oath and subsequently the charge having been found to be baseless P was convicted under ss 182 and 193 of the Indian Penal Code. Held that as much as P had expressly stated that he did not wish to make a complaint the statement must be taken to have been made to the District Magistrate not as Magistrate but as head of the district police and the conviction under s 193 of the Code could not be upheld. *EMPEROR v PRULAL* (1917) 1 L R 35 All 102

ss 182 211—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 403 (1)

1 L R 36 Mad. 308

1 *Sanction to prosecute—Criminal Procedure Code s 195* H made a report against several persons including one S at a police station charging them with robbing and voluntarily causing hurt. The police made inquiry and sent up several persons for trial but not S. Some of these were convicted by the Magistrate but acquitted by the Sessions Judge. Thereupon S made a complaint to the Magistrate charging H with having made a false report in respect of himself to the police. The Magistrate took cognizance of the complaint. Held that the Magistrate had no power to take cognizance of the complaint by reason of the absence of sanction. *EMPEROR v HARDWAR PAL* (1912)

1 L R 34 All 522

2 *Sanction to prosecute—Jurisdiction—Application by insolvent to District Judge alleging misappropriation of property of insolvent* A person who had been declared an insolvent and in respect of whose property a Receiver had been appointed by the District Judge applied to the Court representing that one Bhikhi Ram had misappropriated certain property belonging to him and asking that Bhikhi Ram's house might be searched. The District Judge forwarded this application to the Magistrate and Bhikhi Ram was arrested and his house searched. Subsequently however proceedings against Bhikhi Ram were dropped there being no evidence against him. Bhikhi Ram then applied to the District Judge for sanction to prosecute the applicant under ss 182 and 211 of the Indian Penal Code. The sanction asked for was granted. Held that as regards s 182 there was no objection to the order but as regards s 211 the criminal proceedings taken against Bhikhi Ram were not taken in the Court of the District Judge and it was at any rate doubtful whether it could be said that the offence committed by the applicant was committed in relation to any proceeding pending in that Court. *MUHAMMAD FAKIR UD DIN v BHIKHI RAM* (1914)

1 L R 50 All 212

ss 183 186 and 353—*Resistance to execution of warrant—no date specified on warrant—Resistance to Nazir executing warrant addressed to peon* Resistance to the execution of a warrant directing the attachment of property where the warrant does not specify the date on or before which it is to be executed is not illegal. Where such a warrant was addressed to a peon of the court for execution. Held that resistance to the same by who endeavoured to execute it was not illegal. *MOHINI MOHAN BANERJI v KING EMPEROR* 1 Pat L J 550

PENAL CODE (ACT XLV OF 1860)—*contd*

— s 185— *Property—Exclusive right to sell drugs.* Held that a person who bid at an auction of the right to sell drugs within a certain area under a false name and when the sale was confirmed in his favour denied that he had ever made any bids at all was rightly convicted of an offence under s 185 of the Indian Penal Code. *Queen v Reazooddeen* 3 II R Cr R 3 referred to *EMPEROR v BISHAN PRASAD* (1914)

186

See S 163

1 Pat L J 550

1. ————— Voluntarily ob-
structing Public Servants in the discharge of their
public functions.—Fearing property attached by
Civil Court peons under distress warrants issued
under the Public Demands Recovery Act (Beng 1 of
1895) and the Village Chaukidari Act (Beng 11 of
1870) s 45—Legality of Warrant—Omission to
specify date of extension on the face of a—Civil
Procedure Code (Act 1 of 1908) O XXI r 24 (2)—
Execution by person not named in the warrant—
Delegation of powers by Nazir A distress warrant
issued under the Public Demands Recovery Act
which has been extended beyond the original date
of return but does not bear on the face of it the
altered date is not a legal warrant under O XXI
r 24 (2) of the Civil Procedure Code A warrant
under s 45 of the Village Chaukidari Act must
contain the name of the person charged with the
execution thereof and cannot be legally executed
by any other person delegated by the former for
that purpose Where the accused released certain
buffaloes attached by the Civil Court peons on
the 2nd August under two warrants addressed to
the nazir but endorsed by him to them the one
issued under the Public Demands Recovery Act
which was originally returnable by the 26th July
but had been extended to the 8th August without
the alteration of the date appearing thereon and
the other under s 45 of the Village Chaukidari Act
directed to the nazir but without naming any person
therein as charged with the execution of it Held
that they were not guilty of an offence under s 186
of the Penal Code as the peons were not lawfully
executing the warrants SIKH NARAI PRASAD
(1903) I L R 37 Cal 122

2. Obstructing a public servant in the discharge of his public functions—Local inspection by Munsif—Water ways In a suit in which a public right of way was claimed there was a dispute not only as to whether the public right of way claimed existed but also as to whether there were not certain other public ways the existence of which would discredit the plaintiffs' allegations in the suit. The Munsif trying the case went to the spot to hold a local inspection. He wanted to pass in a boat along a water way but was not allowed to do so by the petitioners who claimed it as their private property. It was found that it was a water way used at least by the people of a particular locality. None of the petitioners were parties to the suit pending before the Munsif in which the local inspection was held. The petitioners were convicted under s 156 Indian Penal Code. *Held* that no offence under s 156 Indian Penal Code was committed. *Pratt v. Kanto Lal & Laxmi* (1916)

3. _____ Obstruction to
public account—Deceit—Fraud—Falsification—War

PENAL CODE (ACT XLV OF 1860)—*contd.*

186--contd

rant not in form validity of—Execution of invalid warrant of arrest obstruction to effect of—Procedure In an application for a decree for a situation of conjugal rights a warrant was issued directing the executing peon to seize the wife and deliver her bodily to her husband failing which to bring her under arrest before the executing Court. The peon seized the woman in execution of the warrant but he was resisted and the woman was snatched away. *Held* that the warrant the execution of which was resisted was illegal and therefore no offence was committed under s. 186 of the Penal Code. **GAHAR MAHAMED SARKAR v PITAMBAR DAS (1918)** 22 C W N 814

—s. 186 and 225B—Obstructing a *liber* servant—Resistance to apprehension—Failure to ob order to furnish accounts—Code of Civil Procedure (Act I of 1908) O XXI r 32—Injunction On a writ in a suit for an account a preliminary decree was passed ordering the defendant to furnish an account within a specified time and he failed to do so and together with two companions resisted a peon sent by the Court to arrest him under the provisions of O XXI r 32 of the Code of Civil Procedure 1908. *Held* that the defendant's arrest was unlawful and that the conviction of him and his two companions of offences under s. 186 and 225B of the Penal Code could not stand. *Held* also that the order to furnish an account which was contained in a preliminary decree was not an injunction within the meaning of O XXI r 32. The word injunction as used in O XXI r 32 has a more extended meaning than it has in the Specific Relief Act 1877. The decisions in *Devgamber Majumdar v Kallayanath Poyad Poyanath v Gangpati* on the effect of s. 260 of the Code of Civil Procedure 1882 have been overruled by the provisions of O XXI r 32 of the Code of 1908. It is not every order of a Court directing a person to do a certain act that is an injunction. In its essence an injunction is a relief consisting in an interdict of a legal right. **ABU SLE v KIVO EKKOR** 3 Pat L J 108

18—

See CRIMINAL PROCEDURE CODE § 4

I L R 42 AL 314

— 168 —

See APPEAL EVENT

L L R. 48 Calc 1053

See SANCTION FOR PROSECUTION

14 C W K 234

I L R 41 Case 14

1 Ord d ly pro
milita d ly p e serra 1-Ord r f d i n g u
t e n e r a l u n y p e m e x c e p t f o r t h e g l d
that the public have a right to enter upon a way
permitted for many purposes other than travel
and an order of building persons to enter a railway
station except for the purpose of travel
would be an illegal order in the present in-
stance however it did not appear that the order
in question was issued in any other way
supposed to be other than the way I have
I was told it ENTERED LIMA (191)

I. L. R. 25 All 108
2 _____ I only I
was so - [?] of [?] of [?]
war I = [?] The word "from [?]"

PENAL CODE (ACT XLV OF 1860)—*contd*s 188—*contd*

under s 188 of the Penal Code refers to orders issued under the Code of Criminal Procedure and not to judgments and orders of Civil Courts. *MANMATHI v. KUTTI AMMU* (1915)

I L R 39 Mad 543

3 ————— *Prohibition order under s 144 Criminal Procedure Code passed without any evidence—Prosecution for disobedience of order not properly passed—Cognizance of case under s 188 by the same Magistrate who passed the order disobeyed.* A servant of the first party filed a petition before the Sub divisional Magistrate complaining that the second party were about to construct a drain and if the first party opposed them there was a likelihood of a breach of the peace whereupon the Magistrate without taking any evidence issued an injunction under s 144 Criminal Procedure Code against the second party. On the next day on the complaint of the same man the Magistrate summoned the second party under s 188 Indian Penal Code. Subsequently he transferred the case to a Magistrate with second class powers and again withdrew it from his file and sent it to the Additional District Magistrate. Held that the proceedings were wholly irregular. That the order under s 144 Criminal Procedure Code should never have been made. That in summoning the second party under s 188 Indian Penal Code the Sub divisional Magistrate was taking cognizance of the offence under s 188 Indian Penal Code which he had no power to do. Either action by the Magistrate under s 476 Criminal Procedure Code or an application for execution under s 190 Criminal Procedure Code was necessary. The High Court quashed the proceedings under s 188 Indian Penal Code and also set aside the order under s 144 Criminal Procedure Code which was the foundation of those proceedings although that order had expired. *CHANDRA KANTO KANJILAL v. KING EMPEROR* (1916)

20 C W N 981

4 ————— *Criminal Procedure Code (Act I of 1898) s 144—Prosecution for disobedience of order prohibiting disturbance.* By an order under s 144 Criminal Procedure Code the petitioners were directed not to make any disturbance over a certain person's rights of a ferry and thereafter the petitioners being found plying another ferry at the site in question but not causing any disturbance were ordered to be prosecuted under s 188 Indian Penal Code. Held that the order for prosecution was infructuous. *SUJAL LISWAS v. SAMIRKUDIN MAHAI* (1911)

22 C W N 599

5 ————— *Disobedience of order under s 144 Criminal Procedure Code—Criminal Procedure Code (Act I of 1898) s 195.* Cognizance of a case under s 188 Indian Penal Code cannot be taken except in accordance with the provisions of s 190 Criminal Procedure Code and under s 487 Criminal Procedure Code the Magistrate whose order is disobeyed is not competent to try the case. *MURTHYOJYOTI v. SHRESTHIAH MULLICK* (1919) 23 C W N 520

ss. 188 269—*Fugitive in case of D. v. a. d. 3—Local Government—Issuance of process—Regulations and the Act—1911 of the Local Government—All cases of the Local Government—A delegation under s 104 by the*

PENAL CODE (ACT XLV OF 1860)—*contd*ss 188 269—*contd*

Collector to a Divisional Officer of the power to call upon people to evacuate houses is illegal and an omission to comply with the order of such officer acting under such delegated authority is not an illegal omission. *Re NAGAPPA THEVAN* (1913)

I L M 38 Mad. 602

s 189—

CRIMINAL PROCEDURE CODE s 435

I L R 39 Mad 561

ss 191 193—

See s 52 I L R 56 All 362

See FALSE EVIDENCE

I L R 38 Calo 368

s 192—*Fabricating false evidence—Document helping Court to form a correct opinion.* Certain cattle were sold in a market on the 1st of March 1917. A clerk whose duty it was to register sales of cattle held at that market and give receipts to the purchasers, gave a receipt on the 27th March most probably and dated it the 21st March 1917 but subsequently altered the date to the 21st the actual date of sale. Held that there was no case of fabricating false evidence for the alteration of the date was not intended to lead anyone to form an erroneous opinion touching the date of sale but the contrary. *EMPEROR v. BADAR ERASAD* (1917)

I L R 40 All 35

ss 192 and 193—*False evidence—Fabrication—Judicial proceedings—Execution proceedings—Criminal Procedure Code (Act V of 1893) s 195 (b)—Sanction to prosecute—Pending proceedings.* For the purpose of ss 192 and 193 of the Indian Penal Code 1860 execution proceedings are judicial proceedings. It is not essential for the purpose of these sections that the judicial proceedings in which the person intends to use the false evidence must be pending at the date of the fabrication. In the absence of any proceeding pending or disposed of in which or in relation to which the offence under s 193 of the Indian Penal Code is said to have been committed no sanction under s 195 (b) of the Criminal Procedure Code is necessary. *In re GOVIND PANDURANG* (1909)

I L R 45 Bom 863

ss 192 193 423—

See FABRICATING FALSE EVIDENCE

I L R 46 Calo 988

s. 193—

See s 192 I L R 35 All 102

See s 192 I L R 45 Bom 168

I L R. 46 Calo 988

See CRIMINAL PROCEDURE CODE—

ss 157 159 410

I L R 33 All 30

s 10. I L R 39 Mad. 677

5 Pat L J 23

ss 236 19. 77

I L R 45 Bom 634

s 233 I L R 42 Mad. 561

See JUDICIAL PROCEEDING

I L R. 37 Calo 82

See THUMB IMPRESSION

I L R 39 Calo 343

PENAL CODE (ACT XLV OF 1860)—contd

—Perjury arising from contradictory statements—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 236 19, 537 (b) AND 164

I L R 45 Bom 834

1 ————— Order to prosecute
—Case pending before Court of Session—Alleged perjury—Propriety of prosecution by committing Magistrate Where a committing Magistrate had ordered the prosecution of a witness under s 193 of the Penal Code while the case in which he had deposed was pending before the Court of Sessions the High Court set aside the order. The impropriety of taking proceedings against a witness while the case is still pending commented on. **HIRENDRA NATH DAS GUPTA v THE EMPEROR** (1914) 18 C W N 1342

2 ————— Perjury in a deposition before a Civil Court not read out to the deponent
—Civil Procedure Code Act I of 1908 O 13 r 5—whether secondary evidence is admissible to prove the deposition—Indian Evidence Act I of 1872 s 91 The petitioner was accused of having made a false statement on oath in the Court of a Munsif. The Munsif stated in evidence in the present trial that this statement was not read out to the witness. The question before this Court was whether secondary evidence could be admitted to prove the making of the statement. Held that secondary evidence cannot be admitted in the trial of the petitioner for perjury to prove the making of the statement in the Munsif's Court. **Empress v Mayadeb Gossami** (I L R 6 Cal 762) **Mohendra Nath v Emperor** (12 Cal 11 v 845 847) **Kamatchinathan Chetty v Emperor** (I L R 28 Mad 308 (310)) and **Valluri Chinchiah v Emperor** (I L R 42 Mad 561) followed. **Romesh Chandra Das v Emperor** (23 Cal 11 A 661) and **Crown v Jagat Ram** (28 P R (Cr) 1918) distinguished. **Kahn Singh v Empress** (5 I R (Cr) 1890) not followed. **IMAM DIN v NIAMAT ULLAH**

I L R 1 Lah 361

—ss 193 195 199 471—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 193 CLF (b) AND (c)

I L 33 Bom 642

—ss 193 and 210—

See SANCTION FOR PROSECUTION

2 Pat. L J 688

—ss 193, 471—

See SANCTION FOR PROSECUTION

I L R 40 Cal 584

—ss 193 and 423—

See FABRICATING FALSE DOCUMENT

I L R 43 Cal 911

—ss 193, 511—Crt—District Judge

hearing election petition under s 20 of the Bombay District Municipalities Act (Form Act III of 1901) in Criminal—False evidence before the District Judge—Sanction for prosecution—Criminal Procedure Code (Act V of 1898) s 193 A District Judge hearing an election petition under the provisions of s 20 of the Bombay District Municipalities Act (Bombay Act III of 1901) is a Court within the meaning of s 193, cl. (b) of the Criminal Procedure Code. No person is liable for attempting to fabricate false evidence (s 13 and 14 of

PENAL CODE (ACT XLV OF 1860)—contd

—ss 193 511—contd

the Indian Penal Code) before the District Judge can be instituted without having obtained sanction as required by s 193 of the Criminal Procedure Code 1898. **Raghubans Sahay v Kail Singh** I L R 17 Cal 82 followed. **In re NANCHAND SHIVCHAND** (1912) I L R 37 Bom 365

—s 196—

See CRIMINAL PROCEDURE CODE 1898 s 193

I L R 38 Bom 642

—ss 197 198—Issuing or signing a false certificate—Certificate meaning of—Civil Procedure Code (Act V of 1908) O XXI r 2—Petition in Court stating satisfaction of decree of a certificate within the meaning of the sections. The two petitioners were convicted under ss 197 and 198 and ss 197 109 and 109 109 respectively the charge being that one of the petitioners purporting to represent the decree holder in a certain suit signed and filed a petition in the Court of the Subordinate Judge stating contrary to fact that the other petitioner who was the judgment debtor had paid off the decretal amount to the decree holder through him. **Amuktar Held** that the petition in question filed before the Subordinate Judge was not a certificate within the purview of ss 197 and 198. Indian Penal Code neither of the requirements of a certificate within the meaning of the sections being satisfied in the case. That there is no provision of law which requires a decree holder or his agent to give or sign a certificate of payment or adjustment nor is there any provision of law which makes the statement of the decree holder or his agent as to payment or satisfaction admissible in evidence as such certificate that is without further proof. That the word certificate may be used as synonymous with certification but that is clearly not its meaning in s 197 and 198 of the Penal Code. **MAHABIR THAKUR v KING EMPEROR** (1916)

20 C W N 520

—s 199—

See CRIMINAL PROCEDURE CODE s 193

I L R 33 Bom 642

25 C W N 886

—Sanction to prosecute—Prosecution based on affidavit false declaration—Declaration inadmissible in evidence A declaration, before it can be made the foundation of a prosecution under s 199 of the Indian Penal Code must be one which is admissible in evidence and which the Court before which it is filed is bound or authorized by law to receive in evidence. **EMPEROR v PAM PRASAD** (1912)

I L R 35 All 53

—ss 201, 203—

See FALSE INFORMATION

I L R 46 Cal 427

—ss 201 302—J. d. r. s. 201—Evidence of murder & appearance of jury in a case and admission to the police station & the fact—In criminal case—The accused were convicted of the crime of murder under s 302 of the Indian Penal Code. In that case it was held that the Indian Penal Code was not amended by the amendments being proposed in the Criminal Procedure Code. The amendments proposed in the Criminal Procedure Code were not in force at the time the accused had a

PENAL CODE (ACT XLV OF 1860)—*contd*ss 201, 302—*contd*

sufficient motive for committing murder that they disposed of the body of the deceased and were loitering near his house at the exact hour of murder. On these facts the accused were convicted under s 201, Indian Penal Code. *Held* that s 201 Indian Penal Code is an attempt to define the position known in England as that of an accessory after the fact. It is settled law that a principal cannot be convicted as an accessory. Where it is impossible to say definitely, however strongly it might be suspected that an accused was guilty of murder mere suspicion is no bar to a conviction under s 201. But if it be accepted as a proved fact that the accused before the Court disposed of a dead body and if the acceptance of that fact completes the chain of circumstantial evidence which proves beyond doubt that the accused were actual principals present at the murder and taking part in the murder they cannot be convicted of the minor offence of causing evidence of the murder to disappear even though by an error of the Judge or by a misconception of the position by the Public Prosecutor the charge of murder is subsequently withdrawn. That on the facts found the accused were principals and the conviction under s 201 could not stand. *Per CHAPMAN J*. It is unsatisfactory to have an alternative indictment one count charging the accused as principal and the other as accessory after the fact. *Queen Empress v Lymba unreported Criminal Case Bom H C 1895 at page 799* and *Torap Ali v Queen Empress I L R 22 Cal 638* relied on. *SUMANTA DRUPATI KING EMPEROR (1915)* 20 C. W. N 186

s 203—

See FALSE INFORMATION

I L R 46 Cal 427

s 210—

See SANCTION TO PROSECUTE

2 Pat L J 688

s 211—

See s 182 I L R 34 All 522

I L R 36 All 212

See COMPLAINT DISMISSAL OF

I L R 40 Cal 444

See CRIMINAL PROCEDURE CODE—

Sg 4 AND 4th I L R 33 All 32

S 200 I L R 37 Bom 378

S 403 I L R 36 Mad 308

See JURISDICTION OF CRIMINAL COURT

I L R 40 Cal 360

See SANCTION FOR PROSECUTION

4 Pat L J 374

1. Laying false information before police—Duty of prosecution—Onus of proof—Elements necessary to be proved—Failure of defence to examine witness effect of. Where the petitioner was convicted under s 211 of the Penal Code of having laid a false information of theft before the police and the petitioner's case was that he had heard from his wife that the persons named in the information had disappeared and the properties named therein were missing and his information was based on this statement of the wife and the prosecution did not prove that there was

PENAL CODE (ACT XLV OF 1860)—*contd*s 211—*contd*

no such statement by the wife who was not examined as a witness for the prosecution nor did the petitioner examine her as a witness on his side. *Held* that the duty of the prosecution in a case under s 211 of the Penal Code is to prove by satisfactory evidence that the charge was wilfully false to the knowledge of the maker of the charge. That it is for the prosecution to establish their case and if they fail to supply that proof which is required to secure the conviction of the accused the failure on the part of the latter to examine any particular witness or witnesses will not imply the guilt of the accused. That the case against the petitioner being that no theft took place the obligation of proving it rested on the prosecution. In the present case the prosecution not having established that there was a matter of fact no theft and the petitioner knew that there was no theft the High Court set aside the conviction and sentence under s 211 of the Penal Code. *HASSAN MIEZA v MANSUR (1913)* 18 C. W. N 391

2. False charge—

Necessary constituents of offence under s 211—Report to a police officer casting suspicion on certain persons. In order to constitute an offence defined by s 211 of the Indian Penal Code the charge therein alluded to must be made to an officer or to a court who has power to investigate and send it for trial and must be an accusation made with the intention to set the law in motion. *Chenna Malli Gouda v Emperor I L R 27 Mad 129*, *Chinna Ramana Goud v Emperor I L R 31 Mad 506* and *Zorawar Singh v King Emperor II All L J 1106* followed. The following statement was made to a police officer—I find there has been a theft. I suspect the persons named and I want an inquiry to be made. *Held* that if the statement was false the offence committed fell under s 182 of the Indian Penal Code and not under s 211. *EMPEROR v MATHURA PRASAD (1917)* I L R 39 All 715

3. Complaint under

s 1 of the Breach of Contract Act (VIII of 1859) withdrawn before passing of any order under s 211. Whether a criminal proceeding within s 211 Indian Penal Code. A complaint under s 1 of the Breach of Contract Act (VIII of 1859) which is withdrawn before any order is made by the Magistrate under s 2 of the Act either for a refund of the advance paid or for specific performance of the contract is not a criminal proceeding within the meaning of s 211 Indian Penal Code. In the matter of *Insouros Sanyasi (1905)* I L R 33 Mad 37 and *Derby Corporation v Derbyshire County Council (1897)* A C 550 referred to. *HASSAN MIEZA v KING EMPEROR (1920)* I L R 43 Mad 443

ss. 211, 500—
See SANCTION FOR PROSECUTION
I L R 44 Cal 970

ss 213, 214—Screening offence—Exclusion of property for screening offence—The offence screened in is shown to have been committed before the screening could be punished. If certain jewellery is if by way of panyid. If pledged the same with S under circumstances which constituted such pledging an offence of criminal breach of trust. The jewellery was later

PENAL CODE (ACT XLV OF 1860)—*contd*— s 213 214—*contd*

returned by S to G on the latter undertaking not to prosecute M for the offence of criminal breach of trust. M was tried for the offence of criminal breach of trust with regard to the jewellery and was acquitted. S and G were next tried for offences under ss 213 and 214 of the Indian Penal Code in that they offered and took restitution of property in consideration of screening an offence. The trying Magistrate convicted them of the offences charged holding that for the purposes of their case U must be deemed to be guilty of the offence of criminal breach of trust. On appeal *Held* acquitting the accused that they could not be convicted of screening of the offence of criminal breach of trust when the offence of criminal breach of trust had not been proved. *Held* also that under the circumstances the trying Magistrate was bound to proceed on the footing that no criminal breach of trust had been committed. **EMPEROR v. SANJAL LALLUBHAI** (1913)

I L R. 37 Bom 653

— s 216—*Harbouring an offender—*

Assistance coming within meaning of the section nature of. To the knowledge of the petitioner warrants for the arrest of the petitioner's brother and a proclamation under s 87 Criminal Procedure Code were issued the proclamation being duly published at the house in which the two brothers as joint owners used to reside. On information received the police interviewed the petitioner at his house and in answer to enquiries he replied that his brother was in the house and promised to produce him. He then went inside the house and after some delay returned with his brother's son and said that he had made a mistake and that it was the son who had come to the house the preceding evening. On search the petitioner's brother was found hiding in the house. The petitioner was convicted under s 216 Indian Penal Code. *Held* that the petitioner was rightly convicted. The ways in which assistance may be rendered need not for the purposes of s 216 be restricted to methods which may properly be regarded as *cumdem generis* or of a like nature with supplies of food or of other necessary articles. **MICCHU MIA v. EMPEROR** (1917)

21 C W N 1062

— s 222—

See CRIMINAL PROCEDURE CODE s 204

I L R. 41 All 454

— s 224—*Village Chowkidar of a police officer—Escape from custody—* *Abetment* A Chowkidar cannot be properly regarded as a police officer within the terms of s 59 Criminal Procedure Code and escape from his custody is not an offence under s 224 Penal Code. **PURNA CHANDRA KUNDU v. HACHANALI CHOWKIDAR**

17 C W N 978

— ss 224, 109—

See ARREST BY PRIVATE PERSON ?

I L R. 41 Calc. 17

— ss. 224, 225—

See RESCUE FROM LAWFUL CUSTODY

I L R. 43 Calc 1161

— ss. 224, 225 and 353—

See WARRANT

3 Pat L J 493

PENAL CODE (ACT XLV OF 1860)—*contd*

— ss 225 332—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 54

I L R. 40 Mad 1023

— s 225B—

See s 186

Pat. J 108

See WARRANT

I L R. 38 Calc 789

I L R. 42 Calc 703

1 ——— *Escape from lawful custody—Defaulting co sharer arrested under warrant of Tahsildar—Rules of Board of Revenue r 9 cl (2) Act (Local) No III of 1901 (United Provinces Land Revenue Act) ss 142 143 145* Where a Tahsildar issued a warrant under s 146 of the United Provinces Land Revenue Act against certain defaulting co sharers and they were arrested but subsequently escaped from detention. *Held* that this was an escape from lawful custody within the meaning of s 225B of the Indian Penal Code. The Tahsildar's warrant was not illegal because the Board had directed that process should ordinarily issue in the first instance against the lambardar. **EMPEROR v. GULAB SINGH** (1903)

I L R. 32 All 116

2 ——— *Warrant of arrest—Actual resistance necessary* In order to constitute an offence under s 225B of the Indian Penal Code something more is required than an evasion of arrest or a mere assertion by the person sought to be arrested that he would not like to be arrested or that a fight would be the result of such arrest. There must be positive evidence to show that the officer armed with a warrant of arrest produced the warrant and that the person sought to be arrested resisted such arrest. **EMPEROR v. ALJAZ HGSAIN** (1916)

I L R. 38 All 506

3 ——— *Escape from jail of a person imprisoned for failure to furnish security to be of good behaviour* Where a person escapes from jail in which he was confined under s 193 of the Code of Criminal Procedure by reason of his having failed to furnish security to be of good behaviour his conviction should be recorded under s 293B and not under s 294 of the Indian Penal Code. **Queen Empress v. Landhaia I J R 7 All 67** referred to. **EMPEROR v. MULLI**

I L R. 43 All 185

4 ——— *Execution of warrant of Civil Court and resistance thereto* It is not necessary that a bailiff executing a Civil Court warrant should in the first instance show the warrant. It is sufficient that he should apprise the person to be arrested of the contents of the warrant and show it if desired. **THE SUPRENT TENDENT AND REMEMBRANCE OF LEGAL AFFAIRS v. BARODA KANTA MAJUMDAR**

25 C W N 815

— s 223—

Insult to Court—Exact words to be given—

See JUDGMENT I L R. 2 Lah 303

— *Intentional insult in an offer sitting judicially—Application for transfer* An accused person in an application for transfer of the case pending against him made an assertion to the effect that the persons who caused the proceedings to be instituted were on terms of intimacy with the

PENAL CODE (ACT XLV OF 1860)—*contd.*s 228—*contd.*

officer trying the case and that therefore he did not expect a fair and impartial trial. *Held* that there being no intention on the part of the appellant to insult the Court but merely to procure a transfer of his case he was not guilty of an offence under s 228 of the Indian Penal Code. *Queen Empress v Abdulla Khan 1898 W N 145 followed* EMPEROR v MURLI DHAR (1916)

I L R 33 All 234

ss 235 and 243—Counterfeit coins—

Father and son presumption as to possession It is not essential for coins to be counterfeit that they should be exact resemblances of genuine coins. It is sufficient that they are such as to cause deception and may be passed for genuine. Where father and son were accused of being in possession of moulds for the purpose of using the same for making counterfeit coins and of being in possession of such coins and there was evidence to show that the father looked after the family cultivation while the son exclusively attended to the shop in the verandah of which the moulds and coins were discovered and it was also shown that the father was never seen in possession of the moulds or of the counterfeit coins. *Held* that the ordinary presumption that the things in the house of a joint Hindu family were in the possession of or under the control of the managing member had been rebutted. AMRIT SOHAI v KING EMPEROR

4 Pat L J 525

s 243—*¶*

See s 235 4 Pat L J 525

See COUNTERFEIT COIN

I L R 41 Cal 477

s 266—Possession of false measure—

Intent—Acquittal—Criminal Procedure Code s 438—Fraud It being in evidence that in the village where accused carried on the business of a cloth seller the usual standard of measurement was 35½ inches it was *held* that a conviction under s 266 of the Indian Penal Code in respect of the possession of such a measure of length could not be sustained. *Held* also that the High Court will not as a rule entertain a reference by a Sessions Judge having for its object the reversal of an acquittal when the Government has right of appeal more particularly when the matter is one such as a question of correct weights and measures in which the Government may be considered to be peculiarly interested. EMPEROR v HARAK CHAND MARWARI (1917)

I L R 40 All 84

ss 268 230—*¶*

See PUBLIC NUISANCE.

I L R 46 Cal 515

s 269—*¶*

See s 189 I L R 33 Mad 602

See MADRAS CITY MUNICIPAL ACT (III OF 1901) S 30 I L R 43 Mad 344

ss. 280—*Rash and negligent act—proof and degree of—Contributory negligence how far is an element for consideration—Evidence considered on of by the High Court in re re* The accused was in charge of a steam launch which was coming up the river in a moonlight night. In the river at deep water some country boats were moored having no lights in them. The accused on

PENAL CODE (ACT XLV OF 1860)—*contd.*s 280—*contd.*

account of mist could not make out whether the boats were stationary or moving but he thought they were moving. He gave whistles but before he could stop the launch it came into collision with two of the boats with the result that they sank almost immediately. The accused then sent a jolly boat to rescue the drowning passengers of the sunken boats. *Held* that under the circumstances of the case the accused was not guilty of the offence under s 280 Indian Penal Code as his conduct was not rash or negligent within the meaning of that section. To support conviction under s 289 Indian Penal Code it must be proved that the immediate cause of the accident was rashness or negligence on the part of the navigator. In considering the question of degree the question of contributory negligence has also to be taken into account not as a defence to the indictment but for the purpose of determining causation and fixing a measure of the liability of the navigator. When the accused navigator did all he could to save the situation but could not avoid the collision he would not be guilty under s 280 Indian Penal Code. The High Court in revision went through the evidence to decide whether the rashness or negligence was proved. KANDAR ALI SERRAO v EMPEROR (1911)

15 O W N 835

s 283—*Obstruction causing of—Whether necessary to prove any particular individual obstructed* Where the evidence showed that an obstruction placed on a road must necessarily prevent vehicles from passing at all and foot passengers from passing without inconvenience. *Held* that it is a necessary inference that persons were obstructed and that it is not necessary to expressly prove that any specific individual was actually obstructed. *The Queen v Khader Moidin I L R 4 Mad 235* not followed. *Queen Empress v Veerappa Chetti I L R 20 Mad 433* commented on. *RE VENKATRAJ (1913) I L R 11 Mad. 805*

ss 283 114—*Obstruction in public way—Toy shop on a street—Exhibition of toys in the shop window—Collection of crowd of persons in street—Obstruction* The accused who had a toy shop in a public street exhibited in the window of the shop or looking out the street certain clockwork toys during a Diwali festival. The result of the exhibition was that thousands of people collected on the road to witness the toys there were dangerous rushes in consequence people were knocked down and great obstruction and danger were caused to those using the road. On these facts the accused were convicted of offences punishable under ss 283 and 114 of the Indian Penal Code. *Held* upholding the conviction that there was obstruction danger and injury to the persons using the public way which amounted to a public nuisance and that the efficient cause of the nuisance was the act of the accused. Ordinarily every shopkeeper has a right to exhibit his wares in any way he likes in his shop but he must exercise the right so as not to cause annoyance or nuisance to the public. *Attorney General v Brighton and Hove Co-operative Supply Association [1900] 1 Ch. 66* followed. EMPEROR v MOOR MAHOMED (1911)

I L R 35 Bom 369

s 290—

See s 268

I L R 46 Cal. 515

Public nuisance—*Liability of principal for act of agent. The proprie*

PENAL CODE (ACT XLV OF 1860)—*contd.*§ 290—*contd.*

tors and the manager of a mill were prosecuted and convicted under s. 290 Indian Penal Code on a complaint that the working of the mill was a nuisance. It appeared that the proprietors were not residents in the locality and there was no allegation of any abetment by them. *Held* that the general rule is that a principal is not criminally answerable for the acts of his agent. Speaking generally the person liable where the user of premises gives rise to a nuisance is the occupier for the time being whoever he may be and the conviction of the proprietors was bad in law. **BIBHUTI BHUSAN BISWAS v. BHUBAN RAJ** (1918)

22 C W N 1062

§ 292—

See OBSCENE PUBLICATION

I L R 39 Cal 377

§ 295—*Defile meaning of—Moothans presence of inside a temple whether defilement* The presence of Moothans a sub caste of Sudras whose status is equal to if not higher than that of Nairs in such portions of a Hindu temple as are open to non Brahmins is not a defilement within s. 295 Indian Penal Code. **KUTTICHA v. MOOTHAY v. RAMA PATTAY** (1918)

I L R 41 Mad 980

§ 296—*Disturbing a religious assembly*

—*Religious procession on a highway—Carrying of flags in a temple* Where certain Lodhas who with the sanction of the public authorities had been carrying flags to a temple in procession through a public street were attacked by persons who objected to the procession. *Held* that such attack constituted a disturbance of the performance of a religious ceremony punishable under s. 296 of the Penal Code. **EMPEROR v. MASIR** (1911)

I L R 34 All 78

§ 298 39—*Public worship & disturb*

ance of—Voluntarily meaning of It is not necessary for the purpose of s. 298 Indian Penal Code that the accused should have an active intention to disturb religious worship. It is sufficient if knowing they were likely to disturb it by their music they took the risk and did actually cause disturbance. It is an offence under s. 298 Indian Penal Code to pass a mosque with music so as to disturb religious worship carried on during hours notified therefor. S. 79 Penal Code cannot be pleaded in such a case. **MUTHAI CHELVI v. BAPAN SAIB** I L R 33 Mad 140 followed. **SUNDARAM v. THE QUEEN and PONNUSAWMY v. THE QUEEN** I L R 33 Mad 703 followed. **PUBLIC PROSECUTOR v. SANKU SEETHAN** (1910) I L R 34 Mad 92

§ 297—

See GRAVE YARD

I L R 40 Cal 548

—*Trespass on a burial ground—Joint owner* Where a person entered upon a grove for the purpose of demarcating his share therein and in doing so dug up certain graves and exposed the bones of the persons buried there in spite of the remonstrances of the relations of the buried persons. *Held* that he was properly convicted of an offence under s. 297 of the Penal Code and none the less because he happened to be part owner of the grove

PENAL CODE (ACT XLV OF 1860)—*contd.*§ 297—*contd.*

Queen Empress v. Subhan I L R 18 All 395 referred to. **EMPEROR v. PAM PRASAD** (1911) I L R 33 All 773

§ 299—

See s. 304 I L R 42 All 302

§ 299 300—*Grievous hurt causing unconsciousness—Hanging an unconscious person believing him to be dead to screen an offence—Death in consequence whether culpable homicide* Where an accused struck his wife a blow on her head with a ploughshare which though not shown to be a blow likely to cause death did in fact render her unconscious and believing her to be dead in order to lay the foundation of a false defence of suicide by hanging the accused hanged her on a beam by a rope and thereby caused her death by strangulation. *Held* by the Full Bench that the accused was not guilty either of murder or culpable homicide not amounting to murder. **The Emperor v. Dalu Sardar** 18 C W N 1279 followed. **PALANI GOUNDA v. EMPEROR** (1910)

I L R 42 Mad 547

§ 299 301—*Murder—Intention to kill one person but death of another actually caused* Where a person intending to kill one person kills another person by mistake he is as much guilty of murder as if he had killed the person on whom he intended to kill. **Public Prosecutor v. Mushunooru Suryanarayana Moorthy** 13 Indian Cases 333 and **Agnes Gore v. Case** 77 English Rep 853 referred to. **EMPEROR v. JEOLI** (1916) I L R 39 All 161

§ 300—

See s. 299 I L R 42 Mad 547

§ 300(3)—*Causing death—Single blow by an iron rod stick—Culpable homicide not amounting to murder* The accused and the deceased having quarrelled the accused took an iron rod stick, and struck one blow on the head of the deceased which caused his death. The accused having been convicted of murder appealed to the High Court. *Held* that the offence committed by the accused was not murder but culpable homicide not amounting to murder because it was possible that the blow he struck exceeded in violence the injury he had in view at the moment of striking it. **EMPEROR v. SARDARHALLA** (1916)

I L R 41 Bom 27

§ 300 (1), 302—

See MURDER I L R 37 Cal 315

§ 300 and 325—

—*Grievous hurt—Murder—Culpable homicide not amounting to murder—Fatal assault committed by three persons acting in concert* A dispute having suddenly arisen concerning the cutting of a sugarcane crop three men armed with lathis attacked one of the men who was engaged in cutting the crop and beat him so severely that he died his skull being broken in three places. A nephew of the man attacked having his lathi with him attempted to rescue his uncle and also received considerable injuries. *Held* that the offence of which the accused men were guilty was not the mere causing of grievous hurt but culpable homicide which however might in the circumstances, be considered as not amounting to murder by the application of except. 4 of s. 300 in the Indian Penal Code. **EMPEROR v. ANANDIA S Aji**

PENAL CODE (ACT XLV OF 1860)—*contd*ss 300 and 325—*contd*

I L R 40 All 103 dissented from *King Emperor v Hanuman I L R 35 All 560* and *Emperor v Ram Dewa I L R 35 All 506* referred to *EMPEROR v GULAB (1918)*

I L R 40 All 686

Murder—Grievous hurt
—*Common intention—Deadly assault with lathi on an unarmed person—Presumption* Four persons armed with lathi attacked and severely beat a fifth who was unarmed over a dispute about irrigation. The person attacked died in consequence of this beating and it was found that he had received several severe blows on the head the result of which was that the bones of the skull were broken to pieces and also other injuries about the body most of the injuries having probably been inflicted whilst the person attacked was on the ground but the evidence did not disclose which of the assailants caused which of the injuries. *Held* that all four assailants were properly convicted of murder under the fourth clause of s 300 of the Indian Penal Code and that the inference was not justified that the common intention of the assailants was not more than the causing of grievous hurt. *EMPEROR v KANHAI (1912)*

I L R 35 All 329

Murder—Grievous hurt
—*Hanging a human body believing the person to be dead and thereby causing death if murder—Intention to kill* The accused assaulted his wife and gave her kicks blows and slaps. The kicks were given below the navel. The woman fell down and became unconscious. In order to create an appearance that the woman had committed suicide the accused took up the unconscious body of his wife thinking it to be a dead body and hung it by a rope. The post mortem examination showed that death was due to hanging. *Held* that the accused could not have intended to kill his wife if he thought that she was already dead and he could not be convicted of murder. The offence that the accused committed was an offence under s 325 of the Indian Code for having given her kicks blows and slaps before she fell down. *EMPEROR v DALU SINDAR (1914)* 18 C W N 1279

s 301—

See s 299 *I L R 109 All 161*

s. 302—

See s 37 *I L R 35 All 506 and 560*

See s 201 20 C W N 166

See *MURDER I L R 37 Calc 315**I L R 44 Mad 443*

Criminal Procedure Code (Act I of 1898) ss 374 376—Accused charged with murder—Duty of presiding Judge as to arranging for his defence—He trial on the same charge The accused who was undefended in the Sessions Court was convicted under s 300 Indian Penal Code. The case came up to the High Court for confirmation of the sentence of death under s 374 Criminal Procedure Code and also on appeal. *Held* that accused persons charged with murder could not go undefended. The respective duties of the Judge and the Bar as to the defence of such accused persons pointed out. The High Court held that on the evidence as it stood the sentence of death could not be confirmed and directed under

PENAL CODE (ACT XLV OF 1860)—*contd*s 302—*contd*

s 376 cl (b) a retrial of the accused on the same charge after arrangement being made for his defence. *KING EMPEROR v MOHAR ALI SHEIKH (1915)* 19 C W N 555

Murder—Poisoning by arsenic—Intention—Knowledge A person who administers a well known poison like arsenic to another must be taken to know that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and if death ensue he is guilty of murder notwithstanding that his intention may not have been to cause death. *Queen Empress v Tulsha I L R 20 All 143* *King Emperor v Bhowani Din I L R 30 All 508* and *King Emperor v Gulah I I P 31 All 148* referred to *EMPEROR v GAURI SHANKAR (1918)* *I L R 40 All 360*

s 304—

See s 37 *I L R 35 All 506 and 560*

See s 59 25 C W N 514

See *CRIMINAL TRESPASS**I L R 41 Calc 662*

Offering a child to crocodiles in the superstitious belief of ultimate good to the child The accused who were husband and wife had lost several children and they offered their next born to the crocodiles to a particular tank in the belief that the child's life would be ultimately saved but it was devoured the parents were convicted under this section. *KING EMPEROR v BHARAT BEPURI AND ANOTHER*

25 C W N 876

ss 304 325 and 299—*Culpable homicide—Grievous hurt—Injury caused by a lathi resulting in death from gangrene* R struck G three blows with a lathi. One blow fractured the bones of the left forearm another fractured a bone in the right hand while the third fractured both bones of the left leg. In the case of the third injury gangrene supervened and G died in consequence. *Held* that R was guilty of either culpable homicide not amounting to murder under s 304 of the Indian Penal Code or causing of grievous hurt under s 325 of the Code. *EMPEROR v RAMA SINGH I L R 42 All 302*

ss 304 and 323—*Accused challanged under s 391 convicted under s 37—whether proceedings abate on account of death of person assaulted—Probate and Administration Act of 1881 s 89* The 2 petitioners and 2 other persons were challanged by the police under s 301 Indian Code for causing the death of one J. The trial Court convicted the 2 latter under s 301 and the 2 petitioners under s 37. They appealed to the Sessions Judge who altered the conviction of all 4 accused to 1 under s 323. The two petitioners then filed a revision in the High Court and urged *inter alia* that as the Appellate Court had held that only an offence under s 323 had been committed and as the person injured had died the proceedings abated and the accused should have been acquitted. The Single Judge who heard the revision referred this point for consideration to a Division Bench. The hurt for the causing of which the petitioners were convicted did not cause the death of J. *Held* by the Division Bench that criminal proceedings once legally instituted whether upon a complaint or

PENAL CODE (ACT XLV OF 1860)—*contd*ss 301 and 323—*contd*

otherwise do not terminate or abate merely by reason of the death of the complainant or the person injured. **S** 89 of the Probate and Administration Act has no application to a criminal prosecution and there is nothing in the Criminal Procedure Code in support of the proposition that the death of the person injured or of the complainant of itself causes the proceedings to abate. It is a mistake to speak of an offence as a purely personal one. **Emperor v Sultan Singh** (I L R 31 All 606) and **Krishna Behari Sen v Corporation of Calcutta** (I L R 31 Cal 993 (F B)) referred to also Halsbury's Laws of England Volume 18, page 232. **Hazara Singh v Crown** (I L R 2 Lah 27).

ss 304, 325—*Assault committed by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt* Three persons attacked a fourth with lathis and death ensued through a fracture of the skull of the person so attacked. There was however no evidence to show that the common intention of the assailants was to cause death or which of them actually struck the blow which fractured the skull of the deceased. **Held** that the offence of which the assailants were guilty was that of causing grievous hurt and not that of culpable homicide not amounting to murder. **Emperor v Bhola Singh** (I L R 29 All 230) followed. **Emperor v Chandan Singh** (1917) (I L R 40 All 103).

s 304A—

See CAUSING DEATH BY RASH OR NEGLIGENT ACT (I L R 80 Cal 55).

Criminal negligence—

Careless as of compounder in dealing with poisonous drug An unqualified person who was in charge of a dispensary attached to a mill at Agra had to make up a quantity of quinine mixture for cases of fever. He went to a cupboard where non-poisonous medicines were supposed to be kept and took therefrom a bottle with an outside wrapper marked poison. This wrapper he tore off and threw away. The bottle itself was labelled strychnine hydrochloride but without regarding this and apparently because there was a resemblance between this bottle and another in which quinine hydrochloride was kept he made up the entire contents of the bottle as if it had been quinine. The result was that seven patients died. **Held** that the compounder was rightly convicted under s 304A of the Indian Penal Code. **Emperor v Dr Sorai** (I L R 42 All 272).

s 306—*Abetment of suicide—Sati*

Held that persons actively assisting a Hindu widow in becoming a sati are guilty of the offence of abetment of suicide as defined in s 306 of the Indian Penal Code. **Emperor v Ram Datal** (1913) (I L R 36 All 26).

s 317—*Exposure or abandonment of a child by a person having care of it—Person entrusted with a child for abandoning it has the care of it*

Accused No 1 having given birth to an illegitimate child gave it to her sister accused No 2 with a view to dispose of it secretly. Accused No 2 accordingly carried it by a railway train and abandoned it in a second class compartment. On these facts accused No 2 was charged with an offence under s 317 of the Indian Penal Code and accused No 1 with having abetted the offence

PENAL CODE (ACT XLV OF 1860)—*contd*s 317—*contd*

under s 317 and 109 of the Code. The Sessions Judge acquitted them both the accused No 2 on the ground that she had not the care of the child and accused No 1 on the ground that as no principal offence had been committed she would not be guilty of abetment. The Government having appealed **Held** reversing the order of acquittal that both the accused had committed the offences with which they had been charged. **Emperor v Chattri** (1916) (I L R 41 Bom 152).

s 323—

See s 71 (I L R 39 All 623)

See s 304 (I L R 2 Lah 27)

See s 332 (I L R 37 All 353)

See BAILIFF (I L R 42 Cal 313)

See APPELLATE COURT (I L R 30 Cal 293)

See CRIMINAL PROCEDURE CODE 1899

s 423 (3 Pat. L J 585)

Death of person injured

—*Abatement of proceedings—Probate and Administration Act (1 of 1881) s 69* A criminal prosecution under s 323 of the Indian Penal Code does not abate by reason of the death of the person injured. The words to prosecute any proceeding in s 89 of the Probate and Administration Act do not refer to criminal prosecutions but to civil actions only. **Rama Dand v Emperor** (1917) 40 I O 1008 (Punjab) and **Labhu v Emperor** (1919) 52 I O 797 (Punjab) dissented from. **Muhammad Ibrahim Saris v Shaik Davood** (1921) (I L R 44 Mad 417).

The petitioner a

Bailiff of the Small Cause Court Calcutta was entrusted with the execution of a writ of possession which required and authorised him to give possession to the decree holder of certain premises in the occupation of the judgment debtor. On the complaint of the judgment debtor's wife the petitioner was placed on his trial on the allegation that he caught hold of her by the hand, forcibly dragged her out of the house and pushed her and when in consequence of the push she fell the petitioner kicked her. Sometime after the occurrence the complainant sent through her husband a letter of complaint to the thana and subsequently a complaint made either by the complainant or her husband was lodged against the petitioner at the thana. The Magistrate in convicting the petitioner under s 323 Indian Penal Code found that in pulling or dragging the complainant out of the house he pushed or jerked her from him in such a manner as to cause her to fall and to receive the injuries found on her elbows and knee. He further found that the petitioner did not deliberately kick the complainant but nevertheless held as follows:—I think it quite possible that on seeing her fall he went up to ascertain what had happened to her and pushed her more than once with his foot to make her rise. **Held** (without deciding whether the provisions of the English Common Law or the Code of Civil Procedure were applicable to the writ in question)—That under the provisions of either law in the execution of a writ of possession a reasonable degree of force may be used in order to effect the removal of persons bound by the decree and refusing to vacate. That on

PENAL CODE (ACT XLV OF 1860)—*contd*s 300 and 325—*contd*

I L R 40 All 103 dissented from *King Emperor v Hanuman I L R 35 All 560* and *Emperor v Ram Naya I L R 35 All 506* referred to *EMPEROR v GULAB (1918)*

I L R 40 All 686

Murder—Grievous hurt—Common intention—Deadly assault with lathis on an unarmed person—Presumption Four persons armed with lathis attacked and severely beat a fifth who was unarmed over a dispute about irrigation. The person attacked died in consequence of this beating and it was found that he had received several severe blows on the head the result of which was that the bones of the skull were broken to pieces and also other injuries about the body most of the injuries having probably been inflicted whilst the person attacked was on the ground but the evidence did not disclose which of the assailants caused which of the injuries. *Held* that all four assailants were properly convicted of murder under the fourth clause of s 300 of the Indian Penal Code and that the inference was not justified that the common intention of the assailants was not more than the causing of grievous hurt. *EMPEROR v KANHAI (1912)*

I L R 35 All 329

Murder—Grievous hurt—Hanging a human body believing the person to be dead and thereby causing death if murder—Intention to kill The accused assaulted his wife and gave her kicks blows and slaps. The kicks were given below the navel. The woman fell down and became unconscious. In order to create an appearance that the woman had committed suicide the accused took up the unconscious body of his wife thinking it to be a dead body and hung it by a rope. The post mortem examination showed that death was due to hanging. *Held* that the accused could not have intended to kill his wife if he thought that she was already dead and he could not be convicted of murder. The offence that the accused committed was an offence under s 325 of the Penal Code for having given her kicks blows and slaps before she fell down. *EMPEROR v DALU SIRDAR (1914)*

18 C W N 1279

s 301—

See s 299 I L R 39 All 161

s 302—

See s 37 I L R 35 All 503 and 560

See s 201 20 C W N 166

See MURDER I L R 37 Cal 315

I L R 44 Mad 443

Criminal Procedure

Code (Act V of 1898) s 74 376—Accused charged with murder—Duty of presiding Judge as to arranging for his defence—Retrial on the same charge The accused who was undefended in the Sessions Court was convicted under s 302 Indian Penal Code. The case came up to the High Court for confirmation of the sentence of death under s 374 Criminal Procedure Code and on appeal. *Held* that accused persons charged with murder should not go undefended. The respective duties of the Judge and the Bar as to the defence of such accused persons pointed out. The High Court held that on the evidence as it stood the sentence of death could not be confirmed and directed under

PENAL CODE (ACT XLV OF 1860)—*contd*s 302—*contd*

s 376 cl (b) a retrial of the accused on the same charge after arrangement being made for his defence. *KING EMPEROR v MOHAR ALI SHAIKH (1915)*

10 C W N 556

Murder—Poisoning by arsenic—Intention—Knowledge A person who administers a well known poison like arsenic to another must be taken to know that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and if death ensue he is guilty of murder notwithstanding that his intention may not have been to cause death. *Queen Empress v Tulka I L R 20 All 143* *King Emperor v Bhawana Din I L P 30 All 503* and *King Emperor v Gulsai I L P 31 All 143* referred to *EMPEROR v GAURI SHANKAR (1918)* *I L R 40 All 360*

s 304—

See s 37 I L R 35 All 506 and 560

See s 59 25 N W N 514

See CRIMINAL TRESPASS

I L R 41 Cal 662

Offering a child to crocodiles in the superstitious belief of ultimate good to the child The accused who were husband and wife had lost several children and they offered their next born to the crocodiles to a particular tank in the belief that the child's life would be ultimately saved but it was devoured the parents were convicted under this section. *KING EMPEROR v BHURAT HEPARI AND ANOTHER*

25 C W N 676

s 304 325 and 299—*Culpable homicide—Grievous hurt—Injury caused by a lathi resulting in death from gangrene* P struck G three blows with a lathi. One blow fractured the bones of the left forearm another fractured a bone in the right hand while the third fractured both bones of the left leg. In the case of the third injury gangrene supervened and G died in consequence. *Held* that R was guilty of either culpable homicide not amounting to murder under s 304 of the Indian Penal Code or causing of grievous hurt under s 325 of the Code. *EMPEROR v RAMI SINGH*

I L R 42 All 802

s 304 and 323—*Accused challenged under a 301 convicted under a 32—whether proceedings abate on account of death of person assaulted—Probate and Administration Act 1 of 1881 s 89* The 2 petitioners and 2 other persons were challenged by the police under s 304 Penal Code for causing the death of one J. The trial Court convicted the 3 latter under s 304 and the 2 petitioners under s 35. They appealed to the Sessions Judge who altered the conviction of all 4 accused to 1 under s 323. The two petitioners then filed a revision in the High Court and urged *inter alia* that as the Appellate Court had held that only an offence under s 323 had been committed and as the person injured had died the proceedings abated and the accused should have been acquitted. The Single Judge who heard the revision referred this point for consideration to a Division Bench. The hurt for the causing of which the petitioners were convicted did not cause the death of J. *Held* by the Division Bench that criminal proceedings once legally instituted whether upon a complaint or

PENAL CODE (ACT XLV OF 1860)—contd

— ss 304 and 323—contd

otherwise do not terminate or abate merely by reason of the death of the complainant or the person injured. S 89 of the Probate and Administration Act has no application to a criminal prosecution and there is nothing in the Criminal Procedure Code in support of the proposition that the death of the person injured or of the complainant of itself causes the proceedings to debate. It is a mistake to speak of an offence as a purely personal one. *Emperor v Sultan Singh* (I L R 31 All 606) and *Krishna Behari Sen v Corporation of Calcutta* (I L R) 31 Cal 993 (F M) referred to also Halsbury's Laws of England Volume 13 page 232. *Hazara Singh v Crown* I L R 11 Lah 27

— s 304 325—*Assault committed by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt*. Three persons attacked a fourth with lathis and death ensued through a fracture of the skull of the person so attacked. There was however no evidence to show that the common intention of the assailants was to cause death or which of them actually struck the blow which fractured the skull of the deceased. *Held* that the offence of which the assailants were guilty was that of causing grievous hurt and not that of culpable homicide not amounting to murder. *Emperor v Bhoja Singh* I I R 99 All 289 followed. *EMPEROR v CHANDAN SINGH* (1917) I L R 40 All 103

— s 304A—

See CAUSING DEATH BY RASH OR NEGLIGENT ACT I L R 39 Calc 855

Criminal negligence—

Car lessness of compounder in dealing with poisonous drug. An unqualified person who was in charge of a dispensary attached to a mill at Agra had to make up a quantity of quinine mixture for cases of fever. He went to a cupboard where non-poisonous medicines were supposed to be kept and took therefrom a bottle with an outside wrapper marked poison. This wrapper he tore off and threw away. The bottle itself was labelled strychnine hydrochloride but without regard to this and apparently because there was a resemblance between this bottle and another in which quinine hydrochloride was kept he made up the entire contents of the bottle as if it had been quinine. The result was that seven patients died. *Held* that the compounder was rightly convicted under s 304A of the Indian Penal Code. *EMPEROR v Dr Sorza* I L R 42 All 272

— s 306—*Abetment of suicide—Sati*. *Held* that persons actively assisting a Hindu widow in becoming a sati are guilty of the offence of abetment of suicide as defined in s 306 of the Indian Penal Code. *EMPEROR v PAM DAYAL* (1913) I L R 11 All 28

— s 317—*Exposure or abandonment of a child by a person having care of it—Person entrusted with a child for abandoning it has the care of it*. Accused No 1 having given birth to an illegitimate child gave it to her sister accused No 2 with a view to dispose of it secretly. Accused No 2 accordingly carried it by a railway train and abandoned it in a second class compartment. On these facts accused No 1 was charged with an offence under s 317 of the Indian Penal Code and accused No 1 with having abetted the offence

PENAL CODE (ACT XLV OF 1860)—contd

— s 317—contd

under ss 317 and 109 of the Code. The Sessions Judge acquitted them both the accused No 2 on the ground that she had not the care of the child and accused No 1 on the ground that as no principal offence had been committed she would not be guilty of abetment. The Government having appealed *Held* reversing the order of acquittal that both the accused had committed the offences with which they had been charged. *EMPEROR v CURRIE* (1916) I L R 41 Bom 152

— s 323—

See s 71 I L R 39 All 623

See s 304 I L R 2 Lah 27

See s 332 I L R 37 All 353

See BAILIFF I L R 42 Calc 318

See APPELLATE COURT I L R 118 Calc 293

See CRIMINAL PROCEDURE CODE 1898

s 423 3 Pat 1 J 585

Death of person injured—Abatement of proceedings—Probate and Administration Act (V of 1831) s 89. A criminal prosecution under s 323 of the Indian Penal Code does not abate by reason of the death of the person injured. The words to prosecute any proceeding in s 89 of the Probate and Administration Act do not refer to criminal prosecutions but to civil actions only. *Rama Nand v Emperor* (1917) 40 I C 1008 (Punjab) and *Labhu v Emperor* (1919) 52 I C 797 (Punjab) dissented from. *MUHAMMAD ISRAHIM SATHI v SHAIK DAVOOD* (1921) I L R 11 Mad 417

*The petitioner a Bailiff of the Small Cause Court Calcutta was entrusted with the execution of a writ of possession which required and authorised him to give possession to the decree holder of certain premises in the occupation of the judgment debtor. On the complaint of the judgment debtor's wife the petitioner was placed on his trial on the allegation that he caught hold of her by the hand forcibly dragged her out of the house and pushed her and when in consequence of the push she fell the petitioner kicked her. Sometime after the occurrence the complainant sent through her husband a letter of complaint to the thana and subsequently a complaint made either by the complainant or her husband was lodged against the petitioner at the thana. The Magistrate is convicting the petitioner under s 323 Indian Penal Code found that in pulling or dragging the complainant out of the house he pushed or jerked her from him in such a manner as to cause her to fall and to receive the injuries found on her elbows and knee. He further found that the petitioner did not deliberately kick the complainant but nevertheless held as follows— I think it quite possible that on seeing her fall he went up to ascertain what had happened to her and pushed her more than once with his foot to make her rise. *Held* (without deciding whether the provisions of the English Common Law or the Code of Civil Procedure were applicable to the writ in question)—That under the provisions of either law in the execution of a writ of possession a reasonable degree of force may be used in order to effect the removal of persons bound by the decree and refusing to vacate. That on*

PENAL CODE (ACT XLV OF 1860)—*contd*s 323—*contd*

the Magistrate's own finding the petitioner should not have been convicted. That is to say that a thing may possibly have happened is not to find that it did happen and there was no finding by the Magistrate that after the complainant had fallen the petitioner touched or pushed her with his foot. That the Magistrate should not have relied on the letter sent by the complainant to the thana previous to the lodging of the complaint. That the witnesses having been disbelieved with regard to the graver charges brought against the petitioner could not be fairly believed with regard to the small residuum of what the Magistrate conceived to be truth. *H MEREDITH v SANJIBANI DAS* 19 C W N 273

s 323 332—*Criminal Procedure Code s 144*—Public servant in the execution of his duty as such—Police constable assaulted whilst attempting to enforce an order which in fact had become obsolete. A police constable was assaulted whilst endeavouring to enforce an order passed by the District Magistrate as to the carrying of lathis by Prangwala which order if originally lawful had in any case become obsolete. Held that in the circumstances the persons who assaulted the constable could not be convicted under s 332 of the Indian Penal Code but they were liable to conviction under s 323. *Queen Empress v Dalip I L R 18 All 246* referred to *EMPEROR v MADHO* (1917)

I L R -40 All 28

s 324—

See COMMON OBJECT 2 Pat. L J 541

s 325—

See s 114 18 C W N 909

See s 300 I L R 35 All 329

I L R 40 All 636

18 C W N 1279

See s 301 I L R 42 All 302

See CRIMINAL PROCEDURE CODE s 106

I L R 33 All 48

See RIOTING I L R 41 Calc 43

See SENTENCE 3 Pat. L J 641

s 328—

See s 114 4 Pat. L J 289

See s 141 17 C W N 1132

See COMMON OBJECT 2 Pat. L J 541

See CRIMINAL PROCEDURE CODE (Act V of 1898) s 307

I L R 37 Mad 236

See CRIMINAL TRESPASS

I L R 41 Calc 663

See PRIVATE DEFTENCE 3 Pat. L J 653

4 Pat. L J 289

s 329—

See CRIMINAL PROCEDURE CODE ss 109

123 397 I L R 34 Bom 326

s 332—

See s 323 I L R 40 All 28

See CRIMINAL PROCEDURE CODE s 54

I L R 40 Mad. 1023

See MAGISTRATE JURISDICTION OF

I L R 39 Calc 377

PENAL CODE (ACT XLV OF 1860)—*contd*

ss 332, 323—Public servant in the execution of his duty as such—House search by Excise Inspector without a warrant—Assault on Inspector. An Excise Inspector in searching the house of a person under the suspicion that he would find cocaine there committed many irregularities. He had no warrant authorising him to make the search he had brought only one search witness and he directed a constable to scale the outer wall of the house. The accused assaulted and beat him. Held that the Inspector and the constables were not acting in the discharge of their duties as public servants and the accused were not guilty of an offence under s 332 of the Indian Penal Code but were guilty of an offence punishable under s 373 of the said Code. *Queen Empress v Dalip I L R 18 All 246* followed *EMPEROR v MUKHTAR AHMAD* (1915) I L R 37 All 353

ss 332 and 503—

See CRIMINAL PROCEDURE CODE s 103

I L R 42 All 87

s 336—

1 ——— Doing an act endangering human life or the safety of others—Temple resorted to by pilgrims on festive occasions—Duty of person in charge to ensure safety of pilgrims attending by license and invitation. The petitioner was the lessee of a certain temple from some of the sibs and was the general manager of all of them. It appeared that on a certain day in the year pilgrims and others in large numbers visited this temple. Close by the gate leading from an outer courtyard into the inner temple there was a well which was surrounded by a masonry platform 14 to 2 feet high and the ring or parapet of the well stood again about 1 foot above the platform. Early at night on the day of the congregation of pilgrims an accident having occurred the petitioner as the instance of the Police Officer in charge had a light placed on or near the one foot parapet but at a later hour the petitioner had the light removed and thereafter between 1 and 11 A.M. while the people were again entering into the inner temple a boy who had no previous knowledge of the well and in the darkness could not see it fell into it. Held that the facts constituted an offence within the meaning of s 336 of the Penal Code. That on the occasion of the festival in question the temple becomes a place of public resort and it was the bounden duty of the petitioner as the person in charge to take all reasonable precautions necessary to ensure the safety of those crowding thither by his license and invitation. *NARSING CHARY MAHAPATRA v KING EMPEROR* (1914) 18 C W N 1176

2 ——— Doing a rash or negligent act endangering human life or personal safety of others—Licensed taxi cab driver asked to wear spectacles at the time of driving—Driver wearing no spectacles at the time of driving—Liability. The accused was at the time he took out a license to drive taxi cabs, asked to use spectacles at the time of driving owing to his defective eyesight. Still he was one night driving his taxi cab without wearing spectacles when his car collided with another car but it appeared that he was not liable for the accident. He was tried for an offence punishable under s 336 of the Indian Penal Code for doing an act so rashly or negligently as to endanger

PENAL CODE (ACT XLV OF 1860)—contd**s 336—contd**

human life or the personal safety of others. The medical evidence adduced at the trial showed that the defect in the eyesight of the accused was not very much and that it would not appreciably interfere with his efficiency as a driver. The Magistrate having convicted him of the offence charged the accused applied to the High Court. *Held* setting aside the conviction and sentence that it was not made out that the accused if he drove his car without wearing spectacles would be acting so rashly or negligently as to endanger human life or the personal safety of others. **EMPEROR v. ABAS MIRZA (1918)** I L R 42 Bom 396

ss. 337-338—Hurt caused by rashness or negligence—Hakim—Performance of eye operation with ordinary scissors—Neglect of ordinary precautions—Partial loss of eye sight. The accused a Hakim performed an operation with an ordinary pair of scissors on the outer side of the upper lid of the complainant's right eye. The operation was needless and performed in a primitive way the most ordinary precautions being entirely neglected. The wound was sutured with an ordinary thread. The result was that the complainant's eye sight was permanently damaged to a certain extent. The accused was on these facts convicted of an offence punishable under s 333 of the Indian Penal Code. He having applied to the High Court *Held* that the accused had acted rashly and negligently so as to endanger human life or the personal safety of others. *Held* also that the act of the accused amounted to an offence punishable under s 337 of the Indian Penal Code since there was no permanent privation of the sight of either eye in consequence of the operation. Where a Hakim gives out that he is a skilled operator and charges considerable fees the public are entitled to the ordinary precautions which surgical knowledge regards as imperative. To neglect such precautions entirely is negligence such as is contemplated by the criminal law. **EMPEROR v. GULAM HYDER PUNJABI (1915)** I L R 39 Bom 523

s 339—Wrongful restraint what necessary to constitute. The accused placed a lock on the outer door of complainant's house intending to prevent and thereby preventing his ingress. *Held* that the offence of wrongful restraint was established although the accused were not physically present to enforce the obstruction. There is nothing in s 339 Criminal Procedure Code which requires the physical presence of the obstructor at the moment of prevention. **ARUMUGAKADAR v. EMPEROR (1910)** I L R 34 Mad 547

s 341—Restraint upon a drunken and disorderly person—Common Law of England—Applicability to India. A private citizen has the right to arrest under the Common Law any person as to whom there is reasonable apprehension that he will commit a breach of the peace. **Timothy v. Simpson (1835) 4 L J (Ex) 81** and **Queen v. Light (1857) 27 L J (MC) 81** referred to. **In re PAMASWAMI AYYAR (1921)** I L R 44 Mad 913

s 341-109—Wrongful restraint—Tenant holding over—Landlord preventing the tenant from going to the demised premises. The accused having prevented a tenant of his who was holding over from entering the demised premises, was convicted of wrongful restraint (ss 341

PENAL CODE (ACT XLV OF 1860)—contd**ss 341-109—contd**

and 109 of the Indian Penal Code). On application to the High Court under criminal revisional jurisdiction *Held* that the accused was rightly convicted inasmuch as the tenant holding over had in India a position recognised by the law and had a right to retain possession of the premises he occupied even against the landlord himself until disposed of in due course of law. **EMPEROR v. HAJI GULAM MAHOMED (1918)** I L R 43 Bom 531

s 342—

See s 107 I Pat L J 129

See RIOTING I L R 48 Calc 78

See WRONGFUL CONFINEMENT I L R 47 Cal 818

s 343—Wrongful confinement—Detention of prostitutes in brothel. Accused No 1 who had a woman in his keeping at Kolhapur brought her from Kolhapur to Bombay where he kept her in the brothel of accused No 2. There she led the life of a prostitute her movements were watched and a guard was kept at the entrance of the house. She was occasionally allowed to go out of the house under surveillance. It appeared that accused No 1 had on previous occasions supplied women to accused No 2. *Held* that on these facts accused Nos 1 and 2 were both guilty of the offence of wrongfully confining the woman. **EMPEROR v. BANDU EBRAMJI (1917)** I L R 42 Bom 181

s 353—

See s 99 IB C W N 548

See s 183 1 Pat L J 550

See BENGAL SURVEY ACT 1810 2 Pat L J 18

See CRIMINAL PROCEDURE CODE—

s 54 (1) 1 L R 36 All 6

s 70 2 Pat L J 437

See RIOTING I L R 41 Calc 836

See SEARCH BY POLICE OFFICERS I L R 41 Calc 261

See WARRANT OF ARREST 3 Pat L J 493

one act constituting two offences—

See GENERAL CLAUSES ACT 1907 s 26

1 Pat L J 373

s 360—

See s 366 I L R 42 Bom 391

See CRIMINAL PROCEDURE CODE (ACT V OF 1893) ss 4-3 439

I L R 37 Mad 119

s 361—Lawful guardian—Hindu law—Nearest major male relative not necessarily the lawful guardian of a female minor. The only persons having an absolute right to the custody of a Hindu minor are the father and the mother of the minor. No such right exists in the person who happens to be the nearest major male relative of the minor and such a relationship would not in law be a defence to a charge of kidnapping a minor from the custody of a de facto guardian. **EMPEROR v. SITAL PRASAD** I L R 42 All 145

PENAL CODE (ACT XLV OF 1860)—*contd*

§§ 361 366, 109—*Kidnapping from lawful guardianship—Completion of offence—Continuous offence—Abetment* The offence of kidnapping is completed the moment a girl under sixteen years of age is taken out of the custody of her lawful guardian and is not an offence continuing as long as the minor is kept out of such guardianship. There can be no abetment of the offence by conduct which commences only after the minor has once been completely taken out of the keeping of the guardian and the guardian's keeping of the minor is completely at an end. *Regina v Samia Kaundan* 1 I P 1 Mad 173. *Queen Empress v Ram Das* 1 L R 18 All 360. *Queen Empress v Ram Sundar* 1 L R 19 All 109. *Chekutty v Emperor* 1 L R 26 Mad 454. *Amar Chatteraj v Queen-Empress* 1 L R 27 Cal 1041. *Chanda v Queen Empress* (1904) Punj Rec Cr J 19 referred to. *EMPEROR v ABDUR RAHMAN* (1916) 1 L R 38 All 664.

§§ 361 366 and 368—*Abduction and kidnapping—Lawful guardian—Lawfully entrusted—Evidence, duty of Crown to produce the best available—Charge necessary for precision in—Guardianship proof of—Construction of Statutes* In a 361 of the Indian Penal Code the word "lawful" does not necessarily mean that the person who entrusts a minor to the care or custody of another must stand in the position of a person having a legal duty or obligation to the minor. It is a sufficient compliance with the section and its Explanation if the entrusting of the minor to the care or custody of another is effected without illegality or the commission of any unlawful act by a person legally competent to do so. "Entrusted" means the giving handing over or confiding of something by one person to another. It involves the idea of active power and motive by the person reposing the confidence towards the person in whom the confidence is reposed. For an entrusting within the meaning of the Explanation to s 361 there must be necessarily three persons viz (1) the person imposing the confidence or trust (2) the person in whom the trust is imposed and (3) the person constituting the subject matter of the trust. The Explanation contemplates a declaration of trust by a person competent to make such a declaration conveying handing over and confiding a minor to the care and custody of another in whom a confidence and trust is imposed. It is necessary for the person accepting the trust to do so either by express assent or by necessary implication arising from tacit acquiescence in the performance of the trust. Neither the declaration of trust nor its acceptance need be necessarily in writing. It is sufficient if the declaration is verbally made and given or if it arises from a course of conduct consistent only with the existence of such antecedent declaration and accepted verbally or by necessary implication arising from the conduct of the person so entrusted with the duty imposed. In a criminal trial the onus is upon the Crown to prove by the best evidence procurable the guilt of the accused. Where therefore it was alleged that a girl had been abducted from the guardianship of a certain person and that person was not called to prove the guardianship held that the Crown had not tendered the best available evidence of the guardianship. Courts of Law ought not lightly to infer that a person is a lawful guardian for one purpose only and not for all purposes if the obligation of guardianship is once established whether

PENAL CODE (ACT XLV OF 1860)—*contd*

as 361 366 and 368—*contd* expressly or by inference. The mere relationship *per se* of master and servant does not constitute a master the lawful guardian of a minor servant within the meaning of s 361 nor can such master in the absence of proper proof be deemed a person lawfully entrusted with the care and custody of such minor. It is the duty of a Sessions Court in framing charges to see that they are precise in their scope and particular in their details. *Held* therefore that in a case under s 366 of the Indian Penal Code the charge should state the time at and date on which the alleged kidnapping or abduction took place. The words of a statute must be construed in their ordinary grammatical and natural sense and not in a forced and artificial sense unless such conclusion would give rise to an obvious absurdity which could never have been contemplated. A court of justice is not permitted to relax the construction of a statute in a manner at variance with its express provisions and which might operate unfairly to the prejudice of an accused person. No court in the administration of criminal justice ought to dispense with the statutory requirements of the law as to the proof necessary to establish a fact. *NUSSAMAT KESSAR v THE KING, EMPEROR* 4 Fat L J 74.

§ 363—
See CRIMINAL PROCEDURE CODE s 193
1 L R 41 Cal 432
See KIDNAPPING 1 L R 40 Cal 714

Kidnapping from lawful guardianship—Minority of Mahomedan when to cease for the purpose of s 36—Majority Act (IX of 1875) s 3 According to Mahomedan Law the occurrence of puberty determines minority and the mother's right to custody but for the purpose of a 363 of the Penal Code regard must be had only to the definition of minority in s 3 of the Majority Act (IX of 1875). In the matter of *Ahalya Bibi* 5 B P R 557 distinguished. *RE MUTHU IERANI* (1913) 1 L R 37 Mad 88.

§ 366—
See s 361 1 L R 38 All 664
4 Pat L J 74
See ABDUCTION 1 L R 45 Cal 641

Kidnapping—Taking out of custody Where two girls under the age of 10 years ran away from their houses and remained for nearly one or two days in the house of a woman who belonged to the cast of Naks in Kuttan and no report was made to the *padhan* or the *phucari*. *Held* that the woman in whose house the girls stayed was properly convicted of an offence under s 366 of the Penal Code. *Queen v Gander Singh* 11 R Cr 111 dissented from. *EMPEROR v JASJIT* (1912) 1 L R 11 All 340.

§§ 366 360 90—*Kidnapping a girl out of British India to seduce her to illicit intercourse—Consent of the girl aged fifteen years* The accused kidnapped a girl fifteen years of age out of British India with her consent in order that she might be seduced to illicit intercourse. He was convicted of an offence under s 366 of the Indian Penal Code. On appeal *Held* reversing the conviction that the accused had committed no offence under s 366 of the Indian Penal Code inasmuch as the girl who was over twelve years of age was kidnapped with her consent. *EMPEROR v HARIBHAI* (1918) 1 L R 42 Bom. 391.

PENAL CODE (ACT XLV OF 1860)—*contd.*

— ss. 368 369—*Kidnapping—Lawful guardianship* A Jat girl under the age of 18 years was sent by her father to carry food to the bullocks. She never returned home. Shortly afterwards she was found in a village not far from her home in the company of two men of the same caste. She was then dressed in boy's clothes and had her hair cut short. The two men offered no explanation as to how the girl came to be with them or why she was disguised. *Held* that both the men in whose custody the girl was found were properly convicted under s. 366 of the Indian Penal Code. *Emperor v. Jetha Valloo* 11 Bom L R 85 followed. *EMPEROR v. HARKESH* (1918)

I L R. 40 All 507

— ss. 366 372—*Kidnapping—Buying or selling minor girls for the purpose of prostitution* A low caste girl left her lawful guardian of her own free will and subsequently met the accused. Ewaz Ali and lived with him for some time. Later he made her over to certain persons who representing that she was a member of a higher caste induced a member of such higher caste to take her in marriage and to pay money for her in full belief that such representation was true. *Held* that Ewaz Ali was neither guilty of an offence under s. 366 of the Indian Penal Code inasmuch as he did not take or entice her away from her legal custody nor of an offence under s. 372 of the said Code. *King Emperor v. Ram Chander* 12 All L J 265 *Empress of India v. Sri Lal* 1 L R 2 All 694 followed. *King Emperor v. Jetha Valloo* 6 Bom L R 785 referred to. *EMPEROR v. EWAZ ALI* (1915)

I L R 37 All 624

— s. 370—*Buying and selling as a slave what amounts to* The appellants in these cases were convicted by Sessions Court of North Malabar under s. 30 Penal Code the second appellant having been found to have sold and the first to have bought a Pulayan named Vellan as a slave. The document recording the above transaction ran as follows:—I execute to you and give you this day this jenmam deed giving you Velandia son Pulayan Vellan with his heirs. The sum that I received from you in cash to day is ten rupees. For this sum of ten rupees you should get work done for you by the said Vellan and his offspring that may come into being as your jenmam and act as you please. On a difference of opinion between ABDUR RAHIM and VAPIER JJ. as to whether the said transaction amounted to an offence under s. 370 Indian Penal Code. *Held* by ATYING J. that the transaction in question was a sale of Vellan and his offspring as mere chattles and that the appellants were guilty of an offence under s. 370 Penal Code. *Empress of India v. Pam Kuar* 1 L R 2 All 703 and *Amira v. Queen Empress* 1 I L R 7 Mad 77 referred to. *KOROTHU MAHMOUD v. THE KING EMPEROR* (1917)

I L R 41 Mad 334

— s. 372—

See 36r I L R 37 All 624

— s. 373—*Obtaining possession of a minor girl for purposes of prostitution—Third party need not necessarily dispose of a minor girl* To constitute an offence punishable under s. 33 of the Indian Penal Code 1860 it is not necessary that the possession of the minor should be obtained from a third person. It is enough if it is established that the accused in fact obtained possession of the minor with intent that the minor shall be used for

PENAL CODE (ACT XLV OF 1860)—*contd.*— s. 373—*contd.*

the purpose of prostitution. *Queen Empress v. Shaikh Ali* (1870) 5 Mad H C 473 referred to. *EMPEROR v. SHAMSUNDARBAI*

I L R 45 Bom

— ss. 378 380 411—

See CONVICTION 3 Pat L J

— s. 379—

See AGRA TENANCY ACT (II OF 1

s. 124 I L R 38 All

See BENGAL TENANCY ACT 1886 s. 1

1 Pat L J

See CRIMINAL PROCEDURE CODE (ACT OF 1898) ss. 397 123

I L R 17 Bom

2 — *Servants' stealing things at master's bidding when theft* In order to convict a servant of theft under s. 379 Indian Penal Code for having cut away some bamboo from the order of his master it must be clearly shown that he (the servant) knew of the dishonest intention of his master. *Hari Bhimal v. The Emperor* 9 C W N 974 followed. *RADHA MADHAB PAI v. THE KING EMPEROR* (1910) 15 C W N

2 — *Theft—Removal of goods from a person's custody—Larceny* In order to constitute larceny there must be an intention to take entire dominion over the property. A taker must intend to appropriate the property to his own use but there may be theft without intention to deprive the owner of the property permanently. Hence where a person snatches away some books from a boy as he came out of school and told him that they would be returned when he came to his house. *Held* that the offence of theft had been committed. *R v. Dickinson* 1 R & R 470 *Prosenno Kumar Patra v. The King* 1 L R 22 Cal 669 and *Queen Empress v. Agha Muhammad Yusuf* 1 L R 13 All referred to. *EMPEROR v. NAUSHE ALI KHAN* (1911) I L R 14 All

3 — *Theft—Elementary necessary to constitute offence—Removal of property in assertion of bona fide claim of right* To sustain a conviction under s. 319 it is necessary to prove dishonest intention to take property out of possession of another person. Consequently if property is removed in the assertion of a bona fide claim of right the removal does not constitute theft. The claim of right must be an honest one though it may be unfounded in law or in fact the claim is not made in good faith but is a colourable pretence to obtain or to keep possession. It is of no avail as a defence. *ARAF ALI KHAN EMPEROR* (1916) I L R 44 Cal. C. W N 12

4 — *Theft—Bombay Land Revenue Code (Bombay Act I of 1879) s. 1—Attachment of buffaloes for non payment of land revenue—No actual seizure of buffaloes—Pecuniary value of buffaloes by their owners—Offence* On default in the payment of land revenue by accused Nos. 1 and 2 the Mamladar went to their houses and made a panchnama declared that their buffaloes were attached and forbade the accused to remove the buffaloes. Notwithstanding this accused Nos. 2 and 3 removed the buffaloes at the instigation of accused No. 1. For this act accused Nos. 1 and 3 were convicted.

PENAL CODE (ACT XLV OF 1860)—contd

s 379—

of the offence of theft and accused No 1 of abetment of the same. The Sessions Judge was of opinion that inasmuch as the Mamlatdar had not taken actual possession of the buffaloes nor seized them the accused had committed no offence in removing them. He therefore referred the case to the High Court. Held that the offence of theft was constituted by the removal of buffaloes inasmuch as on the proved facts the Mamlatdar was in possession of them. **EMPEROR v LALLU WAGHJI** (1918) **I L R 43 Bom 550**

5 Removal of paddy

grown by trespasser from land when in possession of rightful owner of theft. A person who grows paddy on lands as trespasser has no right to go upon the land after the rightful owner has obtained possession and remove the paddy and a plea of *bond fide* civil dispute cannot be successfully raised on such facts in an aver to a charge of theft. **ABINASH CHANDRA SARKAR v KING EMPEROR** (1918) **23 C W N 385**

Theft—Appropriation by tenant of fall trees belonging to the zamindar

Certain trees the property of the zamindar of the village in which they were situated were blown down bodily by a dust storm. Some of the tenants of the village thereupon removed and appropriated the trees. The zamindar laid a complaint against the tenants charging them with theft. The tenants pleaded but were unable to substantiate the plea that they had a customary right to trees thus uprooted by a storm. Held that the action of the tenants in appropriating the trees *prima facie* amounted to the offence of theft. It lays on them to establish the title which they set up and in the circumstances their conviction was right. **EMPEROR v DUWJAPAT**

I L R 42 All 53

ss 379 to 381—

See THEFT

ss 379 and 457—

See CRIMINAL PROCEDURE CODE 1898
s 200 **3 Pat L J 346**

s 380—

See CONVICTION **II Pat L J 354**

See LURKING HOUSE TRESPASS

I L R 44 Cal 358

Circumstantial evidence

necessary for conviction nature and character of The petitioner was convicted under s 380 of the Penal Code for theft of a number of currency notes and the findings were that he as well as five other persons entered the room at or about the time the notes were stolen that his brother in law was present when two of the stolen notes were cashed in Calcutta that shortly after the theft he was in possession of a large sum of money for which he could not satisfactorily account. Held that circumstantial evidence must be exhaustive and exclude the possibility of guilt of any other person or must point conclusively to the complicity of the accused. That in the present case the evidence did not fulfil the conditions of circumstantial proof at all. **CHIRAGUDDIN v EMPEROR** (1914)

18 C W N 1144

PENAL CODE (ACT XLV OF 1860)—contd

ss 390 398—Dacoity—one of the

dacoits killing two persons while the dacoits made good their escape with their booty—whether his comrades liable for the consequences of his act. The house of one K was raided by a gang of five dacoits one of whom was armed with a gun and the rest with *chikars*. The dacoits ransacked the house and made good their escape with their booty. A number of villagers had assembled outside the house and in fighting their way through the crowd one of the dacoits shot one man dead and inflicted fatal wounds upon another who died shortly afterwards. The question before the Court was whether under these circumstances every dacoit was equally liable for the consequences of this act of one of them. Held that murder committed by dacoits while carrying away the stolen property is murder committed in the commission of dacoity. *vide* s 390 of the Indian Penal Code and every offender was therefore liable for the murder committed by one of them. **Queen Empress v Salharam Ahundu** (2 Bom L R 325) and *vide* Theban v Vithi Theban (17 Mad L J 118) followed. **Emperor v Chandar** (1306 All W N 47) distinguished. **LASHKAR v CHOWA**

I L R 2 Lah 274

s 392—Charge amendment by Sessions

Judge before hearing evidence—Criminal Procedure Code s 227. Where the appellants were committed to the Court of Sessions on a charge of dacoity and the Sessions Judge without assigning any reason at the commencement of the trial amended the charge to one of robbery. Held that it was improper for the Sessions Judge to thus alter the character of the charge before hearing evidence. That under the circumstances of the case the fact that the appellants pointed out the places where some of the articles stolen in a robbery were found was not sufficient evidence to convict them under s 392 Indian Penal Code or even under s 411 Indian Penal Code. **Queen Empress v Gobinda** **I L R 17 All 876** followed. **FAIMULLAH v KING EMPEROR** (1911)

16 C W N 238

s 395—

See DACOITY

15 C W N 434

s 398—

See MAGISTRATE **I L R 39 Cal 118**

ss 399 402—

See DACOITY **I L R 41 Cal 350**

s 400—Section to be strictly construed—

Association for dacoity—Gist of offence—Kind of evidence sufficient to convict—Appropriate testimony—Corroboration—Proof that accused members of a criminal tribe—value of—Previous conviction—value of when no association established—Accusatorial effect of. The offence contemplated in s 400 of the Penal Code is one of a very special character and entirely the creature of statute and should therefore be strictly construed. **The Queen v Mookhtaram Sirdar** **23 F P Cr 18** referred to. Association for the habitual pursuit of dacoity is the gist of the offence punishable under the section. Although the evidence need not show the same degree of particularity as to the commission of each dacoity as is required to support a substantive charge of that crime it must be established for the purpose of conviction under the section that

PENAL CODE (ACT XLV OF 1860)—*contd*s 400—*contd*

the accused belong to a gang whose business is the habitual commission of dacoity. The special conspiracy must be proved. *Emper v Auvre All W N (1856) 65 66 King Emperor v Terumal Peddi 1 L R 24 Mad 53 The Public Prosecutor v Borigara Potigadu 1 L R 32 Mad 19* referred to Corroboration of the testimony of an approver in a trial under s 400 must connect the accused with the offence at the occasion of a gang of persons for the business of habitually committing dacoity. The general criminality of a tribe or caste cannot be imputed to individual members operating in gangs where the prosecution is under s 400 and the fact that members of the tribe generally were alleged to have been implicated in several dacoities within a period of ten years preceding the trial was not sufficient proof against the persons under trial when it appeared that the tribe contained within it thousands of human beings. Where a prosecution for the purpose of habitually committing dacoity had not been made out the mere fact that some of the accused had been previously convicted of dacoity or theft or had been bound down to be of good behaviour under s 110 Criminal Procedure Code was of no consequence. The fact that some of the persons undergoing trial for an offence under s 400 had once been sent up on a charge of dacoity of which they were acquitted could not be relied on to prove that they were habitual dacoits. No adverse inference can be drawn against accused persons after their acquittal. *The Emperor v Darsi Gopal Gupta 15 C W N 93 Per v Plumber [1902] 2 K D 39* followed. *Bonar v The King Emperor 15 C W N 461* distinguished. *LADER SUNDAR v THE EMPEROR (1911)*

18 C W N 69

s. 401—

See CHARGE 1 L R 47 Cal 154

See PREVIOUS CONVICTIONS EVIDENCE OF 1 L R 38 Cal 408

s 402—

See DACOITY 1 L R 41 Cal 350

s 403—

See s 23 1 L R 40 All 119

s 405—*Criminal Procedure Code (Act V of 1898)* ss 179 and 182—*Criminal breach of trust—Hundis sent from Dharapuram—Cash sent in Bombay—Jurisdiction* The offence of criminal breach of trust is completed by the misappropriation or the conversion of the property dishonestly. It is only the intention which is essential whether wrongful gain or loss actually results is immaterial. It is a consequence but no essential part of the offence and a person is not accused of the offence by reason of it. Where therefore the accused brokers in Bombay were charged in the Court of the Sub Divisional Magistrate of Erode with the offence of having committed criminal breach of trust in respect of the proceeds of certain hundis entrusted to them by the complainants merchants at Dharapuram for encashment at Bombay. Held that the hundis having been cashed and the proceeds misappropriated by the accused in Bombay the Erode Court had no jurisdiction to try the case. *Ganeshi Lal v Chand Kulkore 1 L R 34 All 437* approved. *Assistant Sessions Judge*

PENAL CODE (ACT XLV OF 1860)—*contd*s 405—*contd*

of North Arcot v Pama namu Asari 26 Mad L J 235 distinguished. *Queen Empress v Brien 1 L R 19 All 111* and *Emperor v Mahadeo 1 L R 32 All 397* commented on. Held also that where as in this case the complaint clearly charged dishonest misappropriation to accused's own use and not use or disposal in violation of law or contract the offence fell under the first part of s 405 of the Indian Penal Code and not under the second. And secondly if it were otherwise the offence would be committed where the dishonest use or disposal took place not where the contract was made or should have been performed. *Re RAMBILAS (1914) 1 L R 111 Mad 639*

ss 405 409—

See CRIMINAL BREACH OF TRUST

1 L R 41 Cal 844

s 406—

See CRIMINAL PROCEDURE CODE s 179

1 L R 35 All 29

See RECEIVER 1 L R 48 Cal 432

1 ———— *Criminal breach of trust—Accessary elements to constitute the offence* The complainant owed money to the accused on a mortgage bond and on a certain day went to their house and paid the amount settled due in full satisfaction of the bond. An endorsement of payment was made on the back of the bond by one of the witnesses for the prosecution and the accused went inside their house with the bond and the money saying that they would keep the money and return the bond but they did not come back that day and afterwards denied the receipt of the money. Held that on the facts there was no trust which could bring the case within the terms of s 408 Indian Penal Code. *GOLAM HOSSAIN v EMPEROR (1917) 22 C W N 1005*

2 ———— *Criminal breach of trust—Prosecution bound to prove entry* In a case of criminal breach of trust if the prosecution could not prove how the accused came by the money they did not establish one of the first essentials of the offence charged. That accused was entrusted with the money. *GOURI NARAYAN BARRUA v TILDIKARAN CHETRI*

25 C W N 838

ss 406 408—*Criminal breach of trust—Water works inspector misappropriating water—Money realized as water tax not credited to the municipality* Where a municipal water works inspector being the lessee of a house within municipal limits had such house connected with a municipal water main and accepted a yearly payment as water tax from his tenants but neither informed the municipal board that the connection had been made nor credited to the board the money which he received as water tax from his tenant. He was held liable as he was properly convicted under ss 406 and 408 of the Indian Penal Code whether or not he might have been punishable under the United Provinces Water Works Act 1891. *EMPTOR v BIMALA CHARAN POI (1913)*

1 L R 35 All 361

s 408—

See CRIMINAL PROCEDURE CODE—

ss 182 AND 531

1 L R 32 All 397

PENAL CODE (ACT XLV OF 1860)—*contd*s 408—*contd*

ss 233 236 239

I L R 32 All 219

Embelement as a clerk or servant—Misjoinder of charges A station master on the East Indian Railway under an arrangement with the Company received a fixed allowance in respect of the marking loading and unloading work at his station and used to engage his own men for that purpose. One of such men engaged as a marksman was first allowed to keep certain registers which it was the duty of the station master to maintain and next allowed to receive cash payments and make entries in the cash register. Whilst so employed he received a sum of Rs 10 0 as an overcharge or demurrage in respect of certain goods which passed through his hands and appropriated the same. To this sum however the Railway Company made no claim. He was also alleged to have received and appropriated to his own use two other sums of money under some what similar circumstances. In respect of the three sums he was tried and convicted on three counts under s 408 of the Indian Penal Code. *Held* that the offence if any committed with regard to the sum of Rs 10 0 did not fall within s 408 at all and this being so the jointer of the three charges in one trial was illegal. **EMPEROR v. KARI UD DIN (1918)** I L R 40 All 565

ss 408 477A—

See CHARGE I L R 40 Calc 318

s 409—

See CRIMINAL BREACH OF TRUST

I L R 41 Calc 844

See CRIMINAL PROCEDURE CODE 1898—

ss 22 AND 233

I L R 38 All 42

ss 233 234

3 Pat L J 124

1 Criminal misappropriation—

Evidence—What prosecution has to prove On a charge under s 409 of the Indian Penal Code it is no necessary for the prosecution to prove in what manner money alleged to have been misappropriated has actually been disposed of by the accused. If it is shown that money entrusted to the accused was not accounted for nor returned by him in accordance with his duty if unpaid it lies on the accused to prove his defence. **EMPEROR v. KADIR BAKSH (1910)** I L R 33 All 249

2 Criminal breach of trust—

Charge—Criminal Procedure Code s 292 (2) An accused person was charged under s 409 of the Indian Penal Code with having embezzled an aggregate sum of Rs 208 12 0 on various dates between the 1st July and the 1st November 1909. *Held* that the charge so framed was not open to objection notwithstanding that evidence was available as to the various items of which the aggregate sum charged was composed. **EMPEROR v. Gul ar Lal I L R 24 All 254** **EMPEROR v. Ishtiaq Ahmad I L R 23 All 69** **Samsuddin Sarkar v. Nisaran Chandra Ghose I L R 31 Calc 928** **Sat Narain Tewari v. Emperor I L R 32 Calc 1085** and **Thomas v. Emperor I L R 29 Mad 553** followed. **Subramania Ayyar v. King Emperor I L R 15 Mad 51** distinguished. **EMPEROR v. Ibrahim Khan (1910)** I L R 33 All 36

PENAL CODE (ACT XLV OF 1860)—*contd*s 409—*contd*

3

A Postmaster

whose duty it was to pay over to the holders of certain cash certificates the money due thereon at a certain rate in fact paid the holders at a lower rate and misappropriated the difference. *Held* that he thereby committed an offence of criminal breach of trust by a Public Servant. **EMPEROR v. SITA RAM** I L R 42 All 204

s 411—

See CONVICTION 11 Pat L J 106

See DISHONESTLY RECEIVING STOLEN PROPERTY I L R 40 Calc 890

See JURY TRIAL BY

24 C W N 619

Receiving stolen property—Presumption as to knowledge of person in whose possession stolen property found after considerable lapse of time—Criminal Procedure Code (Act V of 1898) s 35—Concurrent sentences Where in a case under s 411 Indian Penal Code the stolen property was found in the possession of the accused more than three months after the theft. *Held* that having regard to the length of time there was no presumption that the accused knew or had reason to believe the property to be stolen. An order directing sentences passed in two separate trials against the same accused to run concurrently in illegal. **JOSEF VULLAN BEPRAI v. THE KING EMPEROR (1918)** 22 C W N 597

ss 411 414—*Dishonestly receiving stolen property—Assisting in the concealment of stolen property—Government currency note received in the course of business—Jurisdiction* Where a Government currency note of the value of Rs 1 000 was traced seven months after the loss to a shroff who carried on business in Bombay and through whose hands currency notes would find their way in the course of business though he could not name the person from whom he had received the currency note. *Held* on a complaint under ss 411 414 of the Indian Penal Code that the Chief Presidency Magistrate was right in refusing to issue process. **RAM CHANDRA SINGH v. HAJI MEHAR HAJI ABDULLAH (1913)** 17 C W N 1129

s 415—

See EVIDENCE ACT (I of 1872) s 14

15 I L R 34 All 93

Cheating—Deceit—Shopkeeper receiving currency notes in exchange for goods sold—Retention by shopkeeper of small amount from change on ground that notes were not worth face value—Plea of guilty The accused who had sold goods worth Rs 2 13 0 to a customer received from him two currency notes one of Rs 2 8 0 and the other of Re 1 but tendered as change only Rs 0 93 saying that the notes were not worth their face value and that Rs 0 19 were charged on that account. The accused pleaded guilty and was convicted of the offence of cheating. On application to the High Court. *Held* (i) that whether on the admitted facts the accused ought to be held to have committed the offence of cheating was a question of law as to which the plea of the accused was immaterial (ii) that he had not committed the offence of cheating for there was no deceit at all since the customer

PENAL CODE (ACT XLV OF 1860)—contd

s 415—contd

was not induced to hand over the notes by any representation on the part of the shopkeeper that he would get change calculated on the face value of the notes but handed them to the accused in the ordinary course of the sale and purchase transaction. *EMPEROR v. MUKERJI* 1 AIR 1919 (1919) I L R 43 Bom. 842

s 415 417—

1. *Dishonest intention—Facts proved not sufficient to support conviction—Evidence gone into in revision.* Where according to the Rules regulating the levy of octroi on certain goods brought within the Sambalpur Municipality the goods had to be presented in bulk at the exit station out post with an application for a pass in a prescribed form such application being in the ordinary course handed by the applicant or his agent to the out post mohurer who made it over to the daroga whose duty it was to check the application and to certify the description and quantity of the goods actually presented and then to make out the *chalan* or pass which had to be signed by the mohurer and one of the Rules provided that a municipal member must attest the check at the exit station out post and in the absence of such attestation the exit mohurer shall not sign the *chalan* and another Rule provided that the absence of the mohurer's signature on the *chalan* is one of the reasons for which an application for a refund of duty allowed in certain cases should be rejected and where on a certain day the petitioner at the request of the daroga consented to act as Municipal member at the out post in respect of goods brought there to be passed through and among such goods brought to the out post were some cartloads of goods belonging to the petitioner's firm and in the application for a pass in respect of these goods which was not signed by the petitioner himself but in which his name was written by a gomasta (which application according to the case for the prosecution the petitioner himself handed to the daroga with whom he was in collusion) the goods were entered as 460 bags of linseed and 40 bags of rice but as a matter of fact only 230 bags of linseed were actually brought to the out post and according to the evidence of the daroga the petitioner assured him that he would make good the deficiency on the following day and it was found that the petitioner was cognisant of the application of the details therein entered and of the number of bags brought to and passed through the out post but the petitioner did not attest the check in respect of his own goods and did not attempt to induce the mohurer to sign the *chalan* (which the mohurer in fact did never sign) nor did he do anything further to carry out the purpose imputed to him and made no attempt to obtain a receipt for 500 bags as representing the number actually passed through the out post and on the next day when he tried to send goods to the railway station some of his carts were intercepted and prevented from reaching the railway station by the municipal authorities. *Held* that the facts proved were not sufficient to support the conviction of the petitioner for an offence of cheating. The evidence on the record fell short of the evidence required to prove dishonest mind or dishonest purpose on the part of the petitioner. *BIRJAY MARWARI v. THE KING EMPEROR* (1919) 17 C W N 294

PENAL CODE (ACT XLV OF 1860)—contd

s 415 417—contd

2. *Cheating.* The petitioner proposed to the father of a girl for the hand of his daughter and obtained his consent and was admitted into his house. Subsequently information was received by the father that the petitioner was a married man thus the petitioner admitted to be true. Shortly after the daughter who was major left the father's protection of her own accord and went to the petitioner. On the complaint of the parents the petitioner was convicted of cheating under s 417 Indian Penal Code. *Held* that the facts did not bring the case within s 417 read with s 415 Indian Penal Code. That looking at the natural result of the deception that had been undoubtedly practised and that only between the date the father gave his consent and the date when it became known to him that the petitioner was a married man and on the facts and circumstances of the case it could not be said that any damage or harm was done to the mind or reputation of the parents and consequently the charge failed. *MILTON v. SHERMAN* (1918) 22 C W N 1001

3. *s 417—Cheating complaint of—Proceeding quashed as prima facie case not made out—Pleader's promise to persuade client to give undertaking—Undertaking not given—Pleader if may be proceeded against for cheating.* In a proceeding under s 107 Criminal Procedure Code the opposite party undertook not to go to the property the subject matter in dispute or to do any act that was likely to involve a breach of the peace on the pleader for the complainant agreeing to persuade complainant's master to file an undertaking that he would protect the property from sale. The undertaking which the latter offered to file not having been approved of by the opposite party was not filed whereupon the opposite party started proceedings against the pleader under s 417 of the Penal Code. *Held* that the proceedings should be quashed as no *prima facie* case of cheating had been made out. *KRISHNA v. KUMAN MUKERJI v. KUMUDENDU MUKERJI* (1916) 20 C W N 1112

s 417 420 and 511—

See FORGERY

4 Pat L J 16

Valuable security. *Whether acknowledgment of receipt of insured parcel is evidence that he had paid off a sum of Rs 600 which he owed to complainant.* A registered envelope with blank sheets of paper and posted it to the complainant after insuring it for Rs 600 and the complainant gave an acknowledgment of receipt of the parcel to the Post Office on receiving the same. *Held* that these facts amounted to an attempt to cheat. An acknowledgment of receipt of an insured parcel is not a valuable security. It is merely evidence that a parcel of some sort was delivered to the addressee and it cannot operate as a discharge of any liability. Under s 237 (2) of the Code of Criminal Procedure an accused who is charged with an offence may be convicted of having attempted to commit that offence although the attempt is not separately charged. *SADHO LALL v. KING EMPEROR* 1 Pat L J 391

s 420—

See s 170B

20 C W N 292

PENAL CODE (ACT XLV OF 1860)—*contd*■ 420—*contd*

See s 417 1 Pat L J 391

See CRIMINAL PROCEDURE CODE ACT (V OF 1898) s 562

I L R 41 Mad 533

See EVIDENCE ACT (I OF 1872) ss 11
14 15 I L R 39 All 273

Cheating arising out of attempt to enforce alleged unfulfilled contract Two contracts were entered into between the complainant and accused one for sale by the complainant of a certain number of shares of a particular kind and the other for the purchase by the complainant of another kind. Subsequently when the purchase by the complainant was disputed accused induced complainant to part with his shares promising to give him back cash for it but instead offered to credit the value against the sum due to him under the other contract and subsequently tendered the amount less the loss sustained by him by the non fulfilment of the other contract. Held that the action of the accused was fraudulent and he was rightly conducted under s 420. **ASWINI KUMAR CHATTERJEE v THE KING EMPEROR** 25 C W N 618

Whether convict can be released under s 562 Criminal Procedure Code P B was convicted by a first Class Magistrate under s 420 Indian Penal Code but instead of sentencing him to imprisonment the Magistrate passed an order against him under s 562 Criminal Procedure Code, releasing him on probation of good conduct. Held that s 562 Criminal Procedure Code applies only to a case of simple cheating under s 417 Indian Penal Code and not to aggravated forms of cheating falling under ss 418 to 420. *The Crown v Ahsan Ali* (23 P W R (Cr) 1908) followed. **THE CROWN v PAB NAWAZ** I L R 1 Lah. 612

■ 421—*Criminal proceedings against insolvent—Presidency Towns Insolvency Act (III of 1909) ss 17 103 and 104—Adjudged insolvent—Sanction of Insolvency Court not obtained—Jurisdiction of Magistrate—Suit or other legal proceeding—Interpretation of a person in insolvent circumstances applied to the Insolvent Debtors Court at Bombay for relief under the provisions of the Presidency Towns Insolvency Act 1909 and was adjudicated an insolvent. Ten days later a creditor of the insolvent without having obtained any sanction from the Insolvent Debtors Court filed a complaint against the insolvent in the Presidency Magistrate's Court for an offence punishable under s 421 of the Indian Penal Code 1860. It was contended that the Magistrate had no jurisdiction to entertain the complaint. Held that the Magistrate's jurisdiction to try the insolvent for an offence under s 421 of the Indian Penal Code 1860 was not taken away by anything contained in the Presidency Towns Insolvency Act 1909. The expression or other legal proceeding in s 17 of the Presidency Towns Insolvency Act 1909 coming after the word suit a word of more limited application must be construed on the principle of *ejusdem generis*. It therefore includes only proceedings of a civil nature. **EMPEROR v MULSHANKAR HARINAND BHAT** (1910) I L R 35 Bom. 63*

PENAL CODE (ACT XLV OF 1860)—*contd*

■ 423—

See FABRICATING FALSE EVIDENCE

I L R 46 Calc 988

Consideration—meaning of The word consideration in s 423 of the Penal Code cannot mean the property transferred. Therefore an untrue assertion in a transfer deed that the whole of a plot of land belonged to the transferee is not a statement relating to the consideration for the transfer and is not an offence under the section. **MANTU GOUNDAY Re** (1911) I L R 37 Mad. 47

■ 424—

See BENGAL TENANCY ACT 1885

1 Pat. L. J. 353

See s 71

See s 121 25 C W N 209

Conviction of a ryot under Madras Estates Land Act (I of 1903) for dishonest concealment and removal of crops—legality of—Madras Estates Land Act (I of 1903) ss 73 and 212 no bar to conviction The accused who was a ryot under the Madras Estates Land Act and who was bound under the conditions of his tenure to share the produce of his land with the land holder in a certain proportion dishonestly concealed and removed the produce thus preventing the land holder from taking his due share. Held that the provisions of ss 73 and 212 of the Madras Estates Land Act were no bar to a conviction of a ryot under s 424 Indian Penal Code for the dishonest concealment and removal. **Re SIVANUPANDIA THEVAN** (1914) I L R 38 Mad. 793

■ 426—

See s 147 I L R 39 Mad 57

See NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873) ss 7 and 70

I L R 34 All. 210

■ 426 447—

See CRIMINAL TRESPASS

I L R 35 Calc. 180

Where the accused is peadash of one R acting solely in the interests of his Master removed and damaged some bamboos and the Estate was under Court of Wards Held no offence was committed. **PURNESHWAR SINGH v KING EMPEROR** 15 C W N 224

■ 429—*Cutting off the ears of a horse is maiming within section* The cutting off the ears of a horse is maiming within the meaning of s 429 of the Indian Penal Code. **MARUOWDA v SRINIVASA RANGACHAR** (1912) I L R 35 Mad. 594

1. ■ 430—*Mischief by injury to works of irrigation* There cannot be a conviction under s 430 of the Penal Code where there is a right or a bona fide claim of right. **DEEPTI LEGAL REMEMBRANCE BIKAR AND ORISSA v NATURDHARI SING** (1915) 20 C W N 123

2. ■ 430—*Mischief—Northern India Canal and Drainage Act (VIII of 1833) s 70* Where the foundation of the charge against an accused person is that he cut the bank of a canal for the purpose of unlawfully obtaining water for his own field in order to sustain a con-

PENAL CODE (ACT XLV OF 1860)—contd

s 430—contd.

victim under s. 430 of the Indian Penal Code it is necessary for the prosecution to show that the act of the accused in fact caused or but for prompt intervention would have caused diminution in the ordinary supply of water for agricultural purposes. If this cannot be shown the accused should be convicted under s. 40 of the Northern India Canal and Drainage Act 1873. *Tajuddin v. Emperor* 54 L J 159 followed. *Emperor v. Har Narain* (1919) 1 L R 41 All 599

s 434—

See CRIMINAL PROCEDURE CODE, s 106
1 L R 33 All 771

s 436—*Arson*—*Finding of previous fires unconnected with the charge and enquiry*—*Conviction on inadmissible evidence*. The accused was convicted of arson. During the trial the Sessions Judge admitted the evidence of previous fires in the locality with which however there was nothing to connect the accused and relying, amongst others on that evidence convicted the accused. Held that the Sessions Judge was wrong in admitting the evidence in question. The High Court set aside the conviction and sent for *ABDUL HADID v. KING EMPEROR* (1916) 20 C W N 1267

s 441—

1—*Criminal trespass distinguished from civil trespass*—*Placing hay stacks and manure on another man's land*—*Intention to cause annoyance must be found*. The placing of hay stacks and manure on another man's land may be civil trespass. It may cause annoyance in fact but the act cannot be treated as criminal trespass unless it is found that it was intended by the accused to be annoyance. The distinction between civil and criminal trespass is one which is lost sight of by too many of the Subordinate Magistrates. *MELAN v. SHARAFATULLAH KHAN* (1912) 10 C W N 1007

Criminal trespass

—*Building on another man's land*. A man may be guilty of criminal trespass on the land of another without ever personally setting foot on the land if for example he causes others to build on the land against the wishes and in spite of the protest of the owner of the land. *EMPEROR v. GHASI* (1917) 1 L R 39 All 722

3—Criminal trespass

—*Necessary constituents of offence*. Where a person is found in the house of another in circumstances which would *prima facie* indicate that the offence of criminal trespass as defined in s 441 of the Indian Penal Code had been committed and sets up the defence that he did not enter the house with any of the intents referred to in the section but in pursuance of an intrigue with a female living there it is the duty of the trying Court to give accused an opportunity of substantiating such defence. If the accused succeeds in showing that his presence in the house was in consequence of an invitation from or by the connivance of a female living in the house with whom he was carrying on an intrigue and that he desired that his presence there should not be known to the person in possession then he cannot be convicted of criminal trespass. If however it is shown that the person in possession of the house has expressly prohibited

PENAL CODE (ACT XLV OF 1860)—contd

s 441—contd

the accused from coming to the house an intent to annoy may be legitimately inferred. The following cases were referred to: *Dalmakand Pami v. Ghanamram* 1 L R 22 Cal 331; *Premannund Shaha v. Brindaban Chug* 1 L R 20 Cal 941; *Emperor v. Lalshman Raghunath* 1 L R 26 Bom 553; *Emperor v. Mulla* 1 L R 37 All 39; *Emperor v. Gays Bhar* 1 L R 35 All 517; *Emperor v. Chhotelal* (1917) 1 L R 40 All 221

ss 441 and 442—

See CRIMINAL TRESPASS

ss 441, 442—

See CRIMINAL TRESPASS

1 L R 43 Cal 1143

ss 441, 442—Criminal Trespass—

Finding that the trespass was committed with one of the intents specified in the section whether necessary—*Knowledge of the consequences of the trespass whether sufficient to inculcate*. Held by the Full Bench (AYLING J. dissenting)—Trespass is an offence under s 441 Indian Penal Code only if it is committed with one of the intents specified in the section and proof that a trespass committed with some other object was known to the accused to be likely or certain to cause insult or annoyance is insufficient to sustain a conviction under s 448 Indian Penal Code. Distinction between intention and knowledge of likelihood pointed out. *Queen-Empress v. Rajapadayachi* 1 L R 19 Mad 210 followed. *Emperor v. Lalshman* 1 L R 26 Bom 553 and the view of BENSON J. in *Sellamuthu Serravaram v. Pallamuthu Karuppan* 1 L R 35 Mad 186 not followed. Per AYLING J. A mere knowledge that the trespass is likely to cause insult or annoyance does not amount to an intent to insult or annoy within s 441 Indian Penal Code but where the trespasser knows that his trespass is practically certain in the nature of course of events to cause insult or annoyance it is open to the court to infer an intent to insult or annoy. It is a question of fact whether this presumption of intent is displaced by proof of an independent object of the trespass. *ULAPATHI v. BHEEMA RAO* (1917) 1 L R 41 Mad 15

Criminal trespass—

Proceedings of the on the complaint of some one other than the person in possession—Any person in possession meaning of. The petitioner was convicted under s 448 Indian Penal Code for having broken into a house belonging to the complainant but actually in the possession of her tenant with the object of causing annoyance to the tenant. Held that the proceedings were properly instituted on the complaint of the landlady. That the words "person in possession" in s 441 Indian Penal Code do not mean only complainant in possession there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act. *Chandi Prasad v. Evans* 1 L R 22 Cal 122 (1894) followed. *Imperatrix v. Kesharilal* 1 L R 21 Bom 63 (1896) distinguished. *RAYAZ SINGH v. MORGAN* 25 C W N 40

ss 443 and 444—

See LUNGING HOUSE TRESPASS

PENAL CODE (ACT XLV OF 1860)—*contd*

s 447—

See s 147 I L R 39 Mad 57

See CRIMINAL TRESPASS

I L R 33 Cal 180

I L R 43 Cal 1143

Criminal trespass—

One co sharer building on common land without the consent of the other co sharer Where one co sharer built upon a piece of common land against the will of the other co sharer whose consent had been previously asked and had been refused It was held that the circumstance alone was not sufficient to render the co sharer so building guilty of criminal trespass In the matter of the petition of Gobind Prasad I L R 2 All 465 and Emperor v Lalshman Raghunath I L R 26 Bom 558 referred to EMPEROR v PAM SARUP (1914) I L R 38 AU 474

ss 447, 379—

See THEFT I L R 44 Cal 66

s 448—

See s 441 I L R 46 Mad 156

See CRIMINAL PROCEDURE CODE 1898
s 145 3 Pat L J 147

s 456—*Lurking house trespass—Intent—Burden of proof* The accused was found inside the complainant's house at 2 A.M. and when arrested made no statement as to his reasons for being there On being sent up for trial he stated but could not prove to the satisfaction of the Court that he had an intimacy with a widow living in the house Held that the presence of the accused in the house at that hour pointed to a guilty intent and it was for him to rebut that presumption Emperor v Ishvi I L R 29 All 46 followed Emperor v Jang Singh I L R 26 All 194 Sella Muthu Serrigan and Motayan v Palla Muthu Karuppan 21 Mad L J 161 Queen Empress v Rayapadachy I L R 19 Mad 240 and Premnundo Shaha v Brindaban Chug I L R 22 Cal 994 referred to EMPEROR v MULLA (1915) I L R 37 AU 395

Lurking house trespass

—*Entering a house with intent to have illicit intercourse with a widow of full age no offence* An accused person though he may have known that if discovered his act would be likely to cause annoyance to the owner of a house cannot be said to have intended either actually or constructively to cause such annoyance Where therefore it was proved that a person entered a house with intent to have illicit intercourse with a woman who was a widow and of age Held that he was guilty of no offence Jivan Singh v King Emperor 1908 Puny Rec Cr J 54 dissented from Emperor v Mulla I L R 37 AU 395 referred to Queen Empress v Rayapadachy I L R 19 Mad 240 followed EMPEROR v GAYA BIHAR (1916) I L R 38 AU 517

ss 456 457—

—*Charge of house breaking to commit theft—Conviction under s 456 if proper—Misjoinder of charges—Charge under s 457 convict on under s 556 illegality of* An accused person who was being tried on a charge under s 457 for house breaking with intent to commit theft could not be convicted under s 456 Indian

PENAL CODE (ACT XLV OF 1860)—*contd*456 457—*contd*

Penal Code without amendment of the original charge Although it is not necessary under s 456 Indian Penal Code to specify any particular offences intended to be committed when a particular offence is specified under s 457 Indian Penal Code it is incompetent for the Court to convict the accused of house breaking with some other intent JHARU BREAKER v THE KING EMPEROR (1912) 16 C W N 696

See LURKING HOUSE TRESPASS.

I L R 44 Cal 358

Criminal Procedure

Code s 238—*Conviction under s 456 when charged under s 457 properly of—Criminal intention if should be specified in the charge in a case under s 456—Intention of accused how may be determined by Court* The view that under no circumstances can a conviction be made under s 456 of the Penal Code when the accused has been charged with the commission of an offence under s 457 cannot be maintained. The accused in the middle of the night entered the house of the complainant while she was asleep, was caught but ultimately ran away. The motive alleged by the prosecution was to commit theft of the complainant's ornaments. The accused was summarily tried for offences under s 457 and 380 of the Penal Code and the trying Magistrate finding that the intention of the accused was really to make immoral proposals to the complainant and thus to annoy her convicted him under s 456 of the Penal Code. Held that although the specific intent namely the intent to commit theft was not established yet it was competent to the Court to convict the accused under s 456 of the Penal Code s 238 Criminal Procedure Code being clearly applicable to a case of this character and the accused not having in any way been prejudiced by such conviction Jharu Sheela v King Emperor 16 C W N 696 distinguished. That it is well settled that to sustain a conviction under s 456 it is not necessary to specify the criminal intention in the charge it is sufficient if a guilty intention is proved such as is contemplated by s 441 of the Penal Code. That the intention may be determined as well from direct evidence as from the conduct of the party concerned and the attendant circumstances and in the circumstances of the case the Court could presume that the accused effected the entry with an intent such as is provided for by s 441 of the Penal Code HARARI PRASAD v KING EMPEROR (1916) 20 C W N 1075

s 457—

See s 379

3 Pat L J 346

Intent to annoy

what amounts to A with a view to support a fraudulent claim of title to a house broke into it during the temporary absence of the owner assaulted the owner's servant who was in charge of the house and took forcible possession of it. Held that it was rightly convicted of the offence of house breaking under s 457 Indian Penal Code. Per BENSON J.—That an intent to annoy under s 457 is established if annoyance in the ordinary course of events is known by the person committing the act to be the natural consequences of such act. A man must in law be held to intend the natural and ordinary consequences of his acts irrespective of what his object was at the time of

PENAL CODE (ACT XLV OF 1860)—*contd*s 457—*contd.*

doing such acts if at such time he knows what the ordinary and natural consequences will be. If he does an act which is illegal it does not make it legal that he did it with some other object unless the object was such as would render the circumstances render the particular act lawful. *See SANKARAN NAIR J*—That although the act complained of necessarily involved annoyance yet unless as the intention of the accused was to annoy it may be that the act cannot be said to have been committed with intent to annoy. *Emperor v. Baid I L R = 41 28* referred to *Queen Empress v. Rayapadayachi I L R 19 Mad 210* referred to. A however in doing the act complained of intended to use criminal force to the servant in possession and therefore intended to commit an offence. *SELLAMUTHU SERVATOA NAIR v. PALAMUTHU KARUTAN (1911)*

I L R 115 Mad 186

See s 441 I L R 41 Mad. 156

s 457 511—House breaking—

Attempt—Burgars digging a hole in a wall but not boring it through owing to interruption by third persons. The accused dug a hole in the wall of the complainant's dwelling house during the night with intent to complete that hole in order to make their entry into the house through it and having so entered to commit a theft in the house. In fact the hole was not completed in the sense that it did not completely penetrate from one side of the wall to the other as the accused were interrupted before they could complete it. The accused were on these facts convicted by the trying Magistrate of the offence of attempting to commit house breaking by night. On appeal the Sessions Judge reversed the conviction and acquitted the accused on the ground that the accused's acts did not amount to an attempt to commit house breaking but only to a preparation. The Government of Bombay having appealed against the order of acquittal. *Held* setting aside the order of acquittal that the accused's acts did in law amount to an attempt for the actual transaction the distinct overt act was begun and carried through to a certain point but was not completed by reason of the accused's being interrupted. *EMPEROR v. CHANDRKA SALABATKHA (1913)*

I L R 37 Bom 553

s 457 380 456—

See LURKING HOUSE TRESPASS

I L R 44 Cal 358

s 460—Whether applicable when death was caused by some of the companions of the accused while running away after committing house trespass by night. The accused appellant was one of a party of 4 men who broke into the house of the complainant by night and being discovered were running away when a neighbour caught hold of the accused whereupon some of his companions inflicted certain injuries upon the neighbour of which he died on the spot. *Held* that s 460 of the Penal Code was not applicable as the expression at the time of the committing of house breaking at night must be limited to the time during which the criminal trespass continues which forms an element in house trespass which is itself essential to house breaking and can not be extended so as to include any prior or subsequent time. *Jaffir v. Empress*

PENAL CODE (ACT XLV OF 1860)—*contd*s 460—*contd*

(*P P (Cr) 185*) per Plowden J followed *MUHAMMAD v. CROWT I L R 2 Lah 342*

s. 463-465—

See s 417 4 Pat L J 16

See FORGERY I L R 43 Cal 421
I L R 38 Cal 75

s. 463 467—*Forgery—Forgery committed and conceal fraud already committed.* A Kulkarni misappropriated certain moneys which the *rastra* had paid to him as irrigation cesses. Some time afterwards he forged certain receipts purporting to come from the Government treasury for those moneys with the object of concealing the misappropriation. The accused helped the Kulkarni in the forgery by forging the signatures on the receipts. He was paid Rs 25 for the work. The accused was on these facts charged with the offence of forgery. The Sessions Judge acquitted the accused on the ground that s 463 of the Indian Penal Code penalised the making of a false document only if it was made (*inter alia*) with intent to commit fraud or that fraud may be committed whereas no such intent could be ascribed where the fraud had already been fully committed. The Government of Bombay appealed against the order of acquittal. *Held* setting aside the order of acquittal that the accused had committed forgery although it was effected in order to conceal an already completed fraud. *Lal Mohan Sarkar v. Queen Empress I L R 22 Cal 313 Emperor v. Pash Behari Das I L R 35 Cal 450 and Queen Empress v. Sabapati I L R 11 Mad 411* followed. *Empress of India v. Jivanand I L R 5 All 221 Empress v. Mazhar Hussain I L R 6 All 553 and Queen Empress v. Giridhar Lal I L R 8 All 653* dissented from. *EMPEROR v. BALKRISHNA WAMAN (1913)*

I L R 37 Bom 666

s. 463 471—Using definition of—Criminal Procedure Code (Act V of 1898) as 17 and 531—Jurisdiction—Commitment to Court not possessing jurisdiction bad—Transfer. A forged document was produced in Court in obedience to an order of the Court. *Held* that the production did not amount to using the document as genuine. An involuntary production of a document in Court cannot be said to amount to a use of it. The expression using a document is apparently used in the sense of its being put forward in some way for one of the purposes mentioned in s 463 Indian Penal Code. Although by virtue of s 531 Criminal Procedure Code an order in an inquiry made by a Magistrate not having local jurisdiction will not be set aside unless there is in fact a failure of justice yet when a commitment is made by such a Magistrate to a Court of Session which has no jurisdiction to try the case under s 177 Criminal Procedure Code such commitment is illegal. The High Court has no power to transfer a case thus committed to a Court not having jurisdiction to another Court having jurisdiction. The commitment must be quashed. *ASSISTANT SESIONS JUDGE NORTH ARCOT v. PANAMMAL (1913)*

I L R 38 Mad 387

s 464—

See s. 29 I L R 41 M.L.J. 589

PENAL CODE (ACT XLV OF 1860)—*contd*ss 464—*contd*

Forgery—Document made to screen a previous offence whether made fraudulently An attackshi made by a process server with false signatures in order to defraud a District Munsif into excusing his delay in returning process and his absence from duty is made fraudulently and is a forged document within s 464 of the Indian Penal Code *Emress v Sabapathi* I L R 11 Mad 411 *Emperor v Rakh Behari Das* I L R 35 Cal 450 and *Kolamraju Venkatarayulu v Emperor* I L R 28 Mad 90 followed *Emress of India v Jivanand* I L R 6 All 221 and *Queen Emress v Gurdhari Lal* I L R 8 All 653 doubted *KAMATCHINATHA PILLAI v EMPEROR* (1919)

I L R 42 Mad 558

ss 464, 465 467—*Criminal Procedure Code (Act I of 1898)* ss 221 222 223 342—

Making a false document—Forgery of valuable security—Falsification of part of a document which is surplusage—Evidence—Onus—Defect in charge—Omission to set out intention in charge Where the accused was convicted of having forged a kabuliast executed by himself in favour of his landlord O B whose name appeared on the document as a witness and there were two other witnesses to the document and it was admitted that the accused who was an illiterate man did not make the false document himself and it was not established that the intention of the accused was to fraudulently bind the landlord by his alleged signature as witness and the case for the defence was that it was not the landlord O B who signed the name as witness but another person of the same name and the Sessions Judge held that the onus was on the defence of showing that this O B whose name appeared on the document was a real person and signed the deed and where the Sub Registrar who registered the document and held an inquiry in connection therewith and saw with his own eyes that the accused was in possession of the land covered by the document gave evidence of that fact but the Sessions Judge held that his statement was not evidence *Held* that a charge of forgery cannot be against a person who was not the writer of the forged document or who did not sign the forged name Making a false document is one thing and causing a false document to be made is another One is an offence under s 465 Penal Code the other is an act at most of abetment The part of a document in order to come within the definition of false document must be dishonestly or fraudulently made signed sealed or executed by the person who is charged and it must be made with the intention of causing it to be believed that such document or part of a document was made signed sealed and executed by or by the authority of a person by whom or by whose authority he knows that it was not made signed sealed or executed Even supposing that part of a document is false that part must have some material effect on the transaction. A mere surplusage would not invalidate a document In the present case even admitting that the name of O B was a fictitious name it would not make the document a false document There being two other witnesses to the document besides O B it could have no effect on the validity of the document whether this name was or was not fictitious If it was the

PENAL CODE (ACT XLV OF 1860)—*contd*ss 464, 465 467—*contd*

intention of the accused that the document should be used in future as evidence that the landlord himself was a witness to it that might bring the case within the definition of fabricating false evidence for the purpose of being used in a judicial proceeding or it might be a preparation for the offence of cheating but certainly does not amount to forgery *Held* further that the Sessions Judge was wrong in throwing the onus on the defence and in holding that the statement of the Sub Registrar was not evidence *KALIDR ALI RA DHANIA v THE EMPEROR* (1912)

17 C W N 354

ss 465 471—*Forgery—Dishonestly*

Forging a receipt for a debt which has been written off by the creditor for the purpose of obtaining a certificate of solvency and indirectly in order to secure a contract—Wrongful gain or loss A in order that he might obtain the annulment of an order adjudicating him an insolvent and thereafter that he might be in a position to tender for municipal contracts produced before the receiver in insolvency a document which purported to be a receipt from a creditor for payment of debt which the creditor had in fact written off as irrecoverable *Held* that in respect of the use of this receipt A was properly convicted under s 465 read with s 471 of the Indian Penal Code *Queen Emress v Muhammad Saeed Khan* I L R 21 All 113 and *Queen Emress v Soah Bhuan* I L R 15 All 210 referred to *EMPEROR v ABDUL GHAFUR* I L R 43 All 225

ss 465 471 477A—

See MISAPPROPRIATION

I L N 36 Cal 655

ss 466 471—

See FORGERY

I L R 43 Cal 783

s 467—

See s 29 I L N 41 Mad 559

See s 30 I L R 38 All 430

See s 34 I L R 36 Bom 524

See s 463 I L R 27 Bom 808

s 467—

See CRIMINAL PROCEDURE CODE ss 93 236 239 I L R 32 All 219

Witness proving forged document if able s—Abetment Semble It is doubtful whether a witness who swears to the truth of a document in Court can be said to abet its use *Asmuddi v King Emperor* 11 C N A 531 s c 5 C L J 454 referred to *DEVI LAL v DRAJADHARI GASHAI* (1911) 15 C W N 565

ss 467 109 471—

See CRIMINAL PROCEDURE CODE (ACT I OF 1898) s 403

I L R 40 Bom 97

s 471—

See s 30 3 Pat L J 336

See s 463 I L R 38 Mad 337

See s 463 I L R 43 All 225

See CRIMINAL PROCEDURE CODE—

s 10, I L R 33 Bom 642

PENAL CODE (ACT XLV OF 1860)—*contd.*s 471—*contd.*

s. 403 I L R 40 Bom. 97

See FORGERY I L R 43 Calc 75

I L R 43 Calc 783

See SANCTION FOR PROSECUTION

I L R 40 Calc. 584

Using definition of The mere production of a document in obedience to the summons of a Court cannot amount to using within the meaning of s 471 Indian Penal Code *Assistant Sessions Judge North Arcot v Ramammal* I L R 36 Mad 397 followed. Where a document having been produced upon an order of the Court the witness gives false evidence regarding it such giving of false evidence cannot by itself be considered a fraudulent user of the document within the meaning of s 471 Indian Penal Code. A mere statement that a document is genuine does not amount to using it as genuine *Pe MUTHIAN CHETTY* (1913)

I L R. 80 Mad. 392

ss. 471, 474—*Whether convictions under can stand together—Forgery—User whether mere filing in Court—Guilty knowledge presumption of if rises from mere filing of a document being interested in establishing its contents* The mere fact that a litigant is interested in establishing the contents of a forged document filed by him in support of his case does not raise the presumption that he filed it knowing it to be forged. Where however the accused filed a forged document in support of his case but when the forgery was discovered he fled away without prosecuting his case and without attempting to offer any explanation *Held* that his conduct was not consistent with his innocence and want of guilty knowledge. The filing of a forged document as the basis of a plaint or as a necessary sequel to the pleas in the plaint constitutes an user of it within s 471 Penal Code and it is incumbent on the person using it to show that he filed the document in all good faith believing it to be genuine. *Ambica Prasad Singh v Emperor* I L R 35 Calc 820 referred to and explained. Convictions of offences under ss 471 and 474 Penal Code in respect of the same document cannot stand together. The two offences must be charged in the alternative. *Queen v Asur Ali* 6 A W P 39 followed. *MORAHAN ALI v THE KING EMPEROR* (1912) 17 C W N 94

s 474—

See s 29 I L R 41 Mad. 589

s. 477A—

See CHARGE I L R. 40 Calc 318

See COURT FEE STAMPS

I L R 47 Calc 71

See CRIMINAL PROCEDURE CODE—

ss 222 (2) 233

I L R 38 All. 42

ss 235 537 I L R 32 All. 57

Replacing stamps on documents by used up stamps of offence under The accused was placed on his trial on a charge under s 477A of the Penal Code on the allegation that he as clerk in the Certificate Department had tampered with registrations filed under the

PENAL CODE (ACT XLV OF 1860)—*contd*s 477A—*contd*

Public Demands Recovery Act on behalf of an estate under the management of the Court of Wards by replacing the stamps on those documents and on the accompanying talakutnamas by others taken from other papers *Held* that the acts alleged did not come within the scope of s 477A Indian Penal Code *KING EMPEROR v BISHUDANANDA* (1910) 15 C W N 935

ss 478 482—*Trademark—Importer using a distinctive mark has property in it as against the rest of the world* A distinctive mark may be adopted by a person who is not the manufacturer but the importer of goods and he will acquire the property in that mark as indicating that all goods which bear it have been imported by him. *Balls v Fleming* I L R 3 Calc 417 and *Lavery v Hooper* I L R 8 Mad 149 referred to. In this case merchants selectors and importers of hand made sugar used a distinctive mark denoting that the sugar contained in the bags so marked had been selected and imported by them and their customers accepted the mark as a guarantee that the sugar was hand made. *Held* that the mark so used was a trade mark as defined in s 478 of the Indian Penal Code. *EMPEROR v LATIF* (1916)

I L R. 80 All. 123

ss 478 486—*Trade mark meaning of—S 28—Counterfeiting what amounts to* The trade mark alleged to be counterfeited was that of a company who were the manufacturers of a kind of tooth powder sold in boxes. It appeared that apart from two points of difference the imitation of the whole design was most marked and complete. *Held* that the expression trade mark as defined in s 478 mu t not be confined to the trade mark of the complainants registered in England but must include the whole design on the top of the box and the black label pasted round the side. That the case clearly came within the definition of counterfeit in s 28 Indian Penal Code. *NILMONKY NAG v DUNGA PADA BANERJEE* (1916) 19 C W N 957

s 482—

See s 478 I L R 39 All. 123

ss 482 485 486—

See TRADE MARK I L R 40 Calc 281

s 486—

See s 478 19 C W N 957

s 494—

Bigamy In a case of bigamy the person aggrieved is either the first husband or the second husband and not the father. Where a complaint was preferred by the father of the first husband which resulted in a commitment on a charge under s. 493 of the Indian Penal Code it was held that the commitment was bad. *EMPEROR v LALA* (1909)

I L R. 32 All. 78

A Hindu convert to Christianity married a Christian woman according to the rites of the Roman Catholic religion. Subsequently and during the lifetime of his Christian wife he reverted to Hinduism and married a Hindu woman in accordance with the rites of the class

PENAL CODE (ACT XLV OF 1860)—*concl'd*

— s 499, 95—

See CRIMINAL PROCEDURE CODE, s 88
435 AND 439 I L R 43 All 497

— s 500—

See SANCTION FOR PROSECUTION
I L R 44 Cal 970

— s 503—

See CRIMINAL PROCEDURE CODE, s 103
I L R 43 All 67

— s 504—

See CRIMINAL PROCEDURE CODE s 106
I L R 43 Bom 554See PRIS ACT 1910 s 3
I L R 44 Mad 561

Insult intended to provoke breach of the peace—Necessary elements constituting offence—S 95 act causing harm so slight that no person of ordinary sense and temper would complain of such harm A Deputy Magistrate went to a locality to enquire into a petition made by the residents for funds to enable them to dig a well and in the course of a discussion with the people assembled the Deputy Magistrate remarked that as some of the residents were well to do they must make the well themselves whereupon the accused who were present there said to the Deputy Magistrate "Then why do you make an enquiry go away quietly." The accused were convicted under s 504 Indian Penal Code. *Held* that the ingredients essential for a conviction under s 504 are threefold first intentional insult secondly provocation therefrom and thirdly intention that such provocation should cause or knowledge that such provocation was likely to cause the person so insulted to break the public peace or to commit any other offence. *Held* on a consideration of the circumstances of the case that it was completely covered by the salutary provisions of s 95 Indian Penal Code. *JOY KRISHNA SAMANTA v KING EMPEROR* (1916) 41 C W N 95

— s 511—

See s 193 I L R 37 Bom 365

See s 417 1 Pat L J 391
4 Pat L J 16

See s 457 I L R 37 Bom 553

— s 511 124A—*Attempt to commit offences—Attempt to commit the offence of sedition—Intention a question of fact* Under the Indian Penal Code (Act XLV of 1860) all that is necessary to constitute an attempt to commit an offence is some external act something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article. It is none the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public. In cases of sedition the question of intention is one of fact. *FARRER v GANESH BALVANT MODAK* (1909) 34 L R 34 Bom 378

PENAL PROVISIONS

— construction of—

See TENANTS IN COMMON
I L R 39 Mad 1049**PENAL STATUTES**

— generally not retrospective—

See TRADING WITH THE ENEMY
I L R 40 Mad 34**PENALTY**

See APPEAL

I L R 44 Cal 1036

See COMPANIES ACT (VI of 1882) s 74

See CONTRACT ACT (IX of 1872) s 74

See INTEREST

I L R 42 Cal 652, 690

See THEATRICAL PERFORMANCE

I L R 44 Cal 1025

See TRANSFER OF PROPERTY ACT (II of 1882) s 83 I L R 39 Mad 519

— Penalty Clause not becoming operative—

See INSTALMENT DECREE

I L R 42 Bom 304

— Security bond Breach of conditions—

See CONTRACT ACT (IX of 1872) s 14
I L R 45 Bom 1213

— Court Fees Act (VII of 1870) s 19E—*Scope of the section—Suit to recover penalty by Secretary of State maintainability of—Decision of Revenue authority—Jurisdiction of Civil Court* Unless there is a statutory bar a suit is maintainable by the Secretary of State for India in Council for recovery of a penalty lawfully imposed. A Civil Court has no jurisdiction to review the decision of Revenue authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of the penalty had been erroneously exercised. But the position is different when the order for imposition of penalty is assailed on the ground that it has not been made in accordance with the statute. If the action of the Revenue authority is *ultra vires* if he has not followed the procedure described by the statute which is the source of his authority there is no enforceable claim which a Civil Court is bound to recognize. *Manekji v Secretary of State for India* (1896) Bom P J 529 followed S 19E of the Court Fees Act 1870 contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped. It further contemplates that the estimated value of the estate is less than what the value has afterwards proved to be. *A G v Frier* 11 Price 163. *Bradlaugh v Clarke* L R 3 A C 351. *Cowthorne v Campbell* 1 Anst 214. In the goods of *Cmdn Bibee* 1 L P 26 Cal 407. In the goods of *Sreenivasan G G W N 529* referred to. *NIJENJA PATTI CHOWDHURANI v SECRETARY OF STATE FOR INDIA* (1915) 41 L R 43 Cal 230

— Interest exorbitant rate of—*Inference by Court—Court's power to reduce rate of interest—Mortgage—Release of one joint mortgagor effect of—Contract Act (IX of 1872) s 44* 74. It is competent to a Court to grant relief whenever the stipulation for payment of interest

PENALTY—contd

at a specified rate appears to the Court to be a stipulation by way of penalty. What constitutes a stipulation by way of penalty must be determined in each individual case upon its own special circumstances. *Wester v Bosanquet* [1912] A C 321. *Khagaram Das v Parniankar Das Pramanil I L P 4 Cal 65*. *Pouurang Paja Chellaphroo Chowdhuri v Banga Behari Sen* 40 C B 4 408. *Abdul Majeed v Ahirode Chandra Pal I L R 42 Cal 690* and *Gopeshwar Saha v Jadav Chandra Chanda I L P 43 Cal 63* referred to *Per SANDERSON C J*. The release of one of several joint mortgagors with no express reservation of the mortgagee a remedy against the other mortgagors does not ipso facto release the other mortgagors. *Krishna Charan Barman v Sayat Kumar Das* (1916) I L R 44 Cal 162.

COMPARE HINDU LAW (MINOR)

2 Pat L J 212

PENSION

See CIVIL PROCEDURE CODE 1908 s 10

4 Pat L J 557

See PENSIONS ACT (XXIII OF 1871)

PENSIONS ACT (XXIII OF 1871)

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 9 SCH II s 20

I L R 37 Bom. 442

ss 3, 4, 6 & 8—Pension—Definition—

Grant of village by Government revenue free—*Wajib ul-ar*—Construction of document—Condition purporting to restrain alienation. Held that a grant of zamindari the revenue of which is remitted by the Government is not a pension within the meaning of s 3 of the Pensions Act 1871 and no certificate is necessary under s 6 to institute a suit with respect to it. Nor can an entry in the *wajib ul-ar* to the effect that no co-sharer is competent to transfer property standing by itself have the effect of making such property untransferable. *Ganpat Rao v Anand Rao I L R 28 All 104*. *32 All 148* and *Lachmi Narain v Makund Singh I L R 26 All 617* referred to. *MANNU LAL v FAZL IMAM* (1911) I L R 88 All 580.

s 4—

See SARANJAM I L R 41 Bom 408

See SECRETARY OF STATE FOR INDIA

I L R 33 Cal 378

Collector—Certificate of Collector—Civil Court—Jurisdiction—Suit for declaration for share in cash allowance—*Deshpande Kulkarni Vatan*. The plaintiffs sued for a declaration that they were owners of a share in the *Deshpande Kulkarni Vatan* which consisted of a cash allowance paid annually from the Government Treasury. They did not produce a certificate from the Collector as required by s 4 of the Pensions Act (XXIII of 1871). Held that the suit in the absence of a certificate from the Collector could not be entertained in a Civil Court owing to the provisions of s 4 of the Pensions Act 1871 inasmuch as the suit was clearly one relating to a pension or grant of money conferred by the British Government. *Dabaji Hari v Pajaram Bhatt I L R 1 Bom 75* followed. *Gorind Sita*

PENSIONS ACT (XXIII OF 1871)—contd

s 4—contd

ram v Bapuji Mahadeo I L R 18 Bom 516 distinguished. *DWARKANATH AMRIT v MAHADEO BALKRISHNA* (1912) I L R 37 Bom 91.

Kulkarni Vatan—Land revenue assigned for the office of Kulkarni—Suit for a share in the revenue—Civil Court—Jurisdiction. A suit by a member of a Vatan family for a declaration of his right as owner of a certain share in the land revenue assigned for the purpose of supporting the office of Kulkarni is a suit falling within the purview of s 4 of the Pensions Act 1871 and is not maintainable without a certificate from the Collector. *BALKRISHNA SAMBHAJI v DATTA TRAYA MAHADEV* (1917) 3 L R 42 Bom 257.

No distinct grant of land revenue—Section no bar—Hereditary Village Offices Act (Mad Act III of 1895) s 21 in any claim to recover emoluments of an office meaning of—Regulation VI of 1831—No jurisdiction for Revenue Courts to decide what are emoluments or to decree possession—*Res judicata*. s 4 of the Pensions Act (XXIII of 1871) is a bar to a civil suit only where the Court is able to hold that there was distinct grant of the land revenue itself and where there is nothing to show that in the hands of Government before the grant of the *snam* the land was treated as liable for the payment of land revenue or that the Government intended to split up its ownership into *meltaram* and *kudaram* or to make a distinct grant of the land revenue s 4 of the Pensions Act cannot have any application with reference to a suit for the recovery of such land alleged to have been granted as *snam*. *Her Highness Mathu Sri Jeyjamba Bai Sahib v Secretary of State (Appeal No 10 of 1906)* explained and followed. The words any claim to recover the emoluments of an office. The Madras Hereditary Village Offices Act (Mad Act III of 1895) s 21 can only mean a claim to recover what in fact are the emoluments of an office or possibly what are claimed by the plaintiff to be the emoluments of an office and cannot by any rule of construction be extended to include a claim to recover what the plaintiff denies to be the emoluments of an office but what the defendant alleges to be such emoluments. *Kasirama Narasimhulu v Narasimhulu Patnaidu I L R 30 Mad 126* explained and distinguished. Under Madras Regulation VI of 1831 which was repealed by Madras Act III of 1895 the Revenue Courts had no jurisdiction to decide what were the emoluments of an office or to declare possession against a person alleged to be a trespasser. Hence neither s 21 of Act III of 1895 nor Regulation VI of 1831 is bar to the suit. *Sarutha Koundan v Mathu Koundan I L R 13 Mad 41* referred to. Therefore a decision under the Regulation VI of 1831 cannot operate as *res judicata* with reference to a suit for lands in a civil Court. *SECRETARY OF STATE v SUBBARAYUDU* (1913) I L R 38 Mad. 559.

ss 4 5 6—Suit for a declaration affecting the liability of Government—Jurisdiction of civil Court. The plaintiff came into Court claiming in effect a declaration that he was entitled to be considered as the signee of the Government revenue payable in respect of certain property as being the reverser to one *Dabaji Hari* who was the last signee. He produced a certificate

PENSIONS ACT (XXIII OF 1871)—*contd*— ss 4 5 6—*contd*

purporting to be a certificate under s 6 of the Pensions Act 1871 but it was a certificate granted in respect of some former litigation between the plaintiff and a rival claimant to the property. *Held* that the suit as framed could not be entertained without the production of a certificate in conformity with s 6 of Act No XXIII of 1871 that the certificate produced was not in conformity with s 6 of the said Act and that in any case it would be impossible to pass a decree in favour of the plaintiff without affecting the liability of Government to pay such grant within the meaning of the section. *The Secretary of State for India v Momen* I L R 40 Cal 391 distinguished. *SECRETARY OF STATE FOR INDIA v JAWAHIR LAL* (1915) I L R 37 All 338

Suit to recover Sardeshmukhi Haq—Pensions and grants in Ratnagiri District—Pensions Act whether ultra vires—Bombay Regulation (XXIX of 1837) s 6—Civil Court—Jurisdiction Plaintiff filed a suit against Government to recover two per cent Sardeshmukhi Haq on certain villages in Ratnagiri District not on the old Jamabandi but on survey assessment. The District Judge held that the suit was barred under s 4 of the Pensions Act 1871. On appeal it was contended that the Pensions Act so far as it dealt with pensions and grants of land revenue in Ratnagiri District was ultra vires. *Held* that the Pensions Act was not ultra vires and that the suit was barred under s 4 of the Act. *Secretary of State for India v Momen* (1912) L R 40 I A 48 distinguished. *Varadachariar v Mital v Collector of Ratnagiri* (1877) I R 4 I A 119 relied on. The Pensions Act could not be ultra vires unless it was established that a suit would have lain against the East India Company on a grant of land revenue. But such a suit would not lie inasmuch as the East India Company exercised sovereign rights in collecting land revenue. If they chose to grant any share of that land revenue to individuals they did so not as a mere matter of contract in the ordinary affairs of life but in the exercise of sovereign rights. *MADHAVRAO MORESHWAR v THE SECRETARY OF STATE FOR INDIA* (1920) I L R 45 Bom 198

— s 6—

Sanad construction of—Certificate giving Court jurisdiction to try suit—Grant of soil of village not a grant of land revenue—Non production of certificate at time of institution of suit—Grant on payment of quit rent A village portion of the subject of a suit or partition was granted to the ancestor of the parties by Maharaja Scindia of Gwalior in 1861 and the grant was confirmed in 1866 by the British Government in a sanad which declared that the village in question shall be continued to the grantee and his heirs inclusive of all lands allowances and rights belonging to heirs so long as he and his heirs shall continue loyal to the British Government and shall pay Rs. 800 to Government as a quit rent. In a later portion of the sanad there was a guarantee against any further payment by the holder on account of Imperial Land Revenue beyond the amount specified and a declaration that the village and its holder shall be liable for any local taxation which may be imposed on the district generally. *Held* affirming the decision of the High Court

PENSIONS ACT (XXIII OF 1871)—*contd*— s 6—*contd*

that the sanad was not a grant of Land Revenue but of the soil of the village itself and therefore the Pensions Act (XXIII of 1871) did not apply but even if it did the Subordinate Judge had rightly held that an order made by the Revenue Court referring the plaintiff (respondent) to a suit in the Civil Court was equivalent to a certificate under s 6. *Semle*. The non production of a certificate under s 6 of the Pensions Act at the time of the institution of a suit for which such a certificate is necessary is not a bar to the maintenance of the suit but is a defect which may be cured by obtaining the certificate at a later stage of the proceedings. *GANTAP PAO v ANANT RAO* (1909) I L R 32 All 148

Saranjam—Grant of land revenue—Suit to recover—Collector's certificate—Admission of pleader binding on client—Preliminary decree—Appeal—Remand—Civil Procedure Code (Act V of 1908) O XXI r 23 The grantee of a Saranjam filed a suit for the recovery thereof and at the trial a preliminary issue was raised as to the maintainability of the suit without the certificate provided for by s 6 of the Pensions Act. The grantee's pleader admitted a certificate was necessary but after several adjournments for the purpose failed to produce a certificate. A decree was thereupon passed on the preliminary issue dismissing the suit. On appeal by the grantee it was contended that he was not bound by the admission of the pleader and it was stated that such evidence could be produced as would render a certificate unnecessary. *Held* that the grantee was bound by the admission of his pleader and that even if he was not so bound there was no material before the Court to justify a reversal of the decree and therefore a remand under O XXI r 23 of the Civil Procedure Code (Act V of 1908) was impossible. In the absence of evidence to the contrary the grant of a Saranjam must be presumed to be a grant of land revenue and not of the soil. *Ramchandra v Venkatarao* I L R 6 Bom 698 and *Paja Bommadarera v Narasimha Naidu v Raja Bommadarera* *Enalga Karu Naidu* L R 29 I A 76 referred to. *DATTAJIRAO GHORPADE v NILKANTHRAO* (1914) I L R 39 Bom 352

— ss 8 11—

See s 8 I L R 100 All 580

— ss 8 11—Toda gras allowance—Purchase of the rights to receive allowance at a Court sale—The allowance entered in the name of the purchaser—Application by heirs of the purchaser to receive arrears of allowance—Certificate of Collector. It was directed by a decree that the purchaser at a Court sale of a Toda gras allowance should recover from the Collector the amount due for arrears of the allowance from the date of his purchase. An application to execute this decree was made in 1864 in consequence of which the decree holder's name was entered in the Collector's books as the person entitled to the allowance in question and the arrears up to 1864 were paid. In 1903 the decree holder's heirs applied to the Court to recover the arrears of allowance that had remained unpaid since 1864. The Collector contended that the application could not be entertained in the absence of a certificate from the Collector under the provisions of s 6

PENSIONS ACT (XXIII OF 1871)—contd**ss. 6, 8 11—contd.**

of the Pensions Act 1871 *Held* overruling the contention, that the power of the Collector under the Act had been exhausted and there was no discretion for that officer to exercise either under the Act or the rules so far as the applicant's right to recover the arrears that had become due in the life time of the last holder was concerned. *Held* further that if those amounts remained unpaid the Collector held them for and on behalf of the last holder as moneys due to him and as moneys therefore recoverable on his death by his heirs independently of any question which might arise under the Pensions Act 1871 or the rules framed thereunder **CHHAGANLAL v. PRANJIVAN** (1903) **I L R. 34 Bom 154**

s. 11—Pension—Grant of land by Government—Construction of document—Execution of decree—Civil Procedure Code (1908) s. 60(g) The Government for political considerations granted certain property to the original grantee for life and to his descendants as an absolute estate. *Held* that such grant did not constitute a political pension within the meaning of s. 60 (g) of the Code of Civil Procedure and that the land so granted was not exempt from attachment and sale in execution of a decree. *Held* also that the rights of the parties to whom the grant had been made by the Government must be determined by reference to the original sanad conferring title on the grantee and his descendants and the opinions expressed by certain Revenue Officers as to its meaning were irrelevant on a question of the construction of the document. **Lachmi Narain v. Makund Singh** **I L R 36 All 617** and **Amna Bibi v. Hajm un nissa** **I L R 31 All 332** followed. **HANIZ FATIMA BEGAM v. SAKINA BIBI** (1914) **I L R 36 All 313**

PERFORMANCE

See **CIVIL PROCEDURE CODE (ACT V OF 1908) O XVIII s. 3**
I L R 38 Mad 959

Time for—

See **PROCEDURE**
I L R 43 Cal 832

PERGANA REGISTER

See **LAKHERAS LANDS**
I L R 45 Cal 574

PERILS OF THE SEA

See **INSURANCE** **16 E W N 991**

PERIOD**expiry of the—**

See **TRANSFER OF PROPERTY ACT s. 67**
[I L R. 34 Bom 462]

PERJURY

See **DEPOSITION** **I L R 46 Cal 895**

See **BENGAL EXCISE ACT s. 16**
15 E W N 169

See **FRAUD** **I L R 33 Mad 203**

See **PENAL CODE (ACT XLV OF 1860)**
s. 2 191 193
I L R. 36 All 362

PERJURY—contd**abatement of, before Magistrate—**

See **CRIMINAL PROCEDURE CODE (ACT V OF 1898) s. 195** **I L R 42 Bom 190**

Arising from contradictory statements—

See **CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss. 236 195 537 (b) AND 164**
I L R 45 Bom 834

sanction to prosecute for not desirable in public interests—

See **CRIMINAL PROCEDURE CODE (ACT V OF 1898) s. 195**
I L R 37 Mad 564

In deposition before Civil Court not read out to deponent—

See **PENAL CODE 1860 s. 193**
I L R 1 Lah 361

Sanction for prosecution—Criminal Procedure Code (Act V of 1898) s. 195—Conditional sanction A sanction to prosecute for perjury given under s. 195 Criminal Procedure Code cannot be conditional. **RE MUNEXYA** (1913) **I L R 35 Mad. 471**

Witness—Deposition not read over to witness in the hearing of accused or his pleader but read by witness himself—Inadmissibility of deposition in subsequent trial for giving false evidence—Proceeding against witness—Preliminary inquiry—Omission to record statements of witnesses examined thereat—Order for prosecution not containing assignment of the false statements—Criminal Procedure Code (Act V of 1898) ss. 360 (1) & 476—Practice s. 360 (1) of the Criminal Procedure Code requires the evidence of a witness to be read over to him in the hearing of the accused or his pleader so as to enable the latter to correct any mistakes in it. The reading of the deposition by the witness himself is not a compliance with the section and renders the record of it inadmissible in a subsequent trial against him under s. 193 of the Penal Code. **Malendra Nath Misser v. Emperor** **12 C B N 845** and **Jyotish Chandra Mukerjee v. Emperor** **I L R 36 Cal 955** followed. Although s. 476 of the Criminal Procedure Code does not expressly provide for the manner in which the preliminary enquiry thereunder is to be recorded a summary of the statements of the witnesses examined thereat should be made. An order under the same section directing the production of a person for giving false evidence should set out the statements alleged to be false. **EMERSON v. JOORCHAND NATH GHOSE** (1914) **I L R 42 Cal 240**

Power of High Court to direct prosecution when false evidence given before the Committing Magistrate in the Mofussil—Nearest first class Magistrate—Presidency Magistrate—Criminal Procedure Code (Act V of 1898) s. 476—Practice Where a witness examined during the trial of a prisoner at the Original Criminal Sessions of the High Court has intentionally made false statements before the committing officer at B in the district of Alipore the High Court has jurisdiction, under s. 476 of the Criminal Procedure Code to send the case of the witness for inquiry or trial to the District Magistrate of Alipore as the nearest Magistrate of the first class. **Kedar Nath Kar v. King Emperor** **3 C**

PERJURY—concl'd

Emperor distinguished *EMPEROR v. Tripura Shankar Sarkar* 1 L R 37 Calc 618 L J 357
 DONALDSON (1916) 1 L R 43 Calc 542

PERMANENCY OF RENT

—presumption of—

See LANDLORD AND TENANT
 1 L R 44 Calc 930

PERMANENT AGRICULTURAL TENURE

See LANDLORD AND TENANT
 1 L R 37 Calc 723

PERMANENT HEREDITARY TENURE

See MINES AND MINERALS
 1 L R 44 Calc 585

PERMANENT IMPROVEMENTS

See VENDOR AND PURCHASER
 1 L R 37 Calc 362

PERMANENT LEASE.

See HINDU LAW—PARTITION
 1 L R 43 Calc 1118

See HINDU LAW—RELIGIOUS ENDOWMENT
 1 L R 42 Calc 538

See LEASE 1 L R 43 Calc 332

See LIMITATION 1 L R 43 Calc 34

PERMANENT RIGHT OF OCCUPANCY

See MADRAS ESTATES LAND ACT 1903
 1 L R 44 Mad 856

PERMANENT SETTLEMENT

See CHAUKIDARI CHAKRAM LANDS
 1 L R 44 Calc 841

See FISHERY 1 L R 42 Calc 489

See MADRAS IRRIGATION CESS ACT (VII OF 1865) s 1 1 L R 38 Mad 997
 s 14 PROS 1 AND 2
 1 L R 40 Mad 886

See MADRAS REGULATION XXV OF 1802
 1 L R 44 Mad 864

See REGULATION I OF 1793
 15 F W N 300

PERMANENT TENANCY

See BHAGDARI ACT (BOM ACT V OF 1862)
 s 3 1 L R 38 Bom 679

See LAND REVENUE CODE (BOM ACT V OF 1870) s 3
 1 L R 38 Bom 716

See LANDLORD AND TENANT
 1 L R 47 Calc 1 and 230

See LEASE 1 L R 43 Calc 332

See SUB LEASE
 1 L R 48 Calc 783

See TITLE SUIT FOR
 1 L R 37 Calc 662

—by occupancy raiyat—

See BENGAL TENANCY ACT 1885 s 85
 25 C W N 4

PERMANENT TENANCY—cont'd.

—If may be granted by raiyat at fixed rent—

See BENGAL TENANCY ACT 1885 ss 11
 12 18 AND 85 25 C W N 9

—power of head of mutt to grant—

See HINDU LAW—ENDOWMENT
 1 L R 40 Mad 745

—Adverse possession—Necessity of notice to the landlord—

See LANDLORD AND TENANT
 1 L R 45 Bom 508

—Adverse possession of tenant against mortgagee—Whether can run adversely against mortgagor—

See ADVERSE POSSESSION
 1 L R 45 Bom 661

1 ——— Building lease—Lease construction of—Permanency inference as to—Drilling house—Long possession The mere facts that a lease of land was for dwelling purposes and that the lessees have been allowed to remain in possession of the land on payment of rent for a long period would not in themselves be sufficient to establish the permanent nature of the tenancy where there is nothing to show that the building was contemplated to be or in fact was a masonry building *BARADA PRASAD BARMAN v. PRASANTO KUMAR DAS* (1912) 16 C W N 564

2 ——— Lease—Presumption of permanency—Lease for building purpose—Long possession—Uniform rent—Permanency question of mixed law and fact—Second appeal Where the origin of a tenancy was unknown and it was established (i) that the original tenant and his successor had been in occupation of the land for over sixty years (ii) that the rent had never been varied (iii) that the tenancy had been treated by the landlord as heritable and (iv) that the land was let out for residential purposes the inference was held to be legitimate that the tenancy at its inception was permanent The question of the nature of the tenancy is a mixed question of fact and law the inference as to the nature of the tenancy from the facts found is a question of law which can be gone into on second appeal *MOHA RAM CHAPRAJI v. TELAMUDDIN KHAN* (1911) 16 C W N 567

PERMANENTLY SETTLED ESTATE

See BENGAL TENANCY
 1 L R 38 Calc 473

See LAND TENURE IN MADRAS
 L R 46 I A 33

See PRESERVED FOREST
 1 L R 47 Calc 859

PERPETUAL INJUNCTION

See INJUNCTION 1 L R 37 Calc 731

See TRUST 1 L R 41 Calc 19

PERPETUITIES

See CHARITABLE TRUST
 1 L R 48 Calc 124

See PRE EMPHOV
 1 L R 38 Mad 114

PERPETUITIES—*contd**See* PUTTE LEASE

14 C W N 601

See TRANSFER OF PROPERTY ACT (IV OF 1852) s 84 I L R 39 Mad 462*See* WILL 3 Pat. L J 199

I L R 40 Calc 192

I L R 46 Calc 485

————— applicable to Hindu Law —————

See PRE EMPTION I L R 38 Mad 114*See* HINDU LAW 25 C W N 148

————— *Rule against—Covenant to run with the land* An agreement to grant at an indefinite time in the future whatever land might be required by the other party to the agreement is void as offending the rule against perpetuities *MAHARAJ BAHADUR SINGH v BALCHAND CHOWDHURY* I L R 48 I A 376

3 Pat. L J 163

PERSONÆ INCERTÆ*See* HINDU LAW—WILL

I L R 39 Calc 87

15 C W N 945

PERSONAL ACTION

————— whether criminal proceedings abate on death of person assaulted —————

See PENAL CODE 1860 ss 304 AND 373

I L R 1 Lah 27

————— *Abatement—Death of plaintiff after obtaining a decree in his favour—Whether his legal representatives can carry on an appeal* One D P sold his land in 1908 P a collateral of D P brought the present suit for possession on the allegation that the sale was without consideration and necessary. The first Court decreed plaintiff's claim on payment of Rs 830 being the part of the consideration which it held to have been legally proved. Both parties appealed. During pendency of the appeals P died leaving no heirs except his two widows whose names were brought on the record as legal representatives of the deceased. The lower Appellate Court was of opinion that the right of P being personal his widows could not carry on the appeal which was therefore held to have abated and was dismissed. The Court also held that the vendee's appeal must under the circumstances succeed. The widows appealed to the High Court. Held that judgment having been obtained before plaintiff's death the benefit of it survived to his legal representatives and that the lower Appellate Court must therefore hear the appeals on their merits. *Muhammad Hussain v Ahushalo* (I L R 9 All 131 P B) *Subbaraya Mudali v Manika Mudali* (I L R 19 Mad 345) and *Gopal Ganesh v Pam Chandra* (I L R 26 Bom 597) followed. *MUSAMMAT PAM NAUR v JIWAN SINGH*

I L R 1 Lah 189

PERSONAL COVENANT*See* LIMITATION I L R 42 Calc 294**PERSONAL DEBT***See* PUTTE TENURE

I L R 37 Calc 747

PERSONAL DECREE*See* CHARGE I L R 40 Mad 493*See* DECREE HOLDING I L R 38 Mad 677*See* TRANSFER OF PROPERTY ACT (IV OF 1882) s 90 I L R 34 Bom 540

————— against sub mortgagee —————

See MORTGAGE I L R 45 Calc 702**PERSONA DESIGNATA***See* NAIKINS I L R 37 Bom 116**PERSONAL INAM***See* MADRAS FOREST ACT (XXI OF 1882) ss 10 16 17

I L R 39 Mad 494

PERSONAL LIABILITY*See* EXECUTOR I L R 45 Calc 538*See* FOREIGN JUDGMENT I L R 36 Mad 414**PESHKOSH**

1. ————— *Abuab—Antiquity and purpose of payment—Contractual foundation—Bengal Tenancy Act (VIII of 1885) ss 74 30 (c)—Public Demands Recovery Act (Beng 1 of 1895)* Where the Collector in execution of a certificate issued under the Public Demands Recovery Act realised from the plaintiffs certain charges described as peshkosh levied on two estates from time immemorial and the plaintiff sued for a declaration that it was illegal and prayed for the cancellation of the certificate for the refund of the amount thereunder and for a perpetual injunction restraining the defendant from levying the peshkosh in future. Held that peshkosh could not be regarded as an imposition in the nature of an abuab within the meaning of the various provisions enacted on that subject. Such payment came out of the land and the right thereto was an interest in the land to which a title might be made by prescription. Held also that the peculiar situation and character of the land and antiquity and purpose of the payment all pointed to a legitimate contractual foundation. *Uday Narain Jana v The Secretary of State for India in Council* (1916) S A No 44 of 1912 (unreported) referred to *LAKSHMI NARAYAN ROY v SECRETARY OF STATE FOR INDIA* (1918) I L R 45 Calc 226

2. ————— *Peshkosh or annual sum levied by Government for upkeep of embankment of abuab* An annual sum levied by Government for the upkeep of embankments is not an abuab. Long continued payment from time immemorial which in itself is a title in the receipt of the payment is a good and sufficient basis of the claim. *UDAY NARAYAN JANA v SECRETARY OF STATE FOR INDIA* (1916) 22 C W N 623

PETITION

————— delay in filing divorce —————

See DIVORCE ACT (IV OF 1869) s 14 I L R 41 Bom 115

————— for winding up Company —————

See COMPANY I L R 39 Bom 18 47**PETITION OF COMPROMISE.***See* COMPROMISE I L R 45 Calc 816

PETROLEUM ACT (VIII OF 1899)

ss 11 and 15—Keeping in possession a quantity exceeding the maximum allowed by law—
 Liability of a licensee for the acts of his servant or agent in the absence of finding of guilty knowledge on his own part—Petroleum Act (VIII of 1899) ss 11 and 15 (a). A licensee is not in the absence of a finding by the Court that he knew that more than 500 gallons of petroleum were being transported at one time on his license and that he allowed the same to take place with such knowledge by his servant criminally liable under ss 11 and 15 (a) of the Indian Petroleum Act (VIII of 1899) for the acts of the latter done in contravention of the law. Though the Act provides a personal liability the only person that can be punished is the one who keeps petroleum or carries it about or puts more than 500 gallons at one place. *GANIAT PATI v. EMPEROR* (1912)
 I L R 40 Calc 356

PIAL

over a drain right to—

See MUNICIPAL COUNCIL

I L R 38 Mad 6

PICKETING

See MARKET FRANCHISE

I L R 47 Calc 1079

PIECEMEAL ACQUISITION

See LAND ACQUISITION

I L R 48 Calc 892

PIECEMEAL TRIAL

See RAILWAY

I L R 42 Calc 313

PILGRIM BUSINESS

profits from—

See RECEIVER I L R 40 Calc 678

PILGRIMAGE

See HINDU LAW—LEGAL NECESSITY

I L R 110 Bom 88

PITRAI CHELA

See HINDU LAW—SUCCESSION

I L R 39 Bom 168

PLACE OF EXAMINATION—

See EXAMINATION OF COMMISSION

I L R 48 Calc 448

PLACE OF SUING

See CIVIL PROCEDURE CODE 1908 s 20

I L R 42 All 480 619

PLAINT

See AMENDMENT OF PLAINT

I L R 36 All 370

See CIVIL PROCEDURE CODE (1908) O VI AND VII

See COURT FEE I L R 42 Calc 370

See PLEADINGS I L R 37 Calc 856

See PRACTICE I L R 34 Bom 244

amendment of—

See APPEAL I L R 43 Calc 95

See CAUSE OF ACTION

I L R 38 Calc 797

PLAINT—contd

amendment of—contd

See CIVIL PROCEDURE CODE 1882

I L R 34 Bom 250

See CIVIL PROCEDURE CODE 1908—

s 9 I L R 45 Bom 589

s 92 I L R 36 Bom. 168

O VI R 17 I L R 38 Mad 378

I L R 44 Bom 515

See CONTRACT I L R 47 Calc 458

See COURT FEE I L R 44 Calc 352

See HINDU LAW—ADOPTION

5 Pat L J 164

See IDOL I L R 33 All 735

See LIMITATION ACT 1877 s 8

14 C W N 128

See LIMITATION ACT (1877 or 1908) s 3

I L R 33 All 616

See LIS PENDENS

I L R 41 All 534

See PARTIES I L R 37 Calc 229

See PARTITION SUIT FOR

I L R 38 Calc 651

See PRE EMPTION I L R 36 All 873

See PROCEDURE I L R 48 Calc 832

See REMAND I L R 43 Calc 938

See SPECIFIC RELIEF ACT 1877 s 32

25 C W N 553

See U P COURT OF WARDS ACT (III of 1899) s 48

I L R 37 All 18

authority to file—

See PRACTICE I L R 39 All 343

construction of—

See SPECIFIC RELIEF ACT (I of 1877)

s 9 I L R 40 All 637

order returning—for presentation in

Proper Court—

See CIVIL PROCEDURE CODE 1908 s 104

O XIII s 1 I L R 42 All 74

s 115 I L R 43 All 334

presentation of—

See MADRAS ESTATES LAND ACT (I of 1903) s 10—

I L R 39 Mad 285

rejection of—

See COURT FEE I L R 40 Calc 818

I L R 44 Calc 352

See JURISDICTION OF CIVIL COURT

I L R 34 Bom 267

See JUDICIAL OFFICERS PROTECTION ACT

(VIII of 1850) s 1

I L R 39 All 518

Refusal of to presentation in proper

Court—

See CIVIL PROCEDURE CODE 1908 s 104

O XIII R. 10 I L R 23 All 58

I L R 43 All 334

See LIMITATION ACT (1877 or 1908) s 14

I L R 45 Bom 443

suit against Receiver—

See HIGH COURT I L R 44 Bom 903

PLAINT—contd**Verification of —**See **EX PARTE DECREE****I L R 43 Calc 1001****Amendment—Plaint amendment of**

by party to whom it is returned for proper valuation A plaintiff to whom a plaint was returned for properly valuing the properties claimed therein altered the valuation as directed therein and struck out some of the properties to bring the suit within the jurisdiction of the Court *Held* that there was nothing illegal in the amendment and that it was competent to the Court to accept such amended plaint **KARTUNAYIRA PONTA PUNDAY v ATRIMMOOLA IONAPUNDAY (1909)**

I L R 33 Mad. 262**Leave to file—given by Registrar**

Pepe entrant—Limitation error of procedure rectification within time delay in completion of order and recording the representation of plaintiff Where on leave being asked for in the plaint under cl 12 of the Charter the Registrar on the Original Side of the High Court under a misapprehension of the change in procedure with regard to the filing of plaints gave such leave but on discovery of the fact that the Registrar had no authority to grant such leave the plaint was withdrawn on the 10th August 1907 and was immediately after presented before a Judge sitting on the Original Side who gave the leave and endorsed on the plaint presented 15th August 1907 but there was delay in the office in completing the order and stamps were supplied upon requisition from the office on the 14th December 1907 and it was recorded in the office and also re endorsed on the plaint that the plaint was re registered and filed on the 18th December 1907 on objection being taken by the defendant that the suit was barred by limitation *Held* (by CHAUDHURI J) that the 15th of August 1907 as recorded by the Judge on the plaint was the date of its presentation and the suit was not barred by limitation **OSMOND BEEBY v KSHITISH CHANDRA ACHARYA CHAUDHURI (1914)**

IN C W N 631**Form of plaint—Suit against Corporations—Defendant misdescription of—Service on Corporations—Civil Procedure Code (Act V of 1908) O XXIX rr 1 and 2—Practice**

In a plaint filed against two companies the defendant companies were described as the India General Steam Navigation and Railway Company Limited and the Rivers Steam Navigation Company Limited by their joint agent A E Rogers and notice was served on Mr Rogers Subsequently Mr Rogers retired from the service of companies and left the country At the trial of this suit the plaint was amended and Mr Rogers name was omitted from the title of the suit which was proceeded with against the two companies *Held* that the plaint as originally framed was in contravention of O XXIX r 1 of the Code of Civil Procedure **Ram Das Sen v Stephenson 10 W N 366 Nuben Cander Paul v Stephenson 15 W R 331 and Campbell v Jackson I L R 12 Calc 41** referred to *Held* also that the amendment might stand but the plaintiffs were bound to serve notices of the suit in the manner provided in O XXIX r 1 after the amendment had been made and the suit properly constituted **INDIA GENERAL STEAM NAVIGATION AND RAILWAY COMPANY LD v LAL MOHAN SANA (1915)**

I L R 43 Calc 441**PLAINT—contd****Amendment of plaint—Procedure—**

Suit barred by limitation when change in its nature is made by amendment—Discretion to allow amendment—Valuation of suit—Judicial Committee practice of—Civil Procedure Code (Act V of 1908) O VI r 17 Where there is admittedly a power to allow an amendment of the plaint though such power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time yet there are cases where such considerations are outweighed by the special circumstances of the case **Mohammad Zahoor Ali Khan v Ruttia Khan II Moo I 1468** referred to The suits which gave rise to the present appeals were instituted by the three first respondents claiming a declaration that they were entitled to certain right of preemption against the several appellants (defendants) who were vendees of certain shares and interests in the properties to which the suits related but none of the plaintiffs claimed possession of the property sold and the usual consequential relief The defendants in their defence admitted the plaintiffs right to preemption but objected that a mere claim to such a right was not a claim to any right of property within the meaning of s 42 of the Specific Relief Act (I of 1877) and that the right to preemption could not be enforced by a mere declaratory decree The Subordinate Judge and the first Appellate Court refused to permit an amendment to the plaintiffs by adding a claim for possession after preemption on the ground that a suit to enforce a right to preemption was barred by lapse of time The Court of the Judicial Commissioner on second appeal allowed the amendment to be made there being no reason to suppose that the plaintiffs had acted otherwise than *bona fide* and the amendment not making any alteration in the nature of the relief prayed for *Held* that the discretion exercised in allowing the amendment should not be interfered with *Held* also that the Board will not interfere with any question of valuation unless it can be shown that some items has been improperly made the subject of valuation or excluded therefrom or that there is some fundamental principle affecting the valuation which renders it unsound On the mere question of the value of admitted items their Lordships will not interfere Nor will they allow an argument based upon an assertion that the valuation has proceeded on an erroneous footing to be raised on appeal to the Board unless it was raised before the Judicial Commissioner and if it were so raised the fact that it is not referred to in the written statement of the party raising it is a good and sufficient reason why it should not be introduced at this late stage of the proceedings.

CHARAN DAS v AMIR KHAN (1920)**I L R 48 Calc 110****PLAINTIFF**See **CIVIL PROCEDURE CODE (ACT V OF 1908) O XXII rr 11 5****I L R 48 Bom. 168****See INSOLVENT PLAINTIFF****death of—**See **CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 40 Mad 110**

PLAINTIFF—contd

non appearance of—

See **APPEAL** I L R 37 Cal 426See **NON APPEARANCE**
I L R 48 Cal 57

substitution of—

See **LIMITATION** L R 431 A 113
20 C W N 833**PLANTERS LABOUR ACT (MAD I OF 1903)**See **MADRAS PLANTERS LABOUR ACT 1903**

ss 24, 35—Imprisonment for refusal to perform contract extent of Prosecutions and punishments under the Planters Labour Act (Mad. Act I of 1903) cannot continue indefinitely Only two terms of imprisonment may be awarded once under s 24 and again once under s 35 The refusal of a maistry or a labourer under s 35 to perform his contract cannot be treated as a temporary refusal. *Re PAROA MAISTRY* (1913)

I L R 36 Mad. 497

PLEA OF GUILTYSee **PENAL CODE (ACT XLV OF 1860)**
s 415 I L R 43 Bom 842See **SANCTION FOR PROSECUTION**
I L R 48 Cal 867**PLEADER**See **BOMBAY REGULATION II OF 1827**
s 56 I L R 37 Bom 354See **DEFAMATION** I L R 41 Cal 514See **LEGAL PRACTITIONER**
14 C W N 521See **LEGAL PRACTITIONERS ACT**See **PRACTICE** I L R 34 Bom 408See **UNPROFESSIONAL CONDUCT**

admission by—

See **PENSIONS ACT (XVIII OF 1871)**
s 6 I L R 39 Bom. 352

as litigant—

See **UNPROFESSIONAL CONDUCT**
I L R 43 Cal 685

contempt of Court by—

See **LEGAL PRACTITIONERS ACT (XVIII OF 1870)** s 14

I L R 39 Mad 1045

defamatory statement by Judge—

See **JUDICIAL OFFICERS PROTECTION ACT 1850** I L R 45 Bom 1039

duty of—

See **CONTEMPT OF COURT**
I L R 44 Bom. 443

status and duty of—

See **HIGH COURT** I L R 44 Bom. 418

engaging in trade without intimating to Court—

See **LEGAL PRACTITIONERS ACT (XVIII OF 1870)** s 13

I L R 37 Mad. 233

1. —Pleader right of retainer of
—Has no right to retain moneys in one cause for
d e in another cause A pleader in India has no

PLEADER—contd

right of retainer in moneys realised by him in one cause for his dues in other causes conducted by him *NARAYANASWAMI NAIDU v CHELLAPALLI HANUMANULU* (1909) I L R 33 Mad. 255

2. —Pleader's authority to compromise—*Deccan Agriculturists Relief Act (XVII of 1879)* s 12—Compromise of the case—Court's duty to record the compromise—Pleader a compromiser without authority from his client—client to apply to cancel the compromise Where a party complains that compromise effected in his name was unauthorised he must move the Court to cancel all that has been done and to revive the suit *PIRAJI v GANAPATI* (1910)

I L R 31 Bom. 502

3. —Duty towards client—Pleader in the mofussil—Winding up proceedings—Pleader must not represent parties whose interest are conflicting—*Bombay Regulation II of 1827* s 56 By the custom of the mofussil a pleader employed by a party to a proceeding before a Court is bound faithfully and exclusively to serve that party throughout the whole proceeding The pleader in the mofussil is not merely an advocate—he is the confidential legal adviser of his client and does for him those things which in the presidency towns are often done by solicitors For legal advice for the prosecution of legal proceedings in all their stages the client depends on the pleader This dependence makes the position of the pleader peculiarly onerous and binds him to give exclusive attention to the interest of the client throughout any proceedings in which he is engaged In winding up proceedings a single pleader must not represent two different creditors whose interests are known to conflict A pleader must not accept a *talalatnama* when he knows that he cannot act for his client throughout the proceedings A pleader in defending himself against charges of professional misconduct made certain statements He was dealt with under the disciplinary jurisdiction for making them It was contended in his behalf that the statements made by him in defence must be regarded as having been made by an accused and were therefore protected Held overruling the contention that the pleader was writing to the Court as a pleader and was responsible as such for the statements made by him. **GOVERNMENT PLEADER v BHAGUBAI DAYA BHAI** (1912) I L R 36 Bom 606

4. —Suspension of vakil. Under s 90 of the Appellate Sides rule of the Madras High Court pleaders are responsible to the Registrar for all translations and printing charges incurred by him on their behalf To that extent therefore the vakil must co operate in the conduct of the suit with the Registrar and with the Court under those regulations and vakils have also the general function applicable not only to the bar in general but also to solicitors at large that they must in the conduct of all suits entrusted to them co operate with the Court in the orderly and pure administration of justice. In a proceeding in the High Court to restore an appeal which had been struck off for non payment of the printing charges it appeared that the vakil for the appellant though the money for that specific purpose had been received in his office from his client had omitted to pay it to the Registrar had not made any true and proper explanation to his client of the cause of the appeal being

PLEADER contd

struck off but had allowed letters written by his clerks to go from his office to the client and had even written one himself which would lead him to believe that the appeal had been heard and dismissed in due course and had also not given the Court on the earliest possible opportunity an answer for his absence when the appeal was called on except that other professional engagements had prevented him from being present nor had he ever offered to the Court any explanation or apology concerning his conduct of the case nor expressed to the Court any regret for its effect. The vakil after being called on to show cause why he should not be punished under the Letters Patent of the High Court or the Legal Practitioners Act (VIII of 189) for professional misconduct was whilst personally acquitted of any fraudulent or criminal act suspended from practising for six months. *Held* on an appeal to the Judicial Committee that the vakil had in his acts and omissions to explain regret or apologise for them utterly failed to perform what his honour and duty to his client and to the Court made it incumbent upon him to do and their Lordships while not interfering with his acquittance of direct and personal fraud did not see their way to acquit him of conduct in the management of the appeal and of his client's affairs which caused the procedure of the Court to be the very opposite of what it should be namely responsible orderly and pure and they were of opinion that there was reasonable cause under s 10 of the Letters Patent for the sentence pronounced by the High Court which was justified both in its pronouncement and the extent of the suspension. *In the matter of KRISHNASWAMI AYYAR* 1912).

I. L. R. 35 Mad. 543

5 ———— Compromise of suit by ———— Unless authorised by client—Scope of authority of Attorney. Although a pleader has no power to compromise a suit unless he is specially authorised in that behalf he can bind his client by an admission upon a question of fact provided that such question falls within the scope of the suit in which he has been retained. *Bhuthnath v Ramlal* 6 C W N 82 *Jagapati v Ekamlarn* 1 L R 21 Mad 274 followed *Kouer Narain v Greenath* 9 W R 485 *Rajunder v Bijay Govind* 2 Moo 1 A 253 *Itina Lal v Mansa Ram* 1 L R 18 All 384 *Venkata Nara Simha v Bhasaya Karlu* 1 L R 22 Mad 638 *Nando Lal v Natarain* 1 L R 27 Calc 428 *Swinfu v Chelmsford* IF and F 619 27 L J Ex 38 referred to *DORJOY RAY v SHANKU ATA PAHAMAN* (1911).

17 C W N 150

6 ———— Admission of women as pleaders—Disqualification—Constant Tradition—Regulation of 1871 for the Administration of Justice—Regulation VII of 1793 (Vol 1s) Preamble—Regulation (XXVII of 1914 (Vakil's) Preamble as 4 5 10 to 14 18 20 to 2 30 35 37—Legal Practitioners Act (I of 1846) as 4 1—Pleaders of Lower Provinces Act (XIII of 1857)—Legal Practitioners Act (X of 1853)—Calcutta University Act (II of 1857)—Penal Code (XLV of 1860) s 8—Succession Act (I of 1865) s 3—Mofussil Small Cause Courts Act (XI of 1865) s 1—Pleaders of Mulktears and Revenue Agents Act (XII of 1865) s 1—Pleaders of Revenue Agents Act (XIII of 1865) s 1—Pleaders

PLEADER contd

Amending Act (XXIV of 1865)—General clauses Act (I of 1863) s 2—Legal Practitioners Act (XIII of 1879) s 8 High Court rules thereunder General Clauses Act (X of 1897) s 13 As the law now stands women are not entitled to be enrolled as pleaders of Courts subordinate to the High Court. The Rules of the High Court were made in accordance with and for the purpose of carrying out the intention of the Legal Practitioners Act 1879 and are not *ultra vires*. *Per MOOREJEE J* It is improper to give an extended construction of a statute in the absence of an intention on the part of the Legislature to reverse the established policy or to introduce a fundamental change in long established principles of law. Where it appears that a change of such a policy is desirable the proper remedy is legislation and not an alteration of the law in the disguise of judicial exposition of the existing law. Case law on the subject referred to *Per CURTIS J* In framing rules under an Act of the Legislature the Court should not use any particular expression or word in a different sense to be applied to the particular expression or word by the Act itself. But it is doubtful whether the General Clauses Act applies to rules framed by the High Court under the Legal Practitioners Act 1879. *REGINA GUHA In re* (1916) **I. L. R. 44 Calc 290**

7 ———— Professional misconduct—Disciplinary action—Legal Practitioners Act (XVIII of 1879) s 14—Criminal offence—Suspicion. The District Judge of Rangpur made a reference under s 14 of the Legal Practitioners Act against C a pleader on three charges formulating strong suspicion that he offered to bribe the record room keeper and attempted to have certain words removed from a document. *Held* where the misconduct alleged has no direct connection with the conduct of the pleader in his practical and immediate relation to the Court ordinarily there should be a trial and conviction for criminal misconduct before disbarment will be ordered. *In the matter of an attorney* 1 L R 41 Calc 113 *In the matter of Nal Auni Biswas* 9 W R Cr 29 *In the matter of the second grade Pleaders* 1 L R 34 Mad 29 *In the matter of* 5 B and A D 1038 *In re* 3 Nev and Per 389 *Ex parte* 2 Dougl P O 110 *Stephens v Hill* 10 All and W 78 *Ex parte Wall* 107 U S 265 referred to *CHANDI CHARAN MITTAR A PLEADER In re* (1904).

I. L. R. 47 Calc 1115

PLEADER'S FEES

See BOMBAY REGULATION II of 1827 s 62 **I. L. R. 37 Bom. 303**

See COSTS **I. L. R. 40 All 515**

See HIGH COURT GENERAL RULES OF FOR CIVIL COURTS CHAPTER XXI R 1 **I. L. R. 41 All 246**

Rules of Court of the 4th April 1894 r 80 (1) proviso—Pleader's fees—Fee certificate not filed at or before the hearing—Fee not paid before hearing—Discretion of Court. *Held* on a construction of r 80 (1) of the rules of Court of the 4th April 1894 that the proviso to r 30 only gives a court a discretion to accept a certificate for fees filed after the commencement of the hearing but whatever might have been intended leaves no discretion as to the allowance on taxation of a fee which in fact was not paid

PLEADER'S FEES—contd

on or before the first hearing **BANK OF BENGAL
CAWNPORE v KALRA DAS (1911)**

I L R 33 ALL 374

Practice—Costs scale of—Taxation—Probate proceedings—Probate and Administration Act (V of 1881) s 83—General Rules and Circular Orders of the High Court Chapter VI rr 36 (a) and 42 (a) and Chapter X r 26 In a contested probate proceeding in which letters of administration and costs are granted the pleader's fee can only be assessed under Chapter VI r 42 (a) of the General Rules and Circular Orders of the High Court Rule 36 (a) and Chapter VI of the Rules and Orders has no application **BAIJNATH PRASAD SINGH v SHAM SUNDAR KUAR (1913)**

I L R 41 Cal 637

PLEADER'S ACT (I of 1846)—

See REGULATION II of 1827 (Bom)

I L R 37 Bom 303

PLEADERS MUKHTARS AND REVENUE AGENTS ACT (XX OF 1865)

See PLEADER I L R 44 Cal 290

PLEADERSHIP EXAMINATION

Pledership Examination—Candidate—Examiners—Specific Relief Act (I of 1877) ss 45 46—Mandamus—Discretion In making an application under s 45 of the Specific Relief Act the provisions of s 46 must be strictly observed and in dealing with such an application the principles applicable to a writ of mandamus should generally be followed **Bank of Bombay v Suleman Somji I L R 32 Bom 166** referred to **PROVAS CHANDRA ROY** in the matter of (1913)

I L R 40 Cal 583

PLEADERS OF LOWER PROVINCES ACT (XVIII OF 1852)

See PLEADER I L R 44 Cal 290

PLEADINGS

See ABANDONMENT 22 C W N 853

See ARREST OF SHIP

I L R 42 Cal 85

CIVIL PROCEDURE CODE 1908, Os VI VII & VIII

See EVIDENCE ACT (I of 1872) s 105

I L R 40 All 284

See HINDU LAW—WIDOW

I L R 35 All 326

See ORISSA TENANCY ACT 1913

4 Pat L J 387

See PRE EMPTION I L R 36 All 456

476 573

See SPECIFIC MOVABLE PROPERTY

I L R 39 Mad 1

mistake of law of liquidator—

See CONTRACT WITH FEMY

I L R 44 Bom 631

whether a plea of jurisdiction can be raised on appeal—

See AGRA TENANCY ACT 1501 s 177

I L R 43 All 18

PLEADINGS—contd

whether a plea of jurisdiction can be raised on appeal—contd

See TRANSFER OF PROPERTY ACT (IV of 1832) s 52 I L R 37 Bom 427

1 Quere Whether a defendant who puts the plaintiffs to proof of a family usage alleged by them is precluded at a later stage from saying that he will not insist on the proof of usage but will accept the plaintiffs case on the point **HAZARI MALL BABU v ARANI NATH ADHURJYA (1912)**

17 C W N 280

2 *Plaint's amendment of when should be allowed* Amendment of a plaintiff for a claim should be allowed only where the claim has been omitted by a mistake or inadvertence or for similar reasons and not deliberately **BAVUKI KORE v RAM KHELWAT PERSHAD (1912)**

17 C W N 311

3 *Change of case—Issues—Suit to set aside a deed of gift as fraudulent failing claim for accounts of a share as from agent* Where on the eve of a contemplated pilgrimage to Mecca *M* transferred her property to her nephew *E* by a deed of gift and on the same date the latter executed a deed which provided that a fourth share of the properties thus conveyed should remain in her possession during her life time and on her death should come into *E*'s possession *Held* that the fact that in a suit to set aside the deed of gift on the ground of fraud and misrepresentation which failed a general issue as to whether *E* was liable to render an account to *M* was raised with reference to the whole property would not justify the Court in passing a decree directing *E* to account for the profits of a fourth share on the footing of his being *M*'s agent in respect of that share **MAHMUDA KHA TUN CHOWDHURANI v MOHAMED ELAHADAD KHAN PANI (1912)**

17 C W N 427

4 *Facts in plaintiff not traversed in written statement or put in issue—Court not entitled to decide otherwise* Where a statement of fact in the plaintiff was not traversed in the written statement or put in issue the Court is not entitled to decide it against the pleadings **RAM LAL MONDAL v KHIPODA MOHINI DAST (1913)**

18 C W N 113

5 *Variance between Plaintiff's allegation and proof when ground for dismissal of suit—True rule—Its object—Suit for recovery of possession—Mode of ouster and time thereof allegation as to if material* Where an order having been passed in favour of the defendants under s 33 of the Civil Procedure Code of 1882 the decree holder (now plaintiff) sued for recovery of possession upon declaration of his title alleging that the order itself deprived him of possession but the Courts below dismissed the suit without trial on the merits on the ground that the order under s 33 of Criminal Procedure Code had not that effect *Held* that the suit should have been tried on the merits as the particular mode in which or the point of time at which the ouster of the plaintiff took place was not so material that a variance between pleading and proof on such matters would alone be considered a sufficient ground for dismissing the suit The determination in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case made thereby

PLEADINGS—*contd*

It does not follow from this that every variance between pleading and proof is material and justifies a dismissal of the claim. The rule that the allegations and the proof must correspond is intended to serve a double purpose: *first* to apprise the defendant distinctly and specifically of the case he is called upon to answer so that he may properly make his defence and may not be taken by surprise and *secondly* to preserve an accurate record of the cause of action as a protection against a second proceeding founded upon the same allegations. *NABADIPENDRA MUKERJEE v. MADHU SUDAN MONTDAL* (1912)

18 C W N 473

8 ———— *Change of case—*
Suit on hatchinga—Suit on account stated—Allegation of suit on a count stated to suit on account stated in previous year when account stated found to be forged. The plaintiffs sued to recover the principal and interest due on a certain *hatchinga*. The plaintiffs alleged that they were the proprietors of a joint bank that the father of the defendants used to borrow money on *hatchingas* from their bank that accounts were adjusted up to 1908 and the father of the defendants signed the *hatchinga* for 1908 on which the suit was brought. The lower court found this *hatchinga* to be a forgery but gave the plaintiffs a decree on the *hatchinga* for 1907. *Held* that the suit being on an account stated and not on an open account and the account stated sued on being found to be a forgery the suit could not be altered to one on an account stated in a previous year. In any case it ought not to have been done with retrospective effect. *BHAIRO PRASAD v. GOJADHAR PRASAD RAU* (1914)

19 C W N 170

7 ———— *Issues not expressly framed when may and when should not be determined.* Where the parties have gone to trial knowing what the real question between them was the evidence has been adduced and discussed and the Court has decided the point as if there was an issue framed on it the decision will not be set aside in appeal simply on the ground that no issue was framed on the point. Where the failure to frame the issue has led to an unfair trial or miscarriage of justice the case will be remanded for retrial. *MOHUDDIN v. PIRITHI CHAND LAL CROWDHURY* (1914)

19 C W N 1159

8 ———— *Fraud sole ground of relief—Alteration of ground of relief by picking out facts from allegations in the plaint—Defendant's duty in cases based on fraud.* Where pleadings are so framed as to rest the claim for relief solely on the ground of fraud it is not open to the plaintiff if he fails in establishing the fraud to pick out from the allegations in the plaint facts which might if not put forward as proofs of fraud have yet warranted the plaintiff in asking for relief. A defendant in answering a case founded on fraud is not bound to do more than answer the case in the mode in which it is put forward. *Hickson v. Lombard* L P 111 L 31 and *Guthrie v. Abbot* No offer. *Noorodin Ahmed* 15 B R P C 50 referred to. *RAJENDRA KUMAR BOSE v. GANGARAM HOYAL* (1910) I L R 37 Cal 856

9 ———— *Variance between pleading and proof—Where plaintiff's case in effect*

PLEADINGS—*contd*

ment on the ground of exclusive title he cannot be given a decree for partition when the claim set up is found to be barred. Where a plaintiff sues the defendant in ejectment on the ground that he and defendant were separately enjoying properties he cannot when such claim is found to be barred by limitation rely on a tenancy in common not alleged in the plaint and claim a decree for partition. *CHIDAMBARAM PILLAI v. MUTHU PILLAI* (1909) I L R 33 Mad 356

10 ———— *Suit for cancellation of father's will brought by daughters—Plea of custom excluding daughters from inheritance—Custom not allowed to be raised in this suit.* On suit by the daughters of the testator for a declaration that a will alleged to have been executed by their father was a false and fraudulent document and not binding on them the defendants set up a custom by virtue of which the daughters but not apparently daughters or sons were excluded from inheritance to their father's property. *Held* that as members of their father's family the daughters who but for the will on the death of their mother would take the property of their father had a cause of action which entitled them to bring the suit and the issue whether or not a custom existed excluding them from inheritance was not a fit and proper issue to be determined in the present suit. *RISALI v. BALAK RAM* (1912)

I L R 34 All 351

11 ———— *Defendant admitted plaintiff's title in written statement though claim notified before suit—Suit if may be dismissed for want of cause of action.* The fact that the defendant does not in his written statement deny the plaintiff's title to land of which plaintiff had sued for recovery does not show that the plaintiff had no cause of action. Where therefore it appeared that the defendant did not at any time before the institution of the suit admit the plaintiff's title to the land in suit although plaintiff served him with notice of his claim. *Held* that this Court was not justified in dismissing the suit on the ground of want of cause of action merely because the defendant in his written statement admitted plaintiff's title. *GANGADAS SRI v. THE SECRETARY OF STATE FOR INDIA* (1916)

20 M W N 636

12 ———— *Plaint what should state—Omission to state facts necessary for defendants to meet at the trial effect of—Reliance by plaintiff on inconsistent rights alternately—Plaintiff if can allege facts destructive of each other—Partition suit—Preliminary decree—Costs.* The plaintiff commenced an action for partition on the allegation that he was entitled to fourteen and a half annas share of the property in suit while the defendants contended that they had acquired a good title to a two annas share. The plaintiff did not narrate the history of the title of the plaintiff nor did it mention the needs when by the title had devolved on him. The plaintiff did not make a definite case in plaint but sought at the trial to develop two inconsistent cases on the testimony of two different sets of witnesses. Objection was taken by the defendants on the ground of defect in the plaint but the Subordinate Judge proceeded with the trial. He found in favour of

PLEADINGS—contd

the defendants and allowed them the full amount of costs on the value of the suit. Against the preliminary decree the plaintiff appealed. *Held* that in the plaint the plaintiff was bound to state the nature of the deeds on which he relied in deducing his title from the person under whom he claimed and to show the devolution of the estate to himself. *Phillips v Phillips* 4 Q B D 127 *Derbyshire v Leigh* [1896] 1 Q B 554 and *Davis v James* 26 Ch D 778. It is absolutely essential that the pleading not to be embarrassing to the defendants should state those facts which will put the defendants on their guard and tell them what they will have to meet when the case comes on for trial. Thus much the plaintiff is bound to do though he need not set out the evidence whereby he proposes to prove the facts which give him the title. *Williams v Wilcock* 8 A and E 331 and *Gautret v Egerton* L R 2 C P 371. A plaintiff may in certain circumstances rely upon several different rights altogether though they may be inconsistent. *Narendra Nath v Abhay Churn* 1 L R 34 Cal 51 s c 110 W N 20 4 C L J 437 *Phillips v Phillips* 4 Q B D 127 *Birdan v Greenwood* 3 Ex D 255 *Hawkesley v Bradshaw* 5 Q B D 303 and *In re Morgan* 34 Ch D 496. But the plaintiff cannot be permitted to allege two absolutely inconsistent states of facts each of which is destructive of the other. *Mahamud Buz v Hossein Bibi* 1 L R 15 Cal 683. That in the present case the plaintiff should not have been allowed to proceed on the plaint as framed but should have been called upon to specify in his statement of claim the nature of the deeds and transactions from which he deduced his title. That the order for costs on the full value of the suit could not properly be made at the stage of the preliminary enquiry when the matter is controversy related only to a half anna share in the property. *MOTILAL PODDAR v JUDHISTIE DAS TEOP* (1915)

20 C W N 310

13 ————— Necessity of particularising fraud in plaint discussed. *AVANZO CHANDRA MONDAL v ATUL CHANDRA MULIK* (1910) 23 C W N 1045

14 ————— Pleading and proof variance between when fatal to suit—Variance not affecting cardinal points in issue—Nature of the principle—Quest on one of circumstances rather than of law—Application of the principle in an abstract way leading to error of decision on the merits—Trial Judge's appreciation of witnesses examined in his presence value of. When a sum of money due by A to B was entered in B's account book as having been paid on 6th November 1907 in cash but B's case was that it was liquidated by a promissory note which however bore date the 7th November 1907 and whilst A alleged that the payment was in fact made on 6th November in cash and the note of 7th November was a forgery B and his witness throughout the trial insisted that the date of the transaction was the 7th and the note was signed then. But the evidence and circumstances of the case showed that there was no payment in cash and that the promissory note was genuine but had been executed not on the 7th but on the 6th—the entry in the account book to the effect that the payment was in cash

PLEADINGS—contd

being satisfactorily explained by the practice of entering payments by promissory notes as payments in cash. *Held* that the variance of the case established from the case pleaded in the plaint (as to the date of the note) was not fatal to B's suit to enforce the promissory note in which the cardinal points to be decided were whether the debt had been paid in cash and whether the note was a forgery. That the High Court in relying for the dismissal of the suit on amongst other grounds that of variance between pleading and proof had applied that principle in an abstract and unsatisfactory way which had misled them in estimating the merits of the case. That the question in ultimate analysis was one of circumstances and not of law. That the evidence adduced in support of the transaction having been effected on the 7th November was not necessarily perjured or fabricated when it appeared that the statements of witnesses and entries in account books might be due to bona fide mistake. *ABDUL RAMI MAH v GUSTADJI MUNCHERJI COOPER* (1915)

20 C W N 297

15 ————— Inconsistent material facts in pleadings—Relief in the alternative whether may be claimed—Alternative cases how to be pleaded. Either party to a litigation may in a proper case include in his pleading two or more inconsistent sets of material facts and claim relief thereunder in the alternative but whenever such alternative cases are alleged the facts belonging to them respectively should not be mixed up but should be stated separately so as to show on what facts each alternative relief is claimed. *OFFICIAL ASSIGNEE OF BENGAL v BIDYASUNDARI DAS* 24 C W N 145

16 ————— Variance between allegations and proof. Every variance between pleading and proof is not fatal the Court must carefully consider whether the objection is one of form or of substance having in view the purpose which the rule that allegation and proof must correspond is intended to serve. It is first to apprise the defendant distinctly and specifically of the case he is called upon to answer so that he may properly make a defence and not be taken by surprise and secondly to preserve an accurate record of the cause of action as a protection against a second proceeding founded upon the same allegations. *KUMAR SATISH KANTO PAI v SATISH CHANDRA CHATTOPADHYA* 24 C W N 692

17 ————— Change of case at a late stage if should be permitted. Where the plaintiff sued for recovery of certain jewels upon the allegation that the predecessors in title of the defendants had made a gift of the same to plaintiff and it was not until the appeal to the Privy Council that it was suggested the claim arose not upon gift but upon contract a case of which there was no trace in the pleadings issues evidence or judgment in India. *Held* that the argument now advanced was contradictory of the case made and involved a line of attack that the defendants had no opportunity to meet while the litigation was in the lower Courts and the change of front could not be permitted at the late stage. *MALRAJU LAKSHMI VENKAYAMMA Row v VEYER TADEI APPA POW* 25 C W N 654

PLEADINGS—*concl'd*

18 ————— It is absolutely necessary that the determination in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made. The fundamental principle that the plaintiff cannot be permitted to follow a line of attack which the defendant had no opportunity to meet is of special importance in collision cases when the accident very often happens in an entirely unexpected manner and short time. *W J Pezz v JOHN LOUNG* 25 C W N 519

19 Court not to entertain a question not raised in—*Person of the rule explained—Test* Neither party to a litigation can be allowed to set up at the hearing an entirely new and inconsistent case. The reason for the rule is that the plaintiff might have received no notice that the point would be raised by the defendant and would presumably be not prepared with the necessary evidence and conversely the defendant might be seriously embarrassed if the plaintiff were permitted to spring a surprise upon him in the shape of a new case. The test to be applied is whether the party aggrieved has really been taken by surprise. So where the plaintiff sought to eject the defendant on the ground that he was a trespasser and the defendant answered that he was a tenant at money rent but the Court determined the nature of the alleged tenancy and came to a conclusion which was not the case of either party. *GONDLI BIRJI JOY VAL ABDIV* 26 C W N 294

PLEDGE.

S v BAILMENT I L R 37 Bom 122

See CONTRACT ACT (IX OF 1872)—

s 103 I L R 40 Bom 164

s 176 I L R 40 All 522

s 178 1/9 I L R 42 Bom 205

See PALMS OR TURNS OF WORSHIP

I L R 42 Calc 455

See PERS JUDICATA

I L R 36 Bom 189

of shares in a company—

See COMPANY I L R 42 Bom 159

POLICE

custody—confession—

See EVIDENCE ACT (I OF 1872) s 26

I L R 42 Bom 1

powers of to forbid a certain class to enter a certain place—

See POLICE ACT (V OF 1861) ss 31 32

I L R 39 All 131

powers of to require assistance from public—

See CRIMINAL PROCEDURE CODE s 4^o

I L R 42 All 314

report to—

See BAILABLE OFFENCE

I L R 39 Mad 1006

POLICE ACT (V OF 1861)

See ACT OF STATE

I L R 39 Calc 615

s 15 cl (4)—

See PUNITIVE POLICE

I L R 40 Calc 452

ss 17 19—

See SPECIAL CONSTABLES

I L R 43 Calc 277

s 29—Police constable—Failure to return to duty A police constable having failed to return to duty at the expiry of casual leave was convicted and fined under s 29 of the Indian Police Act. During his trial he was under suspension. Subsequently he was reinstated and ordered to return to duty. He failed to do so. Held that this second disobedience of orders was a separate offence entirely from that in respect of which he had been tried and convicted and that his conviction and sentence in respect thereof were legal. *EMPEROR v NUR UL HASAN*

I L R 42 All 22

Overstaying leave by a Police officer—Conviction proper if when there was reasonable cause. The petitioner a police officer was convicted under s 29 of the Police Act for overstaying his leave. His defence was that he was detained by important private business of his own and therefore could not join in time. Held that in the circumstances of the case it could not be said that the petitioner failed without reasonable cause to report himself to duty on the expiration of his leave and the conviction should be set aside. *JAGADISH CH BOSE v THE KING EMPEROR*

25 M W N 408

ss 31 32—Jatrawals—Competence of police to issue a general order for the control of the bus s 31 of Jatrawals. Held that it is not competent to a Superintendent of Police to issue a general order forbidding persons of a certain class to frequent certain specified places without having first obtained a license. *EMPEROR v KRISHNA LAL* (1916)

I L R 39 All 131

POLICE CONSTABLE

See POLICE ACT 1861 s 29

I L R 42 All 22

POLICE DIARIES

See CRIMINAL PROCEDURE CODE s 110

4 Pat L J 7

See POLICE REPORT

See PRIVY COUNCIL PRACTICE OF

I L R 44 Calc 878

Hostile Crown witness use of police diaries against—Code of Criminal Procedure (Act I of 1893) s 1st—Evidence Act (I of 1872) ss 155 and 151. The police diary may be used to impeach the evidence of a hostile witness for the prosecution. Statements of witnesses made to the police should not be used to corroborate them except in very special circumstances. *RAMCHARITRA SINGH v KING EMPEROR*

3 Pat L J 568

POLICE JAGIRS

Police jagirs in the Pachit Zamindari—Liability of jagir in sale for arrears of rent—Whether successor bound by sale

POLICE JAGIRS—contd

The decision of the Privy Council in the case of *Nilmoney Singha Deo v Balra Nath Singh* amounts to a decision that the police jagirs in the zamindari of Pachit are hereditary subject to the condition that it is competent to the representative of Government to dismiss the heir of the late jagirdar and to appoint even an outsider but that the customary rule of inheritance operates until the representative of Government exercises his option. Although in *Nilmoney Singha Deo v Balra Nath Singh* the Privy Council held that a jagir in the zamindari of Pachit is not liable to be sold for arrears of rent due from a previous jagirdar yet where in fact such a jagir was sold in execution of a decree for arrears of rent previous to the decision of the Privy Council held that the entire tenure passed at such sale and the subsequent decision of the Privy Council did not affect the rights of the parties because when a sale is held the rights of the parties are fixed with reference to the state of the law at that time and any subsequent interpretation does not affect the results of that sale. *JADAB LAL v SRI SRI DEBI LAL SINGH* 2 Pat L J 725

POLICE OFFICER

See EXCISE OFFICER

I L R 46 Calc 411

— duties of—

See HABEAS CORPUS

I L R 44 Calc 76

— opinion of—

See SEARCH WARRANT

I L R 47 Calc 597

— statements made to—

See CRIMINAL PROCEDURE CODE (A & V OF 1898)—

ss 162 289

I L R 34 Bom 599

s 162

I L R 111 Bom 58

— Detention in custody of suspended police officer—*Legality of detention—Police Circular Order No 1159—Legality of the Circular—Calcutta Police Act (Beng 11 of 1866) s 13* The Commissioner of Police has no authority in law to order the detention of a police officer on suspension as he ceases to be a police officer thereafter and the Police Circular Order No 1159 published in the *Calcutta Police Gazette* dated the 31st June 1917 empowering him to do so is illegal. *PRAMATHA NATH BARAT v P C AHIRI* (1919) I L R 46 Calc 581

POLICE PATIL

— arresting the accused—

See PRACTICE I L R 40 Bom 220

POLICE REGULATIONS

See PROCESSION I L R 40 Calc 470

OLICE REPORT

See COGNIZANCE

I L R 40 Calc 854

S CRIMINAL PROCEEDINGS INSTITUTION OF

I L R 37 Calc 49

S CRIMINAL PROCEDURE CODE—

ss 4 173.

25 C W N 357

s 119

4 Pat L J 7

POLICE REPORT—contd

s 19.

I L R 38 Mad 1044

See FALSE INFORMATION

I L R 43 Calc 173

I L R 48 Calc 807

See SANCTION FOR PROSECUTION

I L R 41 Calc 14

See SURETY

I L R 42 Calc 706

I L R 43 Calc 1094

POLICY OF INSURANCE

See INSURANCE

See LIFE INSURANCE

See TRANSFER OF PROPERTY ACT (11 OF 1882 AS AMENDED BY ACT 11 OF 1900)

s 130

I L R 37 Bom 198

— if creates trust—

See MARRIED WOMEN'S PROPERTY ACT (III OF 1874) s 1

I L R 37 Mad 433

POLITICAL AGENT

— certificate of—

See CRIMINAL PROCEDURE CODE s 189

I L R 41 All 452

I L R 42 All 59

POLITICAL AGENT AT SIKKIM, COURT OF

— Execution of decrees—*Transfer of decrees for execution—Civil Procedure Code (Act IV of 1882) s 220A (Act V of 1908) ss 43 45* By the notifications of the 29th March 1889 and 3rd October 1907 the Governor General Council declared that s 220A of the Code of Civil Procedure of 1882 (s 45 of the Code of 1908) should apply to the Court of the Political Agent at Sikkim. A decree obtained in the Court of the Political Agent at Sikkim and transferred for execution to a Court in British India could therefore be executed within the jurisdiction of that Court. *ZAMIR AHMED v THE MAHARAJA OF SIKKIM* (1911) I L R 38 Calc 859

POLITICAL OFFICER.

— certificate of, for trial of offences—

See CRIMINAL PROCEDURE CODE, ss 188 227

I L R 33 All 514

POLITICAL RESIDENT AT ADEN

See DIVORCE ACT (11 OF 1869) s 3 (?)

I L R 37 Bom 57

POLYGAMY

See BURMESE LAW—MARRIAGE

I L R 39 Calc 492

POOLBUNDI CHARGES

See FURNISHMENT

I L R 41 Calc 130

POONA CANTONMENT

See CANTONMENT PROPERTY

I L R 36 Bom 1

PORANBOKE

See MADRAS FOREST ACT (XXI OF 1842)

ss 6 10 10 17

I L R 39 Mad 494

PORT COMMISSIONERS

liability of—

See Loss of Goods.

I L R 46 Calc 56

POSSESSION

See ADVERSE POSSESSION

See ACQUISITION

I L R 37 All 412

See ARMS ACT s. 19 (f)

15 C W N 440

See CIVIL PROCEDURE CODE 1909

I L R 35 Bom 452

O VI RR 93 96

I L R 43 Bom 559

See COCAINE I L R 41 Calc 537

See CONSCIOUS POSSESSION

See COUNTERFEIT COIN

I L R 44 Calc 477

See COURT FEE ACT (VII of 1907)

ETC I L R 38 Mad 1184

See CRIMINAL PROCEDURE CODE s. 145

I L R 34 Mad 138

See EJECTMENT SUIT FOR

I L R 38 Bom 240

See FRAUD I L R 36 Bom 185

See INJUNCTION I L R 38 Calc 791

See LAND REVENUE CODE (BOM ACT V

OF 1810) s. 63 66

I L R 39 Bom 494

See LESSOR AND LESSEE

I L R 38 Mad 1042

See MAHOMEDAN LAW—DOWER

I L R 38 Calc 475

See MAHOMEDAN LAW—ENDOWMENT

I L R 47 Calc 286

See MAHOMEDAN LAW—GIFT

I L R 34 All 465

See OPIUM I L R 45 Calc 820

I L R 37 Calc 24

See PETROLEUM ACT ss. 11 15

I L R 40 Calc 356

See POSSESSIONARY SUIT

I L R 41 All 108

See RECEIVER I L R 47 Calc 418

See SALE I L R 41 Calc 148

See SPECIFIC RELIEF ACT s. 9

15 C W N 294

I L R 33 All 647

See TITLE I L R 41 Calc 394

See TRANSFER OF PROPERTY ACT (IV OF 1882) s. 4 AND 5

I L R 38 Mad 1158

by agent—

See LIMITATION ACT (XX OF 1811) ARTS

142 AND 144 I L R 35 Bom 79

by person claiming as trustee—

See ADVERSE POSSESSION

I L R 37 Mad 373

by servant—

See ARMS I L R 41 Calc 11

POSSESSION—contd

by widow—

See HINDU LAW—MAINTENANCE

I L R 38 Mad. 153

change of—

See PRESCRIPTION I L R 44 Calc 675

confirmation—

See SURVEY ACT ss. 41 62

14 C W N 366

Decree for partition—

See ADVERSE POSSESSION

I L R 45 Bom 943

Decree by Mamlatdar for—

See LIMITATION ACT (IV OF 1908) ART

47 I L R 45 Bom 1135

delivery of—

See TRANSFER OF PROPERTY ACT 1882

s. 54 I L R 34 Bom 139

delivery of in execution—

See CIVIL PROCEDURE CODE (ACT V OF

1908) s. 47 O VI RR 100 101

I L R 40 Mad 964

length of—

See MUNICIPAL COUNCIL

I L R 38 Mad. 6

non delivery of—

See LANDLORD AND TENANT

I L R 46 Calc 956

presumption arising from—

See LAHORE LANDS

I L R 45 Calc 574

protection of former possession as
against Trespasser—

See TREE PATTA I L R 36 Mad. 148

recovery of—

See TRANSFER OF PROPERTY ACT (IV OF

1882) s. 54 I L R 39 Bom 472

See TREE PATTA I L R 36 Mad. 148

right to—

See HINDU LAW—ENDOWMENT

I L R 46 I A. 204

Right of Khot to forfeit occupancy
rights—

See KHOTI SETTLEMENT ACT (BOM ACT

I OF 1850) ss. 9 AND 10

I L R 34 Bom. 267

suit for—

See CHAKIDARI CHAKARAN LANDS

I L R 45 Calc. 685

I L R 46 Calc. 173

See EX PARTE DECREE

I L R 45 Calc. 920

See GIATWALI TENURES

I L R 41 Calc. 812

See HINDU LAW—COARDIAN

I L R 38 Mad. 1125

See LIMITATION I L R. 41 Calc. 52

I L R. 43 Calc. 34

I L R 46 Calc. 694

POSSESSION—*contd*—suit for—*contd*

See LIMITATION ACT 1877 SCH II ART
142 AND 141 I L R 113 Bom 79

SCH II ART 91 I L R 38 Mad 321

See LIMITATION ACT 1908—

SCH I ART 47

I L R 45 Bom 1135

SCH I ARTS 142 144

I L R 39 Bom 335

See MESNE PROFITS I L R 40 Cal 53

—transfer of—

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 40 I L R 40 Bom 498

—went of—

See BARLEY I L R 42 Cal 313

1 ——— Nature of necessary to prove
lost grant or title by adverse possession—*Madras
Forest Act (V of 1882) s 3 16 25*—Noti-
fication under s 25 of reservation made before
the Act extinguishes all rights existing at time of
reservation. Whether enjoyment is set up as the
basis of a title by prescription or as evidence on
which a lost grant should be presumed the same
characteristics will be necessary. Acts done on
parts of a tract of land will only be evidence of
possession of the whole where the said tract of
land possesses a defined boundary. *Sivasubra-
manya v Secretary of State for India I L R 9
Mad 285 at pp 301 and 305* referred to. The
intention of the legislature in enacting s 25
of the *Madras Forest Act* is to place all forests
reserved by executive order prior to the introduc-
tion of the Act on precisely the same footing as
reserves subsequently constituted in accordance
with the provisions of the Act. The intention was
that the notification under s 25 should operate
in exactly the same manner as one under s 16
to which s 17 is a mere corollary. The further
inquiry provided for in s 25 is purely discre-
tionary with Government. Where a reserva-
tion made prior to the Act is notified under s 25
of the Act such notification extinguishes any
right existing at the time of reservation whether
the lands were within s 3 of the Act at the dis-
posal of Government or not at the time of reser-
vation. Where the reservation is made under
s 16 the section provides a mode of redress to
the party while s 25 gives none as the further
inquiry provided therein is merely discretionary
with the Government. *SUBRAMANIAM PILLAI v
THE SECRETARY OF STATE FOR INDIA (1910)*

I L R 38 Mad 353

2 ——— Suit for by proprietor of un-
divided half share—Nature of decree plaintiff en-
titled to—*Proprietor of undivided half share is*
*entitled to—*He can eject any one on the land from the whole of it. The
plaintiff brought a suit for recovery of possession
of a plot of land to the extent of an eight annas
share the plaintiff being the proprietor to the
extent of eight annas and defendants Nos 5 and 6
proprietors to the extent of the other eight annas.
Defendants Nos 1 to 4 were tenants of the land
recognised by defendants Nos 5 and 6. The
plaintiff asked for joint possession with defendants
Nos 1 to 4 if joint possession with defendants
Nos 5 and 6 could not be granted. Held that
all that the plaintiff could ask for was joint pos-
session of an eight annas share. He could not in

POSSESSION—*contd*

this suit ask the Court to decide who was entitled
to possession of the other eight annas share of
the land with which he had no concern. That a
person entitled to an undivided half share of the
land cannot sue to eject anybody from the whole
of it and the defendants Nos 1 to 3 who had
been recognised as tenants by the co-sharer land-
lords could not be ejected by the plaintiff from
the whole of the land. That the plaintiff was
entitled to a decree against all the defendants for
recovery of joint possession of an eight annas
share of the disputed property and he was entitled
to enforce the right by a suit for partition if he
was not satisfied with the delivery of possession
of an undivided half share. *GAJADHAR ANIR v
BHUKARI LAL (1914)* 18 C W N 1011

3 ——— Tenants in common—Presump-
tion—Possession of one co-owner the possession of
all. Possession of one co-owner is in law the
possession of all the co-owners and nothing short
of ouster or something equivalent to ouster will
put an end to that possession. Where a co-owner
in possession did not deny the title of the other
co-owners till shortly before the institution of the
suit and never laid claim to more than his share
it was presumed that the co-owner in possession
was in possession on his own behalf and as well as
on behalf of his co-owner. *Coren v Appuhamy
[1912] A C 230* followed. *Jafar Hussain v
Masud Ali I L R 14 All 193* and *Jogendra
Nath Ray v Baladeo Das I L R 35 Cal 981*
referred to. *AMJAD FAZL KHAN v RAM LAL
(1914)* I L R 37 All 203

3a ——— Suit to recover pos-
session of land from an alleged licensee—Act 10
IX of 1903 (Limitation Act) Sch I Art 144—
Defence of title by adverse possession—Burden of
proof. The plaintiff who was the zamindar
sued to eject the defendant from certain land
within the ambit of the plaintiff's zamindari
alleging that the defendant was in possession
merely as a licensee. The defendant denied
that he was a licensee and claimed that he had
acquired a title to the land in suit by adverse
possession. The defendant however failed to
prove that he had been in adverse possession of
the land for more than twelve years. Held that
the plaintiff was entitled to succeed simply on
the strength of his prima facie title as zamindar.
It was not necessary for him to go further and
prove that he had been in actual possession at
some period within twelve years previous to
the commencement of the suit. In cases
to which Art 144 of the first schedule
to the Indian Limitation Act 1903 applies the
defence being a title acquired by adverse pos-
session for more than twelve years it is not necessary
for the plaintiff as in cases falling under Art 144
to prove that he has been in possession at a period
within twelve years from the commencement
of the suit. It is sufficient if he establishes a prima
facie title and it is then for the defendant to
make good his plea of adverse possession. *Jai
Chand Bahadur v Girwar Singh*

I L R 41 All 689

4. ——— Possession and title—suit to
establish—Whether suit for mere declaration—
Maintainability—Whether catching fish in a stream
let amounts to dispossession. Where the plaintiffs
in a suit establish their title to a village and also
that they have been in possession of it and of a

POSSESSION—contd

streamlet which lies within it but that the plaintiff's possession has been disturbed inasmuch as the defendants people have caught fish in it. *Held* that under such circumstances the plaintiff's suit for a mere declaration is maintainable. Even if the defendants are found to have granted the right to catch fish in the streamlet to other persons not parties to the suit that act would not amount even to disturbance of possession still less to dispossessing the plaintiff nor would the fact that some persons have at times caught fish in the streamlet show that the plaintiffs have been dispossessed. At most the catching of fish in the streamlet would be a disturbance of possession. **SANDEO LAL v BHAGAT & KESHO MOHAN THAKUR (1916)**

20 C W N 1274

5 — Suit for recovery of, by purchaser at sale of land—*Defendant if can set up occupancy right after suffering it by conduct to merge in tenure right.* The plaintiffs brought a suit in 1909 to recover possession of land purchased at a sale in execution of a decree in 1893. After the sale the land remained vacant for ten years from 1893 and the defendants took possession in 1900. The plaintiffs case was that the defendants were in occupation after the sale without any right or title the defence was that the plaintiffs purchased their right as tenure holders only and the defendants had also the occupancy right. *Held* the defendants not having kept alive and distinct the two interests which they possessed but having by conduct treated the occupancy right as no longer existent could not turn round and set up the latter right to the detriment of the execution purchaser. That the plaintiffs cause of action dated back to 1900 when the defendants took possession and the suit was not barred by limitation. **PRAMOTHA NATH POY v KISNOAZ LAL SHARMA (1916)**

21 C W N 304

6 — Suit for recovery of Reversal by Appellate Court on ground of limitation—*necessary findings in—Entry in record of rights presumption of possession arising from—Onus on defendant to prove plaintiff's dispossession—Judgment of Criminal Court in proceeding under a 145 Cr P C evidentiary value of—Statements of witnesses examined before Criminal Court but not in the suit of admissibility—Previous statements in the Criminal Court of witnesses examined in the suit proper use of—Decision of Appellate Court as to admissibility of a document solely on opinion of the Criminal Court in a 145 proceeding property of—* The plaintiff sued for declaration of his title and recovery of possession. In a record of rights published in 1890 the plaintiff was recorded as an occupancy raiyat of the land in suit. By an order of the Magistrate under s 145 Cr P C dated the 27th September 1903 the defendants were declared to be in possession thereof. The plaintiff's case was that he was dispossessed on the 1st December 1903. The suit was brought on the 19th March 1910. The Munsif decreed the plaintiff's suit finding that he had been in possession within 12 years of the date of the suit. The District Judge in appeal without finding the date of the plaintiff's dispossession held that the suit was barred by limitation. *Held* that it was necessary for the District Judge to find when the plaintiff was dispossessed. He must also clearly find under what law the plaintiff's suit was barred and whether the facts necessary for applying that law have been established. That in a suit for

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ejectment the plaintiff has to prove his possession within the statutory period but in the present case the record of rights raised a presumption in the plaintiff's favour and shifted the onus on the defendants to establish affirmatively that the plaintiff had been out of possession for more than the statutory period. That although the judgment of the Criminal Court in the case under s 145 Cr P C was evidence of possession the statements of witnesses who were not examined in the present suit were wholly inadmissible. That if it was sought to use the previous statements of such witnesses as were examined in the present suit then those statements must first be put to the witnesses and duly proved before they could be treated as evidence. **BAKAT ALI v BASANT NUNIA (1910)**

21 C W N 175

7 — Involving boundary dispute—*Onus of proof when one party in possession under order under s 145 Criminal Procedure Code Act V of 1893.* The plaintiff sued for declaration of title and possession of certain lands lying on the boundary between their manor and that of the defendants. It appeared that the defendants were in possession for some years previous to the suit by virtue of an order of the Criminal Court under s 145 Criminal Procedure Code. *Held* that regard being had to the decision of the Privy Council in *Diamans Chowdhurani v Broja Mohini Chowdhurani* L P 29 I A 24 s c I L R 29 Calc 187 C C 11 A 338 it seems clear that the principle stated in *Lukhs Narain Jagadeb v Maharaja Jadu Nath Deo* L R 21 I A 39 s c I L R 21 Calc 181 [as to the shifting of onus from the plaintiff to the defendant in cases where scientific accuracy regarding boundaries cannot be attained and especially in cases where the disputed line of division runs between waste land which have not been the subject of definite possession] must yield to the circumstances of the present case and the onus was on the plaintiff to show that the persons in possession under the order of the Magistrate had no right to possession. **MAHINDRA CHANDRA NANDI v SARADINDU POY (1918)**

22 C W N 583

8 — Resistance to delivery of possession to decree holder—*Claim to be in possession of the property as a tenant under the judgment debtor—Sub tenancy—Civil Procedure Code 1908 O XXI rr 97-99—Parties.* On the 7th July 1919 the plaintiff instituted a suit against his lessee for the recovery of possession of certain premises upon the determination of the term by forfeiture for breach of conditions in the lease. In that suit the plaintiff did not join as defendant the respondent who was admittedly in possession of the said premises as under tenant of the lessee. On the 18th December 1919 an order was made for the recovery of possession in the said suit by which the lessee was given time until the 10th February 1920 to make over possession. This not being done an order dated the 12th March 1920 was obtained by the plaintiff directing the Sheriff to put him into possession. The Sheriff on the 3th April 1920 was obstructed in the execution of this order by the respondent and the plaintiff thereupon made this application before the sitting Judge in Chambers complaining of such obstruction under O XXI s 9. The respondent was summoned to appear to answer the said complaint. *Held* that the application

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must be dismissed and the plaintiff must be left to his remedy by suit against the respondent. An action for possession based upon forfeiture of a term should for practical reasons be brought against all persons in possession (including constructive possession) at the date of the suit, not that the suit is necessarily defective otherwise but because the decree will be difficult to enforce under the Code. **D E D J EERA v J E GURRAY** (1920) **I L R 47 Cal 907**

9 ——— Onus probandi—conflicting evidence as to title—Presumption from possession. It is only when the evidence of possession is strong on both sides and is equally balanced that the presumption that possession goes with title should prevail. This principle does not apply to cases in which the evidence is equally unworthy of credit on both sides except in respect of land of a special character such as waste or jungle lands or lands under water. Arable land is not land of a special character. **FAKIE LALL SARU v MUNSHI RANCHARAN LAL** **1 Pat. L J 146**

10 ——— Trespasser suit against—by person in possession. Previous possession even for a period short of the statutory period of 12 years entitles a plaintiff to a decree for possession in a suit against a trespasser. **SAODRA KUER v GOBARDHAN TEWARI** **2 Pat. L J 280**

11. ——— When follows title—Suit by auction purchaser against person claiming adversely to judgment debtor—Limitation Act (IX of 1908) Arts 138 137 and 142. In suits for recovery of possession of land where no evidence of possession within twelve years prior to the institution of the suit has been given or where the evidence tendered is so unattractive and weak on both sides as to leave the Court unable to determine which of the litigating parties is entitled to possession the legal presumption that possession follows title may be resorted to. Art 138 of the Limitation Act 1908 does not apply to a suit against a person claiming title by possession adverse to the judgment debtor. **BRUNHAD BHUNJAN NARAIN TEWARI v UPENDRA NATH ROY** **4 Pat. L J 463**

12. ——— The plaintiffs were the owners of a miras tenure and under them was a daimiras tenure held by the defendants. This under tenure was sold in execution of a rent decree and purchased by a third party who never obtained possession and in execution of a rent decree obtained against the latter the under tenure was again sold more than twelve years after and purchased by the plaintiffs who used for possession. Per Walsley J (Woodroffe and Subrahwardy JJ contra).—That Art 137 of the Limitation Act applied to the case and the suit was barred. Per Subrahwardy J.—Art 140 or Art 144 applied to the case. Per Woodroffe J (to whom the case was referred under sec 98 C I C).—That none of the articles of the Limitation Act applied to the case but the suit was barred under sec 167 of the Bengal Tenancy Act. Where a rent decree has been properly obtained the tenure itself passes to the purchaser and not the right title and interest of the judgment debtor only and the rights of the purchaser must be determined by the provisions of the Bengal Tenancy Act under sec 154B and sec 179. The plain

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tiffs by their purchase acquired the under tenure with power to annul encumbrances and the interest acquired by the defendants by adverse possession against the recorded tenants of which the plaintiffs were aware was an encumbrance which the plaintiffs could have and should have annulled under sec 167 Bengal Tenancy Act within one year and not having done so their right to recover possession was lost. The word encumbrance as used in secs 159 and 161 of the Bengal Tenancy Act includes a statutory title acquired by a trespasser by adverse possession. **JANANENDRA MOHON DUTT v UNESH CHANDRA GUHA** **20 C W. N 985**

POSSESSION BY FRAUD

See **SHARES** **I L R 40 Cal 331**

POSSESSORY RIGHT

See **POSSESSION**

protection of, as against trespassers—

See **TREL PATTI** **I L R 30 Mad 148**

POSSESSORY SUIT

See **MAHLATDAR'S COURTS ACT (BOM. II OF 1906)—**

ss 19 23 **I L R 35 Bom 487**

s 23 **I L R 30 Bom 123**

I L R 39 Bom 552

See **SPECIFIC RELIEF ACT (I OF 1877)**

s 9 **I L R 41 All 108**

of 1877) s 9.—Second appeal—Civil procedure Code (Act I of 1908) s 102.—Review. Where in a suit under s 9 of the Specific Relief Act judgment was purported to be passed against five defendants but the decree was drawn up against one defendant only who alone contested the suit and the decree holder applied for execution against all the defendants the Court dismissed the application on the ground that decree was against one defendant only on appeal the District Judge allowed execution to proceed against all the defendants but on a subsequent application for review he discharged his original order on the ground of jurisdiction under s 11 of the Specific Relief Act. Held that an application in execution proceedings was included in the term suit in s 9 of the Specific Relief Act and an appeal to the District Judge from an order of the Court of first instance was incompetent and the application for review equally so. **Thomas Sou v Gulam Moidin Bazar** **I L R 26 Mad 433** **Morfu Ali v Dnyand and Amlal (1915)** **I L R 45 Anand Chander Roy v Sidhy Gopal Misser** **8 W. R 11** **Gora Chand Misser v Daylanto Narayan Singh** **12 B L R 261** **Din Dayal v Patrolkhan** **I L R 18 All 431** **Narayan Laxmanand v Nagindas Bhaido** **I L R 30 Bom 113** **Marula Ammal v Marula Maracori** **I L R 30 Mad 21** **Bhyanma Charan Mitter v Debendra Nath Mukerjee** **I L R 27 Cal 431** **Minalshi Naidi v Subramanyam Sastri** **I L R 11 Mad 26** **I L R 141 A 160** **Sari Bhawan Mookerjee v Radha Nath Bose** **20 C. L. J 433** and **Trofulla Krishna Deb v Dasbannasa** **I L R 24 C L J 331** referred to **KANAI LAL CHOUDHURY v JATINDRA NATH CHANDRA (1917)** **I L R 45 Cal. 519**

POSSESSORY TITLE

See ESTOPPEL I L R 34 All 538

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s 9 I L R 36 All 51

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POST-NUPTIAL GIFTSSee HINDU LAW—C 7
I L R 37 Calc 1**POST OFFICE ACT (VI OF 1898)**

ss 19 61 70—Offence—Cocaine—Transmission of by post Held that cocaine is not a substance which falls within the purview of s 10 of the Indian Post Office Act 1898 and it is not an offence under that Act to transmit the same by post EMPEROR v ISMAIL KHAN (1910)
I L R 37 All 289

ss 35 64, 74—Rules framed under Act infringement of falls within s 63—General power to frame rules conferred by s 74 cl (1) not confined in such rules as are contemplated by s 74 cl 2 Rules framed by the Governor General in Council under s 74 cl (1) of the Post Office Act regarding the declaration in the case of articles sent by value payable post form part of the Act under s 74 (3) and infringement of such rules is punishable under s 64. s 35 also enables the Governor General in Council to make such rules. The general power to make rules conferred by s 74 cl (1) is not confined to making such rules as are contemplated by cl 2 THE CROWN PROSECUTOR v KOTHANDARAMIAN (1910)
I L R 33 Mad 511

POSTING OF A DEMAND DRAFTSee SALE OF GOODS
I L R 42 Bom 16**POSTPONEMENT**See CROSS EXAMINATION
I L R 41 Calc 299**POUNDAGE**

Sheriff's right to poundage The Sheriff is only entitled to poundage on sums levied so where a seizure is wrongful and is withdrawn by direction of law the Sheriff receives no poundage *Mortimore v Cragg* 3 C P D 216 In *Mortimore* 13 Q B D 416 and in *re Thoma* (1897) 1 Q B 460 followed *BRIDGEMAN v JAYNARAIN* (1910) I L R 37 Calc 649

POWER OF ATTORNEYSee CIVIL PROCEDURE CODE (ACT V OF 1908) O XIV RP L 16 ETC
I L R 39 Mad 832

See COMPLAINT I L R 42 Calc 19

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I L R 39 Mad 918See OATHS ACT (V OF 1837) ss 5 9 IV
I L R 38 All 131See PRINCIPAL AND AGENT
I L R 43 Calc 527**POWER OF ATTORNEY—contd**See REGISTRATION ACT (III OF 1877)
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60 SCH I ART 48 (g)

I L R 33 All 467

See VAKALATNAMA
I L R 43 Calc 884**construction of—**See LETTERS OF ADMINISTRATION
I L R 40 Calc 74

Amendment of—Omission of name of mukhtar in the power by mistake—In amendment of mistake by Court by allowing fresh power to be filed—Inherent jurisdiction of Court to allow amendment of mistake—Effect of amendment as to limitation—Civil Procedure Code (Act V of 1908) ss 30 37—Rules and Circular Orders Ch VI Art 34 Where there is no doubt as to the fact that the mukhtar who filed an application for execution had in fact authority from the decree holder to do so and that his name was omitted by mistake from the power of attorney the Court may in its discretion allow the power to be amended upon proper application by the decree holder for the insertion of the name of the attorney. If such amendment is allowed it takes effect from the date when the power of attorney was originally filed CHAYEMANNESSA BIBI v BASIRAR PAHMAN (1910) I L R 37 Calc 399

Construction of general power of attorney—What is a—Civil Procedure Code (Act V of 1882) s 37 (a)—Stamp Act (II of 1899) Sch I Art 48—Single transaction meaning of A power of attorney which authorises a person to do all things and take all steps necessary to complete the execution of a decree is a general power of attorney within the meaning of s 37 (a) of the Civil Procedure Code (Act XIV of 1882) *Semble* The expression a single transaction in the Stamp Act (II of 1899) Sch I Art 48 applies to a single act or acts so related to each other as to form one judicial transaction *VENKA TAPASANA IYER v NARASINGA PAO* (1914) I L R 39 Mad 134

Construction—Whether special or general—Is not authorisation extending to all acts for one particular purpose—Civil Procedure Code (Act V of 1908) O III s 2 (a) High Court R III under s 177 of the Civil Procedure Code (Act V of 1908) A power of attorney was issued in plaintiff's favour in the following terms

Accordingly I have become owner of the said mortgage bond Out of the principal and interest due to me in respect of the said mortgage bond nothing has been paid to me As the time in respect of it is about to expire and it is necessary for me to go to my native place I have constituted and appointed the above named person my true and lawful attorney in the matter to receive all moneys due to me in respect of the principal and interest of the aforesaid mortgage bond by suing on my behalf in a civil Court or by coming to an amicable settlement and to pass receipts for me and on my behalf to sue and to receive process and to do all such acts in this one matter as I if present would have done or could have done or would have been permitted to do or would have been called upon

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to do The question being raised whether the power of attorney was a general power of attorney within the meaning of r III of the rules made by the High Court under s 122 of the Civil Procedure Code 1908 or a special power of attorney. Held that the power was a special power of attorney inasmuch as the agent's authorisation extended not to any class of business or employment but was restricted to the doing of all necessary acts in the accomplishment of one particular purpose. *Charles Palmer v Sorabji Jamshedji* (1886) P J 63 applied. *Venkataramana Iyer v Narasinga Rao* I L R 38 Mad 134 not followed. *VAPDAJI HASTURJI v CHANDAPPA* (1916) I L R 41 Bom 40

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(1) (a) AND (2) (d)

I L R 43 Bom 281

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s 52 I L R 37 Bom 303

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s 92 I L R 40 Bom 429

ss 96 100 I L R 36 Bom 320

s 97 I L R 36 Bom 536

I L R 37 Bom 480

I L R 38 Bom 331

I L R 45 Bom 627

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I L R 33 All 849

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of 1878) s 311
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- delay in filing process fees—
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- appointment of guardian—Court's
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ing appointment—
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- Order in personam against a party
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Insolvency—Appearance of the insolvent to obtain a final order of discharge—

See PRESIDENCY TOWNS INSOLVENCY ACT (III of 1909) ss. 38 (b) AND 42 (a) (n)
I L R 44 Bom 555

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Joint possession—Suit for recovery of—

See CIVIL PROCEDURE CODE 1908 O XXI R 30 I L R 34 All 150

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See CIVIL PROCEDURE CODE 1908 ss. 47 AND 104 (a) O XXI R 89
I L R 44 Bom 472

Parties to appeal—

See CIVIL PROCEDURE CODE 1908 O XXI R 60 I L R 44 Bom 860

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Right to worship in a temple and to carry processions through public streets suit whether of a civil nature—

See CIVIL PROCEDURE CODE 1908 s. 9
I L R 44 Bom 410

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See CRIMINAL PROCEDURE CODE 43 I L R 43 All 497

Suit against a Receiver—application for leave—amendment of plaint—

See HIGH COURT I L R 44 Bom 903

Suit for possession—Conversion to suit for redemption—

See CIVIL PROCEDURE CODE 1908 O VI R 17 I L R 44 Bom 515

Commissioners appointed by Court to examine arbitration award—

See CIVIL PROCEDURE CODE 1908 SCH II PARAS 1 (a) AND (c) I L R 45 Bom 512

Third party proceedings (Summons for directions)—

See LETTERS PATENT 186 CL 1
I L R 45 Bom 423

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See CIVIL PROCEDURE CODE (ACT V OF 1908) s. 110 SCH II PARA II I L R 45 Bom 832

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See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1874) s. 14 (a)
I L R 45 Bom. 920

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Reference to High Court under Bombay Revenue Jurisdiction Act—Taxation of Costs—Power of High Court to give direction as to how costs should be taxed—

See BOMBAY REVENUE JURISDICTION ACT (V OF 1876) s. 12
I L R 45 Bom. 1177

Minor—Purchase from—

See PARTITION SUIT I L R 45 Bom 983

Reference to arbitration after suit without intervention of Court—

See CIVIL PROCEDURE CODE 1908 O XXI R 30 O VIII R 8 AND 9 AND SCH II PARAS 1 TO 17 20 AND 21
I L R 45 Bom 245

Claim by a Parsi wife for Costs—

See PRESIDENCY SMALL CAUSE COURTS ACT (XX OF 1932)
I L R 45 Bom 318

Consent order for extension of time—

See ARBITRATION I L R 45 Bom 1071

Decree—Application to set aside sale by Collector—

See BOMBAY HIGH COURT CIVIL PROCEDURE R 107 R 17
I L R 45 Bom 1132

Inherent powers of Court to re-admit appeals—

See CIVIL PROCEDURE CODE 1908 s. 101 AND O VI R 19
I L R 45 Bom 648

Mistake—Discovery of—when first Court's decree was passed—

See LIMITATION ACT 1908 SCH I ART 96 I L R 45 Bom 582

Preliminary issue—

See CIVIL PROCEDURE CODE 1908 ss. 9 AND 2 I L R 45 Bom 627

Summons case—Magistrate to examine accused—

See CRIMINAL PROCEDURE CODE (ACT V OF 1899) s. 34
I L R 45 Bom 672

Trial of an offence with the aid of assessors—

See CRIMINAL PROCEDURE CODE (ACT V OF 1899) s. 34
I L R 45 Bom 619

1. Analogous appeals Two analogous appeals were preferred in the decisions of the Subordinate Judge and the District Judge respectively. In remanding the case the High Court directed both cases to be tried by the District Judge. MAHESUDHAN SHARDA v. ANTOH CHAKRABARTY (1910) 14 C W N 332

2. Arbitration—Order of Judge refusing to decide whether arbitrators are going by decision of their authority—Judge's appeal—Contract on sale of land as to arbitration—Insurance against fire—Liability of Company for further loss—Letter Patent 1865 CL 10 The fact that a

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petition by nineteen different Companies was not signed by all the nineteen Companies and that the appeal from the order of the Judge dismissing the petition was by but one of the nineteen Companies and the other Companies were not parties to it would have required serious consideration if the Court had to revoke the submission to arbitration but when the order which the Court passes is only an intimation to the arbitrators of its opinion on the question of their jurisdiction it is immaterial whether all or some of the Companies are formally parties to the proceedings in appeal. As to the objection that even so far as the petition is by one Company it is signed by one of its officers without any authorisation as required by law the defect is a mere irregularity which can be cured if necessary by the Company putting in a power of attorney showing the authority given to a signatory. **ATLAS ASSURANCE COMPANY LTD v. ARNEDBHAY HARBHAKH (1908)** I L R 11 Bom 1

3 ———— Compromise—Court—Inherent powers—Compromise assented to by pleader not specially authorised in that behalf—Decree in terms of compromise—Decree set aside. In the course of a suit a compromise was presented which was signed by the defendants' pleader who was not specially authorised in that behalf. The Court passed a decree in terms of the compromise. The defendant then applied to the Court to set aside the decree on the ground that he did not engage the pleader and that he had not authorised the pleader to compromise the suit. The Court set aside the decree and set down the suit for hearing. **Held** that it is the inherent power of every Court to correct its own proceedings where it has been misled. **Held** also that under the circumstances the compromise was not binding upon the defendant and the decree passed upon it was void as to him. **BASANDOWDA v. CHURCHIEGOWDA (1910)** I L R 34 Bom 408

4 ———— Decree amendment of—Decree not conformable to what the Court intended—Inherent power of Courts in India—Attachment selling and of—Sheriff's right to Poundage—Civil Procedure Code (Act V of 1908) s 152. The Courts in India have an inherent power to amend or vary decrees so as to bring them into accordance with the judgments after they are signed by the Judges even if they do not fall within s 152 of the Civil Procedure Code (Act V of 1908). *In re Swire* 30 Ch D 239 referred to *Attacott v. Wilding* [1896] 1 Ch 673 distinguished. The Sheriff is only entitled to poundage on sums levied so where a seizure is wrongful and is withdrawn by direction of law the Sheriff receives no poundage. *Mortimore v. Cragg* 3 C 1 D 216. *In re Ludmore* 13 Q B D 415 and *In re Thomas* [1897] 1 Q B 460 followed. **BEJRATAN v. YANARAIN (1910)** I L R 11 Cal 649

5 ———— Decree modification of the terms of after appeal—Jurisdiction—Appellate Court powers of—Civil Procedure Code (Act V of 1908) s 115. s 143 of the Civil Procedure Code 1908 cannot be taken to give any Court power to interfere with or modify its decree after there has been an appeal filed against the decree. The only Court that could after an appeal have been preferred modify the terms of the decree or extend the time fixed in the decree for its execution or suspend the order made in

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the decree would be the Appellate Court. **PARMANAND DAS v. KRIPASINDHU POY (1909)** I L R 37 Cal 548

6 ———— Plaintiff, amendment of—Suit against defendant on ground which failed not to be decreed on another ground—Application for leave to amend plaintiff after arguments heard in appeal disallowed—Res judicata. A suit brought against the defendants on one ground which fails should not be decreed against them on another ground which they had no opportunity of meeting. After arguments in appeal have been heard the Court will not allow an amendment of the plaintiff so as to convert a suit of one character into a suit of a substantially different character. *H* filed a suit in 1904 against *A* and *J* the drawer and indorser respectively of two hundies. At the time of filing the suit *J* was dead. *H* obtained a decree against both defendants which decree remained unsatisfied. In 1905 *H* filed a suit against the heirs of *J* on the same two hundies. **Held** that the earlier suit having been filed against the firm of *J* and not against *J* personally was a bar to the later suit. **BAYABAI v. HAJI NOOR MAHOMED (1908)** I L R 34 Bom 244

7 ———— Reference under Legal Practitioners Act—Jurisdiction—Legal Practitioners Act (XVIII of 1879) ss 13 14—Division Bench jurisdiction of to hear reference under the Act from subordinate Courts. According to a long and undeviating course of practice which may be regarded as the law of the Court a Division Bench appointed to dispose of the civil business arising out of a particular group has power to hear and dispose of a reference under s 14 of the Legal Practitioners Act by the Presiding Officer of a Court within that group. **ABINASH CHANDRA MOITRA In re (1909)** I L R 37 Cal 178

8 ———— Same transaction—Civil Procedure Code (Act V of 1908) O I r 3 O II s 3—Grades of several defendants in one suit—Same act or transaction—Series of acts or transactions. In reading O I r 3 of the Civil Procedure Code (Act V of 1908) it seems quite obvious that the word same which precedes the words acts or transaction governs also the words series of acts or transactions and must be read before those words also. The first condition to be fulfilled before joining several persons as co-defendants in the same suit is that the right to relief sought in the suit must also against the defendants from the same act or transaction or from the same series of acts or transactions. The second condition to be fulfilled under the rule is that some common question either of fact or law should arise against the defendants if separate suits were brought against such persons. Before a plaintiff can join several defendants in the same suit both the conditions laid down in the rule must be fulfilled first the relief sought against the defendants whether jointly severally or in the alternative must arise from the same act or transaction or the same series of acts or transactions. And secondly there must arise between the plaintiff and all the defendants some common question of law or fact. The plaintiff may in one action unite several causes of action against several defendants provided that all such defendants are jointly liable in respect of each and all of such causes of action and that the condition precedent to the plaintiff being allowed to

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join several causes of action against several defendants is that such defendants must all have a joint interest in the main question raised by the litigation and that causes of action joined in one suit against several defendants must be causes of action in which the defendants are all jointly interested. It is not necessary that every defendant should be interested as to all the reliefs claimed in the suit but it is necessary that there must be a cause of action in which all the defendants are more or less interested although the relief asked against them may vary. **UMABAI v. BHAI BALWANT (1903)**

I L R 34 Bom 358

9 ——— **Third party procedure—Discretion refusal to give—Discretion** The general principle on which a Court will issue third party directions is —(i) that there must be a clear case of contribution or indemnity from the third party (ii) that all the disputes arising out of a transaction as between the plaintiff and the defendant and between the defendant and a third party can be tried and settled in one suit and (iii) that in cases of contract and sub contract it must appear that the contract between the plaintiff and the defendant has been imported into the contract between the defendant and the third party. Under the rules now in force the third party cannot be cited so as to be bound by the trial of one particular question which is identical as between the plaintiff and the defendant and as between the defendant and the third party. **Baxter v. France (No 2) (1899)** I Q B 591 followed. **W & A. GRAHAM & Co v. CHENZEL HARUL & Co (1909)** I L R 34 Bom 423

10 ——— **Vakil's right to appear before a Judge sitting on the Original Side of the High Court—Application to file warrant of attorney—Extraordinary Civil Jurisdiction—Civil Procedure Code (Act XIV of 1882) s 635—Civil Procedure Code (Act I of 1908) s 119 129** A vakil of the High Court applied before a Judge sitting on the Original Side of the Court claiming a right to file a warrant of attorney in respect of a suit pending before the Madras District Court in which a rule had been issued calling upon the plaintiffs to show cause why the suit should not be transferred to the High Court in its Extraordinary Original Civil Jurisdiction. *Held* that having regard to the long continued course of practice during which vakils never appeared on the hearing of such applications the present application should be refused. *Held* further that the Civil Procedure Code of 1908 has nothing to do with a matter governed by old rules in force before 1909. **In re A VAKIL'S APPLICATION (1910)** I L R 37 Cal 853

11 ——— **Raising of issues** The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is not agreement between the parties is very embarrassing. Issues should be confined to questions of law arising on the pleadings and such questions of fact as it would be necessary for the Judge to frame for decision by the jury in a jury trial at nisi prius in England. **WEST FALD WATCH COMPANY v. BERNAL WATCH COMPANY (1910)**

I L R 35 Bom 425

12. ——— **Redemption suit—Second suit in ejectment—Res judicata—Court—Discretion—**

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ejectment suit a decree for redemption can be passed—Civil Procedure Code (Act V of 1908) s 11 Expt II It is the practice of the Bombay High Court to pass a decree for redemption in a case in which the plaintiff has sued in ejectment. That is purely in the exercise of the Court's discretionary power and it can hardly be maintained that the plaintiff failing in an ejectment suit ought to pray for the alternative relief by way of redemption when the Court is not bound to grant it as a matter of right. **MAHOMED ISRAHIM v. SHEIKH HAMZA (1911)**

I L R 25 Bom 507

13 ——— **Local Inspection—Subordinate Judge—Personal view of disputed premises—Appreciation of evidence based on the personal view** The plaintiff in a suit to establish easement of passing his rain water over the defendant's field tried to make out his right by the evidence of his witnesses who deposed that the passage for the rain water had all along existed and was still visible to the eye. The Subordinate Judge visited the spot in question at the request of both parties to test the veracity of the witnesses but finding that there was no passage at the spot he disbelieved the witnesses and dismissed the suit. On appeal it was contended that the Subordinate Judge had wrongly decided the case because he had disposed of it not by appreciating the evidence but by the light of his own view at the passage. *Held* that there was no error in the procedure adopted by the Subordinate Judge. **LAKSHMI DAS KESHAJI v. BHANJI KESHAJI (1911)**

I L R 35 Bom 31

14 ——— **Security for cost—Infant plaintiff—Civil Procedure Code (Act I of 1908) s 10 Expt I** It is not desirable to run any risk of stopping a suit filed on behalf of an infant which may be a proper suit to bring merely because of some inability on the part of the next friend to give security for costs. **BHAISHANKER AMBASHANKER v. MULJI ASHARAM (1910)**

I L R 35 Bom 339

15 ——— **Sentence—Magistrate passing non appealable sentence—Adding to sentence to make it appealable—Appeal to Sessions Judge—The Sessions Judge to entertain the appeal and to decide it on merits—Criminal Procedure Code (Act I of 1898) s 1** The Magistrate trying a case passed at first a non appealable sentence on the accused but at the request of the accused made an addition to the sentence passed so as to make it appealable. When the accused appealed to the Sessions Judge his appeal was dismissed on the ground that no appeal lay inasmuch as the sentence first passed by the Magistrate was not appealable and the addition to the sentence could not be made legally. *In revision* *Held* that the Sessions Judge had committed an error in holding that he had no jurisdiction to hear the appeal for though the Magistrate had no jurisdiction to alter the sentence once passed by him yet for the purposes of the Sessions Judge's jurisdiction so far as the appeal was concerned that was the very mistake which he was called upon to correct by way of appeal. When the appeal was heard again by the Sessions Judge he struck out the addition made by the Magistrate in the sentence and having done that dismissed the appeal on the ground that the sentence appealed from was not appealable. In

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revision *Held* that when the Magistrate had passed a sentence beyond one month an appeal lay to the Sessions Judge under s 413 of the Criminal Procedure Code whether that sentence was passed legally or illegally *Held* also that the Sessions Judge being once seized of the appeal the whole appeal became open to his Court even on merits *EMPEROR v KESHAVLAL VICHAND* (1911) **I L R 35 Bom. 418**

III ———— **Service of summons—Procedure—Civil Procedure Code (Act V of 1908) O V s 25—Service of summons by registered post on defendant residing out of British India—Summons returned marked Refused to take—General Clauses Act (V of 1897) s 27** A summons was sent by registered post addressed to the first defendant at Navalgarh in the State of Jaipur and purported to be sent in accordance with the provisions of O V s 25 of the Civil Procedure Code (Act V of 1908). The cover was returned with an endorsement in the vernacular which was translated as follows—Refused to take. The handwriting of Chunilal postman *Held* that as it appeared that the cover was properly addressed to the first defendant and had been registered duly stamped and posted the Court was entitled to draw the inference indicated in s 27 of the General Clauses Act and to hold that there was sufficient service *Per Curiam*. The only rule if it can be called a rule to be laid down is that the Court must be guided in each case by its special circumstances as to how far it will give effect to a return of a cover endorsed refused or words to the like effect *Jaganath Brahmabhai v J E Sassoon I L R 18 Bom. 606 distinguished. BALURAM RAMKRISHNAN v BAI PANABAI* (1910) **I L R 35 Bom. 213**

17 ———— **Setting aside consent decree** A consent decree once duly obtained cannot be set aside by a rule but if it is sought to impeach it upon grounds of fraud that must be done in a regular suit. The only alternative which the law allows is an application for review of judgment. *FATMAI v SOYDAI* (1911)

I L R 36 Bom. 77

18 ———— **Appellate Court duty of—Defective judgment—Omission to consider the defence evidence in a bad likelihood case—Criminal Procedure Code (Act V of 1898) ss 110 118 367 and 474** It is the duty of the Appellate Court on an appeal from an order under ss 110 and 118 of the Criminal Procedure Code to look into the evidence for the defence and after dealing with it to come to a decision thereon notwithstanding that the counsel for the appellant has practically ignored it during his arguments. *IN OI HOSAIN v EMERSON* (1912) **I L R 40 Cal. 376**

III ———— **Criminal Proceedings—Special Leave to Appeal—Limit of jurisdiction—Leave to appeal from convictions and sentences on the grounds of alleged irregular conduct of the proceedings, misdirection to the jury and misapprehension of evidence refused the case not coming within the principle as laid down in *In re Diller*** 1 App Cas 452 *CLIFFORD v KING EMERSON* (1913) **L R 40 I A 241**

20 ———— **Magistrate cannot invite District Magistrate's opinion** While a Magistrate is trying a case a question arises whether the accused is amenable to the jurisdiction

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The Magistrate felt himself doubtful on the question and he referred it to the District Magistrate for opinion. On receipt of the opinion he directed the trial to proceed before him *Held* that it was not competent to the Magistrate to seek the opinion of the District Magistrate in the way he did, but that he should finish the inquiry and complete the record by the reception of all evidence of relevant facts including the facts which bear upon the question of the accused's amenability to a British Court's jurisdiction and then consider for himself the question of law arising on those facts *EMPEROR v ABDUL RAHMAN* (1912) **I L R 37 Bom. 144**

21 ———— **Evidence—Defendant's right to offer evidence** Where the defendant appears and the plaintiff does not appear or offers no evidence when a suit is called on for hearing the Court has no jurisdiction except to dismiss the suit for want of prosecution the defendant is not entitled to have his evidence heard before the suit is dismissed *Ex parte Jacobson L P 22 Ch D 312 distinguished. KESRI CRAND v NATIONAL JUTE MILLS Co* (1912) **I L R 40 Cal. 119**

22 ———— **Cause of action—Promissory Note—Consideration for Note—Separate Causes of Action—Ceylon Civil Procedure Code (Ordinance II of 1889) s 34 s 34 of the Ceylon Civil Procedure Code 1889 (which is in the same terms as the Indian Code of Civil Procedure 1908 O 2 r 2) provides that every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action and that a plaintiff cannot afterwards sue for a part of the claim omitted from an action or (without leave) for another remedy for the same cause of action** The respondent sued upon promissory notes but the action failed owing to a material alteration in the notes. He afterwards sued to recover a part of the consideration for which the promissory notes had been given. *Held* that although the claims in the two actions arose out of the same transaction they were in respect of different causes of action and that consequently the second action was not brought contrary to s 34 of the Code and could be maintained. *PAYANA REXYA SIVATHAY v PANA LINA PAVATHAY* (1913) **L R 41 I A 142**
18 C W N 617

23 ———— **Withdrawal of suit—Material irregularity—Petition—High Court power of—Civil Procedure Code (Act V of 1908) s 115—High Courts Act 1861 s 15** In a suit to set aside a revenue sale the evidence on both sides had been heard the plaintiff amended during such evidence the arguments of both parties completed the case closed and the judgment reserved. The plaintiffs then applied for leave to withdraw the suit with liberty to bring a fresh suit on the same cause of action. This application was granted on the ground of formal defects. The plaintiffs subsequently instituted a fresh suit. Thereupon the defendant moved the High Court to set aside the order and obtained a rule. *Held* that the High Court had no power to deal with this case under s 15 of the Code of Civil Procedure. *AKHAR CO LA v D G CHANDRA CHAND* 11 C I J 45 Dec 4 D I I R 13 Al 161 and *Tirupathi v Mutu I L R 11 Mad 32* distinguished. *BANU SINGH v KUNU LAL THAKUR* (1913) **I L R 41 Cal. 632**

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24. — Admission of fresh evidence—*Appellate Court*—Civil Procedure Code (Act I of 1908) s 41. Where an Appellate Court desires to admit fresh papers in evidence under s 41 of O XXI of the Civil Procedure Code (Act I of 1908) it must record its reasons in writing for doing so and admit them formally in evidence. **DAJI BANAJI v SAKHARAM KRISHNA** (1914) I L R 38 Bom 665

25. — Previous conviction—*Feracancy of previous conviction for the purpose of determining extent of sentence*—Indian Penal Code (Act XLV of 1860) s 5—Indian Evidence Act (I of 1872) s 54 163. The proof of a previous conviction not contemplated by s 70 of the Indian Penal Code may be adduced after the accused is found guilty as an element to be taken into consideration in awarding punishment. *Per SHAH J*—The proof of a previous conviction not contemplated by s 70 of the Indian Penal Code may be adduced provided the previous conviction is relevant under the Indian Evidence Act. The whole question therefore is whether the previous conviction in question is relevant under the Act. It is certainly relevant with reference to the question whether the provisions of s 562 of the Code of Criminal Procedure would apply to this case and it seems to me to be otherwise relevant on the question of punishment. **EMPEROR v ISMAIL ALI BEAT** (1914) I L R 39 Bom 326

26. — Reference for Assessment of damages—A reference should be directed by the Court to assess damages only when the enquiry would involve questions of detail which it would be wasting the time of the Court to investigate. **Wallis v Soyars 6 T L P 308** referred to in **N GHOSH & BROS v POPAT NARAIN BROS** (1915) I L R 42 Calc 819

27. — Execution of a decree—Civil Procedure Code (Act V of 1908) O XXI r 41—*Judgment debtor examination*—Application by judgment debtor to have order for examination set aside in application under O XXI r 41 of the Civil Procedure Code 1908 made ex parte on a verified tabular statement is in order. The judgment debtor is entitled to be heard to have such order set aside but he should apply on summons. The object of O XXI r 41 is to obtain discovery for purposes of execution to avoid unnecessary trouble in obtaining satisfaction of money decrees. Although an order for personal examination is likely to operate harshly and cause unnecessary harassment and obviously ought not to be made unless the Court is satisfied about the bona fides of the application and its urgency, nevertheless still such applications may be fully encouraged to prevent unduly dilatory trouble some and expensive execution proceedings. In **Irappa Triakandas I L P 17 Bom 514** referred to **NATIONAL BANK OF INDIA LTD v A. K. CHUDHARI** (1910) I L R 43 Calc 235

28. — Charge to jury—*Misdirection*—Omission to direct jury on points telling in accused's favour—High Court—Interference—Statute made by accused & sole Commitment Magistrate—Admissibility—Criminal Procedure Code (Act I of 1899) s 37—Indian Evidence Act (I of 1872) s 24—*Interlocutory authority*—Police Paid arresting the accused. The High Court will interfere in those cases where it is made to appear that the Sessions Judge has prejudiced the accused

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by omitting from his charge to the jury points of capital importance telling in accused's favour. The phrase a person in authority in s 24 of the Indian Evidence Act would include the Police latil who arrests one of the persons accused of the offence. *Quere* Whether the statement made by an accused before the Committing Magistrate is governed by s 257 of the Criminal Procedure Code or by s 24 of the Indian Evidence Act. **EMPEROR v FAKIRA APPIA** (1915) I L R 40 Bom 220

29. — Partition Suit—Parties—*Parties*—Civil Procedure Code (Act V of 1908) s 15 O XLVII r 1—*Partition of undivided share—Fraudulent representation* Where the mortgagees of the plaintiff share in a partition suit applied (i) to be added as parties to the suit and (ii) for revocation of an order made by another Judge directing a sale of the one fourth share of certain premises which is one of the properties to be partitioned in the suit on the ground that the conduct of the mortgagees and their attorneys was fraudulent and that the said order was made without jurisdiction. *Held* that one Judge cannot set aside an order made by another Judge even though the order be wrong. The remedy lies in review on the ground set out in O XLVII r 1. **Sharup Chand Mala v Pat Dassee I L P 11 Calc 627 Jatra Mohun Sen v Ashul Chandra Choudhury I L R 24 Calc 334** referred to **PASANTA KUMAR DAS v KUSTUM KUMARI DAS** (1916) I L R 44 Calc 28

30. — Suit filed by an agent on behalf of an absent plaintiff—*Objection raised as to authority of agent—Duty of Court in which plaint is presented* In the case of a suit filed by an agent on behalf of an absent plaintiff where the authority of the plaintiff to have a suit brought at all and to allow his name to be used as a plaintiff in the case is seriously questioned that is a matter of principle which it is a Court's duty to decide and unless it is shown that the plaintiff has in fact authorized the suit either expressly or impliedly a Court ought not to grant a decree in his favour. But where authority has been given by the plaintiff in some form or another and the question is whether the agent has complied with the rules as laid down in the Code of Civil Procedure that is not a question of principle at all but a question of practice and procedure. It is the first Court's business to see that the rules are complied with and it should not leave the investigation of that question to the Appellate Court. But a suit should not be dismissed without the party who has failed to comply with the rules of procedure being given an opportunity of correcting the defect in procedure if there be any. **PAMAN LALJI v CHOKUL NATHJI** (1917) I L R 39 All 343

31. — Modification of Order—*Order of Judge on Original Side of the High Court—Jurisdiction to modify order before formally drawing up the order* A Judge on the Original Side of the High Court has jurisdiction to modify the minutes of an order before the formal order is drawn up. **MAHMOOD BI v SHERRIFA BI** (1918) I L P 42 Mad 256

32. — Judgment containing remarks against a person who is neither party nor witness. It is very desirable that a Judge

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or Magistrate should make remarks which are prejudicial to the character of a person who is neither a party nor a witness in the proceeding before him and who has therefore no opportunity of giving an explanation or defending himself against the remarks made by the Court. *In re HOLIBASSAPPA* (1920) I L R 45 Bom 1127

33 ——— Probate and Administration Proceedings—Appeals—Rules of the High Court 35 36 38—Fees payable to legal practitioners In appeals from orders granting or refusing probate or letters of administration the fee allowable to a legal practitioner is regulated by rule 38 and not by rr 35 and 36 of the Appellate Side Rules of the High Court *SIDHIA CHITTY v VENKA TAROYA CHITTY* (1920) I L R 43 Mad 282

34 ——— Revision—Application to the High Court to revise a proceeding under s 133 Criminal Procedure Code without moving the Judge in the first instance—Criminal Procedure Code (Act V of 1899) ss 435 438 439 It is not the practice of the High Court to entertain an application in revision against an order made by a Magistrate in a proceeding under s 133 of the Criminal Procedure Code unless the party aggrieved has first moved the Sessions Judge under ss 435 and 438. *RASH BHAIRY SAHA v PRANJ BHUSAN HALDAR* (1920) I L R 48 Cal 534

35 ——— Judicial Committee—Compromise of Appeal—*Caritas non est juris*—Certificate of High Court When a person not *ex juris* is a party to an appeal to His Majesty in Council and an agreement by way of compromise having been made it is desired to obtain leave to withdraw the appeal the regular and usual course is to obtain a certificate from the High Court from which the appeal is preferred that the agreement is for the benefit of that party. It is only in rare cases that the Judicial Committee will itself make the necessary inquiries and grant leave without a certificate as was done in *Salunbas v Shrinibas* I L R 47 I A 83. *GOPINDA CHANDRA PAI v KATLASH CHANDRA PAI* (1921) I L R 48 Cal 994

36 ——— Peremptory order dismissing action—Order dismissing action in default of condition precedent—Difference—Order not completed or filed effect of on suit On the suit coming for hearing on the 10th April 1910 it was ordered that it be adjourned to the 1st June 1910 that the plaintiff was to pay to day a costs and was to pay Rs 200 as a condition precedent before the 1st June to the defendant's attorney refundable on taxation of bills and that in default the suit would be dismissed with costs and no further adjournment would be granted. This order was never drawn up or filed. The suit came up again on the 20th June 1910 when it was adjourned though opposed on the ground that the suit could not proceed on an application of the surviving plaintiff to enable substitution in respect of one of the plaintiffs who had died on the 28th June 1910. On the 20th August 1910 the surviving plaintiff obtained an *ex parte* order recording the death of the deceased plaintiff. On the 17th January 1921 when the suit was on the Special List plaintiffs applied that it should be placed in the Special List. It was intended on behalf of the defendants that the suit was dead. *Held* that the petition of substitution was a proceeding of any kind in drawing

PRACTICE—contd

up of the order and in the absence of any appeal from the order the dismissal would be from the date of the order had it contained the words in default the suit will stand dismissed. *Held* in the terms of the order of the 10th April 1910 containing conditions precedent a further order of the Court was necessary before the suit was dead. *SEWATAN v KRISTO MOHON SHAW* (1921) I L R 48 Cal 902

PRADHAN

Status in Santal Parganas—tenants inducted by pradhan whether can set up adverse possession as against the landlord Although a pradhan in the Santal Parganas is not a tenure holder as defined in the Bengal Tenancy Act he has all the attributes of a tenure holder and tenants inducted on to the land by him cannot acquire title by adverse possession as against the landlord. *RAM CHARAN SIKON v L W BERRI* 5 Pat L J 656

Pre-emption—mulari interest sale of—whether right of pre-emption arises The doctrine of pre-emption applied only to the sale of the proprietary interest and therefore does not apply to the sale of the *mukarrari* interest. *SHAIKH MOHAMMAD JANIL v KUTUBAL RAUT* 5 Pat L J 740

PRAGWAL

Right of pragwal to exclusive use of a flag of a certain design—Suit for injunction—*Dirt jayman* *Held* that a pragwal may acquire a right to the use of a flag of a particular design so as to enable him to sue for an injunction against any other pragwal making use of a flag with a similar design for the purpose of diverting pilgrims from the original owner. *Ganesh v Babu Ram* I L R 37 All 72 referred to *BETI MADHO PRAGWAL v HIMA LAL* I L R 43 All 70

PRAYERS

See CIVIL PROCEDURE CODE 1908 s 90
I L R 38 Bom 163

PREAMBLE

See CONSTRUCTION OF STATUTES
20 C W N 1158

PRE-EMPTION

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See BUNDELKHAND ALIENATION ACT (II of 1903) s 3 I L R 37 All 662

See CIVIL PROCEDURE CODE 1908 ss 2 101 149 I L R 35 All 652

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PRE-EMPTION—could

See COURT FEES ACT (VII of 1870) s 7
CLS (v) AND (vi)

See HINDU LAW—JOINT FAMILY
I L R 35 ALL 564

See LETTERS PATENT s 10
I L R 34 ALL 13

See LIMITATION ACT (IX of 1908) s 4
I L R 41 ALL 47

See MAHOMMEDAN LAW—PRE EMPTION

See PRADHAN
5 Pat L J 740

See TRANSFER OF PROPERTY ACT 1892
s 55 I L R 43 ALL 314

decree for—

See CIVIL PROCEDURE CODE 1892 s 309
I L R 32 ALL 301

In respect of sale effected by com-
promise in a suit for land—

I L R 1 Lah. 109

Extension of time for payment of
purchase money—

See CIVIL PROCEDURE CODE 1908

s 104 & 148

I L R 35 ALL 582
O A 2, 14 1 Pat L J 92

right of—

See LIMITATION ACT (IX of 1908) SCH I
ART 120 I L R 38 Mad 67

See MAHOMMEDAN LAW—PRE EMPTION
I L R 38 Bom 183

Registration—Whether sale com-
plete without—

See TRANSFER OF PROPERTY ACT 1892
s 54 1 Pat L J 174

suit for—

See COURT FEES ACT (VII of 1870)
s 7 (vi) I L R 40 ALL 353

CONTRACT

Rule against Perpetuities—Promisor
heirs of not enforceable against—Perpetuities rule
of applicable to Hindu law also A contract of
pre-emption (with reference to sale of lands)
which fixes no time within which the agreement
to convey is to be performed cannot be enforced
against the heirs of the person who entered into
the contract as it infringes the rule against per-
petuities The rule of perpetuities is applicable
to Hindus also *Abin Chandra Soot v. Abab*
Ali Sarkar 5 C W N 343 followed *KOLATHU*
ALIYAR v. KANDIA VADHYAR (1919)

I L R 38 Mad. 114

Held that an option
to arise on any intended sale or other alienation
is subject to the rule against perpetuities *ABIN*
CHANDRA SARKAR v. RAJANI CHANDRA CHAKRA
BARTY
25 C W N 802

CUSTOM

See PRE EMPTION—WAJIB UL ARZ

See CUSTOM

Nature of evidence
required to establish a custom of pre-emption The

PRE EMPTION—could**CUSTOM—could**

plaintiffs claimed a right based upon contract
or custom to pre-empt a sale of zamindari pro-
perty The property was situated in one of the
three mahals of a village named Suram The
plaintiffs were not co-sharers with the vendors in
that mahal the vendees were strangers In 1873
the village Suram consisted of a single mahal
and the village *wajib ul arz* of that date con-
tained the following reference to pre-emption—

In future if any *patidar* wishes to transfer
his share by sale to a stranger

first the sharers in the *patla* *the*
then *patidars* in the *thok* and then *digar*
patidarans deh shall have a right to purchase
In 1883 perfect partition took place and the
village was divided into three separate mahals
A fresh *wajib ul arz* was drawn up for each of
the new mahals but in each the provisions regard-
ing pre-emption were copied *verbatim* from the
wajib ul arz of 1873 Held (i) that the plaintiffs
had failed to establish any right of pre-emption
based on contract (ii) that the oral evidence
was worthless as supporting the custom set up
by the plaintiffs and (iii) that the evidence
afforded by the *wajib ul arz* of 1873 and 1883
was quite insufficient to establish the right claimed
by the plaintiffs if such right was to be regarded
as one based on an alleged custom *Dalpanjan*
Singh v. Kalla Singh I L R 2 ALL 1 referred
to *Auers Lal v. Ram Dhan Lal* I L R
2 ALL 609 and *Sardar Singh v. Iya Hussain*
Khan I L R 28 ALL 614 discussed *GANGA*
SINGH v. CHEDI LAL (1911)

I L R 33 ALL 605

2 Wajib ul arz—

Custom or contract—Construction of document—
Regulation VII of 1882 In a suit for pre-
emption *wajib ul arzes* of 1839 and 1863 were
produced The preamble to the former was
worded thus—Having well understood the
following matters we willingly accept them
It then dealt with the right of pre-emption in
the following terms—Mode of sale or transfer
of whole or part of here giving the right of
pre-emption to co-sharers as against strangers
and concluded with the words therefore we
write this *igarrama* so that it may be of use
in future The *wajib ul arzes* of 1839 provided
that near co-sharers and other *patidars* would
have the right of pre-emption Preference
among them would be according to degrees of
nearness—Held (STANLEY C J) dissenting
that the *wajib ul arzes* contained the record of
custom and not of contract *Per STANLEY*
C J—A custom to be binding must be unaltered
uniform constant and definite If the settlement
of 1833 recorded a custom then the co-sharers
in the village at the time of the later settlement
of 1869 must be deemed to have abrogated it
and to have adopted by agreement the right of
pre-emption which is recorded in the later *wajib*
ul arz as more suitable to the then existing con-
dition The variance in the rights as defined
in two *wajib ul arzes* leads to the conclusion
that the right recorded in 1869 cannot be treated
as a right existing by custom *Per LAKSHMI*
CHAMIER JJ—The word *igarr* does not neces-
sarily mean a contract It means *ratification* or
assent *I EZZAT DUBAI v. PARALWAN PHAGAT*
(1910)
I L R 33 ALL 196

PRE-EMPTION—contd

CUSTOM—contd

3 ——— Custom—Wajib ul arz—Owner of isolated revenue free plots—Evidence of custom The pre-emptive clause of a wajib ul arz contained the following provisions —

If the owner of a share wish to sell it he shall do so first to his near relation who may be a co sharer in the zamindari and in case of his refusal to anyone he likes Held that this by itself was not sufficient evidence of a custom giving owners of isolated revenue free plots of land in the village a right to pre-empt *MAWASI v MUL CHAND (1912)* I L R 34 All 434

4 ——— Evidence —Sales to strangers unchallenged as evidence negating custom—Mode in which such sales should be proved Where the Court is trying the issue of the existence or non-existence of a custom of pre-emption every instance of a sale to a stranger is material evidence which the Court ought to take into consideration and weigh when coming to a conclusion on the issue But a mere vague statement that there had been sales to strangers without the production of the sale deeds or certified copies thereof and without some further details of the sale is not sufficient to prove sales to strangers *Sewak Singh v Gurja Pande 2 All L J 8* discussed *JANKI MISHRA v PANCH SINGH (1913)* I L R 35 All 472

5 ——— Custom—Effect of perfect partition The wajib ul arz of an undivided village supported a finding that there existed a custom of pre-emption amongst the co sharers in the village Subsequently to the framing of this wajib ul arz a perfect partition of the village took place Held that the basis of such a custom was the coparcenary relation and that after partition a co sharer in one mahal could not claim pre-emption in respect of property sold in another mahal in which the pro-emptor was not a co sharer *Daljanam Singh v Kalika Singh I L R 22 All 1* and *Ganga Singh v Oshai Lal I L R 33 All 605* referred to *MUHAMMAD MAHBUB ALI KHAN v RAHIM NAB DAFAL (1915)* I L R 38 All 27

6 ——— Custom—Vendor bound to offer to co sharers—Refusal to purchase—Refusal to give more than a fixed price The custom in pursuance of which a right of pre-emption was claimed being that the vendor was bound to offer the property for sale to his co sharer and only in case of their refusal he could sell to a stranger the vendor offered the property in dispute to the pro-emptor who offered only Rs 160 for it and refused to give more The vendor thereupon sold it to Rs 275 to the defendants Held that the conduct of the plaintiff amounted to a refusal to purchase the property and the vendor was not obliged to give him the option of taking up the contract which he subsequently made for Rs 275 *Kaika Lal v Kaika Prasad I L R 47 All 670* discussed *INDRAJIT v BROTHMAN CRYSTAL MITSUBISHI (1916)* I L R 77 All 262

7 ——— Custom—Finding of fact—Second—In a suit for pre-emption brought on the basis of custom if the Court considers the proper law in the case namely whether the custom is a local custom or a general custom and on the evidence

PRE-EMPTION—contd

CUSTOM—contd

comes to the conclusion that it does not exist the finding is one of fact and is binding on the High Court in second appeal *BARU MAL v TANSUKH PAI (1916)* I L R 37 All 524

8 ——— Custom—Effect on pre-existing custom of village coming to be owned by a single individual When a mahal in respect of which there exists a custom of pre-emption comes into the ownership of a single individual the effect is to put an end to the custom and not merely that the custom falls into abeyance *KAMUN NI SA BIRI v SUDHA BIRI (1917)* I L R 50 All 480

9 ——— Custom—Wajib ul arz—Custom—Property to be offered first to a co-sharer In a pre-emption suit the custom being that a co sharer wishing to sell his property should first offer it to the other co sharers, if the vendor goes to the other co sharers and informs them of his desire to sell and they decline to purchase on the ground that they have not the means or on any other similar ground the vendor is at liberty without violating the custom to sell to a stranger If however a co sharer offers to purchase at a particular value the vendor ought not to sell to a stranger at a lower price *NAUMAL SINGH v RAM RATAN (1916)* I L R 39 All 127

10 ——— Custom—Wajib ul arz—Right of pre-emption acquired by means of imperfect partition of the village There being a pre-existing custom of pre-emption in a village a right of pre-emption may arise in favour of an individual co sharer just as much by the creation of a new patti by imperfect partition as by purchase by the co sharer of a share in the patti *Mahadeo Prasad Sahu v Jaipal Paut 8 Indian Cases 867* dissented from *LAJPA PRASAD CHAUDHARY v GOKUL PRASAD (1918)* I L R 40 All 617

11 ——— Custom—Entrustment—Wajib ul arz clear and unambiguous Where there is an entry in the Wajib ul arz as to the right of pre-emption which is clear and distinct and there is no evidence to the contrary the Court ought to have regard to the prevailing practice to hold that the custom of pre-emption exists *FAZAL HUSSAIN v MUHAMMAD SHARIF* I L R 36 All 471

12 ——— Partition The Wajib ul arz of an undivided village afforded evidence of the existence of a custom of pre-emption in the village between co-sharers Subsequently the village was divided by perfect partition into several mahals each adopting the old custom Held that no right of pre-emption survived as between the different mahals I L R 33 All 605 referred to

I L R 41 All 496

13 ——— Hindus—Pre-emption of agricultural lands—Proof of custom Though the Hindus in Surat have adopted the Mahomedan law of pre-emption by a long-established custom with regard to honours it is an open question whether they have a vested right with regard to agricultural lands *Jao Jivam Harihar v KALIDAS MEHTA (1910)* I L R 43 Bom 604

14 ——— Held that there was a custom of pre-emption existed among the

PRE-EMPTION—*contd*CUSTOM—*contd*

Hindus in Ahmedabad *MOTILAL DAYABHAI v. HABILAL MAGAYLAL* I L R 44 Bom. 695

15 ——— *Held* that in the district of Bulsar when the Hanafi School of Mahomedan Law prevails neighbours have equal rights to pre-empt and there is nothing which is contrary to the principles of justice, equity and good conscience in allowing two neighbours who have equal rights of pre-emption to exercise them *Gokaldas v. Irtab* (1916) 18 Bom. L. R. 693 not followed *VITHALDAS KAHANDAS v. JANETRAM* I L R 44 Bom. 887

16 ——— *Custom—Wajib-ul-ar.*—Partition of village.—Old custom adopted in new mahals.—Right of pre-emption not surviving as between the new mahals. The *Wajib-ul-arz* of an undivided village afforded evidence of the existence of a custom of pre-emption in the village between co-sharers. Subsequently the village was divided by perfect partition into several mahals and each of the new mahals adopted the old custom. *Held* that no right of pre-emption survived as between the different new mahals *Ganga Singh v. Cheda Lal* I L R 33 All. 605 referred to *DROKIRANDAS v. MAHTAB PATEL* (1919) I L R 41 All. 428

FORMALITIES

1 ——— *Mahomedan law*—*Talab-i-ushhah* *Held* that a Mahomedan pre-emptor cannot validly make the *talab-i-ushhah* by letter when he is in a position to do so in person *MUHAMMAD KHALIL v. MUHAMMAD IBRAHIM* (1916) I L R 28 All. 201

2 ——— *Suit by Hindu*—*Mahomedan law of sale* whether applicable.—*Sale complete when—Ceremonies necessary before pre-emption compliance with—S. 37 Act XII of 1857* Per *MULLICK J.* There being special custom pleaded a case where pre-emption is claimed by a Hindu must be tried on the principles of justice, equity and good conscience under a S. 37 Act XII of 1857. As a sale is not complete till legal ownership passes no matter whether there has been payment and delivery the pre-emptor's title in the case of a property worth more than Rs. 100 does not accrue till after registration. It would be against equity, justice and good conscience to apply in such a case the Mahomedan law of sale which is no longer in force and to attach to a mere contract for sale an incident which the Mahomedan lawyers intended to attach only to an actual sale. The performance of the two formalities *talab-i-marcasibat* and *talab-i-ushhah* can be combined but it is essential that the *talab-i-ushhah* should refer expressly to the *talab-i-marcasibat* as having been duly made *Wajmunnessa v. Ayid Ali Khan* I L R 40 All. 343 *Janki v. Gurjatal* I L R 7 All. 45 *Begum v. Mulamma v. Yakub* I L R 16 All. 344 *Jadu Lal Sahu v. Janaki Koer* I L R 35 Cal. 578 and *Budhai Sarda v. Sonavallah Mirdha* 19 Cal. J. 604 s. 13 C. W. N. 390 referred to *Roz J.*—The test to apply in these cases is was the sale in the eyes of the contracting parties and the pre-emptor complied? If it was it was not necessary for the pre-emptor to wait till

PRE-EMPTION—*contd*FORMALITIES—*contd*

registration before performing the ceremony of *marcasibat* *ABETALI PROSAD v. NAZARUL ALAM* (1916) 20 C. W. N. 1048

3 ——— *Mahomedan law*—*Talab-i-ushhah* and *talab-i-marcasibat*—*Observance of both talabs* necessary *Held* that the performance of the *talab-i-ushhah* is an indispensable preliminary to the enforcement of a right of pre-emption according to the Mahomedan Law *MUHAMMAD AHMAD SAID KHAN v. MADHO PRASAD* (1916) I L R 59 All. 183

MORTGAGE

1 ——— *Mortgage of property prior to the passing of Act No. IV of 1884.*—*Government revenue paid by mortgagee.*—*Liability of pre-emptor to pay the amount of the revenue as a condition precedent to obtaining possession of property.* Under a mortgage deed the mortgagor was liable to pay the Government's revenue and if he failed to do so the mortgagee was to pay it and was entitled to recover the sum from the mortgagor and his other property. The mortgagor failed to pay the revenue which accordingly was paid by the mortgagee. Subsequently the property was sold to the mortgagee for the amount of the mortgage plus the amount of the revenue paid by the mortgagee. In a suit to pre-empt this sale *Held* that the pre-emptor was bound to pay the amount paid by the mortgagee for the revenue as a condition precedent to his obtaining possession of the property as well as the amount of the mortgage *LIJOS RAY v. RAM NARAIN* (1916) I L R 38 All. 530

2 ——— *Transfer—Mortgage.*—*Use of the term malkuzah not sufficient to constitute a mortgage.* The material portion of a document executed by the borrowers to secure a loan was as follows:—We agree that we shall pay annually the interest and in default of payment of interest for two years the creditors shall have the right without waiting for the expiry of the time fixed to file suit and to recover their dues from the property mortgaged (*malkuzah*) and if the creditors make delay in realizing the principal and interest then the aforesaid creditors shall not be entitled to recover their dues under the deed from any other property of myself excepting the property mortgaged (*malkuzah*). A claim for pre-emption was brought based upon this document which was claimed to be a sale or at least a mortgage. *Held* by *RICHARDS C. J.* that it was very difficult to distinguish the transaction evidenced by the document in question from what is ordinarily called a simple mortgage. On a construction however of the *wajib-ul-arz* it was held not to include mortgages which did not involve a change of possession. *Held* by *TRELLIS J.* that the document under consideration did not amount to a mortgage but at most constituted a charge on the property referred to there in *Dalip Singh v. Bahadur Puri* I L R 24 All. 446 referred to *KUTUB-UD-DIN v. ABDUL MAJID* (1916) I L R 28 All. 361

POSSESSION

—*Decree for pre-emption*—*Purchaser's possession and right to rents and profits continue until full pre-emption price is*

PRE-EMPTION—contd

POSSESSION—contd

prid—Civil Procedure Code 1882 s 214—Mahomedan law of pre-emption—Change of possession under decree If a claim to pre-emption be disputed and a suit must be brought the rights of the parties are regulated by s 214 of the Code of Civil Procedure which in this respect embodies the principle of the Mahomedan Law. That section enacts that "When the suit is to enforce a right of pre-emption in respect of a particular sale of property and the Court finds for the plaintiff if the amount of purchase money has not been paid into Court the decree shall specify a day on or before which it shall be so paid and shall declare that on payment of such purchase money together with the costs (if any) decreed against him the plaintiff shall obtain possession of the property but that if such money and costs are not so paid the suit shall stand dismissed with costs." It is therefore only on payment of the purchase money on the specified date that the plaintiff obtains possession of the property and until that time the original vendee retains possession, and is entitled to the rents and profits. *Deoknandan v Sri Pam* 1 L R 12 All 234 approved. In the present case the decree under which possession was given to the pre-emptor (appellant) was made on 31st March 1900 by the Subordinate Judge who found that the pre-emptive price was Rs 37,000 and on payment of that sum the pre-emptor was put into possession. The High Court reversed that decree and dismissed the suit but found that the price was Rs 44,850 as stated in the deed of sale. On 2nd July 1904 the original purchaser was put into possession. On 25th January 1908 the Privy Council set aside the decree of the High Court and restored that of the Subordinate Judge except as to the pre-emptive price which was fixed as being Rs 44,850 and the additional sum making up that amount having been deposited possession was again given to the pre-emptor on 19th January 1909. In proceedings in which each party claimed mesne profits from the other the original vendee from the pre-emptor from 1900 to 1904 and the pre-emptor from the vendee from 1904 to 1909. *Held* that the possession of the vendee continued until 19th January 1909 and the pre-emptor only obtained possession within the meaning of s 214 of the Civil Procedure Code 1882 on the date. No mesne profits thereafter were due to him but he was liable to the vendee for mesne profits from 1900 to 1904 for which period he was in possession without title. *Dronadhy Prasad Singh v Ramdhari Chowdhry* (1916)

I L R 11 Cal 675

PRE-MORTGAGE

Pre-emption (pre-mortgage)—Joint usufructuary mortgage—Further simple mortgage on share of one mortgagor in favour of same mortgagor—What amount the claimants of the right to pre-emption are liable to pay. Certain persons made a joint usufructuary mortgage of their property. On the same day one of them executed a deed by way of a further charge or simple mortgage of his share in favour of the same mortgagor. In a suit for pre-mortgage of the share in this second mortgage it was held that the plaintiffs were not liable to pay the sum

PRE-EMPTION—contd

PRE-MORTGAGE—contd

secured by the deed of further charge which was a separate and independent transaction but were entitled to pre-mortgage upon paying such amount of the mortgage debt as was proportionate to the share of the said mortgagor. *KALLA v HARBHAN* (1912) I L R 34 All 416

IRICF

Decree for pre-emption—Price for pre-emption directed to be deposited within one month—Decree holder's application for extension of time granted—Deposit made within extended time—Civil Procedure Code (Act I of 1908) O XX r 14—S 148 Civil Procedure Code—Court's jurisdiction—S 115 On the last day fixed for the deposit of money by a decree of pre-emption the decree holder applied for extension of time to make the deposit and he deposited the amount within the extended time granted to him (ex parte) by the Court. *Held* that the Court had jurisdiction to extend the time. The High Court declined to interfere under s 115 of the Civil Procedure Code. *ABU MUHAMMAD MIAN v MUKUT PERTAP NARAIN* (1916)

20 C W N 880

Payment of pre-emption price into Court—short by one rupee—decree holder entitled to Rs 19 10 0 as costs—whether such payment is sufficient compliance with the terms of the decree The appellants obtained a pre-emption decree in their favour by which they were entitled to get possession of the property on paying into Court the sum of Rs 99 by the 30th of April 1918 and they were also entitled to Rs 19 10 0 as cost of the suit. By the date fixed they paid into Court Rs 98 i.e. one rupee short of Rs 99. Subsequently they took possession of the property and realised the full amount of their costs. *Held* that as the decree holders were entitled to deduct their costs from the decretal amount the payment of Rs 98 was really in excess of what they had to pay and the terms of the decree were therefore satisfied. It is immaterial what the decree holders intended to do the only real test is whether they have sufficiently complied with the terms of the decree. *Dechar Singh v Shami Lal* (10 Indian cases 454) followed. *KARUNIA MAL v WALI MUHAMMAD* I L R 2 Lah 294

RIGHT OF PRE-EMPTION

See PRE-EMPTION—HAJEE CLARKE

Mortgage—Pre-emption a right of substitution not of re-purchase—Vendor not competent to mortgage property liable to pre-emption so as to bind pre-emptor The right of pre-emption being a right of substitution rather than a right of re-purchase the vendee of property which is subject to a right of pre-emption cannot defeat the pre-emptive right by subsequently mortgaging the property and thus force the pre-emptor to take the property subject to a mortgage so created. *Gobind Dayal v Inayatullah* I L R 7 All 175 referred to. *Serai Wali v Nizam Singh* I L R 20 All 100. *Narain v Farbat Singh* I L R 23 All 247 and *Deo Dal v Pam Aulair* I L R 8 All 602 distinguished. *KANTA PRASAD v MOHAN BHAGAT* (1909) I L R 32 All 45

PRE EPTION—*contd*RIGHT OF PRE EPTION—*contd*

2. ——— Partition after sale but before decree—*Muhammadan law*—Effect on suit The plaintiff sued for pre emption of zamindari property basing his claim upon the Muhammadan law and the fact that he was a co sharer in the property sold After the suit but before decree the property was partitioned and the plaintiff and the vendors became owners of different Mahals Held that the plaintiff was no longer after the partition had been completed entitled to a decree for pre emption *TAFAZZUL HUSAIN v THAN SINGH* (1910) I L R 32 All 567

3. ——— Covenant in deed of partition—Proper sale price meaning of A right of pre emption reserved in a partition deed is valid as between the co owners themselves The *ekramamah* contained the following clause—Any one of the parties desirous of selling shall sell the same to the other party willing to buy the same at the proper sale price Held that the proper sale price would be the market value *KALIDUDDIN BRUYAN v REAZUDDIN AHMED* (1909) 14 C W N 295

4. ——— Misjoinder—Civil Procedure Code 1882 ss 44 45—Two sales to same vendee—Suit in respect of both sales—Joinder of vendors as defendants Of the four owners of undivided shares in immoveable property three sold their interest in the property and the fourth sold his interest separately at a later date to the same vendee A pre emptor sued for pre emption on the basis of both these transactions impleading as defendants the vendors and rival pre emptor as well as the vendee Held that the suit was not bad for misjoinder of either causes of action or parties *Bhagwati Prasad Gur v Bindeshri Gur* I L R 6 All 100 dissented from *Kolaiwan Singh v Gur Dajal* I L R 4 All 163 referred to Held also that the vendor is not a necessary party to a suit for pre emption *Hira Lal v Ram Jas* I L R 6 All 57 *Lok Singh v Balwan Singh* All 19 (1903) 239 and *Ram Sarup v Sital Prasad* I L R 6 All 549 referred to *HARBANS TIWARI v TOTA BANU* (1909)

I L R 32 All 14

5. ——— House of residence—Family property—Division under an award—Prohibition of sale by a co sharer of his portion to an outsider—Pre emption—Construction—Court sale—Prohibition not effective An award under which family property was divided among co sharers provided that in case of a sale by any of the co sharers of his portion of the house of residence he should sell it to his co sharer for a certain sum and that he should not sell it to an outsider until the expiration of two months from the date of a notice in writing saying that they (co sharers) were not willing to buy it Subsequently a portion of the house belonging to one co sharer having been sold in execution of a decree against him it was purchased by an outsider The sons of one of the other co sharers thereupon having brought a suit for a declaration that the Court sale was not binding upon them Held that the term of pre emption in the award was contemplated to attach to sales made privately and willingly and not to attachment and sale in execution of the judgment debtor *VITHAL NARAYAN v MARUTI NARAYAN* (1910) I L R 34 Bom 567

PRE EPTION—*contd*RIGHT OF PRE EPTION—*contd*

6. ——— Suit instituted after decrees passed in favour of other pre emptors—Plaintiff no party to former suits—Suit maintainable Held that where a pre emptor having a superior right of pre emption brings his suit within limitation the fact that decrees have been made in favour of other pre emptors the plaintiff not being a party to the suits in which such decrees were passed will be no obstacle to the success of the suit *Abdur Paal v Mamta Husain* I L R 25 All 331 distinguished *Serh Mal v Hulam Singh* I L R 20 All 100 *Allahabad Khan v Abdul Hakim* S A No 724 of 1906 decided April 19th 1907 and *Muhammad Latif v Goring Singh* I L R 5 All 38 referred to *PAS NARAYAN RAI v DUVIA PANDU* (1910)

I L R 32 All 340

7. ——— Suit for pre emption—Act No XVIII of 1876 (*Oudh Laws Act*) s 9 cl (1) and (2) and proviso as to drawing lots—Act No XVIII of 1876 (*Oudh Land Revenue Act*)—Mahal definition of—Co sharer in subdivision of tenure in which property in suit was comprised—Co sharer in whole mahal At the summary settlement of Oudh the taluq in which the property in suit (three villages and two patts or parts of villages) was comprised was settled with the father of the first respondent as taluqdar but at the regular settlement in 1804 he came to a compromise with two other claimants by which he took half the taluq as superior proprietor and the other half was assigned in equal shares to the other claimants who were his relatives in under proprietary right they paying the Government revenue plus 10 per cent to the taluqdar and being jointly liable to him in respect of the same as rent One of these two died childless and his share devolved upon the other one and on the death of the latter both shares descended to the appellant (his son) and the second respondent (his grandson) Between these two in 1893 a partition took place under which the three villages and the two patts were assigned to the second respondent and a decree and mutation of names was made in accordance with the partition but no separate engagement was made for payment of the Government revenue in respect of the property so assigned. In 1900 the second respondent sold the property in question to the first respondent who had succeeded his father as taluqdar In a suit by the appellant against the respondents claiming the right of pre emption under s 9 of the Oudh Laws Act (XVIII of 1876) Held (affirming the decision of the majority of the court of the Judicial Commissioner) that the meaning attributed to the term mahal in the judgement of the officiating Judicial Commissioner (Sir Clamer) namely

any parcel or parcels of land which have been separately assessed to or are held under a separate engagement for the revenue and for which a separate record or right has been prepared was the proper meaning of the word in the Oudh Laws Act and therefore although the second respondent and the appellant may have been jointly liable to the first respondent for the Government revenue plus *malikana* as the rent of the villages and patts assigned under the compromise of 1804 they were not at the date of the sale to the first respondent co sharers in any sub-division

PRE EMPTION—*contd*RIGHT OF PRE EMPTION—*contd*

of the tenure in which the property in suit was comprised (under cl 1 of s 9) or the whole mahal (under cl 2 of that section). The Appellate Court in India found that the appellant and the first respondent had an equal right to pre-emption of the two pattis and that under the proviso to s 9 they must draw lots to determine which of them should be entitled to exercise the right. Thus being done the right to purchase fell to the first respondent and the appellant consequently lost the right to pre-empt. **SHEORAJ KUNWAR v HARIDAS BAKSHI SIKON (1910)** I L R 32 ALL 351

8 ——— **Wajib-ul arz**—Notice of sale given to member of a joint Hindu family—Effect of such notice—Effect of conditional reply disputing amount of alleged consideration Held that a person having a right of pre-emption does not lose it by refusing to purchase the property at the price at which it is offered to him because he believes that such price is in excess of the real price where such belief is entertained and expressed in good faith. Where the pre-emptor and his brothers were members of a joint Hindu family and the vendor addressed a notice to him and his brothers jointly to which the pre-emptor's brother sent a reply. Held that the plaintiff pre-emptor was entitled to claim the benefit of this reply as it had been sent by himself. **Laya Prasad v Dabi Prasad I L R 3 ALL 236** **Amir Chand v Ishar Das ALL Weekly Notes (1882)** 136 **Bhola Bibi v Fakima Bibi ALL Weekly Notes (1892)** 46 and **Karim Dakhsh v Khuda Baksh I L R 16 ALL 247** followed. **SRI KISHAN SIKON v BACHCHA PANDE (1911)** I L R 33 ALL 637

9 ——— Claim of pre-emptor based on purchase by him of another share in the same mahal—Claim made before confirmation of sale in plaintiff's favour—Civil Procedure Code 1882 s 316 Held with reference to s 316 of the Code of Civil Procedure 1882 that a purchaser at auction sale in execution of a decree of a share in zamindari property does not become a co-sharer in the mahal in which such property is situate until the sale has been confirmed in his favour. **HAN ALI v MIAN JAN KHAN (1910)** I L R 33 ALL 45

10 ——— **Right—Personal—Transfer—Transfer of Property Act (IV of 1882) s 6** The right of pre-emption is a purely personal right which cannot be transferred to any one except the owner of the property affected thereby. **JAG UDIT v SAKHARAM GANESH (1911)** I L R 36 Bom 139

11 ——— **Mahomedan law—Demand made "on the premises"**—Demand made in the *abadi* which was part of the premises sold. Where a person claiming pre-emption in respect of a certain zamindari share proved that he had made the demand with witnesses while sitting on his *chabutra* in the *abadi* which formed part of the premises sold it was held that the demand of pre-emption was a good demand made on the premises within the meaning of the Mahomedan law. **Kulsum Bibi v Faqir Mohammad Khan I P 13 ALL 293** followed. **MUHAMMAD USMAN v MUHAMMAD ABDUL GHAFUR (1911)** I L R 34 ALL 1

PRE-EMPTION—*contd*RIGHT OF PRE EMPTION—*contd*

12 ——— **Mahomedan law—Talab-i-mawasibat**—Where a person immediately on hearing of the sale of a house exclaimed *wa-hal shafa hai* and without any delay took the price and brought it to the vendee and claimed the house. Held that the expressions used by him coupled with the circumstances constituted a sufficient first demand. **Muhammad Aldul Rahman Khan v Mohammad Khan, 8 ALL J 270** distinguished. **MUHAMMAD NAZIF KHAN v MAKHDOM BAKSHI (1911)** I L R 34 ALL 53

13 ——— **Wajib-ul arz—Custom—Effect of joining in the purchase as a co-sharer having an inferior right** The vendee in a suit for pre-emption having equal rights with the pre-emptor, disables himself from resisting a suit for pre-emption as much by associating with him in the purchase another co-sharer whose right is inferior to those of the pre-emptor as by associating with himself a stranger. **GUPTESWAR RAM v RATI KRISHNA RAM (1912)** I L R 34 ALL 542

14 ——— **Conditional decree—Decretal amount deposited in Court—Decree enhanced on appeal—Additional payment made not covering amount withdrawn as costs** A successful plaintiff pre-emptor deposited in Court the amount of the decree in his favour but subsequently withdrew therefrom the amount of the costs decreed in his favour. On the amount payable being enhanced on appeal he paid into Court the difference between the original and appellate decrees. Held that the decree had been fully complied with. **Gopal Saran v Isari I L R 6 ALL 351** **Balmukund v Pancham I L R 10 ALL 460** **Parmanand Rao v Gobardhan Sahai I L R 28 ALL 676** and **Bechar Singh v Shams Nath 8 ALL J 2 Notes p 2** followed. **ALI HUSSAIN v AMIR ULLAH (1912)** I L R 34 ALL 686

15 ——— **Second sale—Subject matter of suit re-sold at advanced price—Second sale subject to right of pre-emption in respect of the first** A house in the city of Benares subject to a customary right of pre-emption was sold for Rs 1150. The vendee resold it shortly afterwards to the defendant for Rs 4000. Held on suit brought to pre-empt the property at the original price of Rs 1150 that the second sale was subject to the right of pre-emption and the pre-emptor was only bound to pre-empt the first sale making the subsequent vendee a party to the suit so as to bind him by the proceedings. **Kamla Prasad v Mohan Bhagat I L R 32 ALL 45** referred to. **KHETTER CHANDRA BASU MALLIK v NABIN KALI DEBI (1913)** I L R 35 ALL 385

16 ——— **Right of pre-emptor to put vendor to proof of title—Suit must be for entire property sold** Held that a pre-emptor is not entitled in a pre-emption suit to put the vendor on proof of his title to the property which he purports to sell. The principle of pre-emption is substitution. A pre-emptor is therefore bound to take the title which the vendee was ready to take. Further that a pre-emptor cannot sue to pre-empt only a portion of the property sold. **SABODRA BIBI v BAGESHWARI SIKON (1915)** I L R 37 ALL 829

17 ——— **Effect of perfect partition on—No fresh wajib-ul arz prepared at or after**

PRE-EMPTION—contd

RIGHT OF PRE-EMPTION—contd

partition—Right of a sharer in new mahal after partition to pre-empt properly in another new mahal in which he was not a sharer at date of sale—Value of wajib ul arz as evidence—Prima facie evidence of custom of pre-emption without proof of instances of custom being enforced In this appeal which was one arising out of a suit by the appellant one of the co-sharers in a mauza for pre-emption after there had been a partition of the mauza in which the land sold was situated and no fresh wajib ul arz had been prepared after the partition had taken place their Lordships of the Judicial Committee (affirming the decision of the High Court) were of opinion that the clauses relating to pre-emption contained in wajib ul arzes of 1863 and 1870 proved that prior to the partition the right of pre-emption had existed in the mauza but that the appellant had not shown either on the construction of the wajib ul arz or by other evidence that the custom of pre-emption which obtained in the unpartitioned mauza survived the partition so as to give the appellant a sharer in one of the new mahals a right to pre-empt property in another of those mahals in which he was not a sharer at the date of the sale. Their Lordships did not dissent from the view expressed by *BAYAZI J* in the full bench case of *Dalgarnjan Singh v Kalla Singh I L R 22 All 1* that where a fresh wajib ul arz has not been prepared at partition it does not follow as a matter of law or principle that the custom of contract in force before partition is no longer to have effect or operation and were of opinion that the question must depend upon the circumstances of each case and the inferences which may legitimately be drawn from the evidence. A wajib ul arz is by itself good prima facie evidence of a custom of pre-emption stated in it without corroboration by evidence of instances in which the custom has been enforced. The evidence as to a custom of pre-emption afforded by a wajib ul arz may of course be rebutted by other evidence. *DIGAMBAR SINGH & AHMED SYED KHAN (1914)*

I L R 37 All 129

18 ——— *Wajib ul arz—Owners of resumed muafi land—Held that the owners of a plot of resumed muafi land assessed to revenue separately from the rest of the village which constituted one 10 anna mahal was not a co-sharer with the owners of the mahal so as to give him a right of pre-emption on sale of the mahal under the terms of the wajib ul arz which declared a right of pre-emption to exist on a sale by a co-sharer in favour of other co-sharers in the village* *Kallian Lal v Madan Mohan I L R 17 All 41; Narain Das v Pam Saran Das I L R 17 All 419; Raghunath Prasad v Kanhaya Lal All IR 1907 68 Ahmad Ali v Daryam un nissa 2 All L J 145 and Baitu Lal v Bhola Nath 19 Indian Cases 119* referred to *Narain Prasad v Munna Lal I L R 30 All 39* not followed. *MAHADEO PRASAD & JAGAR DEO GIR (1916)*

I L R 38 All 260

19 ——— *Partition—after institution of suit but before decree—Plaintiff entitled to decree—Court should take notice of matters which come into existence after suit—Talab-i-mua that erroneous statement as to price in it invalidates—Error on ground not before taken when allowed—Suits*

PRE-EMPTION—contd

RIGHT OF PRE-EMPTION—contd

Valuation Act (III of 1887) s 11—Valuation—appeal—Jurisdiction *SANDESSON C J* and *MOOKERJEE J*—The right of the plaintiff to get pre-emption must exist not only at the time of the sale but also at the time of the institution of the suit and finally up to and at the date of the decree of the trial Court. A judgment passed by the High Court on second appeal was reviewed on a ground not taken at any previous stage of the proceeding when the ground raised a pure question of law which did not depend for its determination upon the investigation of new facts and when the alleged error was apparent on the face of the record. *Connecticut Fire Insurance Co v Katannogh (1892) A C 473 at p 480* referred to *Per MOOKERJEE J*—The decree in a suit should ordinarily conform to the rights of the parties as they stood at the date of its institution. But the cases when it is incumbent upon a Court of Justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made. This principle will be applied where it is shown that the original relief claimed has by reason of subsequent change of circumstances become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties. *Per SHARFUDDIN and ROZ JJ*—For the performance of the talab-i-muaqalat what is necessary is an expression by the pre-emptor in clear and explicit terms that the demands to make the purchase and it is not necessary that he should at the time of the performance of the ceremony make any mention of the price. Where in performing the talab the claimant owing to mistaken information understated the price though the ceremonies required by law were fully performed. *Held* that the talab was validly performed. *Plaintiff suing for pre-emption valued his suit at Rs 4000 the price for which according to his information the property had been sold to the defendant. The suit was dismissed by the Subordinate Judge but decreed on appeal by the District Judge who however found that the real value of the property was over Rs 8000. On second appeal it was urged that having regard to the value of property as found by the District Judge appeal lay to the High Court and not to the District Judge but the point was not taken in the memorandum of appeal. Held per SHARFUDDIN and ROZ JJ* That this objection should be overruled in view of s 11 of the Suits Valuation Act and that the decision in *Faj Lokhmi Dass v Katgajani Dass I L J 35 Cal 63* was distinguishable from the present case as in that case the suit was intentionally and grossly undervalued. *AFI MAH & AMERICA GYON (1916)*

O C W N 109

20 ——— *Wajib ul arz—Inequal—Mortgage by conditional sale—Cause of action* The wajib ul arz of a village in recording an entry as to the right of pre-emption referred to transfers (in equal) and provided for the mode in which the first offer was to be made. *Held* that this provision applied to a mortgage by way of conditional sale and that the pre-emptor's cause of action arose upon the execution of the deed of

PRE-EMPTION—*contd*FIGHT OF PRE-EMPTION—*contd*

mortgage and not when a foreclosure decree was passed or when the mortgage obtained possession thereunder *SUDA SINGH v MAHABIR SINGH* (1917) I L R 39 All 544

21 ——— **Sale by co-sharer to Mahomedan a Hindu**—On the assumption that other co sharers were to have the right to pre-empt—Fight of pre-emption of latter—Vendor if may prescribe special conditions not imposed by law—Agreement of sale understood by parties as and represented to be sale—Accrual of right of pre-emption—Transfer of Property Act (I) of 1882 s 54, if determines date of sale Where in property owned by Mahomedans co owners entitled to a fourth share agreed to sell their share to certain persons who were Hindus and in pursuance of the agreement the vendors intimated to the remaining co sharer that they had sold their share as aforesaid and gave the latter two days time within which to exercise his right of pre-emption Held that as all the parties had considered that there was a law of pre-emption which applied between the vendors and their co sharer and that it was applicable to the purchasers who too had assented to that view it was not necessary to enquire whether there was a local custom of pre-emption or whether it could be enforced by a Mahomedan against a Hindu purchaser The Transfer of Property Act was not intended to alter to Mahomedan Law of pre-emption *SITARAM BHAWRAO DESH MUKH v SYED JIAUL HASAN KHAN* (PC) 26 C W N 221

WAJIB UL ARZ

See PRE-EMPTION—RIGHT OF AND CUSTOM OF

1 ——— **Custom or contract**—The wajib ul arz of a village in the Saharanpur district contained the following declaration on the part of the co sharers — Whereas a new settlement of our village from July 1860 to 1890 for a period of 30 years has been made on a revenue of Rs 484 annually therefore the agreement of us proprietors and landholders is that till the term of this settlement and in future till the completion of the next settlement we shall remain bound and carry out — the reference intended being presumably to subsequent clauses of the document. In a later wajib ul arz of 1297 Fashl the parties stated — In regard to the remaining customs of the village the wajib ul arz of 1267 Fashl should be referred to Held that the wajib ul arz of 1267 Fashl recorded a contract and not a custom and that contract had expired with the settlement for which it was entered into *Maratib Husain v Alam Ali Ali W v* (1937) 29 and *Budh Singh v Gopal Rai I L R 30 All 544* followed *ASA PAK v KANHAIA LAL* (1910) I L R 32 All 399

2 ——— **Partition of village—Sey rate wajib ul arzes**—Change in the language A village originally undivided was first partitioned into several mahals with a separate settlement wajib ul arz for each Subsequently one of these mahals was subdivided into two and fresh wajib ul arzes were framed for these two mahals One of the new mahals was in turn divided into two but no fresh wajib ul arzes were then framed The wajib ul arzes framed at the first and second

PRE-EMPTION—*contd*WAJIB UL ARZ—*contd*

partitions differed *inter se* as to their condition relative to pre-emption Held that there was evidence only of a contract for pre-emption which so far as the two last formed mahals were concerned had ceased to exist even before the expiry of the term of the settlement *PRAY SUNKI v SALIO RAY* (1910) I L R 32 All 261

3 ——— **Custom or Contract**—The wajib ul arz of an undivided village gave a right of pre-emption first to a near co sharer (*Kissadar Lari*) and then to a co sharer in the village (*Kissadar deh*) Subsequently the village was divided by perfect partition No new wajib ul arz was framed Property situated in one of the new mahals was sold to a stranger and a suit for pre-emption was brought by sharers in one of the other mahals claiming a *waissadar deh* Held per STANLEY O J that the plaintiff was entitled to pre-empt notwithstanding the partition and that the words *Kissadar deh* as used in the wajib ul arz meant a sharer in the village *Dalganyan Singh v Kalla Singh I L R 22 All 1* distinguished *Sahib Ali v Fatma Bibi I L R 30 All 83* *Mithu Lal v Muhammad Ahmad Said Khan Ali W v* (1899) 19 *Abdul Hai v Nain Singh I L R 20 All 91* *Vallee Sah v Mussamat Gohlee S D A v W P* 1 of 1 506 *Gokul Singh v Minu Lal I L R 7 All 772* *Abbas Ali v Ghulam Nabi Ali W v* (1891) 107 *Mata Din v Mahesh Prasad Ali W v* (1882) 100 *Ram Din v Pokhar Singh I L R 27 All 550* *Ausari Lal v Ram Bhajan Lal I L R 27 All 603* and *Govind Ram v Manohar Khas I L R 29 All 295* referred to Held per BAKER J that the plaintiff pre-emptor could not pre-empt after the partition of the village as although he was a sharer in the village he was not a co sharer of the vendor and that the words *Kissadar deh* as used in the wajib ul arz meant a co sharer of the undivided village for which the wajib ul arz had been prepared *Dalganyan Singh v Kalla Singh I L R 22 All 1* followed *Janki v Ram Parlap I L R 28 All 263* and *Abdul Hai v Nain Singh I L R 20 All 92* referred to *Dora v Jirwa PAK* (1910) I L R 32 All 265

4 ——— **Custom or contract** The pre-emptive clause of a wajib ul arz ran as follows — *Ayunda jari rakha rany shafa la ham ko man ar hai* Held on a construction of the wajib ul arz that it denoted a record of custom and not of contract *Ta adduq Husain Khan v Ali Husain Khan Ali W v* (1908) 121 distinguished *Hazari Lal v Durga Prasad* (1909) I L R 32 All 187

5 ——— **Perfect partition—Mahalan** dhe —The determination of an alleged right of pre-emption must depend upon the particular circumstances of each case and the evidence adduced in support of the pre-emptive right A village was divided by perfect partition into several mahals but no new wajib ul arz was prepared The wajib ul arz framed before partition was headed *Hakuk Kissadaran balludha* rights of co sharers *inter se* and gave the right of pre-emption (i) to co sharers in the *Khatta* (ii) to the proprietors of the patti and (iii) to the proprietors of the village (*malikan deh*) Plaintiff was a co sharer in a different mahal from that in which the vendor was a co sharer Held that the heading of the wajib ul arz limited the mean

PRE EMPTION—*contd*WAJIB UL ARZ—*contd*

ing of the expression *malikan del* to proprietors who were co sharers with a vendor between whom and the vendor a common bond subsisted and as the plaintiff was not a co sharer in the same mahal with the vendor she had no right of pre-emption. *Janki v Ram Paritab Singh I L R 28 S All 286 Sarda Singh v Iya Hussain Khan I L R 28 S All 614 and Goud Ram v Mahabillah Khan I L R 29 S All 295 distinguished Dalgarnjan Singh v Kalka Singh I L R 22 S All 1 followed. SAHIB ALI v FATIMA BIBI (1909) I L R 33 All 63*

8 ——— Partition of village—New *wajib ul-arz* prepared after partition The *wajib ul-arz* of a village before partition provided for pre-emption in the following way — Rights of co sharers as among themselves on the basis of custom or agreement. The custom of pre-emption obtains. In case of sale of property by a co sharer and her co sharer in the mauza can bring a suit for pre-emption. If he offers a low price then the vendor can sell the property to a stranger. The village was divided by perfect partition into three mahals. New *wajib ul-arz* were drawn up after partition and the condition as to pre-emption in each ran as follows — Rights of co sharers inter se based on custom or agreement. The custom of pre-emption prevails. In this case one co sharer sells his share (*hakikat*) another co sharer in the village (*hissandar sharik mauza*) can claim pre-emption. If he offers a smaller price the seller can sell it to a stranger. The plaintiff pre-emptor was a co sharer in a different mahal from that in which the property sold was situated. The vendee was a stranger to the village. The entire body of co sharers in the village were Muhammadans of the same stock and continued so up to the time of partition. *Held* upon a construction of the language of the *wajib ul-arz* and the circumstances of the case that the pre-emptor must succeed as against the stranger vendee notwithstanding that a partition had taken place. *Janki v Ram Paritab Singh I L R 28 S All 286 referred to CHENBUR v ABDUL HAKIM (1910) I L R 33 All 296*

7 ——— Contract or custom—Presumption in absence of evidence that the record is one of custom. Where it is not apparent either from the language of the *wajib ul-arz* itself or from other evidence that the pre-emption clause of a *wajib ul-arz* is merely the record of a new contract between the co sharers the presumption is that it is the record of a pre-existing custom. *Majidan Bibi v Shaikh Hajalan Ali Weekly Notes (1927) 3* followed. The pre-emptive clause of a *wajib ul-arz* was headed "Relating to the right of pre-emption and ran as follows — If a co sharer has to sell and mortgage his *hakikat*—then at the time of transfer it will be incumbent that he should after giving information sell and mortgage for a proper price etc etc. *Held* that this in the absence of evidence to the contrary indicated a pre-existing custom of pre-emption rather than a contract. *BIMB SEN V MORI PAM (1910) I L R 33 All 85*

8 ——— Inalienable—Perpetual lease *Held* that the word "initial" used in the pre-emptive clause of a *wajib ul-arz* was wide enough to include a perpetual lease. *Jagadram Sahas v Mahabir Prasad I L R 34 All 60 and Ahmad*

PRE EMPTION—*contd*WAJIB UL APZ—*contd*

Ali Khan v Ahmed I A B P 101 referred to LALJI MISR v JAGGU TEWARI (1910)

I L R 33 All 101

9 ——— "Apna shafi"—Mahomedan law A *wajib ul-arz* provided that if any co sharer of a *patti* in the *Khalisa* wished to sell his share he would do so paying due respect to his own pre-emptor (*apana shafi*) and if the latter refused and all the other pre-emptors of the village (*our sub shafian deh*) refused then he might sell to a stranger. *Held* that the expression *apna shafi* connoted nearness in space and not a blood relationship and therefore where the vendor and pre-emptor were co sharers in the same *patti* the vendee being a co sharer in a different *patti* the co sharers in the same *patti* had a preferential right. *LAKHAN SINGH v BISHAN NATU (1910) I L R 33 All 299*

10 ——— Partition of village into several mahals—Dastur deli relating to whole village—Suit by co sharer of one mahal against co sharer of another mahal on ground of nearness in relationship to vendor. The *dastur deli* of a village divided into several mahals but which nevertheless was held to be applicable to the whole village and to represent an arrangement come to by the co sharers in the village amongst themselves provided as to pre-emption as follows — If a co sharer wants to sell his share he must sell first to near co sharers then in the *patti* then in the mahal then in the village. *Held* that the effect of this clause was to give to a co sharer in one mahal who was a relation of the vendor a preferential right of pre-emption over a co sharer in another mahal who was not a relation. *LAD PAM v CHENA LAL (1913) I L R 35 All 478*

11 ——— Co sharer in *patti*—and co sharers in mahal—Fictitious conveyance of share in *patti* to latter—Alleged previous offer to plaintiff—Witnesses found to have posed falsely as to part of the evidence as to other parts—Party not coming forward to contradict positive evidence of opponent as to matters within his personal knowledge if any succeed. Plaintiff being a co sharer in the *patti* sued for pre-emption and the defendants who were only co sharers in the mahal or mahal resisted his claim on the grounds (i) that they had by a prior conveyance acquired a share in a *patti* and (ii) that the plaintiff had refused the offer of the defendants' vendor to sell the property to him. *Held* that the reasons given by the High Court for holding in reversal of the first Court that the prior conveyance did not represent a genuine transaction and was fabricated with a view to defeat the claim for pre-emption which the plaintiff was about to bring were cogent and decisive. The High Court also disbelieved the evidence adduced by the defendants to prove plaintiff's refusal of the offer to him of the property by the defendant's vendor on the ground that the witnesses were the same who spoke to the prior conveyance and one part of whose evidence had been found to be distinctly false. *Held* that it was open to the High Court to take this view although there was one witness who did not depose to the deed and neither plaintiff nor other persons in whose presence the offer was stated to have been made had come forward to contradict the defendants

PRE-EMPTION—contd

WAJIB UL ARZ—contd

witnesses The judgment of the High Court should not be treated in a piecemeal manner and taken as a whole was correct **MATHURA PRASAD v SHAIKH MUHAMMAD** (1912)

17 C W N 981

12 ——— Incidents of custom not recorded—*Mahomedan Law* A suit for pre-emption was brought both under the custom recorded in the wajib ul arz and Mahomedan Law but the incidents of the custom were not recorded in the wajib ul arz *Held* that the rights were co-extensive **JAGDAM SAHAI v MAHADEV SAHAI** I L P 28 All 60 followed **ZAMIR AHMAD v ABDUL RAZAQ** (1916) I L R 37 All 472

13 ——— Wajib ul arz—Partition of village Right of co sharers different in mahals—to pre-empt inter se A certain village prior to 1873 consisted of one mahal which was subdivided into two *patties* The wajib ul arz of that year recorded a custom of pre-emption first with near relations then with co sharers in the *patti* and lastly with co sharers in the village Subsequently the village was divided into a number of different mahals and at the last settlement a new wajib ul arz was drawn up for each of the new mahals in similar terms The plaintiff a proprietor in the village though not a co sharer in the mahal brought a suit for pre-emption *Held* that the plaintiff was no longer a co sharer with the vendor and therefore had no preferential right as against the vendor who was grove holder in the village **KHAYALI PAM v KALI CHARAN** (1915) I L R 37 All 573

14 ——— Custom—Mortgage by conditional sale In 1895 a mortgage was made consolidating previous mortgages of the years 1892 1893 and 1894 In 1906 a suit was instituted on the mortgage which was construed as a mortgage by way of conditional sale A decree for foreclosure was obtained and in 1911 the decree was made absolute Shortly afterwards possession was obtained under this decree In 1914 a suit was brought claiming to get possession by virtue of a custom set forth in the wajib ul arzes The clause relating to pre-emption was as follows—If a *pattidar* wishes to transfer his share by sale or mortgage he should do so first to another *pattidar* of the same *thok* and in case of his refusal to the *pattidar* of another *thok* of the village If the *pattidar* wants to sell his share to a stranger by entering an excessive and fictitious price the *pattidar* having the right of pre-emption shall be entitled to acquire the property on payment of the price awarded by the arbitrators *Held* that having regard to the whole context of the wajib ul arzes the sale mentioned wherein for the purpose of giving rise to a right of pre-emption according to custom meant a voluntary sale and the wajib ul arzes did not give him a right of pre-emption under the circumstances under which the mortgage became the owner of the property **ALU PRASAD v SUKHAN I L P 3 All 610** distinguished **SUNDAR KUMAR v PAM GULAM** (1918) I L R 40 All 626

15 ——— Property to be sold to co-sharer first—Sale to stranger—*I fasal to pre-emption* As a general rule the custom as to pre-emption as evidenced by the record in the

PRE-EMPTION—contd

WAJIB UL ARZ—contd

wajib ul arz in that where a co sharer wishes to sell his property he must first offer it to another co sharer and if the co sharer refuses to purchase he is entitled to go to a stranger Where the custom proved is of this nature if the co sharer (vendor) offers the property to another co sharer and such co sharer refuses to purchase on the ground that he has no money or is unwilling for any other reason to purchase the owner of the property is entitled to go and sell it to a stranger and he is not obliged after he has made a definite agreement with the stranger to return and offer the property a second time to the co sharer **LAUNTHAL SINGH v PAM RATTAN** I L P 39 All 127 and **VATHI LAL v DHANS RAM** 15 A L J 315 followed **MUNAWAR HUQAN v AHAD ALI** 5 A L J 331 and **KANHA LAL v KALLA PRASAD** I L R 27 All 670 not followed **SHAN SHEE SINGH v PIRI DAT** (1918)

I L R 40 All 690

16 ——— Involuntary sales—*Held* by the Full Bench—In the absence of any statutory reservation of the right a right of pre-emption does not exist in cases of involuntary sales hence a Malabarotti mortgagee has no right of pre-emption against a purchaser in Court auction of the mortgaged property and he is not entitled to any notice of the intended Court sale or of the price fetched at the sale **ASTUDHAN MOO'AD v ITTIRANCHAN NAM** (1918) I L R 41 Mad 532

17 Purchases made by vendee on different dates—*Suit to pre-empt first sale only*—Vendee claiming to be a co-sharer in virtue of second purchase—*Suit not maintainable* The defendant purchased shares in a village on two different dates The plaintiff sued to pre-empt the earlier sale but no suit was brought in respect of the second sale *Held* that the suit was not maintainable **CHABRAI SINGH v MANESH NARAY SINGH** (1918) I L R 40 All 572

18 ——— Sale of right to receive *malikana*—not a subject of pre-emption *Held* that a right to receive a *malikana* allowance cannot be the subject of a suit for pre-emption **ABDUL WAHID v HALIMA KHATUN** I L R 42 All 583

19 ——— Involuntary sale—*Order de clar d insolvent on application by a creditor*—Sale of property by official assignee—*Operation of pre-emption to bid at auction sale* On an application made by a creditor in insolvency one P. S. Hoshan Das Bahadur was adjudged an insolvent and his property was placed in charge of an official assignee Some of the consisting of *ramindari* was sold by the official assignee at public auction *Held* that the sale not being voluntary no right of pre-emption would arise under the village wajib ul arz **KANHA LAL v KALLA PRASAD** I L P 27 All 670 distinguished *Held* further that the sale having been validly notified a pre-emptor who knowing of the sale did not bid must be taken to have refused to purchase and the official assignee was under no obligation to offer the property to him after it had been knocked down to the highest bidder at the auction **KANHA LAL v KALLA PRASAD** I L P 27 All 60 not followed **GULAM MOHI UD DIN KHAN v HARDO SAHAI** I L R 42 All 402

PRE EMPTION—*contd*W AJIBUL ALFZ—*contd*

20 ————— Resale of property during pre-emption suit to person with a preferential right—but after the extinction of his right to pre-empt by reason of limitation. During the pendency of a suit for pre-emption under the provision of the village wajibul alfz the vendee resold the property in suit to a person who originally had a pre-emptive right superior to that of the plaintiff but who at the date of the sale was barred by limitation from enforcing it. *Held* that the plaintiff's claim was not defeated by such sale. *Mangal v Shaib Pam* I L R 27 All 514 *Janki Prasad v Israr Das* I L R 91 All 574 and *Ram Gopal v Puri Lal* I L R 21 All 441 distinguished. *KANTA PRASAD v RAM JAO* (1913) I L R 36 All 60

21 ————— Custom—Effect of confiscation of part of village—*Karibi wa Khan dani*. In a village comprising two eight anna *thoks* a custom of pre-emption was recorded as prevailing in two wajibul alfzes of 1833 and 1860 and in the *amima khawat* of 1884 the date of the last settlement. *Held* that the custom so recorded was in no way modified by the fact that a four anna undivided share in the village had been confiscated by the Government after the mutiny and granted to other proprietors. *Held* also that a person related to a vendor through the female line only and twelve degrees removed from him could not be considered as falling within the description in the wajibul alfz of *Karibi wa Khandani*. *DURGA PRASAD PANDE v FATEH BHARATH SINGH* (1914) I L R 36 All 451

22 ————— Claim based on relationship to vendor—Death of plaintiff pending suit—Sons of plaintiff not entitled to take advantage of the relationship of their father. The plaintiff in a suit for pre-emption had a preferential right over the vendee on the ground of his nearer relationship to the vendor but the plaintiff's sons had not. *Held* that the plaintiff's sons could not on the death of their father pending the suit claim to take advantage of the relationship in which their father had stood to the vendor. *PAN TAP SINGH v DATLAT* (1913) I L R 36 All 43

MISCELLANEOUS

1 ————— Execution of decree—Decretal amount deposited but part taken out of Court by a creditor of the decree holder the decree for pre-emption having been set aside—Pestoration of decree on appeal—Position of decree holder. A decree for pre-emption conditional on the plaintiff pre-emptor depositing in Court by a certain date Rs 1000 was duly complied with. But on appeal by the vendee the decree was set aside and thereafter a portion of the money deposited by the pre-emptor was attached and drawn out of Court by a creditor who had obtained a money decree against him. The decree was however restored as the result of an appeal to the High Court. *Held* that the plaintiff was entitled to execute his decree upon making good the amount which had been removed by his creditor. *Held* also that the Court of first instance ought not to have permitted any part of the money deposited to be withdrawn until

PRE EMPTION—*contd*MISCELLANEOUS—*contd*

the pre-emption suit had been finally decided. *Abdus Salam v Wilayat Ali Ali Weekly Notes* (1937) 31 distinguished. *SHEO GOPAL v NAJIB KHAN* (1914) I L R 36 All 398

2 ————— Pleadings—Alternative claims and custom and Mahomedan law. There is nothing to prevent a plaintiff in a suit for pre-emption basing his claim in the alternative on contract custom or Mahomedan law. But where there is an established custom of pre-emption and the pre-emptor fails to bring himself within that custom he cannot fall back on the Mahomedan law. *Muhammad Salim v Sadar ud din Beg* 7 All J 660 distinguished. *MUHAMMAD AUSAFULLAH v SAMS UDDIN BIDI* (1914) I L R 36 All 456

3 ————— Dispute as to true sale consideration—Evidence—Burden of proof—Payment before Sub Registrar. In a suit for pre-emption where it is alleged that the sale price is fictitious and put into the deed for the purpose of defeating pre-emption it is open to the pre-emptor to give evidence to show that the market price is far below that stated in the sale deed. If he gives such evidence to the satisfaction of the Court the latter is quite justified in arriving at its own conclusion as to what was the real consideration and this notwithstanding that it is proved that the amount stated in the deed was paid before the Sub Registrar. *Abdul Majid v Amolak* I L R 29 All 618 referred to. *O Conor v Ghulam Haidar* I L R 28 All 617 not followed. *RAM SARUP SARTU v KARANULLAH KHAN* (1914) I L R 36 All 404

4 ————— Practice—Alternative claims—Claim for possession as owner joined with alternative claim for pre-emption. There is nothing in law to prevent a plaintiff in a suit for pre-emption also setting up a claim for possession of the property as owner and his suit ought not to be dismissed on the ground that he has put his case in the alternative. *BHAGWATI SARAN MIAN TIWARI v PARMESHWAR DAS* (1914) I L R 36 All 476

5 ————— Mahomedan law—Vendor a Shia and pre-emptor a Sunni—Shia law to be applied. In a suit for pre-emption the vendee was a Shia Mahomedan the vendee's Hindus and the pre-emptor a Sunni. The claim was laid in the alternative either on custom or on the Mahomedan law. The custom set up was not proved. *Held* that the Mahomedan law applicable was that of the vendor namely the Shia law and that the pre-emptor had no case. *Jog Deb Singh v Mahomed Afzal* I L R 32 Cal 93 not followed. *Imam Ali v Maya Ram* I L R 12 All 99 *Qurban Hussain v Chote* I L R 40 All 10 and *Gowind Dyal v Inayatullah* I L R 41 All 10 referred to. *THI KHAN v FAIZAZ HUSSAIN* (1914) I L R 36 All 498

6 ————— Time for payment of sum decreed—Pre-emptive price enhanced on appeal by the vendee but no time fixed for payment—Practice. The appellate Court in a pre-emption suit enhanced the amount decreed to be payable by the pre-emptor in the first Court but omitted to fix any time within which the enhanced amount should be payable. *Held* that the plaintiff pre-emptor was entitled to a reasonable time within

PRE EMPTION—contd

WAJIB UL APZ—contd

witnesses The judgment of the High Court should not be treated in a piecemeal manner and taken as a whole was correct **MATHURA PRASAD v SHAIKH MUHAMMAD (1912)**

17 C W N 981

12 ——— Incidents of custom not recorded—**Mahomedan Law**. A suit for pre emption was brought both under the custom recorded in the wajib ul arz and Mahomedan Law but the incidents of the custom were not recorded in the wajib ul arz. *Held* that the rights were co extensive **Jagdam Sahai v Mahabir Sahai, I L R 28 All 60** followed **ZAMIR AHMAD v ABDUL RAZAQ (1915)** **I L R 37 All 472**

13 ——— Wajib ul a z—Partition of village Right of co-sharers different in mahals—to pre empt i n t e e A certain village prior to 1873 consisted of one mahal which was subdivided into two *patties*. The wajib ul arz of that year recorded a custom of pre emption first with near relations then with co sharers in the *patti* and lastly with co sharers in the village. Subsequently the village was divided into a number of different mahal and at the last settlement a new wajib ul arz was drawn up for each of the new mahals in similar terms. The plaintiff a proprietor in the village though not a co sharer in the mahal brought a suit for pre emption. *Held* that the plaintiff was no longer a co sharer with the vendor and therefore had no preferential right as against the vendor who was grove holder in the village **KHAYALI RAM v KALI CHAMAN (1915)** **I L R 37 All 573**

14. ——— Custom—Mortgage by conditional sale In 1895 a mortgage was made consolidating previous mortgages of the years 1892 1893 and 1894. In 1906 a suit was instituted on the mortgage which was construed as a mortgage by way of conditional sale. A decree for foreclosure was obtained and in 1911 the decree was made absolute. Shortly afterwards possession was obtained under this decree. In 1914 a suit was brought claiming to get possession by virtue of a custom set forth in the wajib ul arz. The clause relating to pre emption was as follows—*If a pattidar wishes to transfer his share by sale or mortgage he should do so first to another pattidar of the same thok and in case of his refusal to the pattidars of another thok of the village. If the pattidar wants to sell his share to a stranger by entering an excess and fictitious price the pattidar having the right of pre emption shall be entitled to acquire the property on payment of the price awarded by the arbitrators. Held* that having regard to the whole context of the wajib ul arz the sale mentioned wherein for the purpose of giving rise to a right of pre emption according to custom meant a voluntary sale and the wajib ul arz did not give him a right of pre emption under the circumstances under which the mortgage became the owner of the property. **Ali Prasad v Sukhan I L R 3 All 610** distinguished **SCANDAR KECAR v PAM v NULAM (1918)** **I L R 40 All 626**

15 ——— Property to be sold to co-sharer first—Sale to stranger—*I suant to purchases*. As a general rule the custom as to pre emption as evidenced by the record in the

PRE EMPTION—contd

WAJIB UL ARZ—contd

wajib ul arz is that where a co sharer wishes to sell his property he must first offer it to another co sharer and if the co sharer refuses to purchase he is entitled to go to a stranger. Where the custom proved is of this nature if the co sharer (vendor) offers the property to another co-sharer and such co sharer refuses to purchase on the ground that he has no money or is unwilling for any other reason to purchase the owner of the property is entitled to go and sell it to a stranger and he is not obliged after he has made a definite agreement with the stranger to return and offer the property a second time to the co sharer. **Naunihal Singh v Pam Rattan I L R 39 All 127** and **Naths Lal v Dhani Ram 15 A L J 315** followed **Munawar Hussain v Khadim Ali 5 A L J 331** and **Kanhai Lal v Kalka Prasad I L R 27 All 670** not followed. **MAH SUEH SINGH v PIARI DAT (1918)** **I L R 40 All 690**

16 ——— Involuntary sales—*Held* by the Full Bench —In the absence of any statutory reservation of the right a right of pre-emption does not exist in cases of involuntary sales hence a Malabar otti mortgagee has no right of pre emption against a purchaser in Court auction of the mortgaged property and he is not entitled to any notice of the intended Court sale or of the price fetched at the sale. **VASUDEVAN BHOSAD v ATTIRACHIAN DATR (1918)** **I L R. 41 Mad. 582**

17 Purchases made by vendee on different dates—*Suit to pre empt first sale only*—Vendee claiming to be a co sharer in virtue of second purchase—*Suit not maintainable*. The defendant purchased shares in a village on two different dates. The plaintiff sued to pre empt the earlier sale but no suit was brought in respect of the second sale. *Held* that the suit was not maintainable. **CHAMRAJ SINGH v MATHESH DABASI SINGH (1918)** **I L R 40 All 572**

18 ——— Sale of right to receive malikana—not a subject of pre emption. *Held* that a right to receive a malikana allowance cannot be the subject of a suit for pre emption. **ABDUL WAHID v HALIMA KHATUN** **I L F 42 All 262**

19 ——— Involuntary sale—Owner declared insolvent on application by a creditor—Sale of property by official assignee—*Omission of pre emptor to bid at auction sale*. On an application made by a creditor in *sequestrum* one Rai Sri Hishan Das Bahadur was adjudged an insolvent and his property was placed in charge of an official assignee. Some of this consisting of zamindari was sold by the official assignee at public auction. *Held* that the sale not being voluntary no right of pre emption would arise under the village wajib ul arz. **Kanhai Lal v Kalka Prasad I L R 27 All 670** distinguished. *Held* further that the sale having been widely notified a pre emptor who knowing of the sale did not bid must be taken to have refused to purchase and the official assignee was under no obligation to offer the property to him after it had been knocked down to the highest bidder at the auction. **Kanhai Lal v Kalka Prasad I L R 27 All 670** not followed. **GHULAN MOHI UD DIN KHAN v HARDEO SAHAI** **I L R. 42 All 402**

PRE EMPTION—*contd*W AIR L AP7—*contd*

20 ———— Resale of property during pre-emption suit to person with a preferential right—but after the extinction of his right to pre-empt by reason of limitation. During the pendency of a suit for pre-emption under the provision of the village *wajib ul arz* the vendee resold the property in suit to a person who originally had a pre-emptive right superior to that of the plaintiff but who at the date of the sale was barred by limitation from enforcing it. *Held* that the plaintiff's claim was not defeated by such sale. *Manpal v Shaib Ram* 1 L R 27 All 414 *Janki Prasad v Ishar Das* 1 L R 21 All 33 and *Pam Gopal v Pann Lal* 1 L R 21 All 441 distinguished. *KANTA PRASAD v RAM JAG* (1913) 1 L R 36 All 60

21 ———— Custom—Effect of confiscation of part of village—*Karib wa khurdani*. In a village comprising two eight anna *thols* a custom of pre-emption was recorded as prevailing in two *wajib ul arzes* of 1833 and 1860 and in the *amima khawat* of 1884 the date of the last settlement. *Held* that the custom so recorded was in no way modified by the fact that a four-anna undivided share in the village had been confiscated by the Government after the mutiny and re-granted to other proprietors. *Held* also that a person related to a vendor through the female line only and twelve degrees removed from him could not be considered as falling within the description in the *wajib ul arz* of *Karib wa khurdani*. *DURG PRASAD PARDE v FATEH BAHADUR SINGH* (1914) 1 L R 36 All 451

22 ———— Claim based on relationship to vendor—Death of plaintiff pending suit—Sons of plaintiff not entitled to take advantage of the relationship of their father. The plaintiff in a suit for pre-emption had a preferential right over the vendee on the ground of his nearer relationship to the vendor but the plaintiff's sons had not. *Held* that the plaintiff's sons could not on the death of their father pending the suit claim to take advantage of the relationship in which their father had stood to the vendor. *PARTAB SINGH v DAULAT* (1913) 1 L R 36 All 44

MISCELLANEOUS

1. ———— Execution of decree—*Dcretal amount deposited but part taken out of Court by a creditor of the decree holder the decree for pre-emption having been set aside—Restoration of decree on appeal—Position of decree holder*. A decree for pre-emption conditional on the plaintiff pre-emptor depositing in Court by a certain date Rs 1000 was duly complied with. But on appeal by the vendee the decree was set aside and thereafter a portion of the money deposited by the pre-emptor was attached and drawn out of Court by a creditor who had obtained a money decree against him. The decree was however restored as the result of an appeal to the High Court. *Held* that the plaintiff was entitled to execute his decree upon making good the amount which had been removed by his creditor. *Held* also that the Court of first instance ought not to have permitted any part of the money deposited to be withdrawn until

PRE EMPTION—*contd*MISCELLANEOUS—*contd*

the pre-emption suit had been finally decided. *Abdus Salam v Bhatay Ali Ali Weekly Notes* (1894) 31 distinguished. *SHEO GOPAL v NAJIB KHAN* (1914) 1 L R 36 All 398

2 ———— Pleadings—*Alternative claims under custom and Mahomedan law*. There is nothing to prevent a plaintiff in a suit for pre-emption basing his claim in the alternative on contract custom or Mahomedan law. But where there is an established custom of pre-emption and the pre-emptor fails to bring himself within that custom he cannot fall back on the Mahomedan law. *Muhammad Salim v Sadar ud din Beg* 7 All L J 660 distinguished. *MUHAMMAD AUSAULLAH v SAMS UN NISSA BIDI* (1914) 1 L R 36 All 456

3 ———— Dispute as to true sale consideration—*Evidence—Burden of proof—Payment to Sub Registrar*. In a suit for pre-emption where it was alleged that the sale price is fictitious and put into the deed for the purpose of defeating pre-emption it is open to the pre-emptor to give evidence to show that the market price is far below that stated in the sale deed. If he gives such evidence to the satisfaction of the Court the latter is quite justified in arriving at its own conclusion as to what was the real consideration and this notwithstanding that it is proved that the amount stated in the deed was paid before the Sub Registrar. *Abdul Majid v Amolak* 1 L R 29 All 618 referred to. *O Conor v Ghulam Haidar* 1 L R 28 All 617 not followed. *RAM SARUP SAHU v KARAMULLAH KHAN* (1914) 1 L R 36 All 454

4 ———— Practice—*Alternative claims—Claim for possession as owner joined with alternative claim for pre-emption*. There is nothing in law to prevent a plaintiff in a suit for pre-emption also setting up a claim for possession of the property as owner and his suit ought not to be dismissed on the ground that he has put his case in the alternative. *BHAGWATI SARKAR MAY TIWARI v PARVESHAR DAS* (1914) 1 L R 36 All 476

5 ———— Mahomedan law—*Vendor a Shia and pre-emptor a Sunni—Shia law to be applied*. In a suit for pre-emption the vendor was a Shia Mahomedan the vendees Hindus and the pre-emptor a Sunni. The claim was laid in the alternative either on custom or on the Mahomedan law. The custom set up was not proved. *Held* that the Mahomedan law applicable was that of the vendor namely the Shia law and that the pre-emptor had no case. *Jog Deb Singh v Mahomed Isat* 1 L R 32 Cal 357 not followed. *Abbas Ali v Maya Ram* 1 L R 12 All 99 *Qurban Hussain v Ghore* 1 L R 2 All 10 and *Gobind Dayal v Inayatullah* 1 L R 2 All 7 referred to. *PIR KHAN v FAITAZ HUSAIN* (1914) 1 L R 36 All 493

6 ———— Time for payment of—*sum decreed—Pre-emptive price enhanced on appeal by the vendee but no time fixed for payment—Practice*. The appellate Court in a pre-emption suit enhanced the amount decreed to be payable by the pre-emptor in the first Court but omitted to fix any time within which the enhanced amount should be payable. *Held* that the plaintiff pre-emptor was entitled to a reasonable time within

PRE-EMPTION—contd

MISCELLANEOUS—contd

which to pay in the amount decreed and having regard to the enhanced amount (Rs 801) the time within which it was in fact paid (one month and one day after the decree) was reasonable and the plaintiff was entitled to execute his decree **DEBI SARAN TIWARI v GUPTAR TIWARI (1914)**

I L R 36 All 514

7 — Pleadings—Mahomedan Law—

Custom—Amendment of plaint—Discretion of Court The plaintiff in a suit for pre-emption based his claim upon the Mahomedan law. At a somewhat late stage in the case the plaintiff asked leave to amend his plaint by adding an alternative claim based on custom as evidenced by the wajib ul arz but this was refused and the Court not withstanding that it found that according to the wajib ul arz, a custom of pre-emption existed dismissed the suit. *Held* that the Court ought to have permitted the plaint to be amended and even without amending the plaint was competent to decree the claim on the basis of the wajib ul arz. **ABDUL HAMID v MASIT ULLAH (1912)**

I L R 36 All 573

8 — Applicability of Mahomedan law—in the case of a sale of zamindari property

The Mahomedan law of pre-emption applies to zamindari property and is not restricted to houses, gardens and small plots of land. **Munna Lal v Hajira Jan I L R 33 All 28** followed. **FAZAL AHMAD v TABADDUQ HUSAIN (1919)**

I L R 41 All 423

9 — Custom—Wajib

ul arz—Partition of village—Old custom adopted in new mahals—Right of pre-emption not surviving as between the new mahals The wajib ul arz of an undivided village afforded evidence of the existence of a custom of pre-emption in the village between co-sharers. Subsequently the village was divided by perfect partition into several mahals and each of the new mahals adopted the old custom. *Held* that no right of pre-emption survived as between the different new mahals. **Ganga Singh v Chedi Lal I L R 33 All 605** referred to. **DEOKINANDAN v MAHTAB RAI (1910)**

I L R 41 All 426

10 — Sale to stranger—Plaintiffs

joining in their suit persons who were not strangers but had pre-emptive rights in the suit In a suit for pre-emption where the suit is a suit against strangers the plaintiffs by joining persons who have different rights inter se do not thereby forfeit their rights. **Guptalwar Parn v Rati Krishna Ram I L R 33 All 542** distinguished. **BHUPAL SINGH v NAIR SINGH SARAI (1919)**

I L R 41 All 423

11 — Perpetuity Rule when applicable to—Pre-emption right of with regard

to immovable property. *Covenant for unlimited in point of time of value* A Hindu transferred certain immovable property to his son in law reserving a condition that if the transferee or his successors found it necessary to sell the property he or his successors might sell it to the vendor his nephew or heirs at a specified price. The son of the third son in law sold the property to some others whereupon the nephew sued for enforcement of the right of pre-emption. *Held* that an option to arise on any intended sale or other particular kind of alienation is subject to the rule against

PRE-EMPTION—contd

MISCELLANEOUS—contd

perpetuities unless the right is conferred by statute. **NAHIN CHANDRA SAPMA v PAJANI CHANDRA CHAKRADARTI 25 O W N 902**

12 — Conditional decree—If its costs be the plaintiff—Amount paid by the plaintiff less than the sum named in the decree but more than the decretal amount less the plaintiff's costs. The decree in a pre-emption suit ordered the plaintiff to pay Rs 100 within a certain time and also awarded costs amounting to Rs 9 annas 8 to the plaintiffs. The plaintiffs deposited in court within the time allowed Rs 99. *Held* that there was a sufficient compliance with the decree. **Dechar Singh v Shami Nath 3 A L J (Dolce) p 27** and **Ali Husain v Amin ulah I L R 33 All 536** referred to. **RAM LALAN PANDY v MUHAMMAD ISHAQ KHAN I L R 42 All 181**

13 — Mahomedan law—Zamindari

village—Imperfect partition of mahal into several pattis—No rights or property left in common—No right of pre-emption amongst owners of different pattis inter se Where the Mahomedan law of pre-emption is applicable there is ordinarily no right of pre-emption as between owners of different pattis of a mahal divided by imperfect partition. **Munna Lal v Hajira Jan I L R 33 All 28** referred to. **MATHURA PRASAD v HARDEO BAKSH SINGH I L R 42 All 477**

14 — Sale of family property by

the father of a joint Hindu family—*Suit by sons to pre-empt sale—Suit not maintainable* *Held* that the sons in a joint Hindu family cannot maintain a suit to pre-empt a sale of joint family property made by the father as manager and for legal necessities. **Poghnath v Musammal Fata Begam 3 A L J 641** and **Gandhar Singh v Sahib Singh I L R 7 All 181** followed. **PRATAP NARAY SINGH v SHAM LAL I L R 42 All 1264**

15 — Vendee becoming a co-sharer

pending the suit—During the pendency of a suit for pre-emption of a share in zamindari property the defendant vendee acquired by gift a share in village which put him as regards pre-emption on the same level with the plaintiff pre-emptor *Held* that in the circumstances the suit must be dismissed. The principle of **Parn Gopal v Parn Lal I L R 21 All 441** applied. **BIHARI LAL v MOHAN SINGH I L R 42 All 263**

16 — Valuation of property the

subject of a claim for pre-emption—*Property subject to a mortgage—Personal remedy barred as mortgage debt in excess of market value* Where the personal remedy of the mortgagor is barred and the mortgage debt exceeds the value of property mortgaged the value of the property from the point of view of a claimant for pre-emption is the market value simply. **JAGAT SINGH v BALDEO PRASAD I L R 43 All 137**

17 — Khandesh District—Rule of

pre-emption does not exist in the Khandesh District—*Pomblay Regulation 14 of 1677 cl 6* In the District of Khandesh in the Pomblay Regulation the rule of pre-emption does not exist either as a rule of law or as a rule of justice, equity and good conscience. **MAHOMED FIC AMIR v NARAYAN BHOHAJI (1915) I L R 40 Bom 228**

PRE EMPTION—*contd*MISCELLANEOUS—*contd*

16 ——— Sale by Mahomedan to Hindu — *co-harer a claim to pre-emption—Law applies to all parties* One of two Mahomedan co-sharers in two villages in the Presidency of Bombay agreed to sell his share to a Hindu the agreement being made subject to a right in the co-harer to pre-empt and as a complete and immediate sale although part of the purchase price was to be paid later and a sale deed executed. The vendor informed his co-harer that he had sold and invited him to pre-empt the share sold. The co-sharer thereupon performed the ceremonies of pre-emption and claimed as pre-emptor to recover the share from the purchaser. *Held* that the co-harer had a right of pre-emption in accordance with the intention of the parties which had to be looked at to determine what system of law was to apply and what was to be taken as the date of the sale with reference to which the ceremonies were performed. Judgment of the High Court affirmed. **SITARAM BEAURAO v. JIAUL HASAN SIRAJUL KHAN (1091) L N 481 A 475**

L L R 45 Bom 1056

19 ——— Shahi Khat right of — *Partition of estate into separate mahals—sale of separate touzi number—whether owner of one of the mahals has a right to pre-emption* On partition property was divided into several mahals but joint between the parties were left a well certain roads a tank a number of *brahmottar* and *fakirana* holdings and two occupancy holdings. A separate touzi number formed by this partition was sold and the owner of one of the mahals into which the parent estate had been divided claimed a right of pre-emption over the touzi number which had been sold. *Held* (1) that the existence of the undivided holdings did not give him a right of pre-emption (2) that he had no right of pre-emption as *shahi khat* as the road well tank etc. were not appurtenances. **ISHAN SINGH v. BAKSHI SINGH 4 Pat L J 420**

20 ——— Adhlaqi transaction—*Whether a sale when no money consideration passes—Transfer of Property Act 14 of 1880 s 64* One T P in 1907 entered into an Adhlaqi transaction with G M in the Alipur Tahsil of the Muzaffargarh District by which the latter was to sink a well and clear the land attached to it within a period of 4 years and on his carrying out his undertaking T P was to get possession of one third of the land as proprietor. G M apparently carried out his part of the undertaking and on 18th June 1913 his name was entered in the mutation register as owner of one third of the land attached to the well. The present plaintiff then brought a suit for pre-emption in respect of the sale of the one third share in the land and it was objected that the transaction was not a sale. *Held* that the creation of the Adhlaqi tenure in the present case did not amount to a sale as no money consideration passed at all and the defendant became proprietor of one third of the land only because he sank a well and brought the land attached to it under cultivation. Such a transaction did not give rise to any rights of pre-emption. **Mul Chand v. Mansa Ram (15 P F 154) distinguished Ude Ram v. Balshahi (1 P 1883 p 36 note) and Jesa Puri v. Chanda Mal (3**

PRE EMPTION—*concld*MISCELLANEOUS—*concld*

P P 191 referred to **GHULAM MUHAMMAD v. TEK CHAND I L R 2 Lah 199**

21 ——— Waiver—*Pre-emptor who refused to purchase except at a price much below the value* H a member of an agricultural tribe applied to the Deputy Commissioner for permission to sell his land. His application was forwarded to the Tahsildar who went to the village to make inquiries and on 8th January 1913 vendee offered to purchase the land for Rs 1,000 and the house for Rs 400. On 19th January the plaintiffs collaterals of H stated that they were not prepared to pay more than Rs 200 or Rs 300 or both the properties and declined to buy them for more than that sum. The properties were then sold to the vendee. *Held* that the conduct of the plaintiffs amounted to a waiver and that they could not enforce their right of pre-emption. **Indraj v. Brother Clement (1 L R 37 All 262) referred to also Sri Kailash Singh v. Bachela Pande (1 L R 33 All 67) Karam Chand v. Ghulam Hassan (74 P R 1916) distinguished. Held also that plaintiffs had no reasonable ground for entertaining the belief that Rs 2,000 was an excessive price. MUKH RAM v. HARSAS**

L L R 1 Lah 51

PRE EMPTION DECREE—

Whether transferable — On 17th June 1918 Mehr Khan appellant obtained a pre-emption decree on payment of Rs 1,500 within one month. On 6th July 1918 Mehr Khan sold his rights in the decree to Shah Din appellant and on 8th July 1918 they both presented a joint application for execution and deposited Rs 1,500 the fact of the sale being recited in the application. On 6th August 1918 Mehr Khan stated in Court that as he had sold his rights to Shah Din he wished possession under the decree to be given to him. *Held* following **Ramswai v. Goya (1 L P 7 All 107 111)** that a decree for pre-emption is not capable of transfer so as to enable it to be transferred to obtain possession of the pre-emptory property in execution and that consequently Shah Din could not get possession under the decree in favour of Mehr Khan. **Lashkar Mal v. Ishar Singh (94 P F 1907) referred to. MENK KHAN v. GHULAM PASUL I L R 2 Lah 251**

PRE-EMPTOR

right of, to put vendor to proof of title—

See PRE EMPTION I L R 37 All 529

PREFERENCE.

See DEBTOR AND CREDITOR

I L R 43 Cal 521

PREFERENCE SHAREHOLDERS

See COMPANY I L R 42 Bom. 579

PREFERENTIAL CLAIM

See MUTAWALLI I L R 43 Cal 467

PREFERENTIAL HEIR

See HINDU LAW—SUCCESSION

I L R 26 Mad 45

PREJUDICE

- See CHARGE I L R 41 Calc 66
 See CRIMINAL PROCEDURE CODE (ACT V of 1893) s 256 I L R 79 Mad 503
 See CROSS EXAMINATION I L R 41 Calc 299
 See FALSE INFORMATION I L R 43 Calc 173
 See LOCAL INSPECTION I L R 39 Calc 476
 See LUPKING HOUSE TENANTS I L R 44 Calc 358

PRELIMINARY DECREE.

- See APPEAL I L R 42 Calc 914
 I L R 48 Calc 1086
 See BOMBAY REGULATION (II OF 1827) s 52 I L P 37 Bom 303
 See CIVIL PROCEDURE CODE 1908—
 ss 2 AND 97 O XXVI PR 11 12
 I L R 38 Bom 392
 I L P 39 Bom 422
 s 47 O XXII R 10 I L R 39 Mad 438
 s 97 I L R 36 Bom 530
 I L R 37 Bom 480
 I L R 38 Bom 331
 I L R 39 Bom 339
 I L R 45 Bom 627
 O XX = 18 I L R 35 All 159
 See COURT FEES ACT VII OF 1870—
 SCH II CLS 3 4 I L R 32 All 517
 s 7 cl (4) I L R 39 Mad 725
 See HINDU LAW—PARTITION I L R 42 Bom 535
 See MORTGAGE I L R 38 Calc 913
 See MORTGAGE DECREE I L R 39 Mad 544
 See PENSIONS ACT (XXIII OF 1871) s 6 I L R 39 Bom 352
 See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 80 I L R 40 Bom 321

————— in favour of puisne mortgagee—

- See CIVIL PROCEDURE CODE (1908) O XXIV PR 4 5 I L R 38 All 398

Findings on issues relating to misjoinder limitation and jurisdiction—
 Drawing up a preliminary decree—Material irregularity in declining to do so A Subordinate Judge in trying a suit gave his decision on issues relating to misjoinder limitation and jurisdiction and directed the parties to adduce evidence relating to accounts He was asked to draw up a preliminary decree in accordance with his findings on the issues and having declined to do so Held that the Subordinate Judge committed a material irregularity in the exercise of his jurisdiction The decision of the issues conclusively determined the rights of the parties regarding some matters in controversy so far as his Court was concerned

PRELIMINARY DECREE—contd

the decision on each of the issues was therefore sufficient to constitute a preliminary decree *Per Curiam* It is the duty of the Court where it is applied to after the passing of a preliminary decree to have the decree drawn up as to enable the party aggrieved to appeal *Eas Dulah v Shah Vishrab Marondar* I L R 31 Bom 189 referred to *SIDHANATH DHOONDEY v GAYE H GOVIND* (1912) I L R 37 Bom 60

————— Finding that a suit is not res judicata A decision that a matter is not res judicata is not a preliminary decree *Chor malwams v Gangadharappa* I L R 29 Bom 339 followed *BHARNA DEVI SUNDATTA v BHAI GAYDA* (1914) I L R 30 Bom 421

————— Appeal—final decree passed before appeal from preliminary decree disposed of When an appeal has been filed and is pending against a preliminary decree in a suit for partition, the passing of the final decree does not render the appeal untenable *Per SHARF UDDIN J*—A preliminary decree retains its force as such even after the passing of the final decree A preliminary decree is not extinct after the passing of the final decree and the final decree instead of extinguishing the preliminary decree gives effect to it *BIBI WAMIDUN K A R DEEF NARAIN PRASAD* 1 Pat L J 408

PRELIMINARY INQUIRY

- See COMPLAINT DISMISSAL OF I L R 40 Calc 444
 See COURT HEARING OF I L R 37 Calc 642
 See PERJURY I L R 42 Calc 240
 ————— by an Assistant Settlement Officer—
 See JUDICIAL PROCEEDING I L R 37 Calc 42

PRELIMINARY MORTGAGE DECREE

- See LIMITATION I L R 42 Calc 776

PRELIMINARY ORDER

- defective effect of—
 See CRIMINAL PROCEDURE CODE 1898, s 145 435 to 439 I L R 39 Mad 275

PRELIMINARY POINT

- See CIVIL PROCEDURE CODE (1908) O XXI r 23 I L R 39 All 165
 See RIVNAND I L R 43 Calc 143

PPE-MORTGAGE

- See PRE-EMPTION I L R 34 All 418

PREPARATION

- See DECEIT I L R 41 Calc 350

PREROGATIVES

- See HAPPA COURT I L R 44 Calc 459

PRESCRIPTION

See EASEMENT I L R 42 Calc 164
I L R 45 Bom 1027

See EASEMENT ACT (V OF 1882) s 10
I L R 39 Mad 303

— non riparian owner—

See EASEMENTS ACT (V OF 1882) ss 2 (c)
AND 17 (c) I L R 42 Bom. 238

— Prescription proof of acquisition of title by—Acts necessary to prove prescriptive right as trustee of tank—Such right not acquired by acts of conservancy maintaining and repairing etc. A prescriptive right as trustee of a tank the common property of a village cannot be acquired by performing acts of conservancy clearing and maintaining the tank building flights of steps sluices etc enjoying the fruits of trees in the bund selling withered trees and similar acts. *Muthayya v Siraraman* I L R 6 Mad 79 followed. *Sriraman Chetty v Muthayyan Chetty* I L R 12 Mad 741 743 followed. *KABUTHAN CHETTY v KALINUTHAN* (1910)

I L R 34 Mad 323

— Water rights—Reservoir in another's land—Prescriptive right to take water by defined channels—Reservoir fed by surface water—Excavation by one not affecting supply of surface water if actionable. The defendants had by prescription acquired the right to take water for the irrigation of their lands by two defined channels running toward from an ahar or reservoir in plaintiffs mouzah and fed by water coming to it by a defined channel from the north west and surface water from the north south and east. Held that the plaintiffs had every right to cut in their own mouzah a pyne or channel which in no way interfered with the passage of water to the ahar through the channel from the north west although it might result in drawing off the supply of surface water to the ahar to such an extent as would diminish the quantity of water available to the defendants for irrigating their lands. *INDRANATH PENTAP BAHADUR SASTRI v KRISHNA DOYAL GIR* (1910) 14 C W N 825

PRESSENTATION

See COMPLAINT I L R 42 Calc 19

See REGISTRATION ACT (III OF 1877)
s 37 I L R 34 All 355

See REGISTRATION ACT (XVI OF 1906)—

s 32 I L R 35 All 72, 134

ss. 37 38 71 73 s 87 89

I L R 40 All 434

PRESIDENCY BANKS ACT (XI OF 1876)

s 32—Succession Certificate Act (III of 1882) ss 16 and 17—Dividends on shares may be paid to the person obtaining succession certificate—Transfer of shares to the holder of certificate or his nominee—Case stated for opinion of Court—Criminal Procedure Code (Act I of 1908) s 90 and O XXVII. The provisions of s 23 of the Presidency Banks Act of 1876 do not prevent the Banks from accepting the succession certificate granted under the Succession Certificate Act. The certificate affords full indemnity to all the persons who are liable on the securities specified in the certificate as regards all dealings in good faith in respect of such securities. Held

PRESIDENCY BANKS ACT (XI OF 1876)—
concl'd

s 32—*concl'd*

accordingly the Banks will not be contravening the provisions of the Act if they pay the dividends on the shares in the Banks to the person obtaining the certificate and on his requisition transfer the said shares to him or his nominee. *RANJIT SINGHJI v THE BANK OF BOMBAY* (1920)

I L R 45 Bom 138

ss 36 37—Directors lending on the unauthorized securities (e.g.) mortgage of immovable property not ultra vires of the bank. The provisions of s 37 of the Presidency Banks Act (XI of 1876) prohibiting the directors of such Banks from entering into certain kinds of transactions therein mentioned such as taking mortgages of immovable properties are only directory and not mandatory and they prohibit only the directors and not the banks from entering into them and if such transactions are actually entered into by the directors on behalf of the bank they are not ultra vires of the bank. The directors are only agents of the bank and if in entering into such transactions they exceed the powers given to them by the Act the bank can ratify them and enforce them and an assignee (as in this case) from the bank of its rights under such transactions is equally entitled to enforce them. *DAMODAR SHANBOOYE v PABIA ROW* (1918)

I L R 39 Mad. 101

PRESIDENCY MAGISTRATES

See PIERCEAL TRIAL

I L R 42 Calc 313

— jurisdiction of—

See COMPANY I L R 45 Calc 490

— notes of depositions—

See COPIES 15 C W N 770

— courts of—jurisdiction of inter se

—Transfer High Court has power of from Court of Chief Presidency Magistrate to Court of another Presidency Magistrate—Criminal Procedure Code (Act V of 1898) s 21 cl (2) 526 cl (ii) Charter Act (1865) s 15. The Court of the Chief Presidency Magistrate and those of the other Presidency Magistrates are Courts of equal jurisdiction within the meaning of s 620 cl (ii) Criminal Procedure Code (Act V of 1898). The High Court has power to transfer a case from the file of the Chief Presidency Magistrate to that of another Presidency Magistrate. *In re VENKAT SWARA SASTRI* (1919) I L R 35 Mad. 759

— Jurisdiction within Port of Calcutta

—Unauthorized erection of wall on the shore on the right bank of the Hooghly—Demolition of complainant for offence of complainant—Complainant present at the time by mistake in and in Court—Acquittal—Criminal Procedure Code (Act V of 1898) ss 0 47—Calcutta Port Act (Penna III of 1860) ss 105 and 109. A Presidency Magistrate has jurisdiction under s 20 of the Criminal Procedure Code read with s 139 of the Calcutta Port Act (Penna III of 1860) to try an offence under s 24 of the latter committed outside the limit of the town sit within the limits of the port of Calcutta. Where a complainant was present in the Court of a Magistrate who had previously dealt with the case under the belief that it would

PRESIDENCY MAGISTRATES—concl'd

be heard by him but it was taken up and dismissed under s 247 of the Code by the Chief Presidency Magistrate without the knowledge of the complainant—*Held* that the order of acquittal under s 247 ought in the circumstances of the case to be set aside W J GOOD & GURPAT PATE KHEMKA (1919) I L R 47 Cal 147

PRESIDENCY SMALL CAUSE COURT

judgment of—

See APPEAL I L R 41 Cal 323

Rules of—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) ss 9 AND 38

I L R 36 Mad 823

suit in—

See SANCTION FOR PROSECUTION

I L R 44 Cal 816

Jurisdiction—Fraud

Where a decree was passed by the Presidency Small Cause Court and a suit was instituted in the Court of a Munsif to set aside the decree on the ground of fraud *Held* that the jurisdiction to entertain such suits must be determined by the Civil Procedure Code and the suit must be brought either in the Court within whose jurisdiction the fraud was perpetrated or within whose local jurisdiction the defendant ordinarily resides and personally works for gain *Alimoney Barnal v Pudo Lohan Chakrabarty* 5 W R Act X 50 referred to *Held* further that the suit was maintainable in the Munsif's Court and the jurisdiction of the Presidency Small Cause Court to vacate its own decree when the same has been obtained by fraud is not sufficient to oust that of another Court to set aside the decree *Sarihakram Maht v Aundo Ram Maht* 11 O W N 579 referred to The plaintiff in such a suit must allege fraud by which he was prevented from placing his case before the original Court He cannot bring a fresh action by merely alleging that the decree was obtained by the perjury of the person in whose favour it was given *Moham A Golab v Mohomed Salisman* I L R 41 Cal 612 referred to *ABDUL HUSSAIN CHOWDHURY & ABDUL HAYZ* (1910)

14 C W N 695

New Trial—Powers of

Each sitting on application for new trial—Jurisdiction—Practice—Questions of fact and of law—Presidency Small Cause Courts Act (XV of 1882) ss 7 and 33—Amendment Act (I of 1895) s 17—Civil Procedure Code (Act V of 1908) 115 The Second Judge of the Presidency Small Cause Court having dismissed a suit after trial the plaintiffs applied under s 33 of the Presidency Small Cause Courts Act for a new trial and the Judges (the Chief and the Second) on such application set aside the order of dismissal and transferred the suit to the Third Judge to be tried by him On a motion to the High Court by the defendants to set aside the order for new trial *Held* that s 33 of the Presidency Small Cause Courts Act gives the Court power *inter alia* to order a new trial to be held and that there is no limitation in s 33 that the Court can only

PRESIDENCY SMALL CAUSE COURT—concl'd

exercise the power if a question of law arise *Sassoon v Hurry Das Bhukut* I L R 24 Cal 455 referred to *JOHAN SMIDT & RAM PRASAD* (1911) I L R 38 Cal 425

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—

Jurisdiction of Presidency Small Cause Courts—Claim by a Parsi wife to recover costs incurred by her in a matrimonial suit—Arrears of maintenance at the rate fixed by arbitrators—Award—Practice and procedure A suit by a Parsi wife to recover costs incurred by her in a matrimonial suit and to recover arrears of maintenance at a rate fixed by arbitrators in their award is one cognizable by the Presidency Court of Small Causes *ENACH BAW & DITRAY* (1920) I L R 45 Bom 218

= 6, 41—

See APPEAL I L R 41 Cal 323

= 9 38—

See NEW TRIAL

I L R 47 Cal 763

New trial application for—Right of a party to apply—Presidency Small Cause Court Rules O XXI r 2 ultra vires—High Court power of to make rules—Matters of practice or procedure—Right of a party to apply not a matter of practice or procedure The rules of the Presidency Small Cause Court are made by s 9 of the Presidency Small Cause Courts Act of 1892 as amended by the Act of 1895 That section only empowers the High Court to make rules with reference to matters of practice or procedure and not matters of substantive right On a true construction of s 38 of the Act the power given to the Court is really a right given to a party to apply for a new trial such right like the right of appeal is not a matter of practice or procedure O XXI r 2 of the Presidency Small Cause Court Rules which requires at the time of presenting an application for new trial either the deposit in Court of the decree amount or the giving of security for the due performance of the decree is inconsistent with the statutory right given by s 33 of the Presidency Small Cause Courts Act and is ultra vires *Attorney General v Sillen* 11 E R 1900 s r 10 H L C 704 referred to *Colonial Sugar Refining Company v Irving* (1905) A C 369 referred to *MADURAI PILLAI & MUTHU CHETTI* (1914) I L R 38 Mad 893

= 19 (g)—Suit for stones of a well or their value—Title to the well questioned—Jurisdiction of the Small Cause Court Suit to recover stones forming part of a well and soil to have been wrongfully removed by the defendant or their value is cognizable by the Presidency Small Cause Court in spite of the fact that it is necessary to determine the question of title to the well *Pullangouala v Aikantil Kala Purgade* (1913) I L R 3 Bom 65 followed *Tajul Fajr v Isam Ison* (1891) I L R 30 P 150 considered and distinguished *KRIKA MACHARI & KOMALANMAT* (1910)

I L R 31 Mad 892

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—contd

—s 19 cl (s)—*Jurisdiction—Unsuccessful claim proceedings—Suit to recover movable property attached by the Presidency Small Cause Court or for payment of its value—Not a suit for a mere declaration—The Small Cause Court Rules—Claim petitions—Civil Proc Jure Code (Act I of 1905)* A suit by the unsuccessful party in claim proceedings to recover movable property attached by the Presidency Small Cause Court or for the payment of its value is not excluded from the jurisdiction of the Presidency Small Cause Court under s 19 cl (s) of the Act as a suit for a declaratory decree. The statutory suit to establish his right given to the unsuccessful party in claim proceedings under the Code involves in every case a prayer for the setting aside of a summary order of a Civil Court, this being so such a suit cannot be regarded as a suit for a mere declaration. *Phulkumar v Ganeshyam Mirra I I R 35 Calc 9 735* followed. The Small Cause Court rules reproduce the provisions of the Civil Procedure Code as to claim petitions and cases under them must be governed by the same considerations. *RAJAMMAL v NARAYANASWAMI NAIGER (1910)* I I R 39 Mad 219

—s 22—

See COSTS I I R 43 Calc 190

—s 31 cl (b)—

See EXECUTION OF DECREE

I I R 37 Calc 574

—ss 37 38—

See CRIMINAL PROCEDURE CODE s 195

I I R 34 Bom 316

—Sanction to prosecute—

Order granted by single Judge—Powers of Full Court to revoke the sanction—Full Court not an Appellate Court Where a sanction to prosecute has been granted by a Judge of the Presidency Small Cause Court at Bombay a Full Court of that Court has no power to revoke the sanction. *Per CHANDAVANBEAR J*—The language used in ss 37 and 38 of the Presidency Court of Small Causes Act (XV of 1882) does not appear to be appropriate for the purpose of conferring appellate jurisdiction upon the Full Court. *Per BATCHELOR J*—The jurisdiction conferred by s 38 of the Act is not appellate but revisional only. *SHIVLAL PADMA In re (1909)*

I I R 34 Bom 316

—ss 37 38—

See PRESIDENCY SMALL CAUSE COURT

I I P 35 Calc 425

—s 38—

See s 0 I I R 38 Mad 823

I I R 47 Calc 763

—New trial power of

Court to order—Judgment against weight of evidence S 38 of the Presidency Small Cause Courts Act (XV of 1882) places no limitation upon the power of the Court to order new trial in a matter when the judgment is manifestly against the weight of evidence, such power is not restricted to questions of law only. *Sadasook Cambir Chund v Kannayya I I R 19 Mad 96* and *Srinivasa Charlu v Balaji Rao I I R 21 Mad 732* approved. *Ramasamy Isyar v The Madras Times Limited 30 Mad L J 207* overruled. *SAI SIKANDAR POWTHIR v GHOSHMOHIDIN MARAKALAR (1916)* I I R 40 Mad 355

16 C W R 25

—Full Bench of the Small

Cause Court no power to decide facts—Held

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—contd

by the Full Bench that a Full Bench of the Presidency Small Cause Court sitting under s 38 of Act XV of 1882 has no jurisdiction to decide questions of fact whether they are raised generally or in consequence of its finding on another question of fact or law. *Sadasook Cambir Chund v Kannayya I I R 19 Mad 96* and *Srinivasa Charlu v Balaji Rao I I R 21 Mad 732* approved. *Ramasamy Isyar v The Madras Times Limited 30 Mad L J 207* overruled. *SAI SIKANDAR POWTHIR v GHOSHMOHIDIN MARAKALAR (1916)* I I R 40 Mad 355

—New trial—Full Court

—Difference of opinion on questions of fact—Powers of interference—Powers not restricted to questions of law only—Jurisdiction S and D filed cross suits in the Presidency Small Cause Court. The trial Judge allowed S's suit and dismissed that of D. D obtained a Rulo for new trial and the same coming up for argument before the Chief Judge and the trial Judge there was a difference of opinion between the learned Judges on questions of fact. In this division the order of the Chief Judge prevailed with the result that D's claim was wholly allowed and that of S disallowed. Against this order S applied in revision to the High Court contending that under s 38 of the Presidency Small Cause Courts Act 1882 the Full Court had no jurisdiction to make the order because they had no appellate powers on a question of fact and upon such questions their powers of interference were limited to cases where the judgment of trial Court was manifestly against the weight of evidence. Held that the Full Court had jurisdiction as the powers conferred under s 38 of the Presidency Small Cause Courts Act 1882 were not restricted to interference on questions of law only. *Per BATCHELOR J*—There is nothing in the wording of the section which suggests that the Legislature intended to confine the powers thus generally granted to particular cases where questions of law are involved nor can it be accurately said that the powers of interference are only to be used where the original judgment is manifestly against the weight of the evidence. *BOYCOO NARAYAN v DEENAR JAGANNATH (1917)*

I I R 42 Bom 80

—s 41—

See APPEAL I I R 41 Calc 323

—ss 41–49 and Ch VII—

See BOMBAY PEST (WAT PESTICIDATIONS)

ACT (NO II OF 1918)—

ss 9 AND 10 I I R 45 Bom 828 1048

—ss 43 and 48—

See BAILIFF I I R 42 Calc 313

—s 43—Order for possession—

Cause Court has no jurisdiction to amend terms of decree or order passed under Ch. VII—Pest (Wat Pesticidations) Act (Dom. Act II of 1918) On the 21st January 1920 a decree for possession was made in favour of the petitioner by the Presidency Small Cause Court on the ground that the premises were vacant and bond vide required and the opponent was ordered to vacate by the 21st June 1920. On the 10th June 1920 the opponent applied for further

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—*contd*

— s 43—*concld*

time and was granted time till the 9th July. Thereafter on a further application by the opponent the Court stayed execution till the 20th October 1920. The petitioner having applied to the High Court under its revisional jurisdiction—*Held* setting aside the order that the Small Cause Court had no jurisdiction to alter or amend the terms of a decree or order for possession once passed under s 43 of the Presidency Small Cause Courts Act 1882 nor was there anything in the Rent Act which gave the Small Cause Court any power to alter its orders for possession made in due course. **JAMSHEDJI HORMASJI v GORDHANDAS GOKULDAS (1920)**
I L R 45 Bom 1048

— s 48—*Orders made in proceeding under Ch VII—Review—Power of the Court to review the order—Civil Procedure Code (Act V of 1908) ss 8 114 and O XLVII* The Presidency Small Cause Court has no jurisdiction to review its decision in a proceeding under Ch VII of the Presidency Small Cause Courts Act 1882. *Per MACLEOD O J*—S 48 of the Presidency Small Cause Courts Act 1882 means that in the proceedings themselves under Ch VII the provisions of the Code shall apply as far as possible that is to say until an order is made granting or dismissing the application and while any further proceedings which might become necessary in execution of the order are being taken. To go a step further by stating that any other provisions of the Code with regard to appeals or reviews apply would not be warranted by the words of the section. *Per FAWCETT J*—The expression proceedings under Ch VII should be construed as referring simply to the proceedings for the actual hearing of the case on its merits which are terminated by an order either refusing the application or granting possession. It is a further stage and in reality a separate proceeding when the Court after passing such an order is asked to review the order. **FRAMROZ DOSABHAI v DALSUKHBHAI FULCHAND (1920)**
I L R 45 Bom 972

— s 69—

See CAUSE OF ACTION

I L R 41 Cal 825

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) s 17

I L R 39 Mad 869

Limitation Act (IX of 1908) s 20 proviso—Part payment of principal—Literate debtor—Part payment signed but not written by him—Whether sufficient compliance within the proviso When two or more Judges of the Small Cause Court are sitting together for the purpose of exercising the jurisdiction conferred by s 39 of the Presidency Small Cause Courts Act (XV of 1882) they are sitting in a suit within the meaning of those words in s 6) and if a reference is made to the High Court under its provisions such reference is valid. (2) of the Limitation Act requires that in the case of a part payment of the principal of a debt the entry or line the payment should be written by the person who makes the payment when such person knows how to write his mere signature to the entry written by another is not a

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—*concld*

sufficient compliance with the section. **Joshi Bhai Shankar v Bai Parvat I L R 26 Bom 216** **Jama v Jaga Bhana I L R 28 Bom 262** and **Mulki Haji Bahmutulla v Cowry Bhuja I L R 23 Cal 546** followed. **Sesha v Seshaya I L P 7 Mad 55** and **Ellappa v Annamalai I L R 7 Mad 76** distinguished. **LODD GOVINDOSS KRISHNADOSS v RUKMANI BAI (1913)**
I L R 38 Mad 433

— s 88—

See PRESIDENCY SMALL CAUSE COURTS ACT
I L R 38 Cal 425

— s 104

See FRAUD 14 C W N 695

PRESIDENCY SMALL CAUSE COURTS (AMENDMENT) ACT (I OF 1895)

— s 18

See PRESIDENCY SMALL CAUSE COURTS ACT
I L R 38 Cal 425

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)

See INSOLVENT I L R 45 Bom 550

— ss 5 8 36 101 sec 18 Sch II—*Appeal time within which to be filed—Signing of the findings and of the report—Jurisdiction of the Registrar in Insolvency—Validity of a mortgage whether could be decided by the Registrar—Consent when infants are concerned effect of* Under s 101 of the Presidency Towns Insolvency Act 1909 the period of limitation for an appeal from the order of the Registrar in Insolvency is twenty days from the time when the report is signed by the Registrar and the matter is thereby completed and not from the time when the findings of the Registrar are signed or filed. The Registrar in Insolvency has no jurisdiction to deal with the question of validity or otherwise of a mortgage alleged to have been executed by the insolvent. **re LALBHARAI SHAH**
28 C W N 631

— ss 6 8 25 38 39 (2)—(a) (b) (c) (d) (f) (j)—*Protection order—Appeal lies against a protection order—Opposing creditor that is not a decree holder a person aggrieved by the protection order—Protection order a privilege to be granted or withheld according to the character and circumstances of the insolvency—Insolvent guilty of malpractices not entitled to protection* Under s 8 cl (2) (b) of the Presidency Towns Insolvency Act (III of 1909) an appeal lies from a protection order made by a Judge in the exercise of the insolvency jurisdiction. It does not appear from s 8 of the Presidency Towns Insolvency Act that the Legislature wished to put any limitation upon appeals made from original orders of a Judge except perhaps orders regulating procedure. The expression any person aggrieved in cl 2 of the last mentioned section is not to be limited to a creditor who has obtained decrees against the insolvent. Every application for protection after refusal or suspension of discharge must be judged on its merits. If the insolvent has acted recklessly and dishonestly the fact that he cannot pay is no reason for depriving the

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd

ss. 6 8, 25 38, 39 (2)—*concl'd*

creditor of the power of punishing him by attachment and imprisonment to the extent the law allows. A protection order is a privilege to be granted or withheld as the Court in its discretion may determine. In exercising that discretion, it is relevant and proper for the Court to have regard to the character and circumstances of the insolvent. Where a Court finds that the insolvent is of a habitually culpable kind being the result of gross extravagance accompanied by grave malpractices and a total disregard of the creditors whose money was squandered protection ought to be refused. *Varri v Ingram* 13 CA D 338 and *In re Cent. Genl Davis v Harris* 40 CA D 190 195 referred to. **MAHOMED HAJI ESSACK v SHAIK ABDUL FAHMAN** (1915)

I L R 40 Bom 461

ss. 6 27 38 121—*Indian Insolvency Act (11 & 12 Vict c 21) s 3—Bombay Insolvency rules under Indian Insolvency Act r 37—Officer appointed by the Ch of Justice under s 6 of the Presidency Towns Insolvency Act—Attorneys right of audience. The petitioner complained that in certain proceedings before the officer appointed under s 6 of the Presidency Towns Insolvency Act namely on the holding of the public examination of insolvents under s 27 of the Act and the examination of persons summoned by the Court under r 38 such examinations had been conducted by solicitors. The petitioner submitted that for reasons set forth in the petition solicitors had no right of audience before the said officer and petitioned the Chief Justice of the Bombay High Court to form a Special Bench for the determination of the question whether any legal practitioner except counsel had the right to audience before the officer so appointed. Held that attorneys of the High Court have a right of audience before the officer appointed by the Chief Justice in the exercise of the powers conferred upon him under s 6 of the Presidency Towns Insolvency Act. *In re Advocate General of Bombay* (1913)*

I L R 37 Bom 464

ss. 6 101, Sch II, s 18—

See *INSOLVENCY* I L R 47 Calc 721

ss. 7 36 and 90—11 and 12 Vict, cap 21, s 28—*Immovable property situate outside local limits of ordinary original civil jurisdiction of High Court—Dispute as to title—Jurisdiction of High Court in insolvency to decide—Summary procedure when—Letters Patent cl 12 and 13—Bankruptcy Act (46 & 47 Vict cap 52 of 1933) s 10. Under s 7 of the Presidency Towns Insolvency Act (III of 1909) the High Court of Madras in the exercise of its insolvency jurisdiction has jurisdiction to adjudicate on claims relating to immovable property situate outside the limits of its ordinary original civil jurisdiction the jurisdiction which existed under s 26 of 11 & 12 Vict cap 21 has not been cut down by the Presidency Towns Insolvency Act. The jurisdiction conferred by s 7 of the Act is of a discretionary character and it is seldom that the Insolvent Court will deem it expedient to try difficult questions of title. The Judge in such cases would ordinarily ask the Official Assignee in Insolvency to establish his title in an*

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd

ss. 7 36 and 90—11 and 12 Vict, cap 21 s 26—*concl'd*

ordinary Civil Court. S 36 of the Act does not control the language of s 7 but provides a special and summary procedure in certain cases nor does s 90 curtail the jurisdiction otherwise exercisable by the Insolvency Court. Decisions on the Bankruptcy Act (46 & 47 Vict cap 52 of 1883) s 102 corresponding to s 7 of the Indian Act III of 1909 are relevant and should be followed. Cl 12 of the Letters Patent does not control the provisions of cl 18 thereof so as to limit the insolvency jurisdiction of the Court. *Ex parte Dickin* *In re Pollard* L P 8 Ch D 377 378. *Ex parte Brown* *In re Bates* L R 11 Ch D 143 followed. *Maula v Datta* *In re Motion* L R 11 Ch App 123 210. *In re Lucas* I L R 4 Calc 109. *Ganesha Lalani* *In re R D Saha* v R S D Chopra I L R 32 Bom 295. *Khan Sahib Banga Abdul Kadir Sahib v The Official Assignee* 14 Mad L T 61 referred to. **ABDUL KHADER v THE OFFICIAL ASSIGNEE OF MADRAS** (1916)

I L R 40 Mad 810

ss. 7 86—*Official Assignee—Third person's property taken in custody by Official Assignee—Suit by stranger—Civil Court—Right of suit. Where the Official Assignee takes into his possession property as belonging to the insolvent which a third party claims as his own the latter can bring a suit against the Official Assignee in a Civil Court to establish his right. *NATIONAL CHINLAL v THE OFFICIAL ASSIGNEE* (1911)*

I L R 35 Bom 478

ss. 3—

See s 6 I L R 40 Bom 461

See *INSOLVENCY* I L P 43 Calc 248

ss. 8 35—*Rules (Calcutta) under Presidency Towns Insolvency Act rr 17 18 19 and 30—Ex parte order for examination of a person if could be made—Power of the Registrar in Insolvency to make such an order—Procedure when the witness refuses to answer questions—Appeal from an order of Judge in Insolvency—Application under s 36 (1) of the Presidency Towns Insolvency Act 1919 could be and are intended to be made ex parte. To such an application r 30 of the rules framed by the High Court under s 112 of the Act applies and not rr 17 18 and 19. *In re Assory Mohan Roy* I L R 44 Calc 286. *See also C W N 1150* (1916) followed under s 6 (d) and (e) of the Act the Registrar in Insolvency has power to deal with such an application. An application to the Court to set aside an order made by the Registrar in Insolvency under s 36 (1) is not an appeal under cl (2) of s 11 but an application under cl (1) for the review of an ex parte order. The course to be adopted if the person summoned is advised not to answer questions put to him indicated. *PER ALBERT KALEL SELDASA PAT SPANAL KARNANI BANADER v THE OFFICIAL ASSIGNEE OF CALCUTTA* 25 C W N 750*

ss. 9 (d) III—*Adjudication on petition for what to contain—Letters Patent when to be given. A petition for adjudication in bankruptcy alleged that the debtors did part from their place of business and were deceiving their creditors so as to deprive the creditors of means of communicating with them.*

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

§ 8 (d) III—*concl'd*

petitioners are advised and believed that the said insolvents are liable to be adjudged to have committed an act of insolvency. An affidavit in support of this petition alleged the indebtedness of the debtors and that they had left Madras leaving no one in charge of their respective business and are secreting themselves for the purpose of evading their creditors. *Held* that these allegations were a sufficient compliance with s 8 (iii) of the Insolvency Act. The statement of intent to defeat or delay the creditors must apper either in the petition or in the affidavit otherwise the petition is liable to be dismissed as the omission to state it is a substantial defect incurable by amendment. An omission to state the fact that the petitioning creditor is a secured creditor and the value of his security as required by s 12 (2) and s 21 is one that could be cured by amendment. *WHITE C J*—Leave to amend a petition by inserting new causes of action should not be given at a time when by doing so the Court would be depriving the defendant of the plea of limitation. *WALLIS J (dissenting)* whether under peculiar circumstances leave could not be given in such cases. *Per WALLIS J*—The passage (in the petition) conveys with sufficient certainty that the debtors committed an act of insolvency by leaving their place of business and residence with intent to defeat and delay their creditors. But if that act of insolvency is not expressed with sufficient certainty we are at liberty to look at the affidavit and after reading the petition with the affidavit to find that the act of insolvency is charged with sufficient certainty. *Ex parte Coates* in re *Skelton* 5 Ch D 979 distinguished. *GUNNIS & Co v MAHOMED AYYUB SANIN* (1913) I L R 37 Mad 555

§ 8 (e) 10—Partnership debt—

Attachment of property in execution of a joint decree against partner—Property claimed on behalf of an endowment—Enquiry as to whether property attached was really judgment debtors if essential—General Clauses Act (X of 1897) s 13—Act or default if to be personal of person sought to be adjudicated—Delay in applying for annulment § 9 (e) of the Presidency Towns Insolvency Act requires that the act or default which amounts to an act of insolvency must be a personal act or default of the particular individual or in certain circumstances of his agent. Where properties alleged to belong to three judgment debtors remained under attachment in execution of a joint decree against them for more than 21 days. *Held* that this alone could not be relied on as an act of insolvency on the part of H one of the co judgment debtors when in the execution proceeding claim was laid to what was alleged to be his share of the property on behalf of an endowment and that claim was pending when the adjudicating order was made against him and the other co judgment debtors. On an application by H for annulment of the adjudication. *Held* that the above act of insolvency on the part of H co judgment debtors could not be regarded as an act of insolvency on the part of H. *Held* that it was necessary to inquire whether the property attached was in fact the applicant's. An objection that at the application for annulment was not made till after the lapse of a considerable time

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

§ 9 (e) 10—*concl'd*

having been raised for the first time on appeal. *Held* that there being no bar of limitation in the matter this objection taken at this late stage should not be entertained. *HARISH CHANDRA MUKERJEE v THE EAST INDIA COAL CO LD* (1912) 18 C W N 733

§ 13 (8) 15 (2) and 21 (1)—Adjudication annulment if when Court has jurisdiction to pass order for—Debts necessity that all debts of the insolvent actually and properly proved in the bankruptcy should have been fully paid in cash—Conduct of insolvent applying for annulment of an adjudication order duty of Court to scrutinize—Discretion of Court how exercised. A debtor who has been adjudicated insolvent on his own petition cannot even with the leave of the Court withdraw his petition. § 15 (2) of the Presidency Towns Insolvency Act only applies to petitions that are pending before any order has been made as also does s 13 (8) dealing with petitions by creditors. Once an order of adjudication has been made the debtor becomes an insolvent and remains so until the order of adjudication is annulled or he obtains his discharge. The Court can only annul the order of adjudication under s 21 of the Act if the Court is of opinion that the debtor ought not to have been adjudicated in the event or it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full and in the latter case the debts including at least all debts actually and properly proved in bankruptcy must have been fully paid in cash. It is the duty of the Court to scrutinize the conduct of an insolvent applying for an order of annulment. The Court is given a discretion by s 21 and it would not be a good exercise of that discretion to make an order of annulment of an adjudication where if the insolvent were applying for his discharge an order of discharge would not be granted. *In re Keet* (1905) 2 K B 666 661 applied. *In the matter of MANDRAS CAVAL* (1912) I L R 33 Bom. 200

§ 14, 15 21, 33—

See INSOLVENCY I L R 11 Cal 899

§ 15—

See s 13

See INSOLVENCY I L R 11 Cal 899

§ 17—

Leave of Court—Power of secured creditor of adjudicated insolvent to realise his security by means of a regular suit without obtaining leave. A having obtained a decree in a suit brought by him against B for the payment of a sum of money assigned the decree to C by way of mortgage to secure the repayment of monies advanced by C to A. Subsequently A became insolvent and his property being vested in the Official Assignee the latter executed the decree against B and obtained payment of the amount due from B in full. Subsequently C without the leave of the Court first obtained brought a suit against the Official Assignee to recover the amount due to him as mortgages of the decree against B out of the monies so recovered by the Official Assignee. *Held* that the Official Assignee having executed a decree which had been assigned by way of

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd**s 17—contd**

security was in the position of a mortgagor who had sold the mortgaged property and was in possession of the sale proceeds that until the claim of the mortgagee had been satisfied the insolvent or his Official Assignee had no right to the proceeds of the decree and that the secured creditor in such a case might file a suit to obtain payment of his claim out of the amount so recovered by the Official Assignee without obtaining the leave of the Court under s 17 of the Presidency Towns Insolvency Act as the proviso to s 1 covered a suit by a mortgagee to realise his security. **LAL & HETULABHAI ISMAILJI (1313)**

I L R 33 Bom 359

Suit by creditors against an adjudged insolvent—Suit commenced without the leave of the Court—Application for leave after the institution of the suit—Application refused. The leave contemplated under s 17 of the Presidency Towns Insolvency Act (III of 1909) is leave which ought to be obtained before the commencement of a suit and cannot be granted after the same is filed. **In = DWARKADAS TER BHANDAS (1915)**

I L R 40 Bom 235

Decree of Presidency Small Cause Court—Judgment debtor adjudged insolvent subsequent to decree—Adjudication by the High Court—Application for execution by arrest in the Presidency Small Cause Court—Leave of the High Court not obtained—Release of judgment debtor on security—Non appearance effect of—Security bond validity of—Jurisdiction—Water—Presidency Small Cause Courts Act (XV of 1862) s 69. Where a decree was passed by the Presidency Small Cause Court against a person who was subsequently adjudicated an insolvent by the High Court in the exercise of its insolvency jurisdiction the former Court had no jurisdiction without the leave of the High Court to entertain any application for execution of the decree against the insolvent under s 17 of the Insolvency Act III of 1909. Consequently a security bond executed to the Court by a third party for the appearance of the judgment debtor in the course of the execution proceedings carried on without the leave of the High Court was obtained without jurisdiction and was void in law. A reference to the High Court under s 69 of the Presidency Small Cause Courts Act should state clearly the points on which there is a difference of opinion among the Judges of the Small Cause Court. **EASWARA & GOVINDARAJULU NAIDU (1915)**

I L R 39 Mad. 689

s 17 22 and 51—Adjudication by different Courts—Later adjudication based on earlier acts of insolvency—Vesting of property under prior adjudication—Official Assignee whether divested by later adjudication—Convenience of administration of assets by one Court—Annulment of adjudication in the other necessity for—Order of adjudication—Specification of acts of insolvency therein necessity for. Where there are successive adjudications in insolvency by two Courts all the property of the insolvent vests in the Official Assignee appointed by the Court in which the prior adjudication was made and it will not be divested from him by the subsequent adjudication of the other Court even if the later adjudication be based on acts of insolvency committed

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd**ss 17 22 and 51—contd**

earlier in date than those upon which the prior adjudication was made. Where it is found convenient that the estate should be administered by the Court in which the later adjudication was made steps should be taken to annul the prior adjudication. S 51 of the Presidency Towns Insolvency Act (III of 1909) which enacts the doctrine of relation back is intended to enable the Official Assignee to recover property in the hands of third parties and has not the effect of divesting property vested in an Official Assignee under a prior adjudication. *Ex parte Geddes*. In re *Mauat* 10 & J 413 followed. An order of adjudication should specify the precise acts of insolvency on which it is made as the insolvency relates back to the date of the acts of insolvency which are found to have been proved. **OFFICIAL ASSIGNEE OF MADRAS & OFFICIAL ASSIGNEE OF RANGOON (1918)**

I L P 42 Mad 121

ss 17 103 and 104—Adjudged insolvent—Criminal proceedings against the insolvent—Penal Code (Act XLV of 1860) s 421—Sanction of Insolvency Court not obtained—Jurisdiction of Magistrate—Suit or other legal proceeding—Interpretation of. A person in insolvent circumstances applied to the Insolvent Debtors Court at Bombay for relief under the provisions of the Presidency Towns Insolvency Act 1909 and was adjudicated an insolvent. Ten days later a creditor of the insolvent without having obtained any sanction from the Insolvent Debtors Court filed a complaint against the insolvent in the Presidency Magistrate's Court for an offence punishable under s 421 of the Indian Penal Code 1860. It was contended that the Magistrate had no jurisdiction to entertain the complaint. *Held* that the Magistrate's jurisdiction to try the insolvent for an offence under s 421 of the Indian Penal Code 1860 was not taken away by anything contained in the Presidency Towns Insolvency Act 1909. The expression or other legal proceeding in s 17 of the Presidency Towns Insolvency Act 1909 coming after the word suit a word of more limited application must be construed on the principle of *quodam generis*. It therefore includes only proceedings of a civil nature. **ENTERON & MULSHANKAR HARINDR BEAT (1910)**

I L R. 35 Bom. 63**ss 17 126—****See INSOLVENCY I L R 40 Cal. 78**

s 18 (3)—Suit on a promissory note against an adjudged insolvent—Proceedings against an insolvent may be stayed although not pending at the time of the order of adjudication—Proceedings against an insolvent stayed although leave to sue was obtained under s 17—Discret on of the trial Court in staying proceedings not to be interfered with where interference would involve abuse of judicial proceedings. The wording of s 18 (3) of the Presidency Towns Insolvency Act III of 1909 is wide enough to justify a stay of proceedings in an action which was not pending at the time of the order of adjudication. **10 of the English Bankruptcy Act and *Brocas v. Far* 55 L T 35 referred to. VARADHARAJU NAIDU & ARDEL RAHMAY (1916)**

I L R. 41 Bom 312

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

■ 21—

See s 13 I L R 38 Bom 200

See ADJUDICATION ANNULMENT OF
I L R 47 Calc 914

ss 21 ~~18~~ to 30—*Private arrangement of insolvent with creditors for full discharge on part payment whether payment in full or composition under the Act* A private arrangement of the insolvents to pay four annas in the rupee in full satisfaction of their claims even though made with all their creditors is neither a payment in full nor a composition within the meaning of the Act so as to entitle the insolvents to an annulment of an order of adjudication. An order of adjudication under the Presidency Towns Insolvency Act made on an application of the insolvents who were unable to pay their debts can be annulled by payment in full to the creditors as provided for by s 21 of the Act or as the result of a composition with the creditors in the manner provided for by ss 28 to 30 of the Act. **BRIJ KESHOOR LAUL & OFFICIAL ASSIGNEE MADRAS (1920)** I L R 43 Mad 71

■ 22—

See s 17 I L R 42 Mad 121

■ 25—

See s 6 I L R 40 Bom 461

Protection order—Previous decisions on applications for interim orders—Discretion—Practice It has never been the practice of Commissioners in Insolvency under the Indian Insolvency Act (11 and 12 Vict c 21) to consider themselves bound by their previous decisions on applications for interim orders when it has been a matter for their discretion and it by no means follows that because an application has been refused on the first occasion it must also be refused on the second occasion. § 20 of the Presidency Towns Insolvency Act (III of 1909) clearly intends that while an insolvent diligently performs the duties prescribed by the Act he should not be harassed by execution creditors and should not be rendered liable to pressure which by one creditor may get undue advantage to another. The section does not deprive the Court of its discretion in granting or refusing an order but it indicates clearly that the Court should not refuse an order if the insolvent is diligent in performing his duties. **Official Assignee Madras v. The Insolvency Commissioners, Madras (1920)** I L R 43 Mad 71

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

ss 25 ~~20~~ 27 Sch II—*concld*

come forward and prove their claims before the Court. **MOOKERJEE J.**—The term creditor in the Presidency Towns Insolvency Act does not include the *benamdar* of a creditor. Any person who makes an application to a Court for a decision or any person who is brought before the Court to submit to a decision is if the decision goes against him thereby a person aggrieved by that decision within the meaning of that expression in s 26 of the Act. **KETOKEY CHARAY BANERJEE & SABAT KUMARI DABEE (1916)** 20 C W N 995

■ 27—

See s 6 I L R 37 Bom 464

■ 28 29 30—

See s 21 I L R 43 Mad 71

§ 30—*Indian Contract Act (1872) s 135—Surety—Dubash of a Company guaranteeing customers—Part payment of debt by surety to creditor—Insolvency of debtor—Composition effected by insolvent debtor with creditors—Subsequent approval by Court and annulment of insolvency—Right of surety to refund of money paid to creditor—Composition and annulment whether under a 30 of the Act* The dubash of a Company stood surety for customers introduced by him and deposited with them certain Government promissory notes as security. One of such customers failing in business the Company sold the notes and appropriated the proceeds in part payment of the debt of the customer. Both the customer and the dubash were adjudicated insolvents. The customer entered directly without the Official Assignee's intervention into a composition with his creditors with a view to obtain the approval and sanction of the Insolvency Court, and subsequently applied to the Court for approval of the composition and annulment of the insolvency. The Court annulled the insolvency but the order did not embody the terms of the composition as required by s 30 of the Presidency Towns Insolvency Act. The Company had agreed to the composition without the consent of the dubash and received a dividend on the full amount of their debt without giving credit for the money which was appropriated. The Official Assignee acting on behalf of the insolvent dubash applied to the Court to direct the Company to refund the value of his Government Promissory Notes appropriated by them. Held that a creditor was entitled to prove for the full amount of his debt in the insolvency of the principal debtor notwithstanding that the surety had paid a portion of the debt and that the creditor had not proved until he had paid the full amount of his debt. **Official Assignee Madras v. The Insolvency Commissioners, Madras (1920)** I L R 43 Mad 71

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

§ 30—*covered*

being by operation of law and not by act of the creditor the surety would not be discharged from his obligation to the creditor under s 133 of the Indian Contract Act *Ex parte Jacob & In re Jacobs* (1875) 10 CA 41 p 11 followed. On the question whether the fact that the creditor had given receipts in full settlement of the debt without waiting until the composition was sanctioned by the Court discharged the creditor *Held* by SESHAGIRI AYYAR J (WALLIS C J not deciding the point) that where after notice to the surety the composition was accepted by the Court it became an act of the Court and the surety was not discharged from liability. **BOMBAY COMPANY LTD & OFFICIAL ASSIGNEE OF MADRAS (1921)** I L R 44 Mad 361

§ 33—

See *INSOLVENCY* I L R 47 Calc 58

§§ 33 to 37 43—

See *INSOLVENCY* I L R 44 Calc 374

§ 35—

See s 7 25 C W N 750

§ 36—

See s 5 26 C W N 631

See s 6 I L R 37 Bom 464

See s 7 I L R 40 Mad 810

See *COSTS* I L R 46 Calc 795

See *INSOLVENCY* I L R 42 Calc 109

I L R 44 Calc 286 374

I L R 43 Calc 1089

See *INSOLVENCY* I L R 46 Calc 996

*Application under s 36 may be made ex parte—Calcutta High Court Insolvency rr 17 18 19 and 30 Applications under s 36 (1) of the Presidency Towns Insolvency Act for examination of persons thereunder are intended to be made ex parte under the rules framed by the Calcutta High Court under s 112 of the Act To such applications r 30 applies and not rr 17 18 and 19 and this view is supported by the English Bankruptcy Act (1914) 4 & 5 George V Ch 59 and the rules thereunder *In re HISSORY MONAN ROY* (1916) 20 C W N 1155*

*Order under section when can be properly made—Admission of proof of debt by Official Assignee a condition precedent The words in s 36 any creditor who has proved his debt mean not merely a creditor who has lodged proof of his debt but a creditor whose proof has been admitted by the Official Assignee and unless this has been done no order can be made under the section The mere fact that a creditor's name was included in the schedule filed by the insolvent and that so far his claim has not been challenged does not assist him if his debt has not been admitted by the Official Assignee so that he becomes a creditor who has proved his debt within the meaning of s 36 of the Act *Re ABDUL SAMAD* 26 C W N 744*

§ 36 (4) (5)—

Proper proceedings under s 36 (4) and (5) for discovery of insolvent's property—Practice—Costs order for against Official

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

§ 36 (4) (5)—*contd*

Assignee—Indemnity If the Official Assignee desires to proceed under s 36 (4) and (5) of the Presidency Towns Insolvency Act (III of 1909) for discovery of an insolvent's property known or suspected to be in possession of any person the only way he can do that is to take the examination of such person by himself and the Court for an order that he is justified by the admissions made or evidence given by such person and without looking to any further evidence at all to have the order In such case the proper procedure is not for the Official Assignee to present a petition and obtain from Court a rule in bankruptcy against such person to how can There are two courses open to the Official Assignee in such cases The one is to start an action and the other is to proceed against the respondent by notice of motion in insolvency But it is discretionary with the Court in the latter case to direct at the hearing of the motion that the matter be dealt with by an action In the case of motion a notice of motion has to be sent to the respondent stating the grounds of the application supported by an affidavit giving the evidence relied upon The rule was discharged on the merits with liberty to the Official Assignee to proceed by motion on proper materials or by action if he so desired If the Official Assignee brings an unsuccessful motion however careful he may have been the order that the Court would make generally would be that he is to pay the respondent's costs and he will have the right of indemnity given him by the previous order of the Court Or he may obtain an indemnity from the creditor or other person in whose interest the motion is brought before he starts proceeding The order for costs should not be directed to be limited to the assets in the hands of the Official Assignee when the respondent is not in any way in default for which he may be partially mulcted in costs *Re SURESH CHANDRA GOOLKEE* (1918) 23 C W N 481

*Examination by creditor of a mortgagee under s 36—Cost of mortgagee appearing by counsel if recoverable from creditor A mortgagee of an insolvent (applicant) was examined under s 36 of the Presidency Towns Insolvency Act 1909 at the instance of a creditor (the respondents) who challenged the validity of the mortgage At the examination counsel and attorney appeared for the mortgagee Subsequently the respondents did not take any step to have the mortgage declared void Thereupon the applicant made the present application asking for costs of attending by solicitor and counsel upon his own examination against the respondents *Held* that the applicant was not entitled to the order asked for *In re Waddell & Co* 138 (1877) and *In re Appleton* *Ex parte* *ord* 11 *Lid* (1905) 1 CA 79 referred to *IN THE MATTER OF ANANDI PROKA RAO* 24 C W N 685*

Scope of order—An order under the section should not be made merely in the case of justifying the insolvent on a return for suit One R obtained a decree against J and Co for the recovery of the value of certain shares which according to him had been made over to J and Co in pursuance of an arrangement of sale The

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

— s 21—

See s 13 I L R 35 Bom 200

See ADJUDICATION, ANNULMENT OF
I L R 47 Calc 914

— ss 21 23 to 30—*Private arrangement of insolvent with creditors for full discharge on part payment whether payment in full or composition under the Act* A private arrangement of the insolvents to pay four annas in the rupee in full satisfaction of their claims even though made with all their creditors is neither a payment in full nor a composition within the meaning of the Act so as to entitle the insolvents to an annulment of an order of adjudication. An order of adjudication under the Presidency Towns Insolvency Act made on an application of the insolvents who were unable to pay their debts can be annulled by payment in full to the creditors as provided for by s 21 of the Act or as the result of a composition with the creditors in the manner provided for by ss 23 to 30 of the Act. **BRIJI KESHOOR LAUL & CO. OFFICIAL ASSIGNEE MADRAS (1920)** I L R 43 Mad 71

— s 22—

See s 17 I L R 42 Mad 121

— s 25—

See s 6 I L R 40 Bom 461

Protection order—Previous decisions on applications for interim orders—Discretion—Practice It has never been the practice of Commissioners in Insolvency under the Indian Insolvency Act (11 and 12 Vict c 21) to consider themselves bound by their previous decisions on applications for interim orders when it has been a matter for their discretion and it by no means follows that because an application has been refused on the first occasion it must also be refused on the second occasion. S 25 of the Presidency Towns Insolvency Act (III of 1909) clearly intends that while an insolvent diligently performs the duties prescribed by the Act he should not be harassed by execution creditors and should not be rendered liable to pressure whereby one creditor may get undue advantage over another. The section does not deprive the Court of its discretion in granting or refusing protection but sub s (4) indicates clearly the lines along which that discretion should be exercised when a creditor opposes a grant. If an insolvent can produce the certificate referred to the onus is thrown on the opposing creditors of showing cause why the protection order should not be granted. *In the matter of MEGHNAI GARGAUX (1910)* I L R 35 Bom 47

— ss 25 26 27 Sch II—*Creditor if includes his benamidar—Ss 12 (1) (a) 13 as s (7) (b) and 28—Official Assignee if may examine petitioning creditor's claim and remove his name—Benamidar onus of proof of advances on own behalf—Person aggrieved* It is open to the Official Assignee after the insolvent to examine the claim of the petitioning creditor and if he finds that in fact there is no debt due to the petitioning creditor he must strike out the name of such creditor from the list. A benamidar is not entitled to claim as a creditor in the insolvency. The persons who really advanced the moneys should

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

— ss 25 26 27, Sch II—*contd*

come forward and prove their claims before the Court. **MOOKERJEE J**—The term 'creditor' in the Presidency Towns Insolvency Act does not include the benamidar of a creditor. Any person who makes an application to a Court for a decision or any person who is brought before the Court to submit to a decision is if the decision goes against him thereby a person aggrieved by that decision within the meaning of that expression in s 26 of the Act. **KETOKEY CHARAN BANERJEE ; SARAT KUMARI DABEE (1916) 20 C W N 990**

— s 27—

See s 6 I L R 37 Bom 464

— ss 23 25 30—

See s 21 I L R 43 Mad 71

— s 30—*Indian Contract Act (IX of 1872) s 135—Surety—Dabash of a Company guaranteeing customers—Part payment of debt solely to creditor—Insolvency of debtor—Composition effected by insolvent debtor with creditors—Subsequent approval by Court and annulment of insolvency—Right of surety to refund of mon paid to creditor—Composition and annulment whether under s 30 of the Act* The dabash of a Company stood surety for customers introduced by him and deposited with them certain Government promissory notes as security. One of such customers failing in business the Company sold the notes and appropriated the proceeds in part payment of the debt of the customer. Both the customer and the dabash were adjudicated in ol vents. The customer entered directly without the Official Assignee's intervention into a composition with his creditors with a view to obtain the approval and sanction of the Insolvency Court, and subsequently applied to the Court for approval of the composition and annulment of the insolvency. The Court annulled the insolvency but the order did not embody the terms of the composition as required by s 30 of the Presidency Towns Insolvency Act. The Company had agreed to the composition without the consent of the dabash and received a dividend on the full amount of their debt without giving credit for the money which was appropriated. The Official Assignee acting on behalf of the insolvent dabash applied to the Court to direct the Company to refund the value of his Government Promissory Notes appropriated by them. **Held** The creditor was entitled to prove for the full amount of his debt in the insolvency of the principal debtor notwithstanding that the surety had paid a portion of the debt and that the surety could not prove until he had paid the full amount for which he was liable. **Ellis & Emanuel (1876) 1 Ex D 157 and in re Sir Ex parte National Bank of England (1896) 2 Q P 12** followed that the fact that the creditor entered into a composition which the principal debtor without the surety's consent did not entitle the latter to a refund of payments already made by him to the creditor although it might release him from future liability. That the irregularities in the procedure did not vitiate the Court's approval of the terms of the composition and the consequent annulment of the insolvency under s 30 of the Insolvency Act and that the charge of the principal debtor in such a case

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd**s 30—contd**

being by operation of law and not by act of the creditor the surety would not be discharged from his obligation to the creditor under s 13 of the Indian Contract Act. *Ex parte Jacob* 11 re Jacobs (15 a) 10 Cal App 111 followed. On the question whether the fact that the creditor had given receipt in full settlement of the debt without waiting until the commission was sanctioned by the Court discharged the creditor. *Held* by SESHAGIRI ARIAR J (MADRAS) (19-1) not deciding the point) that where after notice to the surety the commission was accepted by the Court it became an act of the Court and the surety was not discharged from liability. *INDEAN COMPANY LTD v OFFICIAL ASSIGNEE OF MADRAS* (19-1) I L R 44 Mad 351

s 33—

See INSOLVENCY I L R 4th Cal 58

s 33 to 37 43—

See INSOLVENCY I L R 44 Cal 374

s 35—

See s 7 25 C W N 750

s 38—

See s 5 26 C W N 631

See s 6 I L R 37 Bom 464

See s 7 I L R 40 Mad 810

See COSTS I L R 46 Cal 795

See INSOLVENCY I L R 42 Cal 109

I L R 44 Cal 236 374

I L R 48 Cal 1089

See INSOLVENCY I L R 48 Cal 896

Application under of may be made ex parte—Calcutta High Court Insolvency Act 17 18 19 and 30 Applications under s 36 (1) of the Presidency Towns Insolvency Act for examination of persons thereunder are intended to be made ex parte under the rules framed by the Calcutta High Court under s 112 of the Act. To such applications s 30 applies and not r 17 18 and 19 and this view is supported by the English Bankruptcy Act (1914) 4 & 5 George V (ch 39) and the rules thereunder. In re KISSORY MOHAN ROY (1916) 20 C W N 1155

Order under section when can be properly made—Admission of proof of debt by Official Assignee a condition precedent. The words in s 36 any creditor who has proved his debt mean not merely a creditor who has lodged proof of his debt but a creditor whose proof has been admitted by the Official Assignee and unless this has been done no order can be made under the section. The mere fact that a creditor's name was included in the schedule filed by the insolvent and that so far his claim has not been challenged does not assist him if his debt has not been admitted by the Official Assignee so that he becomes a creditor who has proved his debt within the meaning of s 36 of the Act. Re ABDUL SAMAD 26 C W N 744

s 36 (4) (5)—

Proper proceedings under s 36 (4) and (5) for discovery of insolvent's property—Practice—Co to order for against Official

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd**s 36 (4) (5)—contd**

Assignee—Indemnity If the Official Assignee desires to proceed under s 36 (4) and (5) of the Presidency Towns Insolvency Act (III of 1909) for discovery of an insolvent's property known or suspected to be in possession of any person, the only way he can do that is to take the examination of such person by itself and ask the Court for an order that he is justified by the admissions made or evidence given by such person and without looking to any further evidence at all to have the order. In such cases the proper procedure is not for the Official Assignee to present a petition and obtain from Court a rule in bankruptcy against such person to show cause. There are two courses open to the Official Assignee in such cases. The one is to start an action and the other is to proceed against the respondent by notice of motion in insolvency. But it is discretionary with the Court in the latter case to direct at the hearing of the motion that the matter be dealt with by an action. In the case of motion a notice of motion has to be sent to the respondent stating the grounds of the application supported by an affidavit giving the evidence relied upon. The rule was discharged on the merits with liberty to the Official Assignee to proceed by motion on proper materials or by action if he so desired. If the Official Assignee brings an unsuccessful motion however careful he may have been the order that the Court would make generally would be that he is to pay the respondent's costs and he will have the right of indemnity given him by the previous order of the Court. Or he may obtain an indemnity from the creditor or other person in whose interest the motion is brought before he starts proceeding. The order for costs should not be directed to be limited to the assets in the hands of the Official Assignee when the respondent is not in any way in default for which he may be partially mulct in costs. *Re SURISH CHANDRA GOYER* (1918) 23 C W N 431

*Examination by creditor of a mortgagee under s 36—Co is of mortgagee appearing by counsel if recoverable from creditor. A mortgagee of an insolvent (applicant) was examined under s 36 of the Presidency Towns Insolvency Act 1909 at the instance of a creditor (the respondents) who challenged the validity of the mortgage. At the examination counsel and attorney appeared for the mortgagee. Subsequently the respondents did not take any step to have the mortgage declared void. Thereupon the applicant made the present application asking for costs of attending by solicitor and counsel upon his own examination against the respondents. *Held* that the applicant was not entitled to the order asked for. *In re Waddell & Co* D 328 (1977) and *In re Appleton French and Scallan Ltd* (1905) 1 C A 749 referred to. *IN THE MATTER OF ASHUT PRKASH CHOWHAN* 24 C W N 893*

Scope of order—In order under the section should not be made in circumstances justifying the institution of a regular suit. One C obtained a decree against J and Co for the recovery of the value of certain shares which according to him had been made over to J and Co in pursuance of an agreement of sale. The

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

— s 30 (4) (5)—*oncd*

decree was affirmed in appeal and an appeal was also preferred to the Privy Council During the pendency of this litigation J and Co deposited with the Pegstrar of the Court some war bonds for the satisfaction of the decree which might ultimately be binding on them The Official Assignee obtained an order from the Court under s 36 cl (5) in respect of these war bonds claiming them as part of the estate of the father of R who was an insolvent *Held*—That in the circumstances of the case the order in question should not have been made but the matter in issue should have been left to be decided in a regular suit The Court should not deal with the matter under s 36 if it really involves difficult questions of title but should leave the parties to litigate such matters in a regular suit **1438 BEHARI GHOSH v THE OFFICIAL ASSIGNEE OF CALCUTTA** 25 C W N 852

— s 33 51 55—*Insolvency Rules* *Calcutta 5 (d)*—*Jurisdiction of Insolvency Court to require into fraudulent transfer of property and declare same void on application under s 36—suit for title for setting aside order under s 36—S 26 Insolvency Act of 1848 (11 and 12 Vict c 21)—13 Eli c 5 principle of—Evidence of insolvent of admissible against transferee of property in view of insolvency—Burden of proof on person claiming by such transfer—Transfer by insolvent when good—Transfer or assignment by insolvent when fraudulent Under the Presidency Towns Insolvency Act (III of 1909) the Insolvency Court has on an application by the Official Assignee jurisdiction under s 30 to inquire as to whether any sale of property by an insolvent is fraudulent or void and if so to make an order for the delivery of such property to the Official Assignee Any one aggrieved by such an order might bring a regular suit to vindicate his title **SREHASE RAJ C** (1917) 22 C W N 335*

— ss 38 103 104—*Offences under the Insolvency Act—Notice of charges—Framing of charges—Discrepancy between notice and the charges framed—Finding of intention—Appeal Court as may make a finding of intention for the first time—Examination of the insolvent under s 36 of the Insolvency Act whether permissible—Voluntary examination of the insolvent—Admissibility of such evidence at the trial of the insolvent—Indian Evidence Act (I of 1872) s 132 The insolvent was adjudicated on the 5th March 1919 and on the same day he made over one book of account to the Official Assignee On the 6th March there was a search in the insolvent's room and amongst other things two diaries of 1918 and 1919 respectively and a stock book were taken charge of by the assistant of the Official Assignee and taken to the office On the 7th March the diary of 1918 and pages 5 to 22 of the stock book were alleged to be missing It was alleged by the Official Assignee that this was done by the insolvent Thereafter the insolvent was examined under s 36 of the Presidency Towns Insolvency Act to which no objection was taken by the insolvent Charges were framed against the insolvent on four counts viz that he fraudulently and with intent to conceal the state of his affairs and to defeat the object of the Act (1) withheld the production of his diary for 1918 and 1919*

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

— ss 38 103 104—*concd*

and his stock book (2) wilfully prevented the production of pages 5—22 of his stock book by removing and causing to be removed the said pages (3) destroyed the said stock book by removing or causing to be removed therefrom the said pages (4) wilfully prevented the production of his diary for 1918 *Held* that a 103 of the Presidency Towns Insolvency Act 1909 applies to offences committed both before and after the adjudication The section also applies to cases of wilfully withholding the production of books even after they have come to the possession of the Official Assignee *Per WOODROFFE J*—Though a charge under s 103 cannot be maintained if not framed in pursuance of the notice under s 104 this must be taken as subject to the principle which is embodied in s 537 of the Criminal Procedure Code 1898 namely that no error or irregularity in a charge will call for a reversal of an order unless it in fact has occasioned a failure of justice and in determining whether this is so the Court shall have regard to the fact whether the objection could and should have been raised in an earlier stage of the proceedings **J M Lucas v Official Assignee of Bengal** 44 C W N 418 (1914) referred to *Held* that with regard to charges (1) and (3) there was no material difference between the charges as framed and as mentioned in the notice and as regards charges (2) and (4) though there was no mention in the notice they were allowed to remain as under the circumstances of the case no prejudice was caused to the accused and as no objection was taken to them in the first instance *Per WOODROFFE J*—If an accused receives notice that the prosecution may seek to prove against him either of two alternative intentions he cannot as he must be ready to meet a charge in respect of both be prejudiced by a charge of having had both be charged both under charges (2) and (3) as the acts charged took place at one and the same place and were one alleged event The Appeal Court with all the materials before it can make a finding of intention if it has been omitted per incuriam by the Judge *The Queen v Ingham* 29 L J (W C) 18 (1859) distinguished *Held* also that as there was no objection on the part of the insolvent to his being examined under s 36 of the Presidency Towns Insolvency Act 1909 his examination was voluntary and as such was admissible at his trial under s 103 of the Act *Quare*—Whether an insolvent could be examined under s 36 of the Presidency Towns Insolvency Act 1909 *Held* on the facts that the charges against the insolvent had not been made out **JOSEPH PERRY v OFFICIAL ASSIGNEE OF CALCUTTA** I L R 47 Calc 254

24 C. W. N. 425

— s 37—

See *INSOLVENCY I L R* 44 Calc. 374

— s. 38—

See s 0 I L R 40 Bom. 461

— *Adjudicated insolvent—discharge suspended—practice of Court requiring insolvents at audience to obtain final discharge—Suit against Official Assignee for an injunction to restrain threatened and imminent injury to property—Notice*

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

§ 38—*contd*

no necessary The plaintiff was adjudicated in solvent on the 26th of September 1911 when an order was made vesting his estate in the Official Assignee. The plaintiff having subsequently applied for his discharge an order was made on the 2nd of October 1912 in the following terms—

It is ordered that the insolvent's discharge be with protection suspended for one year and that he be discharged as from the 2nd day of October 1913. In 1916 and 1917 the plaintiff acquired property in the nature of a business. No final order of discharge having been made the Official Assignee on the 2nd of January 1918 took possession of the plaintiff's stock in trade and then restored possession to the plaintiff on condition of his making payments for the benefit of his scheduled creditors. On the 7th of March 1918 the Official Assignee threatened to re-take possession and on the following day the plaintiff filed the suit (1) to recover the sums paid to the Official Assignee, together with damages for the trespass already committed and (2) to restrain the Official Assignee by an injunction from committing the threatened trespass. The defendant contended *inter alia* that the suit was not maintainable as the plaintiff had not given notice as required by s 80 of the Civil Procedure Code and further that until a final order of discharge was made at the expiration of the period mentioned in the order suspending discharge the property acquired by the plaintiff became divisible amongst the plaintiff's creditors under s 33 (2) (a) of the Presidency Towns Insolvency Act. In support of the latter contention the defendant relied upon the practice of the High Court to require the insolvent whose discharge has been suspended to appear and obtain the final and absolute discharge after the expiry of the period of suspension. At the trial the plaintiff abandoned his claim on the first cause of action and elected to proceed only on the injunction in respect of the second cause of action.—*Held* (1) that the suit was maintainable in respect of the injunction to restrain the threatened and imminent injury to the plaintiff's property in spite of the fact that no notice was given under s 80 of the Civil Procedure Code (2) that the order of 2nd October 1912 though suspending discharge for one year expressly provided that the plaintiff be discharged as from the 2nd day of October 1913 and that the said order having operated as a discharge under the Act from the 2nd of October 1913 the Official Assignee could not proceed against the property of the plaintiff acquired by him after that date (3) that the practice of the High Court to require the insolvent whose discharge has been suspended to appear and obtain the final and absolute discharge after the expiry of the period of suspension being in contravention of the law was unlawful and ought not to be given effect to. *Agarwal Chunilal v The Official Assignee Bombay* (1917) 37 Bom 243 followed though doubted. *In re Dote* (1884) 2 Ch D 637 referred to. *PER CURIAM*—The words of s 38 (b) of the Presidency Town Insolvency Act (III of 1909) imply that the discharge is granted though its operation is suspended. It is not the making of the order that is suspended but the operation of the order made. The Act makes no further proceedings

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

§ 38—*concld*

necessary after an order of suspension under s 38 has been passed. *MURADALI SHAMU v B N LALU* (1919) I L R 44 Bom 555

§ 39—

See s 6 I L R 40 Bom 461

§ 43—

See *INSOLVENCY* I L R 44 Calc 374

§ 51—

See s 17 I L R 42 Mad 121

§ 52, 53, 54—

See *SALE OF GOODS*

I L R 40 Calc 523

§ 55 (1) 108 109—

See *INSOLVENCY* I L R 44 Calc 1018

§ 55—

See 30 22 W N 335

*Provincial Insolvency Act (III of 1907) s 36—Mortgage within two years of insolvency of mortgagor—Good faith and consideration for mortgage—Onus of proof on mortgagor—Mortgage admitted to proof by Official Assignee—Application by Official Assignee to expunge proof of mortgage—Onus of proof Under s 36 of the Presidency Towns Insolvency Act as under s 36 of the Provincial Insolvency Act a mortgagor setting up a mortgage executed within two years of the insolvency of the mortgagor has the onus cast on him to show that the transaction was one executed in good faith and for consideration. The fact that the Official Assignee is moving to expunge a proof which he has admitted under s 26 of the former Act does not shift the burden of proof from the mortgages to the Official Assignee. *The Official Assignee v Annapuramammal* (1913) 20 I C 901 followed. An admission of proof by the Official Assignee is in no sense an adjudication and it is open to him as well as to other creditors to have an adjudication by the Court on notice and in such adjudication the matter has to be decided with reference to the ordinary legal presumptions which arise. *OFFICIAL ASSIGNEE of MADRAS v SAKI BANDA MUDALIAR* (1920) I L R 43 Mad 739*

§ 55 56—*Transfer of property by debtor to a creditor—Fraudulent preference—With a view of giving preference, meaning of—English Bankruptcy Act 1833 s 43—Construction adopted in English cases applicability of to the Indian Act* A trader being in very embarrassed circumstances and unable to meet his obligations as they fell due sold to one of his creditors for what was found to be a fair price a large quantity of diamonds pledged by him with certain other creditors and thereby paid off the debts due to the latter and the purchasing creditor the balance was paid to the debtor who kept his business going by paying off other pressing creditors with that amount. The debtor was adjudged an insolvent on a petition presented within three months of this transaction. On an application by the Official Assignee filed before a Judge of the High Court in Insolvency to declare the transfer void under s 55 and 56 of the Presidency Towns Insolvency Act *Held* that the transaction was not void as a fraudulent preference

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*ss 55 56—*concld*

under s 56 of the Presidency Towns Insolvency Act nor was it void under s 55 of the Act as it was made in good faith and for valuable consideration *Per CURRIE*. To bring a transaction within the scope of s 56 of the Act it must have been entered into with the *dominant* view of preferring a particular creditor. The construction adopted in several English decisions and approved by the House of Lords in *Sharp v Jackson* (1899) 1 C 419 on the corresponding provision in s 48 of the English Bankruptcy Act 1883 should be followed in construing similar language used in s 56 of the Presidency Towns Insolvency Act (III of 1909) *Sharp v Jackson* (1899) 1 C 419 *Ex parte Griffith In re Wilcoxon L P 23 Ch D 69 Ex parte Hill In re Bird 23 Ch D 695* followed *Alam Pannath v Official Assignee of Madras 32 I C 790* dissented from. *THE OFFICIAL ASSIGNEE MADRAS : T B VEDIA & BONS* (1918) I L R 42 Mad 510

Held that an application under this section should be made by the Official Assignee re *SRINIVALL MUNGLECHAND* 26 C W N 803

s 57—

1. *Intimations to the creditor that debtor is about to suspend payment—Transfer of goods to creditor thereafter but before the filing of a petition for declaration of insolvency not a bona fide transfer—Bona fides a requisite under s 57 of the Act*. After receiving notice from the debtor's agent that the debtor was going to suspend payment a creditor took on the day previous to the debtor's filing a petition in insolvency possession of the debtor's goods by virtue of a letter of lien given by the debtor to secure past and future advances and overdrafts. *Held* affirming the decision of *WILLIS J* (s) that giving notice to a creditor that the debtor is about to suspend payment is an act of insolvency (b) that though by the transaction of taking possession of the goods the creditor became the transferee of the goods he was not a bona fide transferee for value within s 57 of the Presidency Towns Insolvency Act (III of 1909) as the act of taking possession was after knowledge of the act of insolvency, and (c) that though the body of s 57 of the Act has not expressly prescribed that the transfer should be bona fide yet bona fides is legally necessary to claim the benefit of the section *Per CURRIE*.—The provisions and the wording of the Presidency Towns Insolvency Act being almost the same as those of the English Bankruptcy Act the rulings of the English Courts on the latter Act are to be followed in interpreting the Indian Act. *Obiter*. A mere intimation to a creditor by the debtor or his agent that the debtor is insolvent does not amount to an act of insolvency. *MERCANTILE BANK OF INDIA LTD : THE OFFICIAL ASSIGNEE MADRAS* (1913) I L R 39 Mad 250

2. *Transfer by insolvent prior to an agency to wife—Bona fide transaction—Transfer by wife to another after husband's adoption—A husband transferred his share in his family dwelling house to his wife without consideration on the 11th November 1911. On the 2th of February 1912 he was adjudicated insolvent and his wife on the 1th of October 1912*

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*s 57—*concld*

transferred the property which had been so conveyed to her to the appellant. *Held* that even assuming that the appellant had purchased the property for valuable consideration and without notice of the adjudication of the insolvent the transfer to the appellant subsequent to the adjudication was void under s 57 of the Presidency Towns Insolvency Act inasmuch as the transfer by the husband to the wife prior to his insolvency was found to be fictitious or *benami* and the consequence that the property had vested in the Official Assignee prior to the transfer to the appellant. *Per MOOREHEAD J*.—No title by estoppel accrued to the appellant as against the Official Assignee. The Official Assignee to what extent representative of insolvent considered in re *Slobodinsky* (1913) 2 K L 517 and in re *Hart* (1912) 3 K B 6 distinguished in re *LAKSHI PRIYA DEVI v PILLAISSORI DEVI* (1916) 20 C W N 554

ss 62, 64—

See SALE OF GOODS

I. L. R. 40 Cal 523

ss 70 and 82—

Separate Creditor—Negligence—neglect or omission—Distribution of assets—Divide of claims not disposed of—Personal liability of the Official Assignee—Method of ascertaining his liability—Cor's. The Official Assignee distributed the assets of the insolvent after deducting commission etc. to the two scheduled creditors though he had notice of claim by three other creditors and their claims were neither admitted nor rejected. *Held*—That the Official Assignee was personally liable for the amount of which the three creditors had been deprived. A creditor who lodges his proof in the statutory form is entitled that it should be dealt with without doing anything more. *Re ARCHIBALD (LIQUIDATOR PEACE* 25 C W N 633

s 86—

See s 7

I. L. R. 35 Bom 473

s 90—

See s 7

I L R 40 Mad 810

Civil Procedure Code (Act V of 1908) s 21—Transfer of petition for insolvency to refuse District Court for disposal—No jurisdiction. As the jurisdiction conferred by the Presidency Towns Insolvency Act on the High Court and by the Provincial Insolvency Act on the mufassal courts are distinct and the Act on the two Acts differ in its important provisions it is not competent for the High Court to transfer under s 90 of the Presidency Towns Insolvency Act and under s 24 Civil Procedure Code an Insolvency petition pending before it under the Presidency Towns Insolvency Act for disposal by a mufassal District Court under the Provincial Insolvency Act. *SRINIVAS ARJANAS v THE OFFICIAL ASSIGNEE OF MADRAS* (1913) I L R 38 Mad 472

s 101—

See s 5

26 C W N 631

See INSOLVENCY I. L. R. 47 Cal 721

ss 103 104—

See s 17

I L R 35 Bom 63

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*cont*

— s 103 104—*conclid*

See = 36

24 C W N 425

See IN SOLVENCY I L R 47 Calc 254

Offence under the Insolvency Act—Trial of offence—Notice of charge and charges framed if either must agree—Lndie preference where the creditor is not admitted a such—Lndie preference whether must be in fraudulently—Criminal proceedings when to take A charge framed under s 103 of the Presidency Towns Insolvency Act 1901 must be in pursuance of the notice required to be issued under s 104 When the Insolvent was charged with having withheld the production of the cash book or books for a certain period and the notice made no reference to the books *Held*—That the charge was not framed in pursuance of the notice and could not be maintained To establish a charge that books are being purposely withheld it must be shown that they exist and have not been destroyed The Insolvent was also charged that on or about January or February 1910 the Insolvent for the purpose of giving undue preference to one of his alleged creditors to wnt A made away with a stock of dhollac *Held*—The charge was bad inasmuch as it was not alleged that the making away was done fraudulently as was required by s 103 (b) of the Insolvency Act *Held also*—That the charge was bad as the creditor was not admitted as such by the Official Assignee *Per JENKINS C J*—Though no universal rule can be laid down it is ordinarily undesirable to institute criminal proceedings until determination of civil proceedings in which the same issues are involved. It is too well known to need elaboration that criminal proceedings lend themselves to the unscrupulous application of improper pressure with a view to influencing the course of the civil proceedings and beyond that there is the mischief of criminal proceedings being instituted with an imperfect appreciation of the facts where they have not been ascertained in the more searching investigation of a Civil Court *J M Lucas v OFFICIAL ASSIGNEE OF BEWAL*

24 C W N 418

Offence under the Insolvency Act—Trial of offence—Notice of charge and charges framed if must agree See Head note under Insolvency in the Civil Indent *J M Lucas v OFFICIAL ASSIGNEE OF BEWAL JOSEPH PERRY v OFFICIAL ASSIGNEE OF CALCUTTA*

24 C W N 425

— s 103—

See LETTERS OF ADMINISTRATION

15 C W N 350

— s 115—*Immunity of Official Assignee from stamp duty whether applicable to his attorney*—*Nattukottai Chetty v whether bankers*—*Loans advanced on or with deposit of goods*—*Firm in arrear account*—*Bankers lien on goods for general balance of accounts*—*Indian Contract Act (IX of 1872) s 11* An attorney representing the Official Assignee is entitled to the same privilege as to stamp duty as the latter has under s 115 of the Insolvency Towns Insolvency Act Consequently the attorney need not pay stamp duty for a copy of the order passed by a Judge of the High Court in the exercise of his insolvency jurisdiction It is perfectly general knowledge and it

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*conclid*

— s 115—*conclid*

has been recognized in judicial decision that Nattukottai Chettis are the Indian bankers of this part of the country *Vellayappa Chettiar v Annamalai Chetty (1916) 6 L W 687* and *Annamalai Chetty v Annamalai Chetty (1919) 10 L W 6* referred to The garnishee a Nattukottai Chetty had in addition to money lending business customers who deposited money with him kept pass books and went with them and drew money and he paid interest on the deposits and bought and sold hundies and lent money on securities *Held* the garnishee was a banker It appeared that diamonds were deposited by a customer with the garnishee from time to time and advances made thereon and the diamonds were redeemed from time to time but also that loans were made by him without deposit of diamonds and entered in the same account *Held* on the insolvency of the customer that under s 171 Indian Contract Act the garnishee was entitled as a banker to retain the deposits as security for his general balance of account with the insolvent and that no contract to the contrary had been proved in the case *OFFICIAL ASSIGNEE OF MADRAS v RANISWAMY CHETTY (1920)*

I L R 43 Mad 747

— s 121—

See s 6

I L R 37 Bom 464

— s 128—

See INSOLVENCY I L R 38 Calc 542

I L R 40 Calc 77

— Sch II—

See s 24

20 C W N 995

See INSOLVENCY

I L R 47 Calc 721

PRESIDING OFFICER

— absence of—

See SALE IN EXECUTION OF DECREE

I L R 39 Calc 26

PRESS

— keeping a, whether a “licensed calling or common law right —

See Press Act (I of 1910) s 3 (1)

PROVISO I L R 39 Mad 1164

— members of the—

See LIBEL I L R 41 Calc 1023

PRESS ACT (I OF 1910)

See PRINTING PRESS AND NEWSPAPERS ACT (XXV OF 1867)

— s 3—*Printing Press—Order in male deposit—Fail to make deposit—Liability—Deposit to be made within reasonable time* The Government of Bombay on the 13th September 1911 issued to the applicant a notice calling upon him under s 3 sub s (2) of the Indian Press Act 1910 to deposit with the District Magistrate of Kara security to the amount of Rs 3000 It was served on the applicant on the afternoon of the 14th September On the 20th September which was a Monday the applicant sent off by post letters to His Excellency the Governor and to the District Magistrate of Kara stating that he had closed down the press On the 21st October

PRESS ACT (I OF 1910)—*contd*s 3—*contd*

the applicant sold the press and had his declaration in respect of the press cancelled the next day. On the 5th October proceedings were taken against the applicant under s 23 (1) of the Act for keeping the press without making the deposit. He was convicted of the offence. The applicant having applied to the High Court. *Held* that no limit of time having been given to the applicant within which to make the deposit ordered the notice and s 3 of the Indian Press Act 1910 must be construed as meaning that the deposit ordered should be made within a reasonable time. *Held* also that the interval which elapsed between the afternoon of the 28th September and the 3rd October could not be reckoned as an unreasonable time. *EMPEROR v FURCHAND BAPUJI* (1913)

I L R 37 Bom 555

—*Original order of Magistrate dispensing with security—Demand of security by Magistrate there after legality—Government of India Act (5 & 6 Geo V) cap 61 ss 106 and 107—Criminal Procedure Code (Act V of 1898) s 435—High Court power of to issue writ of certiorari under to cancel Magistrate's order—Magistrate demanding security not a Court but executive officer—Writ of certiorari when can be issued—Judicial Act what is—Indian Press Act (I of 1910) s 22 whether a bar to issue of writ of certiorari—Proviso object of—Keeping a press whether a licensed calling or common law right. *Per* ABDUR RAHIM Offg C J and SESHAGIRI AYYAR J (AYLING J not dissenting). The Chief Presidency Magistrate acting under s 3 (1) of the Indian Press Act is not a Court but is only an executive officer entrusted with the performance of certain administrative duties whose details are left entirely to his discretion hence an order by him requiring security from the keeper of a press even if in excess of his powers is not capable of being revised by the High Court either by means of a writ of certiorari issued under ss 106 and 107 of the Government of India Act (5 and 6 Geo V) cap 61 or by the exercise of revisional powers as provided by s 435 Criminal Procedure Code (Act V of 1898). *Singam Achi v Subrahmanya Ayyar* I L R 27 Mad 259 *Shanker Sarup v Mago Mal* I L R 27 Mad 313 *Minalshi v Subrahmanya* I L R 11 Mad 26 and *Tyagaraghavalu Pillai v Theagaraya Chetti* I L R 35 Mad 581 applied. *Per* ABDUR RAHIM Offg C J and SESHAGIRI AYYAR J. Whether an act is judicial or not depends on the nature of the powers conferred by the legislature the character of the act sought to be quashed and the nature and extent of the discretion vested with the authority and other similar considerations. *Per* CHITAM—Every keeper of a printing press who makes a declaration under s 4 of the Press and Registration of Books Act (XXI of 1867) after the commencement of the Indian Press Act (I of 1910) is simultaneously liable to deposit such security as the Magistrate demands under s 3 (1) of the Indian Press Act even though the press and the newspapers published therein were in existence before the passing of the Press Act. But the Magistrate may under the proviso to s 3 (1) make an order dispensing with a security. *Per* ABDUR RAHIM Offg C J and SESHAGIRI AYYAR J (AYLING J *contra*).—If once a Magistrate dispenses with a security he cannot thereafter cancel*

PRESS ACT (I OF 1910)—*contd*s 3—*contd*

such order and demand security. The words or may from time to time cancel or may make any order under this sub section which are to be found in the same proviso as that which enables a Magistrate to make an order dispensing with security cannot be construed to include an order dispensing with security. A proviso appended to a section is either an explanation or a qualification of the section. It does not add to or enlarge the scope of the section. *West Derby Union v Metropolitan Life Assurance Society* (1897) 4 Q 647 referred to. *Per* AYLING J.—The substance and not the form must be looked at and that which is in form a proviso may in substance be a fresh enactment adding to and not merely qualifying that which goes before and thus this proviso may really such as one. *Per* ABDUR RAHIM Offg C J and SESHAGIRI AYYAR J. The Supreme Court of Madras had the right to issue writs of certiorari as the King's Bench in England and that right has been preserved to the High Court by the Charters of 1861 and 1865 the Letters Patent of 1865 and the Government of India Act of 1915 and no Act of any legislature has taken away this right. *Nundo Lal Bose v The Corporation for the Town of Calcutta* I L R 11 Calc 275 referred to. *In re Mrs BESANT* (1916) I L R 89 Mad 1164

—s 3 sub s (1) and s 4 sub s (1) Expt 2 ss 17 and 22—Order of Magistrate cancelling previous order dispensing with security if judicial or administrative order—Power to revise by certiorari—Power whether taken away—High Courts in India power to issue writs of certiorari when exercisable—Order of forfeiture by Local Government—Publication with intent to excite hatred etc—Intent how established—Attacks upon school of opinion and class distinguished—Government of India Act 1915 ss 656 106 and 107—S 27 Press Act of ultra vires—Statute interpretation of —Proviso Under s 3 sub s (1) of the Press Act of 1910 the Magistrate has power to cancel a previous order dispensing with security the necessary consequence of which will be that security will have to be deposited according to the amount thereupon fixed by him within the limits prescribed as would be done in normal course on the first making of a declaration. There is no magic in the words of the proviso and the plain meaning must be given to the words of the Legislature. The action of the Magistrate in increasing or diminishing withdrawing or imposing the deposit of security under the Press Act is a pure matter of administrative discretion not a judicial order open to examination by a Court of law of superior jurisdiction. In the only case in which he is to record his reasons the object of recording them is for the information of his superiors in the Government. Where a Magistrate cancelled his previous order dispensing with the deposit of security without giving the owner of the printing press an opportunity to be heard. *Held* that though it might have been a proper exercise of the Magistrate's discretion to have given the owner such an opportunity it was not like a condemnation in which case justice requires that the person to be condemned should be first heard the act of the Magistrate amounting only to the withdrawal of a privilege which need never have been granted and the order would be irre-

PRESS ACT (I OF 1910)—*contd*

s 3 sub s (1) and s 4 sub s (2)
Expt 2 ss 17 and 22—*contd*

verible either upon process of *certiorari* or by way of revision assuming that the order was open to such examination. *Held* further that if it were a judicial order it would be open to examination by way of a revision so that there being a more suitable remedy available a writ of *certiorari* should be excluded and that if it were an order of that quasi-judicial kind to which *certiorari* has sometimes been applied in England or in India the Press Act may quite reasonably have intended to take it away. *ANNE BESANT v THE ADVOCATE GENERAL OF MADRAS* (1919).

I L R 43 Mad 146
23 C W N 986

ss 11 (1) 4 (1) 17 18 20 and 22—
Demand of security by Magistrate under proviso to s 3 (1) legality of—Order by Government under s 4 (2) forfeiting security and copies of newspaper legality of—Jurisdiction of High Court under s 17 extent of—Words which are likely or may have a tendency directly or indirectly whether by interference suggestion allusion metaphor implication or otherwise in s 4 (1) meaning of—

Hatred or contempt and Government established by law in British India in s 4 (1) meaning of—Intention of writer whether essential under s 4 (1)—Onus under s 4 (1) whether on applicant—

In aid of the proof of the nature of or tendency of the words in s 20 effect of—Ss 4 and 92 whether *ultra vires* of the Imperial Legislature of India as contravening s 43 of 3 d. 4 Bill 11 cap 85 or s 22 of 24 d. 25 Vict cap 67 or s 65 of the Government of India Act 6 d. 6 Geo V cap 61. The petitioner in this case who was the keeper of a printing press and publisher of a news paper therein made his application to the High Court under s 17 of the Indian Press Act (I of 1910) for cancellation of (a) an order of the Chief Presidency Magistrate of Madras demanding from her under s 3 (1) of the Act security for two thousand rupees in supercession of a previous order made by him dispensing with security and (b) an order of the Governor in Council Madras declaring under s 4 (1) the security of the two thousand rupees so deposited and all copies of the newspapers wherever found to be forfeited to His Majesty. In dismissing the application on the ground that some of the specified articles (herein after called extracts) of the newspapers were of the objectionable nature described in s 4 (1) of the Press Act their Lordships of the Special Bench held as follows—In an application made under s 17 of the Indian Press Act the only question which the Special Bench of the High Court can determine is whether the extracts complained of did not contain any words of the nature described in s. 4 (1) and the Court has no jurisdiction to determine any other question such as (a) whether the particular order of the Magistrate demanding security was beyond his powers or (b) whether s 4 or 92 of the Press Act is *ultra vires* of the powers of the Imperial Legislature of India as contravening any Act of Parliament, or (c) whether the order of forfeiture was legally made. *In re Mahomed Ali* I L R 41 Cal 466 referred to. *Advocating* Home Rule for India is not *per se* objectionable. But such advocacy must not offend against existing laws. Hatred and contempt towards the Government occurring in s 4 may be created by

PRESS ACT (I OF 1910)—*contd*

ss 11 (1) 4 (1) 17 18 20 and 22—
contd

articles imputing to the Government base dishonest or corrupt or malicious motives in the discharge of its duties or by articles unjustly accusing the Government of hostility or indifference to the welfare of the people. Though the operative or enacting portion of s 4 (1) (c) does not make the intention or motive of the writer of the articles complained of material in considering whether the words are not of the nature described in s 4 (1) Explanation II thereto requires that the writer must *intend* to excite hatred contempt or disaffection if his writings are to be brought within cl (c) the intention being deducible mainly from the words used. The words "the Government established by law of India occurring in s 4 are not to be construed as indicating only the supremacy of the British Crown over India and the British connection with it as opposed to independence. *Mrs BESANT v EMPEROR* (1919). I L R 30 Mad 1085).

s 4—

See FORFEITURE

I L R 42 Cal 730

Interpretation of Statute—Government established by law in British India meaning of—S 4 of Act No 1 of 1910 not *ultra vires* of the Indian Legislature. *Held* that s 4 of the Indian Press Act 1910 is not *ultra vires* of the Indian Legislature. *Besant v Advocate General of Madras* I L R 53 Mad 146 referred to. In cl (1) (c) of that section the expression "Government established by law in British India" means the established authority which governs the country and administers its public affairs and includes the representatives to whom the task of government is entrusted. The word "Government" in ss 2 and 4 of the Act is equivalent to Government established by law in British India. *Besant v King Emperor* I L R 39 Mad 1085 referred to. In an application under s 17 of the Indian Press Act 1910 against an order under s 4 forfeiting the applicant's security the Court on a consideration of the articles upon which the order complained of was based found that they were such as would convey to an ordinary person that the rules of this country

in addition to incompetence cowardice and heartlessness were guilty of the slaughter of innocent people in order to terrorize them into submission and to crush out all kinds of political movements and national aspirations and further that they were perfidious enough to pervert and misapply the Defence of India Act with the like object and to invent the Rowlatt Act for a similar purpose. The Court accordingly held that the order for forfeiture of the applicant's security was completely justified. *In the matter of the petition of SUNDAR LAL*.

I L R 42 All 233

s 4 (1) cl (c) Expt II, ss. 17 21 22—Ground for setting aside forfeiture of security defect in notice of—Sed quis intent proof of if necessary to justify forfeiture under s 4 (1) (c)—Intention how far material—Intention and tendency distinguished—Truth of facts alleged of justification—What evidence admissible under s 20—Extrinsic evidence of intention if admissible when meaning of writing plain—Evidence Act

PRESS ACT (I OF 1910)—*contd*

— s 4 (1) cl (e) Expl II ss 17 21
23—*concl'd*

[I of 1872] ss 92 98 and 14—*Effect on probable readers if may be considered—Order of forfeiture how far conclusive—Onus of proof on an application under s 1—Government established by law in British India meaning of—Class members of the Indian Services recruited in England if a* Per CURRIAM —Upon an application under s 17 of the Indian Press Act I of 1910 to set aside an order of forfeiture of security deposited by a newspaper the Court has to see whether the article in question is obnoxious to the provisions of s 4 of the Act. D feat in the form of the notice under s 4 sub s (1) is no ground for setting aside the order of forfeiture. It is only Expln II to s 4 which according to the decision of the Judicial Committee in *Annie Besant v The Advocate General of the Government of Madras* 35 T L R 590 s c 23 C W V 936 imports consideration of the writer's intention. The explanation does not cover all the cases comprehended in cl (e). The explanation does not apply where the words used have a tendency to bring into hatred or contempt or excite disaffection towards the Government established by law in British India or where the words used tend to bring into hatred or contempt a class or section of His Majesty's subjects in British India e.g. the officers of the Government recruited in England. Per WOODROFFE J (FLETCHER J agreeing)—The question of intention is only material if the Court has to deal with comments on the measures (meaning thereby legislative measures) or action of the Government or the administration of justice. These comments again are not protected if they in fact excite or attempt to excite hatred or contempt or disaffection but are protected if the disapproving comments on the measures of Government are made with a view to obtain their alteration by lawful means or if they are made on the actions of Government or administration of justice and if in both cases there is no attempt to excite hatred or contempt or disaffection. Per MOOKERJEE J—Comments of the character mentioned in Expln II to s 4 of the Act may be permissible even though they are likely or may have a tendency to produce the corresponding result mentioned in cl (e) but they must not excite or constitute an attempt to excite hatred or contempt or disaffection. The term measures in the explanation was intended to apply to legislative measures. Per WOODROFFE J (FLETCHER J agreeing)—An offence under the Press Act is not seditious as such but the printing, or publishing of matter of the nature and tendency mentioned in s 4 which attracts to itself the penalty of forfeiture. Per MOOKERJEE J—Whether the offending article justifies a conviction under s 124A of the Penal Code is no test of the validity of an order of forfeiture under s 4 of the Press Act. An article may well be beyond the bounds of the Penal Code and yet be drawn into the net of the Indian Press Act. Per CURRIAM —The truth of the facts alleged in the article is no ground for taking the case out of the operation of s 4 of the Press Act and evidence is not admissible to prove their truth. Both the Crown and the accused may under s 20 of the Press Act give in evidence other copies of the newspaper published after the commencement of the Act in aid of the proof of the nature and tendency

PRESS ACT (I OF 1910)—*concl'd*

— s 4 (1) cl (e) Expl II ss 17 21
23—*concl'd*

of the matter treated in the offending article. Per WOODROFFE J (FLETCHER J agreeing)—S 20 applies where if the offending article stood alone there might be doubt or ambiguity as to the character nature or tendency of the words used and not where the meaning of the article is apparent on its face. Other articles which appeared in the newspaper cannot be put in to prove its policy. In the matter of the AMRITA BAZAR PATRIKA PRESS LD (1919)

23 C W N 1057

— ss 4 17 19 22—

See FORFEITURE I L R 41 Cal 468
I L R 47 Cal 190

— ss 4 (1) 17 and 19—*Forfeiture of deposit and pamphlet—application to set aside forfeiture grounds for—A notification under s 4 (1) of the Press Act 1910 forfeiting the security deposited under s 17 (1) can only be challenged by means of an application under s 17 and in order to succeed the applicant must show that the newspaper book or other document in respect of which action is taken is not of the nature described in s 4. Per MAHUR J—The High Court has to look to the reasonably possible effects which the words complained of may produce. Where there is a particular enactment and a general enactment in the same Statute and the latter taken in its most comprehensive sense would overrule the former the particular enactment must be operative. PURSUTTAN NARAYAN NAYAK v CHIEF SECRETARY TO GOVERNMENT OF BIHAR AND ORISSA*

14 Pat L J 174

— ss 17 19 20 and 22—

See s 3 I L R 39 Mad 1085

PRESUMPTION

See ACQUIESCENCE

I L R 37 All 412

S v ADVERSE POSSESSION

I L R 33 All 229

See AGRA TENANCY ACT (II of 1901)

ss 166 201 I L R 34 All 250

s 201 I L R 33 All 799

See BENGAL TENANCY ACT (VIII of 1885) s 2 CL (5)

I L R 44 Cal 555

See CUSTOM I L R 36 All 257

See DEPOSITION I L R 45 Cal 825

See EVIDENCE ACT (I of 1822)—s 106

See FORFEITURE I L R 47 Cal 190

See HINDU LAW—ADoption

I L R 37 Mad 599
I L R 42 Bom 277

See HINDU LAW—JOINT FAMILY

I L R 33 All 877
I L R 36 Bom 275

See HINDU LAW—MARRIAGE

I L R 38 Cal 700

See HINDU LAW—PARTITION

I L R 36 Bom 379

PRESUMPTION—contd

- See LANDLORD AND TENANT (MNC)
I L R 33 All 757
I Pat L J 604
- See MADRAS REGULATION XXI of 1809
s 4 I L R 38 Mad 620
- See MAHOMEDAN LAW—DOWRY
I L R 32 All 291
- See MAHOMEDAN LAW—EIGHTHACT
I L R 48 Calc 856
- See MAHOMEDAN LAW—MARRIAGE
I L R 32 All 345
- See MALABAR LAW
I L R 39 Mad 317
- See MORTGAGE (PRIORITY)
I L R 34 All 102
- See PENAL CODE (ACT XLV of 1860)—
§ 82 AND 83 I L R 37 All 187
§ 76 I L R 32 All 451
- See POSSESSION I L R 37 All 203
- See PUBLIC GAMBLING ACT (III of 1867)
ss 3 4 I L R 35 All 1
- See REGISTRATION ACT (III of 1877)
s 32 I L R 34 All 253 331
- See SECOND APPEAL
I L R 38 All 122
- See STANDARD OF PROOF
I L R 40 Calc 698
- See TRANSFER OF PROPERTY ACT (IV of 1882) s 101 I L R 34 All 268
- See WILL I L R 47 Calc 1043
I L R 45 Bom 908

As to ancient document applied to copy—

- See EVIDENCE ACT 1872 s 65
I L R 41 All 593

ancient and uninterrupted user—

- See EASEMENTS ACT (V of 1882) ss 2
(c) AND 17 (c) I L R 42 Bom 288

Difference between—Vatan and
Inam and Saranjam grants—

- See BOMBAY HEREDITARY OFFICERS ACT
(BOM ACT 3 of 1874) s 1.
I L R 44 Bom 237

Record of Rights—entries in—

- See BOMBAY LAND REVENUE CODE 1879
s 13.
I L R 44 Bom 214

nature of—

- See EVIDENCE ACT (I of 187) ss 107
108 I L R 37 Mad 440

in commission of offence

- See ORIGIN ILLEGAL POSSESSION OF
L L R 37 Calc 24

of death—

- See EVIDENCE ACT 187 s 108
See PRACTICE I L R 40 Bom 220

of annual tenancy—

- See BOMBAY LAND REVENUE CODE (BOM
ACT V of 18 9) s 83
I L R 45 Bom 350

PRESUMPTION—contd

of permanent tenancy—

- See BOMBAY LAND REVENUE CODE (BOM
ACT I of 1879) s 83
I L R 45 Bom 303 350

Property which has descended from
one granthi to another—

- See CUSTOMS I L R 1 Lah 540

In favour of continuance of life—

- See HINDU LAW—SUCCESSION
I L R 1 Lah 554

of Right arising from occupation—

- See EJECTMENT SUIT FOR
I L R 38 Bom 240

PREVAILING RATE

- See LANDLORD AND TENANT
I L R 37 Calc 742
I L R 45 Calc 930

**PREVENTION OF CRUELTY TO ANIMALS
ACT (XI OF 1890)**

- See BOMBAY DISTRICT POLICE ACT (BOM
ACT IV OF 1890) s 111
I L R 45 Bom 203

Whether the offence must
be committed within sight of any person—Prepara-
tion of gins dye from cow's urine Where it was
found that the petitioner tortured his cows by
depriving them of water and these cows were tied
up where the sufferings of the animals could be
witnessed by persons from the lane on which
the house of the petitioner was situated Held
that the offence comes within the purview of
s 3 of the Prevention of Cruelty to Animals Act
(XI of 1890) MISRI GORE v ABDUL LATIF (1912)
17 C W N 332

Owner turning out
horse into street to starve Accused abandoned
his horse by turning it out into the street and
some days after it was found in a starving condi-
tion and accused was charged under s 3 Held
that accused could not be convicted under the
section as he must in fact be able to exercise
control over the animal at the time of ill treat-
ment EMPEROR v NASIR WAZIR
I L R 44 Bom 159

s. 3, cl (b)—Cruelty to animals—
Cranes having their eyes sealed up—Carriage by
railway in that condition The accused purchased
at Indore certain cranes (saras) which had their
eyes sealed up He was carrying them in that
condition by rail from Indore to Kolhapur At
Poon a intermediate station it was found that
the birds eyes were bleeding from the stiches
He was therefore convicted of an offence un-
der s 3 cl (b) of the Prevention of Cruelty
to Animals Act 1890 Held that the accused
had committed no offence under the section for
the cruelty if any was caused by the antecedent
stitching up of the eyes and not by the manner
or position in which the birds were carried in the
train EMPEROR v ABRAHAM MEER SHIKARI (191)
I L R 41 Bom 654

PREVENTION OF GAMBLING ACT

- See BOMBAY PREVENTION OF GAMBLING
ACT 1857

PREVIOUS ACQUITTAL

See ACQUITTAL I L R 37 Calc 680

See CRIMINAL PROCEDURE CODE s 403

I L R 37 All 107

I L R 40 Bom 97

PREVIOUS CONVICTION

See CHARGE I L R 47 Calc 154

See CRIMINAL PROCEDURE CODE s 413

I L R 39 All 293

See PRACTICE I L R 39 Bom 325

— proof of—

See SECURITY FOR GOOD BEHAVIOUR

I L R 41 Calc 1123

— when passed in a Native State—

See PENAL CODE s 75

I L R 42 All 136

— Belonging to a Gang of Thieves—Habit—Evidence of habit—Admissibility of evidence of previous convictions of offences against property and of bad livelihood—Penal Code (Act XLV of 1860) s 401 Where the other evidence in a case under s 401 of the Penal Code establishes association for the purpose of habitually committing theft evidence of previous convictions of offences against property and of bad livelihood is admissible to prove habit and for this purpose convictions of bad livelihood are more cogent than those of isolated thefts *Empress v Naba Kumar Patnaik* 10 W N 146 *Mohr Ali Sarkar v Emperor* (Or App 742 of 1902) decided 20th March 1901 by PAIRMAN and HILL JJ (unreported) *Madhu Dhara v Emperor* (Or App 592 of 1903 decided 26th July 1903 by RAMPINI and MOOKERJEE JJ) (unreported) *Khanja Karwil v Emperor* (Or App 78 of 1903 decided 28th January 1904 by HOLWOOD and RYVES JJ) (unreported) *Godardhan v Emperor* (Or App 958 of 1910 decided 21st November 1910 by HOLWOOD and FLECHER JJ) (unreported) referred to *Mankura Pasi v Queen Empress* I L R 27 Calc 139 doubted and explained *Bhona v Emperor* (1911) I L R 38 Calc 408

— A finger mark expert was called as a witness who compared certain finger prints of the accused taken in Court with some other finger prints on a paper which contained a record of certain convictions which purported to be the convictions of the accused and pronounced them to be similar This was taken as proof of the previous convictions of the accused *Held* that the previous convictions were not properly proved *RAM DAS SINGH v King Emperor* (1916) 21 C W N 469

PREVIOUS DEPOSITIONS

See ADMISSION

I L R 41 Calc 601

PREVIOUS ENJOYMENT

See EASEMENT

I L R 39 Calc 59

PRICE.

— oral agreement as to—

See EVIDENCE ACT (I of 1872) s 9^a

I L R 33 Mad 514

PRICE—contd

— of goods sold, suit for—

See CONTRACT ACT ss 90 73 120

I L R 34 Bom 192

PRIEST

— Panchas preventing hereditary priest from giving his ministrations—

See VRIITH I L R 45 Bom 221

PRIMARY COURT

— jurisdiction of—

See EX PARTE DECREE

I L R 40 Calc 153

PRIMOGENITURE

See CUSTOM

24 C W N 601

1 Pat L J 109

See HINDU LAW—IMPARTIBLE ESTATE

I L R 38 All 590

See HINDU LAW—INHERITANCE

I L R 34 All 85

I L R 42 Calc 1179

See HINDU LAW—SUCCESSION

18 C W N 55

I L R 40 Calc 997

See KUNIPURA STATE OF

I L R 39 Calc 711

See OUDH ESTATES ACT (I of 1869)—

ss 8 10 I L R 38 All 553

ss 8 AND 22 SURS (II)

I L R 32 All 599

ss 14 15 AND 22

I L R 43 All 245

See TALUQDARI ESTATE

I L R 43 All 297

PRINCIPAL.

See HUNDI SUIT OF

I L R 46 Calc 663

See UNDISCLOSED PRINCIPAL

— death of—

See PRINCIPAL AND AGENT

I L R 40 Calc 249

— liability of—

See PRINCIPAL AND AGENT

14 C W N 414

I L R 43 Calc 511

— part-payment of—

See PRESIDENCY SMALL CAUSE COURTS

ACT (XV of 1892) s 69

I L R 38 Mad 433

— suit by for money received by agent—

See PRINCIPAL AND AGENT

I L R 41 All 254

PRINCIPAL AND AGENT

See ACCOUNT

15 C W N 939

I L R 40 Calc 105

I L R 44 Calc 1

See CIVIL PROCEDURE CODE 185^a ss

215A AND 216 I L R 32 All 525

See CIVIL PROCEDURE CODE 1909 s 20

(c) I L R 34 All 49

PRINCIPAL AND AGENT—*contd.*

See COMPANY I L R 36 Bom 564

See CONTRACT ACT (IX of 1872)—

ss 178 179 I L R 42 Bom 205

s 230 I L R 84 All 168

ss 182 to 237

See CONTRACT WITH ENEMY

I L R 44 Bom 631

See COSTS I L R 43 Calc 190

See LIMITATION ACT (IX of 1908) Sch

I Art 115 I L R 39 All 81

Art 116 I L R 39 All 355

See OATHS ACT (V of 1878) s 8 9 10

I L R 83 All 131

See PRACTICE (30)

See SALE OF GOODS

I L R 42 Calc 1050

I L R 42 Bom 16

—Agent's power in disposing of land—

See ESTOPPEL 2 Pat L J 600

—Agent's power to refer dispute to arbitration—

See JURISDICTION I L R 34 Bom 12

—Lambardar not agent for co sharers—

See AGRA TEHSELDAR ACT 1901 s 194

I L R 34 All 93

—suit for negligence occasioning loss—

See CIVIL PROCEDURE CODE 1908 s 20

I L R 34 All 49

ACCOUNTS 3397

AUTHORITY OF AGENT 3401

FRAUDULENT REPRESENTATIONS BY AGENT 3403

LIABILITY OF AGENT 3403

LIABILITY OF PRINCIPAL 3404

NOTICE 3405

MISCELLANEOUS 3406

ACCOUNTS

1 ——— Limitation Act (XV of 1877) Sch II Arts 89 115 116—Accounts suit for against sons of gomastha—Covenant to furnish annual accounts—Neglect to do so is refusal—Suit by co sharer for accounts of his share lies. A suit for money found due on an account and a suit for an account are really one and the same thing. *Said Chandra v Chandra Varain* 1 C L J 23. I L R 32 Calc 719 followed. Such a suit lies on the death of an agent against his legal representatives. *Lawless v The Calcutta Landing and Shipping Co Ltd* 1 L R 7 Calc 677. *Jogesh Chandra v Benote Lal Ray* 14 C W N 23 followed. *Held* (Cox J dissenting) that a suit for accounts not against the agent personally but against his legal representative is governed by Art 115 or Art 116 of the Limitation Act and not by Art 89. The objection that a co sharer cannot sue the gomastha of all the co sharers for the accounts of his share only does not apply where the remaining co sharers have been made parties defendants and a decree passed

PRINCIPAL AND AGENT—*contd.*ACCOUNTS—*contd.*

for an account of the whole agency. *Quare* Whether when there is a covenant by the agent to furnish accounts year by year the neglect on the part of the agent to furnish the accounts in respect of any particular year amounts to refusal to render accounts within the meaning of Art 89. *Quare* Whether where there is such a covenant a suit against an agent for accounts of particular years when the agent has neglected to furnish accounts or for the sum found due thereon can be regarded as a suit for compensation for the breach of a contract as contemplated by Arts 115 and 116 of the Limitation Act. *Jhappanassas Bibi v Bama Sundari Choudhuran* (1912)

18 C W N 1042

2 ——— Agent's death—
Liability of legal representatives to render accounts—
—Liability of agent's assets—Remedy of principal—
—Suit for damages—Onus—Limitation—Limitation Act (IX of 1908) Sch I Arts 89 115 120. The legal representatives of an agent cannot be called upon to render accounts to the principal in the same sense as the agent himself as they cannot be required to explain matters of which they have no personal knowledge and to assist the principal in the investigation of the management of his estate of which they are ignorant. The estate of the agent however continues to be liable and the remedy of the principal is to sue the representatives for any loss he may have suffered by reason of the negligence or misconduct misfeasance or malfeasance of his agent. The maxim *actio personam moritur persona* would be no bar to an action where the act complained of was not a mere tort but was a breach of a quasi contract where the claim was founded on a breach of a fiduciary relation or on failure to perform a duty. *Concar v Murrell* 40 CA D 543. *Philips v Homfray* 24 CA D 330 relied on. A claim by the principal against the legal representative of the agent for money misappropriated by the agent and for damages for loss suffered by reason of the agent's negligence or misconduct is therefore maintainable—the suit being one not for accounts strictly so called but for money payable to the principal by the representatives of the agent out of the assets in their hands. *Manmohanath Bose v Basanto Kumar Bose* 1 L P 22 All 337 relied on. In such a suit the burden will be on the plaintiff to prove his case. Such a suit is not governed by Art 89 of the Limitation Act but by either Art 115 or Art 120. *Lawless v Calcutta L & S Co* 1 L P, Cal 627. *Harend v Administrator General* 1 L R 12 Calc 35. *Indrabhan v Jamuna* 1 L P 75 All 5 referred to. *KUMEDA CHARAN BALA v ASUTOSH CHATTOPADHYAYA* (1912) 17 C W N 5

3. ——— Death of agent—
Suit for accounts if lies or may be continued against heirs. A suit for accounts brought against an agent may be continued on his death pending suit against his legal representatives. *See* 1. A suit for accounts lies against the heirs of a deceased agent. *Manmatha Nath Bose Mullick v Ba. a. Kum. v Bose* 11 C L J 1 L P 111. 337 doubted. *Kum. Ch. Charan v Asutosh* 15 C L J 24 referred to. *BARANATH SINGH v BA. CH. KUMAR POY* (1913) 17 C W N 695

PREVIOUS ACQUITTAL

See ACQUITTAL I L R 87 Cal 680

See CRIMINAL PROCEDURE CODE s 403

I L R 37 All 107

I L R 40 Bom 97

PREVIOUS CONVICTION

See CHARGE I L R 47 Cal 154

See CRIMINAL PROCEDURE CODE s 413

I L R 39 All 293

See PRACTICE I L R 39 Bom 328

— proof of—

See SECURITY FOR GOOD BEHAVIOUR

I L R 43 Cal 1128

— when passed in a Native State—

See PENAL CODE s 75

I L R 42 All 136

Belonging to a Gang of Thieves—Habit—Evidence of habit—Admissibility of evidence of previous convictions of offences against property and of bad livelihood—Penal Code (Act XLV of 1860) s 401 Where the other evidence in a case under s 401 of the Penal Code establishes association for the purpose of habitually committing theft evidence of previous convictions of offences against property and of bad livelihood is admissible to prove habit and for this purpose convictions of bad livelihood are more cogent than those of isolated thefts *Emper v Naba Kumar Patnaik* 10 W N 146 *Moh v Ali Sarkar v Emperor* (Cr App 742 of 1900) decided 20th March 1901 by PRINSEY and HILL JJ (unreported) *Madhu Dhar v Emperor* (Cr App 582 of 1905 decided 26th July 1905 by RAMPIVI and MOOKERJEE JJ) (unreported) *Khania Karori v Emperor* (Cr App 78 of 1909 decided 28th January 1909 by HOLMWOOD and RYVES JJ) (unreported) *Gobar dhan v Emperor* (Cr App 958 of 1910 decided 21st November 1910 by HOLMWOOD and FLETCHER JJ) (unreported) referred to *Mankura Pass v Queen Empress* I L R 27 Cal 139 doubted and explained *Bhoya v Emperor* (1911) I L R 83 Cal 408

A finger mark expert was called as a witness who compared certain finger prints of the accused taken in Court with some other finger prints on a paper which contained a record of certain convictions which purported to be the convictions of the accused and pronounced them to be similar This was taken as proof of the previous convictions of the accused *Held* that the previous convictions were not properly proved *RAM DAS SINGH v KING EMPEROR* (1916) 21 C W N 469

PREVIOUS DEPOSITIONS

See ADMISSION

I L R 41 Cal 601

PREVIOUS ENJOYMENT

See EASEMENT

I L R 39 Cal 59

PRICE

— oral agreement as to—

See EVIDENCE ACT (I of 1872) s 92

I L R 38 Mad 514

PRICE—contd

— of goods sold, suit for—

See CONTRACT ACT ss 39 73 190

I L R 34 Bom 199

PRIEST

— Panchas preventing hereditary priests' from giving his ministrations—

See VEDHA I L R 45 Bom 234

PRIMARY COURT

— jurisdiction of—

See EX PARTE DECREE

I L R 48 Cal 153

PRIMOGENITURE

See CUSTOM

24 C W N 601

I Pat L J 109

See HINDU LAW—IMPARTIBLE ESTATE

I L R 38 All 590

See HINDU LAW—INHERITANCE

I L R 34 All 65

I L R 42 Cal 1179

See HINDU LAW—SUCCESSION

18 C W N 55

I L R 48 Cal 997

See KUTUPURA STATE OF

I L R 39 Cal 711

See OUDH ESTATES ACT (I of 1869)—

ss 8 10 I L R 33 All 552

ss 8 AND 22 SURS (11)

I L R 33 All 599

ss 14 15 AND 22

I L R 43 All 245

See TALUQDARI ESTATE

I L R 43 All 297

PRINCIPAL

See HINDI SUIT OF

I L R 46 Cal 663

See UNDISCLOSED PRINCIPAL

— death of—

See PRINCIPAL AND AGENT

I L R 40 Cal 248

— liability of—

See PRINCIPAL AND AGENT

14 C W N 414

I L R 43 Cal 511

— part-payment of—

See PRESIDENCY SMALL CAUSE COURTS

ACT (XV of 1892) s 69

I L R 38 Mad 438

— suit by for money received by agent—

See PRINCIPAL AND AGENT

I L R 41 All 254

PRINCIPAL AND AGENT

See ACCOUNT

15 C W N 939

I L R 40 Cal 109

I L R 44 Cal 1

See CIVIL PROCEDURE CODE 188 ss

215A AND 216 I L R 32 All 525

See CIVIL PROCEDURE CODE 1909 s 20

(c) I L R 34 All 49

PRINCIPAL AND AGENT—contd.

See COMPANY I L R 36 Bom 564

See CONTRACT ACT (IX of 1872)—

ss 178 179 I L R 42 Bom 205

s 230 I L R 34 All 168

ss 182 to 237

See CONTRACT WITH ENEMY

I L R 44 Bom 631

See COSTS I L R 43 Calc 190

See LIMITATION ACT (IX of 1908) Sch

I Art 115 I L R 39 All 81

Art 116 I L R 39 All 355

See OATHS ACT (X of 1878) s 8 9 10

I L R 33 All 131

See PRACTICE (30)

See SALE OF GOODS

I L R 42 Calc 1050

I L R 42 Bom 16

—Agent's power in disposing of land—

See ESTOPPEL 2 Pat L J 600

—Agent's power to refer dispute to

arbitration—

See JURISDICTION I L R 34 Bom 13

—Lambardar not agent for co-

sharers—

See AGFA TEVANCY ACT 1901 s 194

I L R 34 All 98

—suit for negligence occasioning

loss—

See CIVIL PROCEDURE CODE 1908 s 20

I L R 34 All 49

ACCOUNTS 3307

AUTHORITY OF AGENT 3401

FRAUDULENT REPRESENTATIONS

BY AGENT 3403

LIABILITY OF AGENT 3403

LIABILITY OF PRINCIPAL 3404

NOTICE 3405

MISCELLANEOUS 3406

ACCOUNTS

1 ———— Limitation Act (XV of 1877) Sch II Arts 89 115 116—Accounts suit for against sons of gomastha—Covenant to furnish annual accounts—Neglect to do so is refusal—Suit by co sharer for accounts of his share of lies A suit for money found due on an account and a suit for an account are really one and the same thing *Shib Chandra v Chandra Varan I O L J 232 I L R 37 Calc 719* followed Such a suit lies on the death of an agent again t his legal representatives *Lawless v The Calcutta Landing and Shipping Co Ltd I L R 7 Calc 677* *Jogesh Chandra v Benole Lal Pat 14 C W V 33* followed *Held (Coxe J dissenting)* that a suit for accounts not against the agent personally but against his legal representative is governed by Art 115 or Art 116 of the Limitation Act and not by Art 89 The objection that a co sharer cannot sue the gomastha of all the co sharers for the accounts of his share only does not apply where the remaining co sharers have been made parties defendants and a decree passed

PRINCIPAL AND AGENT—contd.

ACCOUNTS—contd.

for an account of the whole agency *Quare* Whether when there is a covenant by the agent to furnish accounts year by year the neglect on the part of the agent to furnish the accounts in respect of any particular year amounts to refusal to render accounts within the meaning of Art 89 *Quare* Whether where there is such a covenant a suit against an agent for accounts of particular years when the agent has neglected to furnish accounts or for the sum found due thereon can be regarded as a suit for compensation for the breach of a contract as contemplated by Arts 115 and 116 of the Limitation Act *Jhappajhanessa Bibi v Bama Sundari Choudhury (1912)*

16 C W N 1042

2 ———— Agent's death—

Liability of legal representatives to render accounts

—Liability of agent's assets—Remedy of principal

—Suit for damages—Onus—Limitation—Limitation

Act (IX of 1908) Sch I Arts 89 115 120 The

legal representatives of an agent cannot be called

upon to render accounts to the principal in the

same sense as the agent himself as they cannot

be required to explain matters of which they have

no personal knowledge and to assist the principal

in the investigation of the management of his

estate of which they are ignorant The estate of

the agent however continues to be liable and the

remedy of the principal is to sue the representa-

tives for any loss he may have suffered by reason

of the negligence or misconduct misfeasance or

malfeasance of his agent The maxim *actio per**sonalis moritur persona* would be no bar to an

action where the act complained of was not a

mere tort but was a breach of a quasi contract

where the claim was founded on a breach of a

fiduciary relation or on failure to perform a duty

*Conchr v Murricta 40 C D 313 Philips v**Hornfray 24 C D 439* relied on A claim by

the principal against the legal representative of

the agent for money misappropriated by the agent

and for damages for loss suffered by reason of the

agent's negligence or misconduct is therefore main-

tainable—the suit being one not for accounts

strictly so called but for money payable to the

principal by the representatives of the agent out

of the assets in their hand *Manmohanath Bose**v Ba onto Kumer Bose I L R 22 All 33* relied

on In such a suit the burden will be on the

plaintiff to prove his case Such a suit is not

governed by Art 89 of the Limitation Act but

by either Art 115 or Art 120 *Lawless v**Calcutta L & S Co I L R 7 Calc 6* *Harender**v Administrator General I L R 12 Calc 35**Bindrabai v Jamuna I L R 25 All 5* referredto *Kumeda Chandra Bala v Astosh Chatter-**padhaya (1912)* 17 C. W. N. 5

3. ———— Death of agent—

Suit for accounts if lies or may be continued against

heirs A suit for accounts brought against an

agent may be continued on his death pending

suit against his legal representatives *Simple*

A suit for accounts lies against the heirs of a

deceased agent *Jagannath Nath Bose Mullik v**Bosanta Kumar Bose Mullik I L R 22 All 3*doubted. *Kumeda Chandra Bala v Astosh Chatter-**padhaya (1912)* 17 C. W. N. 5

PRINCIPAL AND AGENT—*contd*ACCOUNTS—*contd*

4 ———— *Principal suit by agent for accounts—Limitation—Limitation Act (IX of 1908) Art 89* The plaintiff as principal sued the defendant as agent for accounts. The agency was created in 1896 by a registered document which provided that accounts were to be rendered at the end of each year the agent also hypothecating immovable property as security. In 1897 the plaintiff transferred the property to his wife who in 1899 re transferred the property to her husband. The agency was terminated in 1910 and the suit was brought in 1911 for accounts from 1899. Held that a new agency was created in 1899 irrespective of the agreement of 1896. That Art 89 of the Limitation Act was applicable to the case and as in this case there was no demand and refusal during the continuance of the agency and as the suit was instituted within three years of the date when the agency terminated the plaintiff was entitled to the accounts claimed. **SURESH KANTA BANERJEE CHOWDHURY v. NAWAB ALI SIKDAR (1915)** **MO C W N 356**

5 ———— *Suit for account—Hypothecation of property as security for the proper discharge of his duties by the agent—Agreement to render account annually—Limitation Act (IX of 1908) Sch I Arts 89 115 132—Death of the principal effect of—Agent continuing in service of the heir—Contract Act (IX of 1872) ss 207 253 cl (10)—Method to be adopted for rendering account* Where certain immovable properties were hypothecated to the principal by the defendant as security for the valid discharge of duty as agent in a suit for accounts by the principal. Held that Art 132 of the Limitation Act will apply inasmuch as it is also by implication a suit to enforce a charge. **Hajezuddin Mandal v. Jadu Nath Saha I L R 35 Cal 298** followed **Jogesh Chandra v. Benode Lal Poy 14 C W N 102** dissented from. On the death of the principal an agency is terminated and a new agency is created if the agent continues in service of his principal's heir. Where there is an agreement to submit accounts annually in a suit against the agent for an account Art 89 and not Art 115 of the Limitation Act will apply. **Shib Chandra Poy v. Chandra Narain Mookerjee I L R 32 Cal 719** and **Ashgar Ali Khan v. Akhurd Ali Khan I L R 24 All 27** followed. **Easw v. Baroda Aislere 11 C L J 43** dissented from. Duty of an agent does not end by merely submitting papers when accounts are demanded but a failure to explain them when called upon to do so will amount to a refusal under Art 89 of the Limitation Act. **Hurrisnath Rai v. Krishna Kumar Bakshi I I R 14 Cal 147** relied on. **Chand Ram v. Brojo Choud 19 W P 14** **Upendra K. shore v. Ramtara Debya 13 C W N 696** not followed. **MADHUSUDAN SEN v. RAHMAN CHANDRA DAS BASAK (1915)** **I L R 43 Cal 248**

6 ———— *Ordinary money account—Lending of money to persons to whom agent is not authorised to lend—Suit for account—Limitation Act (IX of 1908) Arts 89 and 90—Termination of agency* A suit by a principal against an agent for the recovery of money lent to persons to whom the agent was not authorised to lend is a suit for an ordinary money account and is governed by Art 89 and not Art 90 of

PRINCIPAL AND AGENT—*contd*ACCOUNTS—*contd*

the Limitation Act. The question when an agency terminates is a question of fact. **Great Northern Insurance Co v. Cunliffe 9 Ch Ap 595** distinguished. **Venkatachalam v. Narayanan I L R 39 Mad 376** referred to. **MUTHIAN v. ALACAPPA (1917)** **I L R 41 Mad 1**

7 ———— *Indian Trust Act (II of 1882) s 88—Suit against agent for account of profits of private business—Limitation—Fetters of accounts once settled between principal and agent reasons for* Where the main allegation on which a suit was based was that the defendant being an agent of the plaintiff had for some time been carrying on on his own account and to the detriment of the plaintiff's business similar to that of the plaintiff's and the object of the suit was to compel the defendant to account for the profits which he had received from his own private business it was held that the article of sch I to the Indian Limitation Act 1908 which was applicable was either art 62 or art 80. On the facts it was found that whichever article applied the suit was barred. Where fiduciary relations have subsisted between the parties a Court will not reopen accounts which have long been settled between the parties unless the plaintiff can show definitely at least one fraudulent omission or insertion in the account. The principles laid down in **Williamson v. Barlow I L R 9 Ch D 529** and **Boo Jinalboo v. Sha Nagar Palab Kany I L R 11 Bom 78** followed. **FURAN MAL v. FORD MACDONALD AND COMPANY Ltd (1919)** **I L R 41 All 635**

8 ———— *Suit by principal for money received on his behalf by agent—Interest—Costs—Appeal against allotment of costs on wrong principles* Held that where money is recoverable by a principal from an agent as having been received by the agent on the principal's behalf the agent is not as a rule liable for interest unless by virtue of an express agreement or of some mercantile usage. Held also that an appeal as to the allotment of costs will lie from an appellate decree when the Court below has exercised its discretion as to costs arbitrarily and not according to general principles. **Davlat Ram v. Durga Prasad I L R 15 All 333** and **Radhe Shyam v. Behari Lal I I R 40 All 558 559** followed. **LALMAN v. CHINTAMANI (1918)** **I L R 41 All 254**

9 ———— *Committee for collection of subscriptions to rebuild a mosque—Neglect of treasurer to pay his own subscription and to collect other subscriptions promised—Treasurer not legally liable* A movement having been set on foot for re constructing a mosque A and J promised to subscribe Rs 500 each. A was appointed treasurer of the committee for collecting subscriptions. J gave a cheque for his promised subscription of Rs 500 but owing first to some defect in the endorsement and later on to its having become out of date it was never cashed. The mosque also was never reconstructed. A having died his heirs were sued by the members of the committee for the amount of the unpaid subscriptions. Held that neither A nor his heirs were liable for payment of the money. **ABDUL AZIZ v. MASUM ALI (1914)** **I L R 36 All 269**

PRINCIPAL AND AGENT—*contd*ACCOUNTS—*contd*

10 ———— *Obligation of agent not only to submit accounts but to explain account papers* The obligation of an agent to wards his principal does not terminate merely by submission of account papers. He is bound to explain the same papers and if on accounts taken it is found that he had in his hands money which belongs to his principal he is bound to pay that sum. **MADEUSUNDAN DEV v PAKHAL CHANDRA DAS BASAK** (1915) 19 C W N 1070

AUTHORITY OF AGENT

1 ———— *Leave by agent—Apparent authority—Ratification—Knowledge of principal if necessary for ratification* Every act done by an agent in the course of his employment on behalf of his principal and within the apparent scope of his authority binds the principal unless agent is in fact unauthorised to do the particular act and the person dealing with him has notice that in doing so he is exceeding his authority. The grantees in this case were entitled to presume that the agent who had admittedly authority to grant reclamation leases had acted with regularity and within the scope of his authority. Where ratification is established as to a part it operates as a confirmation of the whole of that particular transaction by the agent. Before the principal can be held bound by ratification he must be proved to have had full knowledge or at any rate in absence of knowledge of all the essential facts of the transaction into which his agent had entered on his behalf. **KATYATANI DEBI v PORT CANNING AND LAND IMPROVEMENT CO** (1914) 19 C W N 56

2 ———— *Construction of Power of Attorney—Denial of authority of agent—Chetty money lending firm business of—Power implied from nature of business which could not be carried on without it—Proof of similar previous transactions with objection by principal—Account books presumption to be drawn from—Evidence Act (I of 1872) s 114* The defendant was a Chetty and had a large money lending business in Pangoon which he carried on by an agent to whom he gave a power of attorney for the general management of his business in which he stated the duties and powers entrusted to him as being to transact conduct and manage all affairs concerns matters and things in which he may be in anywise interested and concerned and for that purpose to use or sign my name to any document or writing whatsoever to borrow money from any bank or banks firm or firms person or persons either with or without pledge of securities for money advanced to various persons and to make draw sign accept endorse negotiate and transfer all and every or any bills of exchange promissory notes hundie cheques drafts bills of lading and all other negotiable securities whatsoever which my signature or endorsement may be required or which my said attorney may in his absolute discretion think fit to make draw sign accept endorse negotiate and transfer in my name and in my behalf. Under this power the agent pledged the firms credit with the plaintiff Bank to enable a client who applied to him for financial assistance to have a cash credit account opened in his name and obtain from the Bank

PRINCIPAL AND AGENT—*contd*AUTHORITY OF AGENT—*contd*

advances to secure due repayment of which he executed a promissory note in favour of defendant a firm which the agent endorsed over to the Bank in conformity with the provisions of the Presidency Banks Act (VI of 1876) s 37 c) (e) the agent at the same time giving the Bank a letter of guarantee on behalf of his firm. The client after drawing large sums of money on the cash credit account thus opened having become insolvent the Bank brought an action for the amount due to which the defence was a denial of authority on the part of the agent to enter into the transactions so as to bind the defendant's firm. Held (reversing the decision of an Appellate Bench of the Chief Court) that applying the principles of construction of powers of attorney laid down in *Bryant v Post* and *Bryant v La Banque du Peuple* (1893) A C 170 the authority to enter into transactions of the nature in dispute in the present case was to be found in the document itself by necessary implication from the nature of the business with the general management of which the agent was entrusted without such authority it would hardly have been possible to carry on the business of a money lender and financier. On the evidence moreover it was proved that amongst such Chetty money lending firms it was the practice for the agent to pledge the credit of the firm and that for a considerable time similar transactions had been entered into previously by the agent without this authority being questioned. The mere fact that the defendant did not receive any benefit on the transaction would not (if it were the case) relieve him of liability if the authority of the agent was established but the defendant a books of accounts which were called for and not produced would presumably have shown such transactions and the receipt of commission on them. **BAKE OF BENGAL v PAMA NATHAN CHETTY** (1915) 1 L J 43 Cal 527

3 ———— *Limited authority of latter known to third party—Holding out principle if applicable—Estoppel—Negligent or improper act of principal apparently investing the agent with extended authority not proved—Misdirections* A person who deals with an agent whose authority he knows to be limited does so at his peril in this sense that should the agent be found to have exceeded his authority the principal cannot be made responsible. In order that the principle of holding out should in any given case of agency apply to the act done by the agent and relied upon to bind the principal must be an act of that particular class of acts which the agent is held out as having a general authority on behalf of his principal to do. But if the agent be held out as having a limited authority to do on behalf of his principal acts of a particular class then the principal is not bound by an act done outside that authority even though it be an act of that particular class because the authority being thus represented to be so limited, the party prejudiced has notice and should ascertain whether or not the act is authorised. Where the principal did not by any negligent or improper act allow the agent to be apparently invested with an authority beyond or greater than the limited authority which the customer knew him to possess there could not be any estoppel against the principal in respect of any of the steps in a transaction whereby the customer was deceived

PRINCIPAL AND AGENT—contd

ACCOUNTS—contd

4 ———— *Principal suit by agent for accounts—Limitation—Limitation Act (IX of 1908) Art 99* The plaintiff as principal sued the defendant as agent for accounts. The agency was created in 1896 by a registered document which provided that accounts were to be rendered at the end of each year the agent also hypothecating immovable property as security. In 1897 the plaintiff transferred the property to his wife who in 1899 re transferred the property to her husband. The agency was terminated in 1910 and the suit was brought in 1911 for accounts from 1899. *Held* that a new agency was created in 1899 irrespective of the agreement of 1896. That Art 89 of the Limitation Act was applicable to the case and as in this case there was no demand and refusal during the continuance of the agency and as the suit was instituted within three years of the date when the agency terminated the plaintiff was entitled to the accounts claimed. **SUNDER KANTA BANERJEE CHoudhury v NAWAB ALI SIKDAR (1915) 11 C W N 356**

5 ———— *Suit for account—Hypothecation of property as security for the proper discharge of his duties by the agent—Agreement to render account annually—Limitation Act (IX of 1908) Sch 1 Arts 89 115 132—Death of the principal effect of—Agent continuing in service of the heir—Contract Act (IX of 1872) ss 207 203 cl (10)—Method to be adopted for rendering account* Where certain immovable properties were hypothecated to the principal by the defendant as security for the valid discharge of duty as agent in a suit for accounts by the principal. *Held* that Art 132 of the Limitation Act will apply inasmuch as it is also by implication a suit to enforce a charge. **Hafeezuddin Mandal v Jadu Nath Saha 1 L R 35 Calc 298** followed **Jogesh Chandra v Benode Lal Roy 14 C W N 122** dissented from. On the death of the principal an agency is terminated and a new agency is created if the agent continues in service of his principal's heir. Where there is an agreement to submit accounts annually in a suit against the agent for an account Art 89 and not Art 115 of the Limitation Act will apply. **Shid Chandra Poy v Chandra Narain Mookerjee 1 L R 32 Calc 719** and **Ashgar Ali Khan v Khurshed Ali Khan 1 L R 4 All 27** followed **Easin v Baroda Kishore 11 C L J 43** dissented from. Duty of an agent does not end by merely submitting papers when accounts are demanded but a failure to explain them when called upon to do so will amount to a refusal under Art 89 of the Limitation Act. **Hurnath Ras v Krishna Kumar Bakshi 1 L R 14 Calc 147** relied on **Okand Ram v Brojo Gobind 19 W P 14 Upendra Kishore v Ramlara Debba 13 C W N 696** not followed **MADHUSUDAN SEN v RAJMAL CHANDRA DAS BASAK (1915) 1 L R 43 Calc 248**

6 ———— *Ordinary money account—Lending of money to persons to whom agent is not authorized to lend—Suit for account—Limitation Act (IX of 1908) Arts 89 and 90—Termination of agency* A suit by a principal against an agent for the recovery of money lent to persons to whom the agent was not authorized to lend is a suit for an ordinary money account and is governed by Art 89 and not Art 90 of

PRINCIPAL AND AGENT—contd

ACCOUNTS—contd

the Limitation Act. The question when an agency terminates is a question of fact. **Great Western Insurance Co v Cunliffe 9 Ch Ap 525** distinguished **Venkatachalam v Arayanan 1 I R 39 Mad 376** referred to **MUTHIAN v ALACAPPA (1917) 1 L R 41 Mad. 1**

7 ———— *Indian Trust Act (11 of 1882) s 88—Suit against agent for account of profits of private business—Limitation—Re opening of accounts once settled between principal and agent reasons for* Where the main allegation on which a suit was based was that the defendant being an agent of the plaintiff had for some time been carrying on on his own account and to the detriment of the plaintiff a business similar to that of the plaintiffs and the object of the suit was to compel the defendant to account for the profits which he had received from his own private business it was held that the article of sec 1 to the Indian Limitation Act 1908 which was applicable was either art 62 or art 90. On the facts it was found that whichever article applied the suit was barred. Where fiduciary relations have subsisted between the parties a Court will not re open accounts which have long been settled between the parties unless the plaintiff can show definitely at least one fraudulent omission or in error in the account. The principles laid down in **Williamson v Barbour 1 L R 9 Ch D 529** and **Boo Jwaiboo v Sha Nagaiah 1 L R 11 Bom 78** followed. **PUPAN MAL v FORD MACDONALD AND COMPANY Ltd (1919) 1 L R 41 All 655**

8 ———— *Suit by principal for money received on his behalf by agent—Interest—Costs—Appel against allotment of costs on wrong principles* *Held* that where money is recoverable by a principal from an agent as having been received by the agent on the principal's behalf the agent is not as a rule liable for interest unless by virtue of an express agreement or of some mercantile usage. *Held* also that an appeal as to the allotment of costs will lie from an appellate decree when the Court below has exercised its discretion as to costs arbitrarily and not according to general principles. **Daulat Poon v Durgoo Prasad 1 L R 15 All 333** and **Radhe Shyam v Behari Lal 1 L R 40 All 555** 56^o followed. **LALMAN v CHINTAMANI (1916) 1 L R 41 All 254**

9 ———— *Committee for collection of subscriptions to rebuild a mosque—Neglect of treasurer to pay his own subscription and to collect other subscriptions promised—Treasurer not legally liable* A movement having been set on foot for re constructing a mosque A and J promised to subscribe Rs 500 each. A was appointed treasurer of the committee for collecting subscriptions. J gave a cheque for his promised subscription of Rs 500 but owing to some defect in the endorsement and later on to its having become out of date it was never cashed. The mosque also was never reconstructed. A having died his heirs were sued by the members of the committee for the amount of the unpaid subscriptions. *Held* that neither A nor his heirs were liable for payment of the money. **ABDUL AZIZ v MASTUN ALI (1914) 1 L R 36 All 268**

PRINCIPAL AND AGENT—*contd*LIABILITY OF PRINCIPAL—*contd*

party but that agent was authorised by defendant No 2 generally to raise money for the management of the state. *Held* that the defendant No 2 was liable for the entire debt. **SATYA PRATY GHOSAL v GOBINDA MOHUN ROX CHOWDHURY (1009)** 14 C W N 414

Liability of principal for fraudulent conduct of the agent—Scope of the agent's or servant's employment—Unauthorised acts—Scope of agency. The principal is liable to third persons in a civil suit for the frauds, deceptions, concealments, misrepresentations, torts, negligence and other malfeasances or misfeasances and omissions of duty of his agent in the course of his employment although the principal did not authorise or justify or participate in or indeed know of such misconduct or even if he forbade the acts or disapproved of them. The principal is not liable for the torts or negligence of his agent in any matter beyond the scope of the agency unless he has expressly authorised them to be done or he has subsequently adopted them for his own use and benefit. **McGowan v Dyer** L R 8 Q B D 141. **Hern v Nichols** 1 Salteld 259. **National Exchange Co v Drew** 2 Mcq H L 103. **Brooklesby v Temperance P B Society (1895)** A C 173. **Pearson v Pearson v Dublin Corporation (1907)** A C 851. **Clinch v Life Assurance Co v Brown (1904)** A C 403. **Glasgow Corporation v Lorimer (1911)** A C 209. **Bowles v Stewart** 1 Sch & Lef 209. **Fit Simons v Duncan** 2 I R 483. **Subhan Bibi v Saraiatulla** 3 B L R 413. **Morrison v Yerachoyte** 6 C W N 429. **Iwar Chunder v Satish Chunder** 1 L R 30 Cal 207. **Gopal Chandra v Secretary of State** 1 L R 36 Cal 647. **Mohial v Govindram** 1 L R 30 Bom 83. **British M H Co v Charnwood Forest Ry Co** 18 Q B D 714. **Mackay v Commercial Bank** L R 5 P O 394. **Sovre v Francis** 3 A C 106. **Houldsworth v City of Glasgow** 5 A C 317 referred to **Lloyd v Grace (1912)** A C 716 and **Rubens v Great Fingall (1906)** A C 439 followed. **Barwick v English Joint Stock Bank** L R 2 Ex 259 and **Burma Trading Corporation v Mirza Mahomed Ally** 1 L P 4 Cal 116 explained. Acts of fraud by the agent committed in the course and scope of his employment form no exception to the rule whereby the principal is held liable for the torts of his agent even though he did not in fact authorise the commission of the fraudulent act. This rule of liability is based upon grounds of public policy. It seems more reasonable that where one of the two innocent persons must suffer from the wrongful act of a third person the principal who has employed and retained a dishonest agent and has placed him in a position of trust and confidence should suffer for his misdeed rather than a stranger. **SHERMAN KHAM v ALIMUDDIN (1915)**

I. L. R. 43 Cal. 511

NOTICE.

Agent paying debts owed to principal from money belonging to a third person—Principal is affected with notice of trust—Payment by cheque drawn by person connected with the third person's business of amounts to such notice—Sub agency—Privity with principal absent—Contract Act s 194 A servant of a Banking

PRINCIPAL AND AGENT—*contd*NOTICE—*contd*

Company was also the sole agent of the Texas Oil Company for sale of the latter's oil. The Banking Company having pressed V to pay moneys owed to it by V V discharged some of his debts to the Bank by a cheque drawn in its favour on another Bank by M who was the head clerk and manager of V's agency for the Oil Company per pro V sole agent for Bengal and United Provinces. Some of this money might presumably be money held by V in trust for the Oil Company. *Held* that there was nothing on the face of the cheque that would lead the Bank to doubt that V was perfectly entitled to deal with the moneys to which they related in whatever manner he thought fit. To affect a Bank with knowledge of the ownership of moneys paid into the accounts of their customers by the mere form of the signature on the negotiable documents by which such moneys are transferred is to proceed far beyond the recognised limits of the doctrine of notice and such a doctrine if accepted would create a serious embarrassment to the conduct of banking business. **Coleman v Bucks (1897)** 2 Ch 243 and **Gray v Johnston** 1 L R 3 H L 1 (1888) referred to. *Held* further that the fact that V was a servant or agent of the Banking Company did not affect it with notice of the trust. Knowledge communicated to an agent of a fact which it was not the agent's interest to disclose and which he did not disclose to the principal cannot be imputed to the principal. V had appointed sub agents for sale of the Texas Oil Company's oils on terms similar to those which bound him to the Company. *Held* on the facts that no privity was established between the Company and the sub agents. **THE TEXAS COMPANY v THE BOMBAY BANKING COMPANY**

L R 46 I A 250
I L R 44 Bom. 139
24 C W N 469

MISCELLANEOUS

Claim and cross claim—Business of principal Company transferred to another Company set up by former and closely identified with it but business conducted as before by former—Latter Company is may sue without reference to set off claimed by the agent A & Co were entitled to receive from the respondents the price of sugar purporting to have been sold by the latter on their behalf and the respondents had a larger sum of money in deposit with A & Co as bankers. A & Co it appeared had incorporated another Company called the Mysore Sugar Company which as to personnel and otherwise was closely identified with A & Co and completely controlled by them the object being that the Mysore Sugar Company would take over the sugar factory of A & Co and though this was technically done the factory continued to be run and maintained in the same way as before and the respondents never knew of what had happened. The Official Trustee in whom the assets of the Mysore Sugar Company vested upon insolvency having sued the respondents for the price of sugar sold out of the factory without reference to the cross-claim and set off of the respondents against A & Co. *Held* that if the Mysore Sugar Company could bring actions for sums due

PRINCIPAL AND AGENT—*contd*AUTHORITY OF AGENT—*contd*

by the agent acting beyond his authority *THE RUSSO CHINESE BANK v LI YAU SAM* (1909) 14 C W N 381

FRAUDULENT REPRESENTATIONS BY AGENT

Principal and Agent—Bribe or secret commission accepted by Agent after transaction completed—Contracts obtained by fraud voidable but not void—Limitation Act (XV of 1877) Sch II Art 95 The plaintiff instituted a suit against the defendants within three years from the date when the fraud as alleged in the suit became first known to him though he had suspicions of the fraud prior to the three years. The suit was for setting aside a lease which the plaintiff alleged he had been induced to grant to the defendant No 1 under fraudulent representations made to the plaintiff by the defendant No 2 who whilst purporting to act as the plaintiff's servant or agent received after the lease had been duly drawn up executed and registered the sum of Rs 500 from the defendant No 1 as a bribe or secret commission by way of payment for the service rendered to the latter in connection with the making of the arrangements for the execution of the lease. *Held* that mere suspicion is not knowledge and the suit was not barred by limitation. *Held* further that a bribe is nevertheless a bribe because its payment is postponed. When a bribe has been given it is immaterial to inquire what if any effect the bribe had on the mind of the receiver and whether he was influenced thereby to recommend to the plaintiff an arrangement with the appellant which he would otherwise have recommended. *Harrington v Victoria Graving Dock Company* L R 3 Q B D 549 and *Shipway v Broadwood* (1899) 1 Q B 389 referred to. *Held* further that a contract induced by fraud is only voidable and the remedy by rescission is open only so long as the parties can be restored to the relative position which they originally occupied. *Urguhari v Macpherson* L R 3 App Cas 331 followed. *Olough v London and North Western Railway Company* L R 7 Ex 28 referred to. *INDRA NATH BANERJEE v ROOKE* (1909) 1 L R 37 Cal 81

LIABILITY OF AGENT

1. — *Misconduct—Agent with irrevocable authority may be removed for misconduct—Suit abatement of* In every contract of service there is an implied condition that if the services be not faithfully performed the employer is entitled to put an end to the contract and an irrevocable contract of agency is no exception to this rule. An agent appointed under an irrevocable contract of agency may be removed if he is guilty of misconduct in the performance of his duties. The above principle will apply whether the person employed be a servant or agent or a person occupying a fiduciary position. A suit brought against such an agent for his removal and for recovering damages for his misconduct does not abate with the death of such agent. *MOHIL KOTTA KUN CHUTANI NATH v SURESHANATH PATTAR* (1909) 1 L R 33 Mad 182

2. — *Construction of Contract—Indian Contract Act (IX of 1872) as 215 216—*

PRINCIPAL AND AGENT—*contd*LIABILITY OF AGENT—*contd*

Agent appointed to sell goods buying them on his own account S 216 of the Indian Contract Act is merely enabling and confers upon the principal the right to claim from his agent the benefit of the transaction to which the agency business related where the agent without the knowledge of the principal has dealt with the business on his own account instead of on account of the latter. The principal is free to exercise that right or not. The law is that where a party elects to adopt a transaction he must take its benefit with its burden. He cannot, as is said, 'both appropriate and reprobate'. But both the benefit and the burden must for that purpose be attached to and incidents of the transaction which the principal has affirmed by election. Where an agent appointed to sell his principal's goods for a fixed price buys them on his own account without the previous consent of the latter it is competent for the principal either to repudiate the transaction under the circumstances mentioned in s 216 of the Contract Act or to affirm it. If he elects to affirm the principal will be liable to pay to the agent such charges only as are incidents of the transaction of purchase that is such as the vendor under the contract would have been liable to pay to the purchaser because what is affirmed is the relation of vendor and purchaser. But if those charges are annexed by the terms of the contract to the agency so as to regulate the relation of principal and agent as distinguished from the relation of vendor and purchaser the agent is not entitled to recover them. *Solomons v Pender* 3 H & C 639, and *Andrews v Parnsey & Co* (1903) 2 K B 635 referred to. *JOACHIMSON v MEONJEE VALLABHDAS* (1909) 1 L R 14 Bom. 292

LIABILITY OF PRINCIPAL

Contract Act (IX of 1872) s 230—Liability of principal and agent—Principal when may be sued—Negotiable Instruments Act (XXVI of 1881) as 4 III (b) and 43 — *Negotiable instrument what is not—Debt incurred on behalf of several co-sharers—If everyone bound for every part of the debt—Apportionment of debt according to the properties in respect of which debt incurred* Where an agent is personally liable for a debt the creditor has the option to proceed either against the principal or the agent. Where it did not appear that in lending the money the lender (who knew that the money was being borrowed on behalf of certain principals) looked exclusively to the agent for repayment. *Held* that he could proceed to realise the money from the principals. *In the matter of the Ganges Steam Tug Co Ltd* 1 L R 18 Cal 31 36. *Pateerson v Gardesqui* 1 L East 62. *Thomson v Dartmouth* 9 B & C 18 referred to. As the authority to the agent contemplated a joint and reciprocal liability of all the principals. *Held* that the liability could not be distributed so as to hold each of the principals liable for his own apportioned share of the debt. Where an agent took loans upon notes of hand under letters of authority in order to pay the Government revenue in respect of certain properties and it was found as a fact that in one of these properties defendant No 2 had no interest and that he had not given any power of attorney for raising loan to meet dues in respect of that pro

PRINCIPAL AND AGENT—contd

LIABILITY OF PRINCIPAL—contd

erty but that agent was authorised by defendant No 2 generally to raise money for the management of the state *Held* that the defendant No 2 was liable for the entire debt **SATTA PRIYA GHOSAL v GOBINDA MONDOL ROY CHOWDHURY (1909) 14 C W N 414**

Liability of principal for fraudulent conduct of the agent—Scope of the agent's or servant's employment—Unauthorised acts—Scope of agency Tort The principal is liable to third persons in a civil suit for the frauds, deceptions, concealments, misrepresentations, torts, negligence and other malfeasances or misfeasances and omissions of duty of his agent in the course of his employment although the principal did not authorise or justify or participate in or indeed know of such misconduct or even if he forbade the acts or disapproved of them. The principal is not liable for the torts or negligences of his agent in any matter beyond the scope of the agency unless he has expressly authorised them to be done or he has subsequently adopted them for his own use and benefit **McGowan v Dyer L R 8 Q B D 111** *Hern v Nichols 1 Baskeld 239* *National Exchange Co v Drew 2 Macq H L 103* *Brooklesby v Temperance P B Society (1895) A C 173* *Pearson v Pearson v Dublin Corporation (1907) A C 851* *Citizen's Life Assurance Co v Brown (1904) A C 43* *Glasgow Corporation v Lumsden (1911) A C 209* *Bowles v Stewart 1 Sch & L 209* *FitzSimons v Duncan 2 I R 483* *Subjan Bibi v Saratulla 3 B L R 413* *Morrison v Verschoyle 6 O W N 499* *Jewar Chander v Satsah Chunder 1 L R 30 Calc 207* *Gopal Chandra v Secretary of State 1 L R 30 Calc 647* *Mohlal v Govindram 1 L R 30 Bom 33* *British M Co v Charnwood Forest Ry Co 18 Q B D 714* *MacLay v Commercial Bank L R 5 P C 394* *Suisse v Francis 3 A C 106* *Houldsworth v City of Glasgow 5 A C 317* referred to *Lloyd v Grace (1912) A C 716* and *Pubens v Great Fingall (1906) A C 439* followed. *Barwick v English Joint Stock Bank L R 2 Ex 259* and *Burma Trading Corporation v Mirza Mahomed Ally 1 L P & Calc 116* explained. Acts of fraud by the agent committed in the course and scope of his employment form no exception to the rule whereby the principal is held liable for the torts of his agent even though he did not in fact authorise the commission of the fraudulent act. This rule of liability is based upon grounds of public policy. It seems more reasonable that where one of the two innocent persons must suffer from the wrongful act of a third person the principal who has employed and retained a dishonest agent and has placed him in a position of trust and confidence should suffer for his misdeed rather than a stranger **SHEWAN KHAN v ALIUMUNDI (1916) 1 L R 43 Calc. 511**

NOTICE.

Agent paying debts owed to principal from money belonging to a third person—Principal is affected with notice of trust—Agent by cheque drawn by person connected with the third person's business of amounts in such notice—Sub-agency—Privilege with principal absent—Contract Act s 194 A servant of a Banking

PRINCIPAL AND AGENT—contd

NOTICE—contd

Company was also the sole agent of the Oil Company for sale of the latter. Banking Company having pressed V to pay moneys owed to it by V V discharged some of his debts to the Bank by a cheque drawn in its favour on another Bank by M who was head clerk and manager of V's agency the Oil Company per pro V sole agent Bengal and United Provinces. Some of this money might presumably be money held by V in trust for the Oil Company. *Held* that there was nothing on the face of the cheque that would lead the Bank to doubt that V was perfectly entitled to deal with the moneys to which they related in whatever manner he thought fit. To affect a Bank with knowledge of the ownership of moneys paid into the accounts of their customers by the mere form of the signature on the negotiable documents by which such moneys are transferred is to proceed far beyond the recognised limits of the doctrine of notice and such a doctrine if accepted would create a serious embarrassment to the conduct of banking business **Coleman v Bucks (1897) 2 Ch 213** and **Groy v Johnson 1 L R 3 H L 1 (1868)** referred to. *Held* further that the fact that V was a servant or agent of the Banking Company did not affect it with notice of the trust. Knowledge communicated to an agent of a fact which it was not the agent's interest to disclose and which he did not disclose to the principal cannot be imputed to the principal. V had appointed sub agents for sale of the Texas Oil Company's oils on terms similar to those which bound him to the Company. *Held* on the facts that no privity was established between the Company and the sub agents. **THE TEXAS COMPANY v THE BOMBAY BANKING COMPANY** **L R 48 I A 250** **I L R 44 Bom. 139** **24 C W N 469**

MISCELLANEOUS

Claim and cross claim—Business of principal Company transferred to another Company set up by former and closely identified with it but business conducted as before by former—Latter Company if may sue without reference to set off claimed by the agent A & Co were entitled to receive from the respondents the price of sugar purporting to have been sold by the latter on their behalf and the respondents had a larger sum of money in deposit with A & Co as bankers. A & Co it appeared had incorporated another Company called the Mysore Sugar Company which as to personnel and otherwise was closely identified with A & Co and completely controlled by them the object being that the Mysore Sugar Company would take over the sugar factory of A & Co and though this was technically done the factory continued to be run and maintained in the same way as before and the respondents never knew of what had happened. The Official Trustee in whom the assets of the Mysore Sugar Company vested upon insolvency having sued the respondents for the price of sugar sold out of the factory without reference to the cross-claim and set off of the respondents against A & Co. *Held* that if the Mysore Sugar Company could bring actions for sums due

PRINCIPAL AND AGENT—contd

AUTHORITY OF AGENT—contd

by the agent acting beyond his authority *The Russo Chinese Bank v Li Yau Sam* (1909) 14 C W N 381

FRAUDULENT REPRESENTATIONS BY AGENT

Principal and Agent—Bribe or secret commission accepted by Agent after transaction completed—Contracts obtained by fraud voidable but not void—Limitation Act (XV of 1877) Sch II, Art 95 The plaintiff instituted a suit against the defendants within three years from the date when the fraud as alleged in the suit became first known to him though he had suspicions of the fraud prior to the three years. The suit was for setting aside a lease which the plaintiff alleged he had been induced to grant to the defendant No 1 under fraudulent representations made to the plaintiff by the defendant No 2 who whilst purporting to act as the plaintiff's servant or agent received after the lease had been duly drawn up executed and registered the sum of Rs 500 from the defendant No 1 as a bribe or secret commission by way of payment for the service rendered to the latter in connection with the making of the arrangements for the execution of the lease. Held that mere suspicion is not knowledge and the suit was not barred by limitation. Held further that a bribe is nevertheless a bribe because its payment is postponed. When a bribe has been given it is immaterial to inquire what if any effect the bribe had on the mind of the receiver and whether he was influenced thereby to recommend to the plaintiff an arrangement with the appellant which he would otherwise have recommended. *Harrington v Victoria Graving Dock Company* L R 3 Q B D 549 and *Shipway v Broadwood* (1899) 1 Q B 369 referred to. Held further that a contract induced by fraud is only voidable and the remedy by rescission is open only so long as the parties can be restored to the relative position which they originally occupied. *Urguhart v Macpherson* L R 3 App Cas 831 followed. *Gough v London and North Western Railway Company* L R 7 Fz 333 referred to. *Indra Nath Baxerjee v Pooke* (1909) 1 L R 3 Calc 81

LIABILITY OF AGENT

1. *Misconduct—Agent with irrevocable authority may be removed for misconduct—Suit abatement of.* In every contract of service there is an implied condition that if the services be not faithfully performed the employer is entitled to put an end to the contract and an irrevocable contract of agency is no exception to this rule. An agent appointed under an irrevocable contract of agency may be removed if he is guilty of misconduct in the performance of his duties. The above principle will apply whether the person employed be a servant or agent or a person occupying a fiduciary position. A suit brought against such an agent for his removal and for recovering damages for his misconduct does not abate with the death of such agent. *Yotil Kotta Kun Churni Nath v Subramanian Pattar* (1909) 1 L R 33 Mad 162

2. *Construction of Contract—* And an *Contract Act (IX of 1872) ss 215-216—*

PRINCIPAL AND AGENT—contd

LIABILITY OF AGENT—contd

Agent appointed to sell goods buying them on his own account S 216 of the Indian Contract Act is merely enabling and confers upon the principal the right to claim from his agent the benefit of the transaction to which the agency business related where the agent without the knowledge of the principal has dealt with the business on his own account instead of on account of the latter. The principal is free to exercise that right or not. The law is that where a party elects to adopt a transaction he must take its benefit with its burden. He cannot, as is said, both appropriate and reprobate. But both the benefit and the burden must for that purpose be attached to and incidents of the transaction which the principal has affirmed by election. Where an agent appointed to sell his principal's goods for a fixed price buys them on his own account without the previous consent of the latter it is competent for the principal either to repudiate the transaction under the circumstances mentioned in s 216 of the Contract Act or to affirm it. If he elects to affirm the principal will be liable to pay to the agent such charges only as are incidents of the transaction of purchase that is such as the vendor under the contract would have been liable to pay to the purchaser because what is affirmed is the relation of vendor and purchaser. But if those charges are annexed by the terms of the contract to the agency so as to regulate the relation of principal and agent as distinguished from the relation of vendor and purchaser the agent is not entitled to recover them. *Solomons v Pender* 5 H & O 639 and *Andrew v Ramsey & Co* (1903) 2 K B 635 referred to. *Joachimson v Michael Vallaridas* (1909) 1 L R 11 Bom. 292

LIABILITY OF PRINCIPAL

Contract Act (IX of 1872) s 23—Liability of principal and agent—Principal when may be sued—Recoupable Instruments Act (XXVI of 1892) ss 4 III (b) and 9 *Negotiable instrument what is not—Debt incurred on behalf of several co sharers—If everyone bound for every part of the debt—Apportionment of amount according to the properties in respect of which debt incurred* Where an agent is personally liable for a debt the creditor has the option to proceed either against the principal or the agent. Where it did not appear that in lending the money the lender (who knew that the money was being borrowed on behalf of certain principals) looked exclusively to the agent for repayment. Held that he could proceed to realise the money from the principals. In the matter of the *Ganges Steam Tug Co Ltd* 1 L R 18 Calc 31 36. *Palmer v Gandasree* 15 East 62. *Thomson v Davenport* 9 B & C 111 referred to. As the authority to the agent contemplated a joint and reciprocal liability of all the principals. Held that the liability could not be distributed so as to hold each of the principals liable for his own apportioned share of the debt. Where an agent took loans upon notes of hand under letters of authority in order to pay the Government revenue in respect of certain properties and it was found as a fact that in one of these properties defendant No 2 had no interest and that he had not given any power of attorney for raising loan to meet due in respect of that pro

PRINCIPAL AND AGENT—*contd*LIABILITY OF PRINCIPAL—*contd*

erty but that agent was authorised by defendant No 2 generally to raise money for the management of the state. *Held* that the defendant No 2 was liable for the entire debt. **SATYA PRITA GHOSAL v GORINDA MOHUN ROY CHOWDHURY (1909) 14 C W N 414**

Liability of principal for fraudulent conduct of the agent—Scope of the agent's or servant's employment—Unauthorized acts—Scope of agency Tort The principal is liable to third persons in a civil suit for the frauds, deceptions, concealments, misrepresentations, torts, negligence and other malfeasances or misfeasances and omissions of duty of his agent in the course of his employment although the principal did not authorise or justify or participate in or indeed know of such misconduct or even if he forbade the acts or disapproved of them. The principal is not liable for the torts or negligences of his agent in any matter beyond the scope of the agency unless he has expressly authorised them to be done or he has subsequently adopted them for his own use and benefit. **McGowan v Dyer L R 8 Q B D 141** *Hern v Nichols 1 Salteld 239* *North Exchange Co v Drew 2 Macq H L 103* *Brookley v Temperance P B Society (1895) A C 173* *Pearson v Pearson v Dublin Corporation (1907) A C 851* *Citizen's Life Assurance Co v Brown (1904) A C 423* *Glasgow Corporation v Lorrimer (1911) A C 209* *Boules v Stewart 1 Sch & Lef 209* *Pri Symons v Duncan 2 I R 433* *Subjan Bibi v Saratulla 3 B L R 413* *Morrison v Verschoyle 6 O W N 429* *Jawar Chunder v Satish Chunder I L R 30 Calc 207* *Gopal Chandra v Secretary of State I L P 36 Calc 647* *Motilal v Govindram I L R 30 Bom 33* *British M B Co v Charnwood Forest Ry Co 18 Q B D 714* *Macley v Commercial Bank L R 5 P O 394* *Suisse v France 3 A C 100* *Houldsworth v City of Glasgow 5 A C 317* referred to: *Lloyd v Grace (1912) A C 716* and *Rubens v Great Fingall (1906) A C 439* followed. *Barwick v English Joint Stock Bank L R 2 Ex 259* and *Burma Trading Corporation v Mirza Mahomed Ally I L P 4 Calc 116* explained. Acts of fraud by the agent committed in the course and scope of his employment form no exception to the rule whereby the principal is held liable for the torts of his agent even though he did not in fact authorise the commission of the fraudulent act. This rule of liability is based upon grounds of public policy. It seems more reasonable that where one of the two innocent persons must suffer from the wrongful act of a third person the principal who has employed and retained a dishonest agent and has placed him in a position of trust and confidence should suffer for his misdeed rather than a stranger. **SHERJAN KHAN v ALIMUDDI (1915) I L R 43 Calc. 511**

NOTICE.

Agent paying debts owed to principal from money belonging to a third person—Principal is affected with notice of trust—Payment by cheque drawn by person connected with the third person a business if amounts to such notice—Sub-agency—Privately with principal absent—Contract Act s 194 A servant of a Banking

PRINCIPAL AND AGENT—*contd*NOTICE—*contd*

Company was also the sole agent of the Texas Oil Company for sale of the latter's oil. The Banking Company having pressed V to pay moneys owed to it by V, V discharged some of his debts to the Bank by a cheque drawn in its favour on another Bank by M who was the head clerk and manager of V's agency for the Oil Company per pro V sole agent for Bengal and United Provinces. Some of this money might presumably be money held by V in trust for the Oil Company. *Held* that there was nothing on the face of the cheque that would lead the Bank to doubt that V was perfectly entitled to deal with the moneys to which they related in whatever manner he thought fit. To affect a Bank with knowledge of the ownership of moneys paid into the accounts of their customers by the mere form of the signature on the negotiable documents by which such moneys are transferred is to proceed far beyond the recognised limits of the doctrine of notice and such a doctrine if accepted would create a serious embarrassment to the conduct of banking business. **Coleman v Bucks (1897) 2 Ch 743** and **Groy v Johnston I L R 3 H L 1 (1868)** referred to. *Held* further that the fact that V was a servant or agent of the Banking Company did not affect it with notice of the trust. Knowledge communicated to an agent of a fact which it was not the agent's interest to disclose and which he did not disclose to the principal cannot be imputed to the principal. V had appointed sub-agents for sale of the Texas Oil Company's oils on terms similar to those which bound him to the Company. *Held* on the facts that no privity was established between the Company and the sub-agents. **THE TEXAS COMPANY v THE BOMBAY BANKING COMPANY!**

L R 46 I A 250
I L R 44 Bom. 189
24 C W N 469

MISCELLANEOUS

Claim and cross-claims—Business of principal Company transferred to another Company set up by former and closely identified with it but business conducted as before by former—Latter Company is may sue without reference to set off claimed by the agent A & Co were entitled to receive from the respondents the price of sugar purporting to have been sold by the latter on their behalf and the respondents had a larger sum of money in deposit with A & Co as bankers. A & Co it appeared had incorporated another Company called the Mysore Sugar Company which as to personnel and otherwise was closely identified with A & Co and completely controlled by them the object being that the Mysore Sugar Company would take over the sugar factory of A & Co and though this was technically done the factory continued to be run and maintained in the same way as before and the respondents never knew of what had happened. The Official Trustee in whom the assets of the Mysore Sugar Company vested by a judgment having sued the respondents for the price of sugar sold out of the factory without reference to the cross-claim and set off claimed by A & Co against A & Co. *Held* that if the Mysore Sugar Company could bring set-off as for

PRINCIPAL AND AGENT—contd**MISCELLANEOUS—contd**

from the respondents in respect of sales of sugar they could bring them only as principals in this sense that they could take the benefit of these sums subject to every equity which affected these sums in the hands of A & Co. **THE OFFICIAL TRUSTEE OF MADRAS v A SUNDARAMURTHI MUDALIAR** 24 C W N 1004

Contract—Undisclosed principal—Contract Act (IX of 1872) ss 230 (2) 236 To enable an agent to sue on a contract under s 230 (2) of the Contract Act there must in fact have been a principal though undisclosed for whom he was acting in entering into the contract. Where a person in entering into a contract purported to act as agent for an undisclosed principal but in fact no such principal existed and the person was in reality acting on his own account he is debarred from suing on the contract by s 236 of the Contract Act. **RAMJI DAS v JANGI DAS** (1912) 1 L R 39 Cal 802

Suit for declaration of title to the benefits of a decree—Maintainability of the suit Where an agent entered into a contract in his own name with a third party and brought a suit to recover damages for breach of the same and obtained a decree thereon a suit subsequently brought by the principal against the agent for declaration of title to the decree was not maintainable. The principal before the suit was brought by his agent might have adopted the contract made by the latter and sued on it but if he did so he was bound to adopt the contract cum on re **Udell v Atherton** 7 H & N 172 and **Bristol v Whitmore** 9 H L C 391 approved. He might also have intervened at any stage in the suit which had been commenced by his agent. **Sailler v Leigh & Camp** 195 approved. **GOODEMAN v JANARATNA PUGLIA** (1912) 1 L R 49 Cal 335

PRINCIPAL AND INTEREST

See ACCOUNT

1 L R 41 Mad 570

See DEKKAN AGRICULTURISTS RELIEF ACT (XVII of 1879)

1 L R 35 Bom 204

See LIMITATION ACT (IX of 1903) Arts 132 AND 75 1 L R 39 Mad 931

PRINCIPAL AND SURETY

See CONTRACT ACT (IX of 1872) ss 126 TO 147

— debt barred against principal whether surety liable for—

See HINDU LAW—JOINT FAMILY

1 Pat L J 497

Promissory note payable on demand—Limitation—Payment of interest by principal—Acknowledgment of debt—Liability of surety—Contract of grantee—Limitation Act (IX of 1903) ss 18 20 21 See 1 Ais 65 73 115—**Contract Act (IX of 1872) ss 126 128** Where an on demand promissory note was executed by the debtor and bore an endorsement on it repay ment guaranteed by me signed by the person

PRINCIPAL AND SURETY—contd

purporting to make the guarantee and where the said promissory note was unaccompanied by any writing restraining or postponing the right to sue. **Held** that the endorsement must be treated as a contract of guarantee by the person purporting to make the guarantee. **Held** also that the promissory note was a present debt payable without demand that the liability of the surety on the guarantee accrued from the date of the promissory note that the Statute of Limitation began to run in favour of the surety from the date of the note and that for the purposes of this case it mattered not whether Art 65 or Art 115 of the Limitation Act applied. **Norton v Ellam** 2 M & W 461 **Roe v Young** 2 Brod & Bing 165 **Maltby v Murrells** 5 H & N 81 **In re George** 44 Ch D 627 **Perumal Ayyan v Alagarasami Bhagavathar** 1 L R 20 Mad 245 **Holl v Hadley** 2 Ad & El 758 **Colin v Buckle** 8 M & W 680 **Srinath Roy v Peary Mohan Moolerjee** 25 C L J 91 and **Dwarka Dass Gochar dhana Doss v Chirakala Krishnaya** 21 Mad L J 457 referred to. Where payment of interest on an on demand promissory note was made by the principal debtor with the knowledge and consent of the surety and even at his request but where there was no evidence that it was made on behalf of such surety. **Held** that the fresh period of limitation created under s 20 of the Limitation Act by the payment of interest by the principal debtor could be only in respect of the debt upon which the interest was paid viz the debt of the principal debtor. The fact that the interest was paid with the knowledge and consent of the surety and even at his request made no difference unless the circumstances could be said to render the payment one on behalf of the surety. **Domi Lal Sahu v Roshan Dabay** 1 L R 33 Cal 198 **In re Powers Lundell v Phillips** 30 Ch D 291 **In re Frisby** 43 Ch D 106 **Levin v Wilson** 11 App Cas 639 distinguished. **Krishna Kulkarni v Radha Ramun Munshi** 1 L R 12 Cal 330 **Hajarnal v Arisankarav** 1 L R 5 Bom 647 **Coop v Creswell** 1 L R 2 Eq 106 **Morgan v Rowlands** L R 7 Q B 493 **Green v Humphreys** 26 Ch D 474 **In re Boswell** (1916) 2 Ch 359 **Astbury v Astbury** (1893) 2 Ch 111 **In re The Estate of William Senger** 3 Jur N 8 **431** 26 L J Ch 809 and **Gardner v Brooke** 21 R 6 referred to. **Per MOORE J.**—Though the liabilities of the debtor and the surety arise out of the same transaction the liabilities of the two persons are distinct for the purposes of the application of s 20 of the Limitation Act. **Gopal Das Saithe v Gopal bin Sonu Bast** 1 L R 23 Bom 243 and **Srinivasa Varadachariar v Echammal** 21 Mad L J 455 followed. The surety under the terms of the contract is either jointly or separately liable along with the principal debtor if the debts are deemed joint s 21 (3) of the Limitation Act shows that the payment by one of them (the debtor) does not extend the time on the other hand if the debts are deemed distinct the same result follows upon a true construction of s 20 itself. S 128 of the Contract Act which makes the liability of the surety co extensive with that of the principal debtor is of no assistance to the plaintiff as it must be read along with the provisions of the Limitation Act which defines the measure of the liability and has no reference to the extinction of liability by operation

PRINCIPAL AND SURETY—contd

of the Statute of Limitation & payment by one per on cannot keep alive the remedy against another unless the circumstances are such that payment by the one may be regarded as a payment for the others. There is nothing in the relation of principal and surety itself which makes payment by the principal binding as a payment by the surety. *Cockrill v Sparks* 1 H & C 639 1 L R 359 Re Holmerhausen 62 L T 341 and *Henton v Laddison* 68 L T 405 referred to. *BRAJENDRA KISHORE ROY CHOWDHURY v HINDUSTAN CO OPERATIVE INSURANCE SOCIETY* LD (1917) 1 L R 44 Cal 878

PRINCIPAL CONTRACT

See CONTRACT 1 L R 46 Cal 831

PRINTER AND PUBLISHER

See CONTENT 15 C W N 771
1 L R 45 Cal 169

See SEDITION

1 L R 33 Cal 227 233

PRINTING PRESS

See PRESS ACT (I or 1910)

Newspaper definition of— Paper not containing profane or libellous public news or comments thereon—Onus of proof of character of the paper—Formal proof of newspaper and of printing matter—Incitement to murder and acts of violence—Use of seditious language—Newspapers (Incitement to offences) Act (I of 1908) s 2 (1) (6) 3—Power of third Judge on difference of opinion between Judges of the Court of Appeal to deal with the whole case against an accused—Criminal Procedure Code (I of 1898) s 429 The definition of a newspaper in s 2 (1) (b) of Act VII of 1908 must be read as a whole. It refers to a work which publishes periodically public news or comments thereon. It is not enough to take a single issue of it and to pick out an isolated sentence or a paragraph therein which might by stretch of language be interpreted to contain public news or comments thereon. When it is disputed whether a work is a newspaper the production ought to establish its alleged character by proof of the contents of more than one issue. To bring a case under s 3 (1) of the Act the character of the offending paper as a newspaper has to be first established and this may not always be possible by the production and proof of the contents of one issue only. In a proceeding under s 3 of the Act the newspaper and the offending matter must be regularly proved. In such cases it is essential that the proceedings should be regularly conducted and the forms of law observed. s 1 (1) of the Act confers very limited powers of forfeiture and applies only to the cases of presses used for the printing of new papers which contain an incitement to the particular crimes or class of crimes specified therein. The word incitement clearly implies the idea of rousing to action in agitation or stimulation. The use of seditious language sufficient to bring the case under s 124A of the Penal Code is not equivalent to an incitement to offences mentioned in s 3 (1) of Act VII of 1908. A thinly veiled glorification of rebellion implying a desire on the part of the writer that there should be a successful rebellion though it

PRINTING PRESS—contd

may amount to sedition under s 124A of the Penal Code is not sufficient to bring the case within s 3 (1) of the Act. There must be something more direct and specific for that purpose. In the case of two prisoners regarding the guilt of one of whom only the Judges of the Appellate Court are divided in opinion it may be that what has to be laid before another Judge is the case of such prisoner alone. But where they are equally divided as to the guilt of one accused though in certain aspects they may be agreed the whole case as regards the accused is laid before the third Judge and not merely the point or points on which there is a difference of opinion and it is his duty to consider all the points involved before delivering his opinion upon the case. *SABAT CHANDRA MITRA v EMPEROR* (1910)

1 L R 38 Cal 202

PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867)—

Indian Press Act (I of 1910) s 3 sub s (1)—Control of press owners—Deposit of security power of Magistrate to dispense with—Declarations made by keeper of printing presses—Publishing objectionable matter in newspaper or other periodical—Order by Governor in Council for seizing security and newspaper with all copies whereof found and annulling declarations made—Petitions by owner of press to set aside or revise orders of Magistrate and Governor in Council—Articles in newspaper bringing Government into hatred and contempt—Criminal Procedure Code 1898 s 435—Writ of certiorari—Appeal in criminal case—Practice in Privy Council—Indian Press Act (I of 1910) ss 3 sub s (1) & sub s (1) 17 and 22 Under the Printing Presses and Newspapers Act (XXV of 1867) s 4 any person who keeps a printing press in his possession must make and subscribe a declaration before a Magistrate stating that he has a press for printing and where it is situated and by s 5 no printed newspapers or other periodical shall be published without the printer or publisher making a declaration that he is the printer or publisher the name of the periodical and the place where the printing is conducted. Under the Indian Press Act (I of 1910) the Government of India s 3 sub s (1) the person making such declaration is required to deposit before a Magistrate a sum of money or other security not less than Rs 500 but not more than Rs 2000 as the Magistrate thinks fit to require. The Magistrate however may for special reasons dispense with the deposit and has certain powers of cancelling or varying any order made under this subsection. By s 4 sub s (1) the Local Government in case of anything objectionable appearing in the paper may by notice in writing addressed to the owner of the press declare the security deposit the newspaper in which the objectionable matter appears and all copies of it wherever found to be considered forfeited to the Crown and the declaration made as above by the keeper of the press annulled. ss 17 and 18 give power to any person interested in any property so forfeited to make an application to a Special Bench of the High Court to set aside such order on the ground that the newspaper did not contain anything of an objectionable nature such as is described in s 4 sub s (1). The appellant

PRIVATE DEFENCE—could

may be justified if the right of self defence was exercised reasonably and properly but the measure of self defence must always be proportionate to the quantum of force used by the attacker and which it is necessary to repel. A Court should not convict where it finds that the prosecution case is in the main untrue but each case must depend upon its own facts as to the applicability of this general principle. Where the prosecution case is found to be substantially untrue but there is a residuum of evidence with regard to some other charge incidental to the main charge which after careful judicial enquiry is found to be true and trustworthy the accused may be convicted on such incidental charge. **RAM PRASAD MANTOV v KING EMPEROR** 4 Pat L J 289

Right of whether may be pleaded in the alternative. An accused person is not debarred from denying that he committed the act of which he is accused and at the same time pleading the right of private defence. **IAUDI KEOT v THE KING EMPEROR** 5 Pat L J 64

PRIVATE FERRY

See **FERRY** I L R 37 Calc 543

PRIVATE FISHERIES ACT (II OF 1889)

§ 3—*Conviction without ascertaining boundary of fishery which is in dispute and bonafides of a cused propriety of—Purcha eriditinary value of—Certified copy of Rubakari admissibility of.* The petitioner a fisherman was convicted under s 3 of the Private Fisheries Act for having fished in a river. It was in dispute whether the river appertained to a Khass Mahal or to a mouzah belonging to the remindars under the orders of whose Jaradars the petitioner acted. The complainant the Jaradar under Government produced a Government purcha or extract from a record of rights prepared under the Bengal Tenancy Act and the defence produced a certified copy of a Rubakari issued by the Commissioner containing an adjudication of the disputed boundary. Held that in the absence of a determination of the true boundary of the fishery and the bona fides of the petitioner the conviction was not proper. That the extract from the record of rights at most raised a rebuttable presumption in favour of the complainant. That the Magistrate's order that the Rubakari was inadmissible in evidence on the ground that a certified copy not the original order was produced was wrong. **RADHAKANTH KHAIBARTA v EMPEROR (1917)** 22 C W N 742

PRIVATE INTERNATIONAL LAW

See **FOREIGN JUDGMENT SUIT ON**
I L R 37 Mad 163

Jurisdiction—Power of Foreign Court to sell debt which has arisen in British India—lex loci rei sitae. Where a pledge of movable property or of a debt is allowed by the law of the territory where the transaction took place the Court of that territory has jurisdiction to sell the property in execution of its decree so as to pass a valid title to it even if the property in situ is outside of its jurisdiction. **Ghaneshankar v Bhanoli** I L R 5 Bom 249 distinguished. **D COTTEA v ANSAR KURHU (1913)** I L R 36 Mad 1

PRIVATE KNOWLEDGE

— of facts by Judge—

See **EVIDENCE** I L R 36 Mad 168

PRIVATE LAND

See **MADRAS ESTATES LAND ACT (I OF 1908)** ss 3 & 165
I L R 39 Mad 341

PRIVATE PARTITION

See **JOINT ESTATE**
I L R 43 Calc 103

PRIVATE PATHWAY

See **MUNICIPALITY**
I L R 43 Calc 130

PRIVATE REFERENCE

See **ARBITRATION** I L R 37 Calc 83

PRIVATE SALE

See **ATTACHMENT BEFORE JUDGMENT**
I L R 45 Calc 780

PRIVATE STREET

See **BOMBAY CITY MUNICIPAL ACT (BOY ACT III OF 1888)** ss 30j
I L R 43 Bom 129
I L R 34 Bom 593

PRIVATE TRIBUNAL

See **HINDU LAW** 25 C W N 201

PRIVILEGE

See **DEFAMATION** I L R 43 Calc 389
I L R 33 Mad 87

See **DEFAMATION—STATEMENT BY ACCUSED** I L R 40 Calc 433

See **EVIDENCE ACT (I OF 1872)** s 18
I L R 41 All 125

See **FALSE EVIDENCE** I L R 37 Calc 878

See **LIBEL** I L R 40 All 841
I L R 39 All 561
I L R 45 Calc 304

See **LIMITATION** I L R 40 Calc 898

See **MALICIOUS PROSECUTION** I L R 38 Calc 880

See **PENAL CODE** s 409

See **SECRETARY OF STATE FOR INDIA** I L R 39 Mad 781

— against Court—
See **INSTRUCTIONS TO COUNSEL** I L R 40 Calc 898

— for statement in complaint to Magistrate—
See **PENAL CODE (ACT XLV OF 1860)** s 498 I L R 37 Mad 110

PRIVILEGE OF COUNSEL

See **LIMITATION** I L R 40 Calc 898

PRIVILEGE OF WITNESS

See **EVIDENCE ACT (I OF 1872)** s 132
I L R 40 All 171

PRIVITY

— between parties—
See **CIVIL PROCEDURE CODE (ACT V OF 1908)** s 11 I L R 40 Bom 879

PRIVACY—*contd*

— meaning of—

See TRANSFER OF PROPERTY ACT (IV OF 1899) s 108 (1)
I L R. 40 Mad 1111

PRIVITY OF CONTRACT

See CONTRACT I L R. 37 All 115

PRIVITY OF CONTRACT AND ESTATE

See JURISDICTION I L R. 39 Calc 739

PRIVITY OF ESTATE

See LESSOR AND LESSEE
I L R. 37 Calc 683

PRIVY COUNCIL

See APPEALS TO HIS MAJESTY IN COUNCIL

See APPEALS TO PRIVY COUNCIL

See CIVIL PROCEDURE CODE 1908—

s 13 I L R. 40 Mad 112

s 100 108 109 O XLV R 23

I L R. 33 All 391

s 110 I L R. 40 Bom 477

I L R. 42 All 445

I L R. 44 Bom 104

O XLV R 15 I L R. 37 All 567

See COSTS I L R. 47 Calc 415

See COURT MARTIAL
25 C W N 85

See LAND ACQUISITION ACT (I OF 1894)
s 51 I L R. 37 Bom 506

See LEAVE TO APPEAL TO PRIVY COUNCIL

See PRACTICE I L R. 48 Calc 894

See PRIVY COUNCIL APPEALS

— appeal to against conviction by Court Martial Commissioners—

See CRIMINAL LAW 25 C W N 701

— Certificate of High Court

See PROCEDURE I L R. 41 Mad 293

— decision of—

See BILL OF LADING
I L R. 38 Mad 941

See WAKE OF VALIDITY OF
I L R. 43 Calc 158

— judgment of—

See HINDU LAW—WILL
I L R. 38 Calc 183

— order of His Majesty in—

See LIMITATION ACT (XV OF 1877) SCH II ART 180 I L R. 33 All 154

— order of transmitted to the original Court

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XLV R 15 AND 16

I L R. 38 Mad. 832

— Restoration of property alienated pending appeal—

See CIVIL PROCEDURE CODE 1908 O XLV R 15 I L R. 37 All 567

PRIVY COUNCIL—*contd*

— whether new point may be taken on appeal to—

See COMPROMISE I L R. 44 Mad. 581

See PRIVY COUNCIL PRACTICE OF
I L R. 34 All 57

— When will interfere in Criminal cases—

See PENAL CODE s 89
25 C W N 514

1 ——— New case—Practice The hearing of the appeal being *x parte* the Judicial Committee refused to depart from the established practice of not allowing the appellant to make a new case based on grounds which were not urged in the Courts in India were not specified in the petition to the High Court for leave to appeal and were not suggested in the reasons contained in the case for the appellant SONI RAM & KANHAIYA LAL (1913)

I L R. 35 All 227

17 C W N 605

2 ——— Decision inconsistent with former one—Binding character The fact of a decision of the Judicial Committee not being consistent with an earlier one cannot affect its binding character and the High Court is bound to follow it MADHU SUDAN MOYDAL & RADHIKA PRASAD DAS (1912)

17 C W N 878

3 ——— Valuation—Application for leave to appeal—Appealable value—Decision in directly involving amount Defendants who were co-sharers of the plaintiff in the zemindari having purchased certain holding from the tenants the plaintiff sued them for their share of the rent due from one such holding amounting to Rs 230 The High Court reversing the decree of the lower Court dismissed the suit on the ground that as there was no contract of tenancy between the parties there was no relation of landlord and tenant between them The plaintiff in applying for leave to appeal to the Privy Council proved that there were other holdings similarly purchased by the defendants and that the decision of the High Court would have the effect of depriving him of rents of all such holding amounting to Rs 800 a year which capitalized came up to over Rs 10,000 Held that the decision indirectly involved a claim or question to or respecting property of the value of Rs 10,000 or upwards and leave ought to be granted SRINATH PAL CHOWDHURY & CHINDEA CHANDRA LAL CHOWDHURY (1906)

14 C W N 651

4 ——— Leave to appeal—Appealable value—Right of party to prove value of subject matter contrary to valuation in plaint or memo of appeal—Mere profits pending suit is to be aided The valuation made in conformity with the stamp law do not prevent a party from obtaining leave to appeal by proving that the real value of the subject matter does not fall short of the appealable amount But a defendant who had previously adopted the value given in the plaint for the purpose of an appeal preferred by him should not be allowed to contest that valuation on the principle that a party cannot both approve and reprobate In a suit for recovery of possession of immovable property with mere profits the subject matter to be valued would include mere profits claimable from the tenant

PRIVY COUNCIL, PRACTICE OF—*contd*

5 ——— In Criminal case—Grounds for refusing special leave to appeal In this case the main grounds of appeal were that the Judge had during the trial wrongly amended the charge to the prejudice of the petitioners improper admission of evidence misdirection and that the sentences contravened the provisions of s 71 of the Penal Code (Act XLV of 1860) But their Lordships were of opinion that in what had been done there was nothing grossly contrary to the forms of justice nor any violation of fundamental principles and therefore refused to grant special leave to appeal to His Majesty in Council on the ground that they had no power to interfere *Dillet In re L R 12 A C 459* followed *CLIFFORD v KING EMPEROR* (1913)

I L R 41 Cal 563

6 ——— Of newspaper for publication of criminal libels—Penal Code (Act XLV of 1860) s 499 Exceptions 1 2 9 and s 52—Position of members of the Press and of Judges—Libel on Magistrate in respect of conduct of criminal trial—Charge to Jury—Misdirection—Powers and functions of Judicial Committee in criminal cases No kind of privilege attaches to the profession of the Press as distinguished from the members of the public The freedom of the journalists is an ordinary part of the freedom of the subject and to whatever length the subject in general may go so also may the journalist but apart from statute law his privilege is no other and no higher The responsibilities which attach to his power of dissemination of printed matter may and in the case of a conscientious journalist do make him more careful but the range of his assertions his criticisms or his comments is as wide as and no wider than that of any other subject No privilege attaches to his position Nor does any privilege or protection attach to the public acts of a Judge which exempts him in regard to these from free and adverse comment He is not above criticism his conduct and utterances may demand it Freedom would be seriously impaired if the judicial tribunals were outside of the range of such comment The appellant the Editor of the *Burma Critic* a newspaper published in Pangoon was charged under s 499 of the Penal Code with having in certain articles entitled *A Mockery of British Justice* defamed a District Magistrate with reference to his alleged conduct in the trial of a case in which a European resident in the district was acquitted on charges of abduction and rape of a native girl of 11 or 12 years His defence was under the 9th exception to s 499 and he pleaded admitting the libels to be false that he published them in good faith for the public good and believing them to be true after having taken due care and attention in the matter of their publication He did not however disclose what were the actual things upon which he founded his own beliefs nor what the steps if any were he took to investigate their truth before giving them to the public He was tried in the Chief Court of Lower Burma before the Chief Judge with a jury and was found guilty and sentenced to one year's imprisonment after serving four months of which he was discharged the rest of the sentence being remitted. He obtained special leave to appeal mainly on the ground that there had been misdirection resulting in an exceptional miscarriage of justice which had caused him substantial wrong *Held* on the facts that a fair and statable case in support of the statutory

PRIVY COUNCIL PRACTICE OF—*contd*

defence and his belief that the libels were true had been put forward for the appellant and for the respondent a case was made which was also fair and statable so that there was material before the jury on both sides and the determination was on a subject peculiarly within the jury's province The case was not improperly withdrawn from the jury's domain on fact and they were not misdirected in law A charge to a jury must be read as a whole If there are salient propositions of law in it these will of course be the subject of separate analysis But in a protected narrative of fact the determination of which is ultimately left to the jury it must needs be that the view of the Judge may not coincide with the view of others who look upon the whole proceedings in black type It would however not be in accordance with usual or good practice to treat such cases as cases of misdirection if upon the general view taken the case has been fairly left within the jury's province But in any case in the region of fact their Lordships of the Judicial Committee would not interfere unless something gross amounting to a complete misdescription of the whole bearing of the evidence has occurred The appellant's defence being as above and involving an admission that the libels were false his counsel at the trial by statements and innuendoes which were reiterated throughout the case endeavoured to withdraw the pleaded defence and to persuade the jury that what was stated in the defamatory articles was true *Held* that it could not be considered misdirection for the Judge in charging the jury to put before them a narrative of the real facts of the case as disclosed by the evidence showing what was in accordance with the pleaded defence namely the falsity of the libels and the consequent innocence of the Magistrate on the charges against him The letters put in evidence as to the charges that the Magistrate had conspired to suddenly leave the complainants in the abduction and rape case without an advocate and to furnish them with a false interpreter though not before the appellant when he wrote the defamatory articles were before him in the course of his trial and when it was discovered that they were not true and that a gross mistake on a matter of fact had been made those libels should not have been adhered to for a moment the mistake should have been acknowledged and an apology tendered instead of which the case was conducted to its close upon the footing that an unstated defence was the real and good defence namely that all the libels were true The question of the special position and functions of the Judicial Committee and their powers and practice as advisers of the King in criminal matters is not truly one of jurisdiction The power of His Majesty under his Royal authority to review proceedings of a criminal nature unless where such power and authority have been parted with by Statute is undoubted On the other hand there are reasons both constitutional and administrative which make it manifest that this power should not be lightly exercised The overruling consideration upon the topic has reference to justice itself If throughout the Empire it were supposed that the course and execution of justice could suffer serious impediment which in many cases might amount to practical obstruction by an appeal to the Royal Prerogative of review on judicial grounds then it becomes plain that a severe blow would have been dealt to the orderly administration of law within the King's dominions

PRIVY COUNCIL, PRACTICE OF—contd

The views expressed by Dr Lushington in *The Queen v Joykisen Mooleerjee I Moo P C N S 272* and the principle and practice laid down by Lord Kimdown in *The Falkland Islands Company v The Queen I Moo P C N S 299* still remain those which are followed by the Judicial Committee in appeals in criminal matters. The principle laid down in *Pe Dillet L R 10 A C 409* that the course of criminal proceedings will not be reviewed or interfered with by the Privy Council unless it is shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise substantial or grave injustice has been done is not to be interpreted in the sense that where ever there had been a misdirection in any criminal case leaving it uncertain whether that misdirection did or did not affect the jury's mind that then in such case a miscarriage of justice could be affirmed or assumed. The Judicial Committee is not a Court of Criminal Appeal. In general its practice is to the following effect. It will not interfere with the course of criminal law unless there has been such an interference with the elementary right of an accused as has placed him outside of the pale of the regular law or within that pale there has been a violation of the natural principles of justice so demonstratively manifest as to convince their Lordships first that the result arrived at was opposite to the result which they themselves would have reached and secondly that the same opposite result would have been reached by the local tribunal also if the alleged defect or misdirection had been avoided. *Makin v Attorney General for New South Wales (1894) A O 7 Vairaraha Pillay v The King Emperor I L R 30 Mad 501 I R 401 A 193 and Lanier v The King (1914) A O 303* distinguished. It must be established demonstratively that justice itself in its very foundations has been subverted and that it is therefore a matter of general Imperial concern that by way of an appeal to the King it can be restored to its rightful position in that part of the Empire. The authority of decisions of the Court of Criminal Appeal in England which apply to a different system a different procedure and a different structure of principle must stand out of the reckoning of any body of authority in the matter of the procedure of the Judicial Committee in advising His Majesty. *Clifford v The King Emperor I L R 41 Cal 568 L P 401 A 241* approved. *ARKOLD v KING EMPEROR (1914)*

1 L R 41 Cal 1023

7 ———— *Criminal cases—application for—Petitioners sentenced to death—Stay of execution of sentences pending hearing of petition refusal of—Tendering advice as to exercise of King's Prerogative of Pardon.* On an application for special leave to appeal in a case in which the petitioners had been sentenced to death their Lordships of the Judicial Committee not being a Court of Criminal Appeal declined to interfere with regard to staying execution of the sentences pending the hearing or to express any opinion as to whether they ought to be suspended. The tendering of advice to His Majesty as to the exercise of His Prerogative of pardon is a matter for the Executive Government and is outside their Lordships province. *PALMER v KING EMPEROR (1910)* 1 L R 42 Cal 739

8 ———— *Invasion of liberty and jurisdiction of a citizen—Embodiment—Criminal and Civil*

PRIVY COUNCIL, PRACTICE OF—contd

liability distinction between—Costs against Crown in criminal appeal. The appellant who was a member of a firm was authorized by the guardian of two minors by a power of attorney to act for the guardian in collecting and investing the minors' property. Acting under this authority funds were received and remittances made from time to time by the appellant a firm with whom an account was opened in the name of the minors. A certain amount due to the minors from a creditor was paid by him in the shape of crediting it to the appellant's firm in their account with their bankers which account was overdrawn. The minors' account with the appellant's firm was duly credited with that amount. The appellant lent thereafter asked to give a guarantee for the funds of the minor in his hand gave security to the satisfaction of the authorities. Thereafter criminal proceedings were instituted against the appellant who was tried by the Chief Justice without a jury and convicted of having embezzled the minor's money. Held that the facts did not on any just or legal view of them warrant a conviction and the grounds of distinction between the categories of liability in a civil as distinguished from a criminal suit appeared in the present case to have been left out of judicial view. That the Judicial Committee of the Privy Council does not lightly interfere in criminal cases but in the present case although the proceedings taken were unobjectionable in form justice had gravely and injuriously miscarried and the sentence pronounced against the appellant formed such an invasion of liberty and such denial of his just rights as a citizen that their Lordships felt called upon to interfere. Having regard to the exceptional nature of the case their Lordships directed the Crown to pay to the appellant the costs of the appeal. *LANIER v THE KING (1913)* 18 C W N 98

9 ———— The general principle is established that the King in Council does not act in exercise of his prerogative to review in criminal cases in the free fashion of a fully constituted Court of Criminal Appeal. The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred. A mere mistake on the part of the Court below as for example in the admission of improper evidence will not suffice if it has not led to injustice of a grave character. Nor do the Judicial Committee advise interference merely because they themselves would have taken a different view of evidence admitted. Such questions are as a general rule treated as being for the final decision of the Courts below. Under s 172 of the Criminal Procedure Code (Act V of 1898) every police officer making an investigation is to enter his proceedings in a diary which may be used at the trial or inquiry not as evidence in the case but to aid the Court in such inquiry or trial. And by s 374 when the Court of Session passes sentence of death the proceedings are to be submitted to the High Court for confirmation and the sentence is not to be executed unless it is confirmed by that Court. In this case which was one of murder the accused was convicted by the Sessions Judge and sentenced to death and that sentence was substantially in every material particular confirmed by the Court of the Judicial Commissioner (as the High Court) on appeal. After confirming the sentence the High Court of Appeal took into consideration the police diary made

PRIVY COUNCIL, PRACTICE OF—*contd*

5 — In Criminal case—Grounds for refusing special leave to appeal In this case the main grounds of appeal were that the Judge had during the trial wrongly amended the charge to the prejudice of the petitioners improper admission of evidence misdirection and that the sentences contravened the provisions of s 71 of the Penal Code (Act XLV of 1860) But their Lordships were of opinion that in what had been done there was nothing grossly contrary to the forms of justice nor any violation of fundamental principles and therefore refused to grant special leave to appeal to His Majesty in Council on the ground that they had no power to interfere *Dillet In re L R 12 A C 459* followed *CLIFFORD v KING EMPEROR (1913)*
I L R 41 Cal 568

¶ — Of newspaper for publication of criminal libels—Penal Code (Act XLV of 1860) s 499 Exceptions 1 2 9 and s 62—Position of members of the Press and of Judges—Libel on Magistrate in respect of conduct of criminal trial—Charge to Jury—Misdirection—Powers and functions of Judicial Committee in criminal cases No kind of privilege attaches to the profession of the Press as distinguished from the members of the public The freedom of the journalists an ordinary part of the subject of the subject and to whatever length the journalist in general may go so also may the journalist but apart from statute law his privilege is no other and no higher The responsibilities which attach to his power of dissemination of printed matter may and in the case of a conscientious journalist do make him more careful but the range of his assertions his criticisms or his comments is as wide as and no wider than that of any other subject No privilege attaches to his position Nor does any privilege or protection attach to the public acts of a Judge which exempts him in regard to these from free and adverse comment He is not above criticism his conduct and utterances may demand it Freedom of conduct be seriously impaired if the judicial tribunals were outside of the range of such comment The appellant the Editor of the *Burma Critic* a newspaper published in Rangoon was charged under s 499 of the Penal Code with having in certain articles entitled *A Mockery of British Justice* defamed a District Magistrate with reference to his alleged conduct in the trial of a case in which a European resident in the district was acquitted on charges of abduction and rape of a native girl of 11 or 12 years His defence was under the 9th exception to s 499 and he pleaded admitting the libels to be false that he published them in good faith for the public good and believing them to be true after having taken due care and attention in the matter of their publication He did not however disclose what were the actual things upon which he founded his own beliefs nor what the steps if any were he took to investigate their truth before giving them to the public He was tried in the Chief Court of Lower Burma before the Chief Judge with a jury and was found guilty and sentenced to one year's imprisonment after serving four months of which he was discharged the rest of the sentence being remitted He obtained special leave to appeal mainly on the ground that there had been misdirection resulting in a exceptional miscarriage of justice which had caused him substantial wrong *Held* on the facts that a fair and statable case in support of the statutory

PRIVY COUNCIL, PRACTICE OF—*contd*

defence and his belief that the libels were true had been put forward for the appellant and for the respondent a case was made which was also fair and statable so that there was material before the jury on both sides and the determination was on a subject peculiarly within the jury's province The case was not improperly withdrawn from the jury's domain on fact and they were not misdirected in law A charge to a jury must be read as a whole If there are salient propositions of law in it these will of course be the subject of separate analysis But in a protected narrative of fact the determination of which is ultimately left to the jury it must needs be that the view of the Judge may not coincide with the view of others who look upon the whole proceedings in black type It would however not be in accordance with usual or good practice to treat such cases as cases of misdirection if upon the general view taken the case has been fairly left within the jury's province But in any case in the region of fact their Lordships of the Judicial Committee would not interfere unless something gross amounting to a complete misdescription of the whole bearing of the evidence has occurred The appellant's defence being as above and involving an admission that the libels were false his counsel at the trial by statements and innuendoes which were reiterated throughout the case endeavoured to withdraw the pleaded defence and to persuade the jury that what was stated in the defamatory articles was true *Held* that it could not be considered misdirection for the Judge in charging the jury to put before them a narrative of the real facts of the case as disclosed by the evidence showing what was in accordance with the pleaded defence namely the falsity of the libels and the consequent innocence of the Magistrate on the charges against him The letters put in evidence as to the charges that the Magistrate had conspired to suddenly leave the complainants in the abduction and rape case without an advocate and to furnish them with a false interpreter though not before the appellant when he wrote the defamatory articles were before him in the course of his trial and when it was discovered that they were not true and that a gross mistake on a matter of fact had been made those libels should not have been adhered to for a moment the mistake should have been acknowledged and an apology tendered instead of which the case was conducted to its close upon the footing that an unstated defence was the real and good defence namely that all the libels were true The question of the special position and functions of the Judicial Committee and their powers and practice as advisers of the King in criminal matters is not truly one of jurisdiction The power of His Majesty under his Royal authority to review proceedings of a criminal nature unless where such power and authority have been parted with by Statute is undoubted On the other hand there are reasons both constitutional and administrative which make it manifest that this power should not be lightly exercised The overruling consideration upon the topic has reference to justice itself If throughout the Empire it were supposed that the course and execution of justice could suffer serious impediment which in many cases might amount to practical obstruction by an appeal to the Royal Prerogative of review on judicial grounds then it becomes plain that a severe blow would have been dealt to the ordered administration of law within the King's dominions

PRIVY COUNCIL, PRACTICE OF—*co old*

of the High Court says of it that the appellants advocate stated that he did not desire to press it, and so no more was said about it *KALYAN DAS v MAHABUL AHOLAN* (1915)

I L P 40 All 497

15 ——— Directions—application for—
All applications for directions for the preparation of paper books in Privy Council appeals should be made to the Bench taking Privy Council business *SHIVA PRASAD SINGH v I ANI PRAYAG AU MARI DEBI*

26 C W N 840

PRIZE

See CONFISCATION I L R 42 Calc 334

PRIZE COURT

——— adjudication by—

See SALE OF GOODS

I L R 45 Calc 28

——— See *at of ship as prize*
——— *Claimant a Persian subject—Commercial domicile of the claimant in enemy territory—Claimant failing to establish intention of removing domicile to a neutral country—Declaration of London Article 57 effect of—Condemnation of ship as lawful prize* On the 5th November 1914 was declared between Great Britain and Turkey On the 13th November 1914 the ship *SS Karadeniz* then lying in Bombay Harbour was captured as an enemy vessel under Government Orders On the 10th November 1914 the ship's papers were lodged in Court with the usual affidavit On the 21st November 1914 the writ was issued against the ship and the goods laden thereon for the condemnation thereof as lawful prize On the 15th January 1915 the claimant filed his claim to the ship His petition in support of his claim alleged that he was a Persian subject and had purchased the ship on the 15th August 1914 from a Turkish Company at Constantinople where he resided and carried on business that the sale had been completed the same day that the ship on its arrival in Bombay on the 10th August 1914 was not permitted to leave the Port by the Port Officer at Bombay and that at the time of its capture or at any other times material to the matter in cause no subject of the Turkish Government or enemy of Great Britain had any share right title or interest in the said ship He prayed for the restitution of the ship and damages for her detention *Held* that the ship must be condemned as lawful prize inasmuch as on the outbreak of war the claimant had his commercial domicile in Turkey and that at the time of the capture and for months after he had no intention of removing that domicile to a neutral country and preventing the ship from reaching enemy territory Decisions of the English and American Prize Courts referred to Effect of Art 57 of the Declaration of London considered in view of the decisions in *The Zeyora* (1915) 2 A C 77 and *The Proteon* (1915) A C 513 The "*KARADENIZ*" (1919) I L P 44 Bom 61

PROBATE

See COURT FEES ACT 150—

s III (c)

5 Pat L J 38

ss. 19 AND 1191 Sch I AND III

I L R 43 All 279

PROBATE—*co old*

See EVIDENCE ACT (I of 1872) s 41

I L R 38 Bom 309

See EXECUTOR 14 C W N 256

See GUARDIAN I L P 42 Calc 953

See HINDU LAW—STRIDHAN

I L R 40 Calc 88

See HINDU WILLS ACT (XXI of 1800)

ss 2 AND 5 I L R 34 Bom 506

See INAM LANDS I L R 30 Bom 272

See JOINT PROBATE

See LIMITATION L R 43 I A 113

20 C W N 830

See LIMITATION ACT (XV of 1871) ss 5 AND 7

I L R 34 Bom 589

See LIMITATION ACT 1908, s 17

I L R 37 Mad 175

SCH I ART 93

I L R 37 Bom 158

See MAHOMEDAN LAW—WILL

I L R 37 Calc 839

See OFFICIAL TRUSTEE

I L R 38 Calc 53

See PRACTICE (73)

See PROBATE AND ADMINISTRATION ACT

See PROBATE PROCEEDINGS

See SECOND PROBATE

I L R 43 Calc 825

See SUCCESSION ACT (X of 1860) s 214

I L R 35 All 448

See WILL I L R 38 Calc 127

——— as evidence of right—

See SUCCESSION ACT (X of 1860), s 187

I L R 38 Mad 989

——— conditional order for grant of—

See SUCCESSION ACT (X of 1860) s 187

I L R 38 Mad 989

——— dismissal of application for

default—

See WILL 14 C W N 924

——— obtained by one executor—

See HINDU LAW—WILL

I L R 30 Mad 365

——— suit to revoke—

See DECLARATORY DECREE SUIT FOR

I L R 43 Calc 694

——— will signed by 3rd party in presence

and by direction of Testator—

See SUCCESSION ACT 1860, s 40

I L R 45 Bom 989

1 ——— Jurisdiction of High Court—

Letters of Administration—High Court and District

Court jurisdiction of—Concurrent jurisdiction—

Letters and Administration Act (I of 1881) ss 61

AND 67—High Court means of ss 81—

Practice—Rule 73 of the High Court Rules and

Orders The High Court has jurisdiction to grant

probate and letters of administration on the Original

Side in any case which has been brought

before any District Judge the two

Provinces of Bengal mentioned

in s 87 of the Probate Act

re—contd

(V of 1881) is not merely confined to the Appellate Jurisdiction of the Court but it includes its Original Jurisdiction. In the case of *Mahendra Narain Roy v O W* 377, referred to S 87 of the Probate and Administration Act does not require that any portion of the property should be within the limits of the Original Jurisdiction of the High Court and Rule 740 of the High Court cannot override the express provisions of this section giving the High Court concurrent jurisdiction with the District Court. NAGENDRABALA DEBI v. KASHIPATI CHOWDHRI (1909)

I L P 37 Calc 224

2 ————— Jurisdiction—Testamentary and Intestate Jurisdiction of High Court—Relocation—Probate and Administration Act (I of 1881) s 50—Official Trustee of Bengal—Official Trustee's Act (XIII of 1864) Where a Judge exercising the original testamentary and intestate jurisdiction of the High Court granted probate to the Official Trustee of Bengal the probate being expressed to be granted to the Official Trustee of Bengal for the time being assuming the order to have been erroneous it cannot be said that the Judge acted without jurisdiction so as to bring the matter within the scope of s 50 of the Probate and Administration Act OFFICIAL TRUSTEE OF BENGAL v KUMUDINI DAS (1916) 1 L R 37 Cal 387

3 — Grant of probate on compromise if may be revoked.—Persons not parties but cognizant of grant if bound—Infant if bound—Acquiescence—Delegation of powers by District Judge to District Delegate—Probate and Administration Act (1 of 1881) 5^o Proceedings in a Court of probate are proceedings *quasi in rem* and a probate granted in solemn form is binding not only on the parties who have appeared or have been formally cited but also on privies & persons who being cognizant of the proceedings and having an opportunity to intervene have chosen not to do so. *Nevell v Weeks 2 Phillim 224 Wycherley v Andrew L P 2 P 2 d D 337 Young v Hollaway (1890) P 37* relied on. It may be taken as settled law that in a contentious proceeding probate may be granted in common form in consequence of a compromise between the disputants resulting in the withdrawal of opposition and that it cannot afterwards be revoked except on proof of fraud or circumvention practiced either upon the Court or upon the parties. *Nicol v Isak 2 Moo P C C 38* followed. When a probate is granted in common form by reason of a compromise between the parties the terms of the compromise cannot be embodied in the order for the reason that a Court of Probate cannot in many instances enforce the terms. *Evans v Saunders 30 L J P M d A 181 Rondnill v Carter 3 W d Tr 41 Carrut v Christian L P 2 P d D 181* referred to. But they may be enforced by an action if otherwise unobjectionable. But though a probate obtained in common form as the result of a compromise is binding upon the parties to the compromise it is not binding upon those who are not parties to it even though they have been cognizant of the form proceedings. *Hutcliff v Andrews L P 2 P d D 3* referred to. When the terms of the compromise are agreed to by the parties who are parties to the Court of probate will not make an order binding infants to the terms of the compromise. *Norma v Straire L P 6 P d D 219*

PROBATE—contd

referred to. But though an infant has a right in such cases to apply after he comes of age for revocation of probate obtained by consent yet he may be barred by acquiescence and delay for a long time or by the subsequent ratification of the dispositions of the will from putting the executor to the proof of the will in solemn form or from contesting its genuineness. *Hoffman v. Lorn*, 4 Philm 230; *Mohan v. Broughton* (1900) F 66 relied on. Where the caveators having by reason of compromise withdrawn their opposition the District Judge sent the case to the District Delegate for enquiry and report. Held that the District Judge had acted within the powers conferred on him by s 52 of the Probate and Administration Act. *KUNJA LAL CHOWDHRY v. KAILASH CHANDRA CHOWDHRY* (1910)

4 — Request to Idol—Probate and Administration Act () of 1882)—Shebat appointed executor by implication—Letters of administration with will annexed if should be revoked and probate ordered to issue Where the testator having bequeathed his estate to an idol the shebat who was opposed by the testator's heirs was granted letters of administration with the will annexed—Held that although the applicant might probably have been granted probate as being executor by implication the estate being very small and letters of administration having been actually issued and the objector who appealed having no sort of interest in the matter the order of the District Judge should be maintained *Brojo v Raj Kumar, 6 C W N 310* referred to *KALI CHARYA THAKUR v ANANDA KANTA BHATTACHARJEE 18 C W N 1* (1910)

4 (a) ————— Mahomedan Will.—It is not necessary to take out probate to a Mahomedan Will which may be tendered in evidence and proved in any proceeding although no Probate has been taken out in respect of it. SAKINA TIBER v MAHOMED ISKAK. 15 C W N 185

MAHOMED ISMAK 15 C W N 185

5 _____ Party entitled to object to grant of—Attaching creditor has interest sufficient to oppose grant Where an application made for the grant of probate of the will of A a judgment creditor of A's son who in execution has attached the son's interest in the property of his deceased father has an interest sufficient to justify him in opposing the grant APARAJASTIAN A S J C NARAYANA AYLAR (1910) 1 L R 34 Mad 405

6 ————— Standard of proof ————— Testimony capacity — Evidence as to execution — Pre sumption — Expert evidence relevancy and weight of the evidence — Source ion Act (I of 1855) ss 46 48 101 102 Evidence Act (I of 1857) ss 3 10 45 101 102 The standard of proof to establish a will required by the Indian Statute is that of the prudent man and not an absolute or conclusive one. The doctrine in *Tyrrill v. Tinsion* (1844) P 131 and *Barry v. Dulin* 2 Moo P C 450 disapproved. *Shama Churn Kundu v. Aklaram Das* 11 P 27 Cal 61 L P 271 A 10 referred to. The presumption against misconduct exists in a civil case though it may be rebutted by a lower standard of proof than that in a criminal trial. *Coe v. Sledge* 6 H L Cas 46 and *Dennis v. Fisher* 10 Moo P C 50ⁿ referred to. The admissibility relevancy and weight of the evidence of expert

PROBATE—contd

discussed *Per* WOODROFFE J—If the cross examining counsel after putting a paper into the hands of a witness merely asks him some question as to its general nature or identity his adversary will have no right to see the document but if the paper be used for the purpose of refreshing the memory of the witness or if any question be put respecting its contents or as to the handwriting in which it is written a sight of it may then be demanded by the opposite counsel *Peck v Peck* 21 L T R 610 referred to *JARAT HUMARI DAS v BISSESSER DUTT* (1911).

I L R 39 Cal 245

7 ——— **Caveat**—if may be entered by widow of a predeceased son—Maintenance of widow of predeceased son if may be affected by probate proceedings—Obligation of the heir—Sufficient interest The widow of a predeceased son of the testator has in fact no interest sufficient to enable her to appear on probate proceedings. Her right to maintenance will not be affected by anything that may take place on the hearing of an application for probate *Bai Parbati v Tarunadi Dolatram* I L R 35 Bom 963 cited from *Jamunbai v Manubai* I L R 9 Bom 605 approved *Rangammal v Echemmal* I L R 2 Mad 405 followed *Seddesbury Das v Janardan Sarkar* I L R 29 Cal 551 6 C B 430 referred to *In the goods of CHANDRA CHANDRA BABAJEE* (1913) 17 C W N 1141

8 ——— **Limitation**—Limitation Act (IX of 1908) s 164—Its applicability to probate proceedings—Probate and Administration Act (I of 1881) s 83 S 164 of the Limitation Act does not apply to the case of one who is not a defendant in a probate proceeding. Merely citing a person in a probate application does not make him a defendant. Under s 83 of the Probate and Administration Act the case must be contentious and the person cited must appear to oppose the grant before he becomes a defendant. The limitation laid down in Art 164 of the Limitation Act applies to the case of a defendant as understood by s 83 of the Probate and Administration Act *Bai Manekbai v Manekji Karanje* I L R 7 Bom 213 *Tiluck Singh v Larotein Prosad* I L R 23 Cal 94 *Rahmat Karim v Abdul Karim* I L R 34 Cal 672 referred to *SAROJA SUNDARI BASAK v ADHOY CHARAN BASAK* (1914).

I L R 41 Cal 819

9 ——— **Joint Hindu family Ancestral property**—Will—Payment of full probate duty. In a case where there was admittedly a joint Hindu family consisting of a father and a minor son the father made a will in effect bequeathing the whole property to his minor son. It was not disputed that the property covered by the will was joint family property. The executors contended that the deceased testator had no beneficial interest in any part of the property devised and therefore they were exempted from the payment of any probate duty. Held that where the matter in question was probate the parties claiming under the will could not go behind its terms or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will itself but with the express statements made therein and that the executors must pay full probate duty upon the will. *Collector of Kara v Chinnai* I L R 29 Bom 161 distin-

PROBATE—contd

guished *KASHINATH PARSHARAM v GOURAVA BAI* (1914) I L R 39 Bom 245

10 ——— **Revocation**—Will validity of—Proof in common form—Knowledge—Acquiescence—Delay—Probate and Administration Act (I of 1881) s 30 It does not matter by what facts knowledge of the grant of probate and acquiescence in it are established for neither knowledge nor acquiescence nor lapse of time are of themselves operative as a bar to the proceeding which every person interested in the estate of the testator has a right to bring if he was not made a party in the probate proceeding. His application must be bona fide and he must give some reasonable and true explanation of the delay. *Hoffman v Norris* 2 Phillim 230 *Merrycather v Turner* 3 Curt 809 and *Kunja Lal Choudhury v Kaila Chandra Choudhury* 14 C B 1 1068 referred to *MAHARAJA CHONDHRANI v SHIVA SUNDARI MOZUNDAR* (1914) I L R 42 Cal 480

11 ——— **Revocation**—Probate or letters of administration revocation of—Effect on alienation under revoked grant—Void or voidable grant—Mortgage to pay off debt due by estate if subsists after revocation. A purchaser of property sold under a grant of probate or letters of administration subsequently revoked in order to discharge a debt which the true executor or administrator was compellable to pay acquires an indefeasible title. There has been a divergence of judicial opinion on the question of the effect of revocation of a probate or letters of administration the effect being made to depend upon whether the grant was void or voidable. A view more favourable to the rights of a bona fide transferee for value without notice has been taken in recent decisions where grants have been treated as operative until revoked even when obtained by fraud and by suppression of the fact that the deceased had left a will. *Debendra Anil Dutt v Administrator General of Bengal* I L R 35 I A 109 1 C L P 35 Cal 955 19 C B 809 referred to. Where a co-proprietor of the executor having satisfied the entire Government revenue obtained a decree for contribution against him and in execution thereof a property belonging to the estate was sold at an inadequate price and meanwhile the probate having been revoked administrators appointed in his place with the Court's sanction mortgaged the property to procure money which they applied in setting aside the sale under s 310A of the Civil Procedure Code of 1882 and subsequently on appeal by the executor the latter was restored to office and the letters of administration were cancelled. Held that the mortgage held good. *SAILAJA PRADAN CHATTOPJEE v JADU NATH BOSE* (1914) 19 C W N 240

12 ——— **Succession duty**—Court Fees Act (II of 1870) s 19 (c) amended by Act VIII of 1875 s 19 (1)—Duty of the first executor—Application for second probate—Duty payable if any on second probate. When an executor to whom probate has been granted dies leaving a part of the testator's estate unadministered and a new representative is appointed for the purpose of completing the administration there being no new succession and no new devolution of the estate no fresh succession duty should be levied. What the legislature appears to have intended is that where the full fee chargeable under the Court Fees Act on a probate at the time it is granted

PROBATE—contd

... shall be chargeable
... grant is made in respect of that
... property as comprised in that estate In the
goods of Chalmers 21 W P 246 In the goods of
Gasper 1 L P 3 Ca's 73 In the goods of Innes
16 W R 253 In the goods of Baitlaar (1908)
L. B. R. 255 In the goods of Ameernun 15 W R
496 Webster v Spencer 3 B & Ald 360 Cum
mins 3 Jo & Lat 65 In the goods of Bell L P
2 P & D 247 Anon 1 Freeman 313 Anon 1
Ch Ca 265 and Watkins v Brent 1 M's & Cr
104 referred to SWARNA JAYE DEBI & SECRE
TARY OF STATE FOR INDIA (1915)

I L R 43 Cal 625

13 ————— Executor not renouncing on
citation must take out probate—Letters of Adminis-
tration can otherwise issue An executor called
upon by citation to accept or renounce is clearly
compellable if he accept to take out probate
within a limited time If he does not do so Letters
of Administration with copy of the will annexed
may be granted to any competent applicant
KAVASJI SORABJI & BAI DEDAI (1916)

I L R 40 Bom 666

14 ————— Granted after service of cita-
tion upon father of testator's childless widow
who was appointed her guardian ad litem—Applica-
tion for revocation by widow who received benefits
under Will—Proceedings with it can be re opened—
Appointment of guardian ad litem—His consent
whether necessary—Civil Procedure Code (Act V
of 1908) O XXXII r 4 effect and applicability
of—Citation whether summon—Object of citation—
Probate and Administration Act (1 of 1881) s 83
Where the mother of the testator as executrix
applied for probate citation was issued upon
the father of the testator's childless widow who
was appointed guardian ad litem for the widow
The father refused to accept the citation and it
was fixed on the door of his house Probate was
granted on the 13th March 1912 The widow
came of age in 1913 On the 18th November
1918 a petition for revocation of probate was
filed The District Judge revoked the probate
on the ground that the father of the widow entered
no appearance Held that the widow for several
years having received benefits under the Will the
proceedings could not be re opened Kunja Lal v
Kailash 14 C W N 1068 (1910) and Monorama
v Shiva 19 C W N 366 (1914) referred to
Where a Will of which probate is sought affects
the interests of a minor it may be expedient as
a rule of practice to appoint a guardian ad litem
for the minor But it does not follow that every
rule in O XXXII is thus made strictly and legally
applicable A citation for probate is not a sum-
mons to appear The object of citations whether
general or special is to give those interested
an opportunity of coming in if they so choose
and contesting the application for probate Until
a caveat is entered the proceedings are not con-
tentious S 83 of the Probate and Administration
Act shows that up to that stage there is no issue
and no suit Until contest arises, O XXXII of
the Civil Procedure Code would seem to have no
application to the proceedings The effect of
s 4 of XXXII is that no person can be appointed
a guardian ad litem without his express consent
The question whether the person appointed guar-
dian ad litem consented to act will always be one

of importance on the merits PADHASHYAM DAS
& PANGA SUNDARI DAS 24 C W N 541

15 ————— Compromise—of probate proceedings
ing validity of—withdrawal of application for
probate effect of—whether second application for
probate can be made An application for probate
cannot legally be disposed of by a compromise
The law imposes on the court itself the duty of
determining whether the will is genuine or not
The provision in O XXIII r 1 to the effect that
if a plaintiff withdraws from a suit he shall be
precluded from instituting a fresh suit in respect
of the same subject matter does not apply to an
application for probate The circumstances of a
probate case do not properly admit of the
withdrawal of an application for probate by
an Executor JYOTIRHAR NATH SARAI & JAGAT
PRASAD 2 Pat L J 535

16 ————— Will by two persons Two per-
sons can make a joint will JETHABHAI GORAL
DAS & PANCHOTAS HAV A (19.0.)

I L R 45 Bom 667

17 ————— Executors—Executor and a
Hindu will carrying on family business—Debts
incurred therein—Creditor's remedy against executor
personally Executor's right to indemnity—Executor
if sufficiently represents estate when his interest
adverse to beneficiary—Minor represented by
nominee of party having adverse interest An
executor appointed under Act 1 of 1881 is in
many respects in a different position from a Hindu
widow succeeding to her husband's estate as
guardian of a minor or a shraut of an idol The
executor who borrows money in the course of the
administration for the purposes of the estate is
personally responsible for the payment of such
debts though he is entitled to be indemnified out
of the estate for such borrowing if he shows it
was reasonably and properly made This principle
has been accepted by the Calcutta High Court as
applicable to Hindu executors The principle
applies equally to borrowings by the executor in
conducting a family business which in India is
regarded as a heritable asset and the executor is
personally responsible for them subject to his
right of indemnity against the estate upon proof
that the borrowing was in all respects proper and
for the benefit of the estate Where certain funds
sued on were rejected as being insufficiently
stamped Held that the plaintiffs were entitled
to sue for the consideration Ordinarily executors
would fully represent the estate but not
in a case where their personal interest as executors
were diametrically opposed to those of the bene-
ficiary and the estate A minor represented as
guardian by a nominee of a party whose interest
is adverse to the minor is not properly repre-
sented in the suit SUDHIR CHANDRA DAS &
GOBINDA CHANDRA FOY (1917)

I L R 45 Cal 535
21 C W N 1043

18 ————— Delay—Delay in taking out
probate of a will if justified by circumstances
and reasons—Probate applied for on necessity argu-
ing Where a long time elapsed between the
death of the testatrix and the date on which the
will was put forward for probate and the testatrix
was an illiterate Hindu lady the prior history of
the case was worthy of consideration Where there
were reasons for the delay in proceeding the will

PROBATE—contd

although in such a case the Court was bound to scrutinize the evidence very carefully there was no rule of the law of evidence that such a will was incapable of being proved. **PROBATE DUTY** *r* **HEIDAY NATH GHOSAL (191)** 22 C W N 424

19 ——— **Accounts—Probate and Administration (Act I of 1881) s 50** clause 5 of the explanation and s 93 sub s (1)—**Liability to submit accounts if periodical—Correct account for period antecedent to the final grant of probate if just cause for revoking the probate** The statute contemplates the submission of one account only and the executors are under no liability to submit accounts periodically. **Correct accounts submitted for the period antecedent to the final grant of probate is not a just cause for revoking the probate** under clause 5 of the explanation to s 50 of the Probate and Administration Act. **CHANDRA KUMAR CHAKRAVARTI v. PRASAD KUMAR CHAKRAVARTI (1921)**

I L R 48 Calc 1051

PROBATE AND ADMINISTRATION ACT (V OF 1881)

See **HINDU LAW—WILL**

See **LIMITATION ACT**

I L R 37 Mad 175

See **RECEIVER** I L R 37 Calc 754

——— **Sale by executor before probate—**

See **EXECUTOR SALE BY**

I L R 38 Mad 575

——— **whether obtaining of Probate necessary before Executor can sue—**

See **LIMITATION ACT (IX of 1908)**

I L R 37 Mad 175

——— **ss. 2 and 4—**

See **EXECUTOR SALE BY**

I L R 38 Mad 575

See **HINDU LAW—WILL**

I L R 39 Mad 385

——— **ss. 2 51 56 87**

See **PROBATE** I L R 37 Calc 224

——— **s 3—**

See **WILL** I L R 43 Bom 641

——— **ss. 2 51 53—**

See **TRANSFER**

I L R 42 Calc 842

——— **s 4—**

See **EXECUTOR SALE BY**

I L R 36 Mad. 575

See **HINDU LAW—WILL**

I L R 38 Mad. 369

See **LIMITATION ACT 1908**

I L R 37 Mad 175

See **MAHOMEDAN LAW—PROBATE**

I L R 37 Calc 839

See **SETTLEMENT BY A HINDU WOMAN ON TRUSTS** I L R 40 Bom 341

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd

——— **s 5—contd**

Chandernagore executed a mytic will according to the provisions of the French Code. On his death a general legatee applied to the Court at Chandernagore for having the will deposited according to the French law. After the usual proceedings were taken the French Court recognized the will and made it over to a Notary with power to give copies to the parties. The trustees under the will applied to the District Judge of Hughly for letters of administration with a copy of the will annexed. **Held** that s 5 of the Probate and Administration Act does not require that the will should have been deposited once and remain in Court for all time. The fact that the will was deposited in the French Court and the Court had before it the original will at the time it made a judicial pronouncement as to the validity of the will under the French law was a sufficient deposit within the meaning of s 5. That the French Court having so provided a copy authenticated by the notarial seal was a properly authenticated copy within the meaning of s 5. **SUSHILABALA DASGI v. ANUKUL CHANDRA CHOUDEHURY (1918)**

22 C W N 713

——— **ss 5 50 62 64 and 76—Probate valuation for—**

See **PROBATE DUTY** 6 Pat L J 411

——— **ss 13 19 31 33 and 41—Legal guardian—disqualified proprietor whether entitled to grant—Procedure when grant applied for by minor's guardian—Statutory person powers of—Court of Wards whether manager of is entitled to grant** The words legal guardian in s 31 of the Probate and Administration Act 1881 mean a guardian appointed under the authority of law. If a guardian appointed under the Guardian and Wards Act s 19 does not deprive a disqualified proprietor from obtaining a grant of letters of administration provided such proprietor is not a minor or a lunatic. Letters of administration cannot be granted to a minor but under s 31 they may be granted to the legal guardian of a minor if the minor is the sole residuary legatee and under s 33 they may be granted to the person to whom the care of the minor's estate has been committed by competent authority if the minor is the sole universal or residuary legatee or a person who would be solely entitled to the estate of the intestate. When an application is made under s 31 or 33 it must be made on behalf of the guardian and not on behalf of the minor through the guardian and the guardian must in the first place apply to be appointed the minor's guardian for the purpose of enabling him to obtain letters of administration for the use and benefit of the minor. Until he has obtained an order of the Court appointing him guardian he cannot be considered a legal guardian within the meaning of s 31 or a person to whom the care of the minor's estate has been committed by a competent authority within the meaning of s 33. Although the granting of letters of administration is discretionary the discretion must be exercised in accordance with rules formulated and acted upon in the courts for many years. The main object of a grant being the protection and benefit of the estate the court has a discretion to refuse to the person who has the largest interest that in

——— **s 5—Deposited in Court meaning of—Will proved in French Court and kept with Notary if deposit within the meaning of section—Copy given by Notary of authenticated copy within the meaning of section** A French subject of

ADMINISTRATION ACT (V

PROBATE AND ADMINISTRATION ACT (V
OF 1881)—contd

—contd

ss 13 19 31 33 and 41—contd

his hands the estate will suffer irretrievable loss and damage but the court is not entitled to pass over a person entitled to the grant on the ground that it is more satisfactory to make the grant to someone else. When dealing with a statutory person such as the manager of the Court of Wards it is necessary to examine the statute to see what power he can properly exercise under the statute and to regard that as impliedly prohibited which is not conferred on him expressly or by necessary implication. Although the manager of the Court of Wards has wide powers of management over the estate of a disqualified proprietor there is nothing in the Act which entitles him as such manager and by virtue of his office to apply for letters of administration to the estate of a deceased person in which the disqualified proprietor has a larger interest. **BHAGWATI KHER v. BAHURIA RAMSANKI KHER** 5 Pat. L. J. 347

s. 16—

See LETTERS OF ADMINISTRATION
I L R 47 Cal. 835

s. 19—

See s. 13 5 Pat. L. J. 347

ss 19 and 24—

See WILL

19 C W N 527

s. 23—Grant of Letters of Administration—Title to property of Court would go into in granting administration—Practice. It is not the practice of the Court in its Testamentary and Intestate jurisdiction to go into questions of title in a application for the grant of letters of administration. The Court would not frame a issue or go into evidence to decide as to who is entitled to the property. Letters of administration were ordered to be issued to the husband in respect of his deceased wife's estate upon furnishing security upon allegation in the husband's petition that part of such estate was *jantula tridhan* although it was denied by his wife's brother who entered caveat but did not apply for letters of administration himself. In the goods of *Paghubar Hiam* 3 C W N 345 and *Ochava Ram v. Dolatram* I L R 23 Bom 633 relied on. **NISHI KANTA CHATTERJEE v. ANANTHON MUKHERJEE** (1912) 17 C W N 613

ss. 23, 64, 69, 70 and 73—

See LETTERS OF ADMINISTRATION
5 Pat. L. J. 10*

ss. 26 and

See LETTERS OF ADMINISTRATION
14 C W N 463

ss. 31, 33 and 23—

See s. 13 5 Pat. L. J. 347

s. 34—If/ron/ful alienation of deceased estate apprehended by executor—Temporary injunction application for relief—Civil Procedure Code (Act I of 1908) O XXXIX r 1—Administrator pendente lite, appointment of proper course—Injunction when may be granted—English practice—A probate proceeding is not a suit in which there is property in dispute as contemplated by r 1 of O XXXIX of the Civil Procedure Code as the

s. 34—contd

only question in controversy in such a proceeding is that of representation of the estate of the deceased and no question of title thereto or the title of the deceased or of the conflicting titles alleged by the parties to the proceeding can be investigated by the court. But the Court of Probate is not therefore incompetent to grant a temporary injunction in any circumstance. The proper procedure to follow in cases of this description is for the aggrieved party to apply to the Court for the appointment of an administrator pendente lite. When such an application has been made the Court may in case of necessity grant a temporary injunction either in exercise of its inherent power or under r 7 of O XXXIX of the Civil Procedure Code. English practice referred to and contrasted. **NIROD KARANI DESAI v. CHAKRABARTI DEBI** (1914) 19 C W N 205

s. 37—Moult of math—Death—

Application by claimant to office for letters of administration—Trust estate—Beneficiary—Shedat and idol relation of. A moult is not the owner of the property of the math and on his death a person claiming to be his successor in office cannot apply under Act I of 1881 for letters of administration in respect of the math property. The object of the Act is intended to apply only to property in which the deceased person had owned his share to constitute it a portion of his estate although he held it in trust. **Ranji Singh v. Jagannath Prasad Gupta** I L R 10 Cal 315 distinguished. **Mohammed Jib Lal Chir v. Mohammed Jaga Mohan Chir** (1898) 16 C W N 799

s. 41—This section does not apply where there is no want of persons entitled to letters of administration. It does not empower the court to make a merely arbitrary selection from among persons contending for the grant. In a proper case but not merely by virtue of his office a nominee of the Court of Wards may be within the phrase "some person within the meaning of s. 41." **BHAGWATI KHER v. RAMSANKI KHER** 5 Pat. L. J. 347

s. 50—

See LETTERS OF ADMINISTRATION
3 Pat. L. J. 415
I L R 40 Cal. 50
See PROBATE
I L R 37 Cal. 357
I L R 42 Cal. 430
I L R 43 Cal. 1751

Percentage of grant

Just cause material administration of—Quarrels between co-administrators making grant of estate inoperative if ground for annulment. Administration is not under s. 50 Expt (4) of the Probate and Administration Act a just cause for revocation of probate. *Amala* decided in *Ka* is followed. *I L R 44 Cal. 95* followed. The words "come under s. 50 and inoperative" in s. 50 Expt (4) of the Act imply the discovery of something which is known at the date of the grant would have been a ground for refusing it e.g. the discovery of a later will or codicil or a subsequent discovery that the will was forged or that it alleged to be later was still living. *Tal Chandra Thakur v. Salwar* I L R 46 Bom 27 approved. One of two joint administrators applied for the revocation of

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd

s 50—contd

the grant to the other on the ground that in consequence of quarrels between them it had become impossible to carry on the administration and the grant had in this way become inoperative and useless. *Held* that this was no ground for revoking the grant. **GOUR CHANDRA DAS v SAPAT SUNDARI DAS** (1912) **I L R 40 Calc 50**
18 C W N 883

Grant revocation of—Creditor's rights to contest will pronounced in fraud of creditors—Order holding applicant his right is appealable—Interlocutory order Where eight years after the death of B one of his sons L obtained letters of administration with a copy annexed of an alleged will left by B which if genuine would deprive another son S who had meanwhile become heavily involved in debt of a very large share of his inheritance. *Held* that the creditors of S were entitled to apply for revocation of the will their application being based on the ground that the probate had been obtained in fraud of creditor. **Sheikh Azim v Chandrarath Namdas** **8 C W N 748** **Nilmans Singh Deo v Urianath Woolerye** **I L R 19 Calc 19** **Kishan Das v Satyendra Nath Dutt** **I L R 98 Calc 441** referred to *Semle*. No appeal lay from an order of the trial judge holding that the creditors had locus standi to contest the will the same being merely in interlocutory. **Sheikh Azim v Chandrarath Namdas** **8 C W N 748** **Abhiram Das v Gopal Das** **I L R 17 Calc 48** referred to **LAKSHI NARAYAN SHAW v MULTAN CHAND DAGA** (1912) **18 C W N 1099**

Civil Procedure

Code (1908) ss 114 and 151—Letters of Administration—Cancellation of order—Procedure A Court which has once granted letters of administration cannot revoke them without notice to the persons in whose favour they have been granted. Where letters of administration have been granted *ex parte* and an application is made to revoke them it is open to the court concerned to proceed either under s 114 or s 151 of the Code of Civil Procedure or under s 50 of the Probate and Administration Act (1881). **PARMAN v BOHRA NEX RAM** (1915) **I L R 37 All 280**

Revocation appli-

cation for—Question of genuineness of will if arises—Just cause—Fraudulent concealment from Court by person cited of transfer of his interests—Assignee not cited in consequence—Assignee may apply for revocation when assignment subsequent to testator's death No question of the genuineness of the will arises for consideration till the Court has decided that the probate must be revoked on one or more of the grounds specified in s 50 of the Probate and Administration Act. The only matter for consideration upon an application for revocation of probate is whether the applicants have made out a just cause for revocation. The application could not be thrown out at this stage on the ground that the evidence adduced by the applicant was not sufficient to throw doubt upon the genuineness of the will. A person interested by assignment in the estate of the deceased may where a will has been set up and proved at variance with his interests apply for revocation of the probate of the will so set up. He need not show that he had an interest in the estate of the deceased

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd

s 50—contd

at the time of his death. An interest acquired subsequently by purchase of a part of the estate is sufficient. Where A having applied for probate of a will caused citation to be issued on B his father who but for the will would inherit a portion of the estate but the notice was served on B a week after L had assigned his interests to C but neither B nor A who presumably knew of the transfer by B brought the fact of the assignment to the Court a notice and probate was granted without the assignee's getting any notice of the proceedings. *Held* that the proceeding is not defective in substance was bad because the grant was obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case. **MOKNADASINI DASSI v KARADHAR MANDAL** (1911) **19 C W N 1108**

Application for revocation of grant of probate—Explanation of a, circumstances in which a grant of probate is to be deemed to have become useless and inoperative—of executor's inventory and accounts significance of the expression—Period during which executor entitled to continue in possession—s 98 (1) executor is liable to submit accounts periodically—Necessity of giving full and specific details in objections to executor's inventory and accounts An application under sec 50 of the Probate and Administration Act for revocation of a probate was made on the allegations firstly that the grant had become useless and inoperative through circumstances and secondly that the persons to whom the grant had been made had wilfully omitted to exhibit an inventory and accounts in accordance with the provisions of Chap VII of the Probate Act and had further exhibited an inventory and accounts which were untrue in material respects. *Held*—That as long as the person entitled to the estate has not taken it out of the possession of the executors they are entitled to continue in occupation of the estate. **Bombay Burma Trading Corporation Ltd v Frederick York Smith** **I L R 211 A 130** **s c I L R 19 Bom 1 at p 9 (1894)** referred to. That as under the terms of the will there were duties still to be performed by the executors it could not be maintained that the grant had become inoperative through circumstances. **Taran Singh v Ramrajan Tewari** **I L R 31 Calc 89 (1903)** and **Saniarraiah v Buddulata** **28 C L J 261 (1918)** distinguished. *Held further*—That the statute contemplates the submission of one inventory and one account and not periodical accounts. What is contemplated is that an account should be filed within one year from the grant showing the assets which have come to the hands of the executor or administrator and the manner in which such assets have been applied or disposed of. The fact that time has been extended by the Court does not enlarge the scope of the account. The account of the estate which is required to be exhibited whether it is exhibited within a year or there after is the account contemplated by the second paragraph of sub sec 1 of sec 98. **Mohesh v Binnu Nath** **I L R 23 Calc 20 s c** **7 C W N 646 (1897)** and **Sarat Sundari v Uma Prasad** **I L R 31 Calc 678 s c** **8 C W N 578** (followed. It is

**PROBATE AND ADMINISTRATION ACT (V
OF 1981)~contd**

§ 34—contd

13 19 31 33 and 41—cont'd

his hands the estate will suffer irretrievable loss and damage but the court is not entitled to pass over a person entitled to the grant on the ground that it is more satisfactory to make the grant to someone else. When dealing with a statutory person such as the manager of the Court of Wards it is necessary to examine the statute to see what powers he can properly exercise under the statute and to regard that as impliedly prohibited which is not conferred on him expressly or by necessary implication. Although the manager of the Court of Wards has wide powers of management over the estate of a disqualified proprietor there is no hint in the Act which entitles him as such manager and by virtue of his office to apply for letters of administration to the estate of a deceased person in which the disqualified proprietor has a larger interest. BHAGWATI KHER v. BHADURI RAMSABHI KHER 5 Pat L J 347

8 16—

See LETTERS OF ADMINISTRATION
I L R 47 Calc 838

8 19--

Dec 8 1955 5 Pat L J 347

—ss 18 and 24—

See WILL

18 E W N 527

23—Grant of Letters of Administration—Title III properly of Court would go into in granting administration—Practice It is not the practice of the Court in its Testamentary and Intestate jurisdiction to go into questions of title in a application for the grant of letters of administration The Court would not frame issues or go into evidence to decide as to who is entitled to the property Letters of administration were ordered to be issued to the husband in respect of his deceased wife's estate upon furnishing security upon allegation in the husband's petition that part of such estate was *jantika stridhan* although it was denied by his wife's brother who entered caveat but did not apply for letters of administration himself In the goods of *Rajghubar Hazam 3 C IF N celarum Rajkumath Vs. ser v Must Pale Koor 6 C W N 345 and Ochakra ram v Dolatram I L R 28 Bom 644 cited on* *NIJAI KANTA CHATTERJEE v ASHUTOSH MUKERJEE* (1912) 17 C W N 613

EX 64, 69 70 and 73--

See LETTERS OF ADMINISTRATION

5 Pat L J 107

\$3 26 64

See LETTERS OF ADMINISTRATION

14 C W N 463

is 31 35 and 23—

See s 13 5 Pat L J 347

31- Wrongful alienation of deceased
 estate apprehended by caretaker—Temporary injunction
 application for by executors—Civil Procedure Code
 (Act of 1908) O XXXV rr 1 —Adminis-
 trator pendente lite appointment of proper course
 —Injunction when may be granted—English practice
 A probate proceeding is not a suit in which there
 is property in dispute as contemplated by r 1 of
 O XXXV of the Civil Procedure Code as the

only question in controversy in such a proceeding is that of representation of the estate of the deceased and no question of title thereto or the title of the deceased or of the conflicting titles alleged by the parties to the proceeding can be investigated by the court. But the Court of probate is not therefore incompetent to grant a temporary injunction in any circumstance. The proper procedure to follow in cases of this description is for the aggrieved party to apply to the Court for the appointment of an administrator pendente lite. When such an application has been made the Court may in case of necessity grant a temporary injunction either in exercise of its inherent power or under r 7 of O XXV of the Civil Procedure Code. English practice referred to and contrasted NIRON PARANI DEBI & CHANAKSHINI DEBI (1914) 18 C W N 205

37—Mokunt of math—Deaf—

Application by claimant to office for letters of administration—Trust estate—Beneficiary—Shedai and idol relation of A mohunt is not the owner of the property of the math and on his death a person claiming to be his successor in office cannot apply under Act V of 1881 for letters of administration in respect of the math property. s 37 of the Act is intended to apply only to property in which the deceased person had owner ship so as to constitute it a portion of his estate at the time he held it in trust. *Ranjit Singh v Jaganna bhai Prosad Gupta* 1 L R 10 Cal 375 distinguished. *WORTH JIM LAL GILL v WORTH JAGA MONI GILL* (1898) 18 C W N 788

§ 41- This section does not apply where there is no want of persons entitled to letters of administration. It does not empower the court to make a merely arbitrary selection from among persons contending for the grant in a proper case but not merely by virtue of his office a nominee of the Court of Wards was come within the phrase some person within the meaning of s 41. BRAONATI ARZE : BARTHA 5 Pat L J 247

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See LETTERS OF ADMINISTRATION
3 Pat. L. 3 415
3 Pat. L. 3 415

See PROBATE

I L R 42 Calc 1951
I L R 48 Calc 1951

Just cause wasal administration of Quarta between co administrators making grant & clerical certificate of growth for annuitant Mal administration is not under s 50 Expt (f) of the Probate and Administration Act a just cause for revocation of probate Ananda I rad v Fa' Inupha L L P 24 Calc 95 followed The words become useless and inoperative in s 50 Expt (f) of the Act imply the discovery of something which has been known at the date of the grant would have been a ground for refusing it eg the discovery of a later will or codicil or a subsequent discovery that the will was forged or that the alleged testator was still living Hal Canjodhar Thak v Salvas L L P 6 Bom 9th approved One of two joint administrators applied for the rescission of

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd

s. 62—

See s. 50 19 C W N 882

ss. 62, 63 and 76—

See PROBATE VALUATION FOR
I L R 43 All 411

s. 64—

See LETTERS OF ADMINISTRATION

14 C W N 463
5 Pat L J 107

s. 69—

See s. 50 13 C W N 119
19 C W N 882

See LETTERS OF ADMINISTRATION

5 Pat L J 107

ss. 70 and 73—

See LETTERS OF ADMINISTRATION

5 Pat L J 107

s. 78—

See s. 50 13 C W N 763
I L R 47 Calc 115

ss. 78 and 86—

See ADMINISTRATION BOND
I L R 39 Calc 563

ss. 79 and 80—Administration bond—

A *signee* not enforcing bond—Second assignment of valid—Order of appealable An administration bond can be assigned by the District Judge upon conditions under s. 79 of the Probate and Administration Act. But there is no provision in the law authorising the District Judge to assign it again while the first assignment is still in force. Where the first assignee having come to terms with the administrator other persons interested in the estate applied to have the bond transferred to them and the application was granted. Held that no appeal lay from the order but the order being without jurisdiction could be set aside in revision. *Brojo Nath Pal v Dasmoni Das* 2 C L R 589 *Abhiram Das v Gopal Das* I L R 17 Calc 48 followed *Umacharan v Multakeshi* I L R 28 Calc 149 commented on *SHUKH BALINDUPPIN v MUBSANNMAT MABURNI* (1912) 16 C W N 662

s. 81—Indian Succession Act (V of 1865) s. 250—Will—Probate—Caveator—Interest

passes by the caveator. The provision of s. 81 of the Probate and Administration Act 1881 (which correspond with those of s. 250 of the Indian Succession Act 1865) enact that the interest which entitles a person to put in a caveat must be an interest in the estate of the deceased person that is there should be no dispute whatever as to the title of the deceased to the estate but that the person who wishes to come in as the caveator must show some interest in the estate derived from the deceased by inheritance or otherwise. *Abhiram Das v Gopal Das* I L R 17 Calc 48 followed *PIPOJSHAN BHUKAJI v PES TOJJI MERWANJI* (1910) I L R 34 Bom 459

s. 82—

See HINDU LAW—WILL

I L R 30 Mad 365

ss. 82 and 82—

See HINDU LAW—WILL

I L R 30 Mad 365

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd

s. 83—

See EVIDENCE ACT (I of 1872) s. 41
I L R 33 Bom 309

See PLEADER & FEE

I L R 41 Calc 637

See PROBATE I L R 41 Calc 819

See WILL 14 C W N 921

Probate case—Procedure S. 83 of the Probate and Administration Act read with O. XVIII r. 3 Civil Procedure Code merely means that in a probate case the Civil Procedure Code so far as possible determines the procedure of the Court. These sections nowhere say that it is competent to the Court to allow the parties to divide the testator's property without proving the will. *Kunja Lal Choudhury v Kailash Chandra Choudhury* 14 C W N 1063 and *Saroda Kanta Dass v Gobinda Mohan Dass* 12 C L J 91 referred to. There can be no dismissal of a probate case in accordance with the terms of a petition of compromise between the propounder and objector. The main issue in such a case is whether or not the will has been proved and the only effect of a compromise is to reduce a contentious proceeding into one which is not contentious but this does not absolve the Court from the task of their granting probate or refusing it. If a compromise has been made and the objector withdraws from the contest the Court will grant probate in common form but the Court cannot dismiss the case altogether and embody the terms of the compromise as if the decree was one capable of execution by him. *JANAKBATT THAKUR RAIY v GAJANAND* (1916) 20 C W N 986

1 Pat L J 377

s. 86—

See ADMINISTRATION BOND

I L R 39 Calc 563

ss. 85 and 90—Administrator's application to sell granted against opposition—Appeal—Order of appealable as decree or irrespective of whether order decree or not—Interlocutory orders under the Act of appealable A Hindu widow who had obtained Letters of Administration to the estate of her deceased husband applied under s. 90 of the Probate and Administration Act for permission to sell the dwelling house for the purpose of satisfying debts. The application which was opposed by the reversioner having been granted the latter appealed. Held per D. CHATTERJEE J that the order was a decree as defined in the Civil Procedure Code and was appealable as such. *Quere* Whether s. 86 of the Probate and Administration Act in making orders of the Probate Court appealable under the rules contained in the Civil Procedure Code means only that the procedure in such appeals would be as in appeals under the Civil Procedure Code. Per DEACH CROFT J—An appeal lay under the terms of s. 86 of the Probate and Administration Act irrespective of whether the order was a decree or not. *SARAT CHANDRA PAL v DEVODI KUMARI DASSI* (1914) 20 C W N 23

s. 87—

See PROBATE I L R 37 Calc 224

s. 89—

See CIVIL PROCEDURE CODE O. XXII
s. 1 I L R 31 Mad 357

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PROBATE AND ADMINISTRATION ACT (V OF 1881)—*concl*

s. 90—*contd*s. 90—*contd*

See MAHOMEDAN LAW—PRE EMPTION
I L R 36 Bom 144
I L R 41 Bom 636

See VALICIOUS PROSECUTION
4 Pat L J 676

See PENAL CODE s. 323
I L R 44 Mad 417

s. 304 323 I L R 1 Lah 27

Executors also appointed shebais—Heirs of such Shebais if liable to render accounts de bonis non S by will appointed A and B his executors as well as Shebais of an idol in whose favour the will created a trust in respect of the whole of his properties S left a widow and a daughter The daughter obtained administration de bonis non of the estate of S and brought a suit against the heirs of A for delivery to her of the Debutter estate and for accounts Held that the suit was misconceived As soon as debts legacies and funeral expenses were paid the executors would hold the property upon the trusts of the Will and there would be no property administered by the executors which would pass to any administratrix de bonis non appointed by the Probate Court If the property became trust property it was not for the administrator to ask for accounts and the administratrix de bonis non could not maintain a suit of this nature GOUR CHANDRA DAS v SREEMATI MOYMOYI

25 C W N 332

s. 90—

See s. 86 20 C W N 28

See COMPROMISE DECREE
14 C W N 451

See HINDU LAW—PARTITION

I L R 43 Cal 1118

Sanction of Court obtained in respect of principal but not of interest—Stipulation as to interest if binding—Post diem interest S 90 of the Probate and Administration Act which authorises an administrator to grant a mortgage of immoveable property vested in him only with the previous permission of the Probate Court implies that sanction of the Court should be taken on all the essential elements of the mortgage transaction including the provision for payment of interest Where the principal amount only was mentioned in the application for sanction but in the mortgage actually executed the administrators stipulated to pay compound interest at 30 per cent per annum with half yearly rests the Court reduced it to simple interest at 9 per cent per annum and it was directed that the interest should be added to the mortgage money as was done in Chajmal v Brij Bhulan L R 22 I A 199 s. c. I L R 17 All 511 SAILAJA PRASAD CHATTERJEE v JADU NATH BOSE (1914)

19 C W N 240

Power of Hindu widow heiress to sell as administratrix if restricted—Order of Judge granting her leave to sell if may be collaterally attacked in Land Acquisition proceedings There is nothing in the Probate and Administration Act which would justify a differentiation between the powers of an administratrix who happens also to be a Hindu widow and heiress

of her husband and those of any other administrator under the Act *Kamakhya Nath v Hari Churn* I L R 26 Cal 607 followed. The validity of an order by a District Judge granting leave to an administrator to sell property cannot be challenged collaterally in Land Acquisition proceedings *Quere* Whether the order can be so challenged on the ground of fraud. CHURU LAL HALDAR v MUKSHADA DEBI (1919)

23 C W N 652

s. 92—

See HINDU LAW—WILL

I L R 29 Mad 365

s. 98—

See COURT FEES AMENDMENT ACT 1899
s. 19H I L R 41 Cal 658

s. 112—

See LEGACY I L R 36 Bom 111

PROBATE DUTY

See COURT FEES ACT 1870

2 Pat L J 611

Valuation of estate for Probate and Administration Act (V of 1881), ss. 5, 59, 62, 64 and 76—Court Fees Act (VII of 1870) Sch. 1 Art. 11 Sch. III Probate duty is calculated on the value of the estate at time of application for Probate or Administration and not at the date of the death of the Testator or intestate and for purposes of Court fees the present value is the basis of reckoning and not possible future value THE DEPUTY COMMISSIONER OF SINGHDHUM v JAGADISH CHANDRA DEO DHABAN DES

6 Pat L J 411

PROBATE PROCEEDINGS

See INTERROGATOIRES

I L R 11 Cal 300

See LETTERS OF ADMINISTRATION
3 Pat L J 415

See PLEADER'S FEES
I L R 41 Cal 637

See PROBATE.

Issue of citations on infant—Guardian of infant if must consent to appointment—Proof of consent—Civil Procedure Code (Act V of 1903) O. XXII r. 4—Probate and Administration Act (V of 1881) s. 50 O. XXII r. 4 of the Civil Procedure Code which provides that no person shall without his consent be appointed guardian ad litem of a minor does not apply to probate proceedings which have not arrived at the contentious stage Nevertheless when citation is issued upon an infant it is necessary for the protection of the interest of the infant that the Court should see that the person appointed guardian to receive such citation on behalf of the infant has consented to accept the appointment and take upon himself the onus that by virtue of the appointment falls upon him on behalf of the infant and it is for the person who got the guardian appointed to show the Court that that person accepted the appointment and took upon himself the burden thereof SACHINDRO NARAYAN SARKAR v HIRMOYEE DASGI

24 C W N 633

PROCEDURE

See ADMINISTRATION

I L R 41 Calc. 890

See APPEAL TO PRINCIPAL

See ARBITRATION I L R 53 All 743

See CIVIL PROCEDURE (1 of 1880)

s 373 3 I L R 56 All 172

See CIVIL PROCEDURE (1 of 1880)

4 I L R 45 Bom 718

s 4 I L R 35 All 243

4 s I L R 39 All 47

s 9 I L R 35 All 98

s 9s I L R 43 Bom. 433

10s O VI PR 27 AND 9

I L R 43 All 377

s 101 O VI R 13

I L R 39 All 8

O I P 3 O VII R 1

I L R 40 All 7

O II P - O VIII R 14

I L R 36 All 264

R 2 I L R 37 All 646

O VI R 1 AND 2 O VI R 17

I L R 35 All 163

O VI

O VI R 3 6 I L R 40 All 590

R 8 I L R 35 All 105

PR 8 AND O VII R 3 9

I L R 35 All 331

s 13 O VII s 3

I L R 39 All 143

O VI R 21 I L R 38 All 5

O VII R 3 O VI R 4

I L R 34 All 123

I L R 41 All 663

O VI R 23 I L R 34 All 612

RR 92 93

I L R 39 All 114

O VII R 8

I L R 39 All 396

O VI s 21 I L R 39 All 388

R 33 I L R 34 All 32

SCH II PARA 3

I L R 41 All 578

See COMPROMISE I L R 43 Calc. 469

See CONTEMPT OF COURT

I L R 42 Calc. 1169

See CRIMINAL COURT

I L R 43 All 283

See CRIMINAL PROCEDURE CODE—

ss 107 AND 145 I L R 34 All 449

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ss 110 AND 123 I L R 40 All 39

s 17 I L R 35 All 103

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I L R 37 All 331

s 41

I L R 39 All 308

s 40

I L R 40 All 307

s 40

I L P 43 All 180

s 4

I L P 41 All 197

s 4

I L R 40 All 52

See DEFENCE OF INDIA ACT (1 of 191)

s 2

I L R 41 All 164

See EXCISE I L R 41 Calc 694

See EXECUTION OF DECREES

I L R 44 Calc 1072

I L R 35 All 119

See FALSE INFORMATION

I L R 43 Calc. 173

See GUARDIANS AND WARDEN ACT (1 of 1890)

s 5 to 20 (CHAP II)

I L R 36 All 282

See HABEAS CORPUS

I L R 41 Calc 76 459

See INSOLVENCY I L R 47 Calc 56

See LAND ACQUISITION ACT (1 of 1894)—

s 9

I L R 39 All 534

s 9 18 AND 20 I L R 37 All 69

See LETTERS OF ADMINISTRATION

I L R 47 Calc 838

See LIMITATION ACT (1 of 1908) s 3

I L R 36 All 235

See LUTACI ACT (1 of 1912)

I L R 43 All 459

See MAHOMEDAN LAW—MARRIAGE

I L R 42 Calc. 351

See MINOR I L R 32 All 287

See OFFENCE COMMITTED ON THE HIGH SEAS

I L R 36 Calc 487

See PARTIES I L R 46 Calc 48

See PARTITION SUIT FOR

I L R 38 Calc 681

See PENAL CODE—

ss 182 211

I L R 34 All 522

s 494

I L P 40 All 615

I L R 32 All 78

See PRACTICE—

See PROBATE AND ADMINISTRATION ACT

(1 of 1881) s 30

I L R 37 All 330

See PROVINCIAL INSOLVENCY ACT (1 of 190)

s 13 (3) 17

I L R 36 All 63

ss 18 36 AND 4

I L R 37 All 65

s 26 46

I L R 36 All 8

s 36

I L R 39 All 391

See SMALL CAUSE C.

s 17

I L R 38

s 17

I L R 38

PROCEDURE—contd

See PATEABLE DISTRIBUTION

I L R 42 Calc 1

See PRESTIGATION ACT (XVI of 1908)

SS 31 32 52 87

I L R 35 All 34

See REVIEW I L R 45 Calc. 60

See REVIVOR I L R 43 Calc 903

See SANCTION FOR PROSECUTION

I L R 37 Calc 714

I L R 44 Calc 816

14 C W N 806

See U P COURT OF WARDS ACT (III of 1890) ss 10 AND 20

I L R 37 All 585

See UNITED PROVINCES MUNICIPALITIES ACT 1900—

ss 67 102

I L R 36 All 329

s 187

I L R 35 All 450

See WASTE LANDS ACT 1813 s 18

I L R 44 Calc 328

See WORKMEN'S BREACH OF CONTRACT (XIII of 1859) I L R 35 All 61

in partition Suit

See CIVIL PROCEDURE CODE ss 110 AND 112 I L R 42 All 646

Security for good behaviour—

See CRIMINAL PROCEDURE CODE ss 110 AND 112 I L R 42 All 646

When accused believed of unsound

mind—

See CRIMINAL PROCEDURE CODE ss 464 AND 465 I L R 42 All 137

When question at issue in Criminal proceedings is also sub judice in a Civil case—

See CRIMINAL PROCEDURE CODE s 476 I L R 43 All 180

1 ——— Right to set aside consent decrees.—A consent decrees once duly obtained cannot be set aside by a rule but if it is sought to impeach it upon grounds of fraud that must be done in a regular suit. The only alternative which the law allows is an application for review of judgment. *FATMADAT : SONDAI* (1911)

I L R 36 Bom 77

2 ——— Appeal to High Court.—*Jurisdiction of High Court of Rights—Standard of Measurement—Code of Civil Procedure (Act XIV of 1859) s 531—Bengal Tenancy Act (VIII of 1886) s 102 : sub s (3). The right of appeal to the High Court given by s 102A sub s (3) of the Bengal Tenancy Act 1886 is subject to s 531 of the Code of Civil Procedure 1859, and can only be exercised upon the grounds mentioned. The High Court has therefore no jurisdiction under the sub section to set aside the decree of a District Judge upon the ground that he had applied the wrong standard of measurement to land of which the rent was in question. *NARAYAN CHANDRA LAL : BRUKER* (1913)*

I L R 45 I A 183

3. ——— Appeal—Security Bond in Decree Holder—Duration of Liability—Obligee not named in Decree—Enforcement—Civil Procedure Code (XVI of 1908) s 616—Civil Procedure Code

PROCEDURE—contd

(V of 1908) as 47 144. An appeal to the Court of the Judicial Commissioner having been preferred against a decree of the Subordinate Judge for possession the Judge ordered under s 545 of the Code of Civil Procedure 1882 that the successful plaintiff should be let into possession in execution of the decree upon furnishing security so that any order made by the said Appellate Court might be made binding upon the security for the sum secured. The present appellants entered into a bond reciting the order and hypothecating property to secure the sum provided no oblige was named in the bond. The Appellate Court in the first instance affirmed the decree but on the result of a successful appeal to the Privy Council, they subsequently dismissed the suit save as to certain villages and directed the Subordinate Judge to ascertain the mesne profits due to the defendants. Upon an application made to the Subordinate Judge in 1909 the appellants being made parties he made a decree finding the amount of the mesne profits and declaring the liability of the appellants upon the bond to the amount secured. Held that the liability upon the bond (which was not a personal liability) did not terminate upon the first order of the Appellate Court. It extended to the final determination of the Subordinate Judge had liability upon the bond. *ATAGHUBAR SINGH : JAI INDRA BAHADUR : SR* (1919)

I L R 48 I A 223

4. ——— Failure to comply with order for security for costs—Application for leave to appeal in forma pauperis—Civil Procedure Code (Act V of 1908) O XXI r 10. The Code of Civil Procedure 1908 and the rules thereon contained apply to proceedings in the High Court at Calcutta under the Letters Patent save so far as the Code expressly provides to the contrary. The appellant appealed to the High Court at Calcutta under s 15 of the Letters Patent of 1865 against the rejection by the Court in its original civil jurisdiction of a petition under the Probate and Administration Act (V of 1831). She failed to comply with an order that she should give security for costs within two months and subsequently applied for leave to continue the appeal in forma pauperis. The High Court acting under O XXI r 10 of the Code of Civil Procedure 1908 dismissed the application and the appeal. That rule provides that upon a failure to comply with an order for security of costs the Court shall dismiss the appeal. Held that O XXI r 10 applied to the appeal and that under that rule the High Court was bound to dismiss the application and the appeal for even if the inherent power declared by s 161 to make such orders as may be necessary for the ends of justice could be exercised in the face of the imperative words of the rule the circumstances did not admit of an exercise of that inherent power. *Decision of the High Court affirmed. SAKHAI THAKURAN : SAKHAI* (1914)

I L R 43 I A 79

I L R 43 Calc. 491

5 ——— Appeal to Privy Council—Certificate of High Court—Code of Civil Procedure (V of 1908) sec 109 (c) O XXI r 3—*Madras Estates Land Act (Madras Act of 1925) sec 5 sub sec (3)*—*Iltah decreed under earlier Act—*less judicata—*Special leave to appeal refused*. A certificate granted by a High Court upon a petition under O XXI r 3 Code of Civil

PROCEDURE—*could*

Procedure for leave to appeal to the Privy Council should show clearly whether it is intended to certify merely that the case falls within s 110 of the Code or that it falls within s 109 (c) and s 110 as a case otherwise fit for appeal. Upon a petition under O V L r 3 for leave to appeal from a decree of the High Court in a suit for the recovery of Rs 400 rent the High Court certified that as regards the subject matter and the nature of the questions involved the case fulfils the requirements of s 109 and 110 of the Code of Civil Procedure and that the case is a fit one for appeal to His Majesty in Council. *Held* that the appeal could not be maintained, since the value of the subject matter was under Rs 10,000 and there was nothing in the certificate to show that the discretion conferred on the High Court by section 109 (c) was invoked or exercised. *Held* further that a contention that the provision in s 62 sub s 3 of the Madras Estates Land Act 1904 for the remaining in force of decreed puthas and muchalkas referred only to puthas and muchalkas decreed under that Act was not of sufficient weight to justify their Lordships in granting special leave to appeal. *PADMAKUMARA AYYAR v. SWAMINATHA AYYAR* (1921). L R 48 I A 31 I L R 44 Mad 293

6 ——— Amendment of Plaint—*New Case*
—Civil Procedure Code (V of 1908) s 153 O VI r 17—Limitation—*Drench of Contract*—Contract to sell three out of twelve sites to be granted—*Time for performance*—Limitation Act (IX of 1908) Sch I Art 115 The appellant contracted in 1903 to sell to the respondent three out of twelve sites for oil wells which she expected to be allotted to her by Government for that year. In 1904 four sites were allotted for 1903 but the appellant did not obtain the whole twelve till 1912. The respondent in 1904 or 1905 after the four sites were allotted asked the appellant to transfer three to him but she refused; no sites were transferred to him. In 1913 the appellant sued the respondent for specific performance of a verbal agreement which he alleged that the appellant had made in 1912 in reference to the 1903 contract to transfer to him three sites allotted in 1912 but not being among those allotted for 1903. Both Courts found against the alleged verbal agreement but the Appellate Court allowed the respondent to amend his plaint by claiming damages for the failure to deliver sites under the agreement of 1903. *Held* that it was not open to the Court under the Code of Civil Procedure s 153 and O V r 17 to allow the amendment as it altered the real matter in controversy between the parties. *Held* further that the claim as amended was barred by limitation since the appellant became liable to perform the contract of 1903 as soon as three sites had been allotted to her for 1903 and there was a refusal by her to transfer in 1904 or 1905. Judgment of the Court of the Judicial Commissioner reversed. *MA SHWE MYA v. MAUNG MO HUAUNG* (1911) L P 48 I A 214 I L P 43 Calc 832

PROCEEDINGS

—pendency of—

See CIVIL PROCEDURE CODE (Act V of 1908) O V L r 3

I L R 38 Mad 535

PROCESS OF COURT

—abuse of—

See IN OLDERNEY I L R 41 Calc 599

PROCESSION

See HIGHWAY I L R 35 Mad 28

See PUBLIC ROAD FIGHT TO LIFE

I L R 31 Bom 571

See SPECIFIC RELIEF ACT (I of 1900)

s 4. I L R 42 Bom 433

—Right to be carried in cross-palanquin procession—

See CIVIL PROCEDURE CODE 1908 s 9

I L R 45 Bom 591

—Commissioner of Police
—Orders prohibiting a public procession and a particular individual from joining it—*Legality of such orders*—*Public notice of order necessary*—*Power of Indian Legislature to make police regulations regarding public processions*—*Calcutta Police Act (Beng 11 of 1866) s 6A (4) 10A—Calcutta Suburban Police Act (Beng 11 of 1866) s 32 (4) 40A—Calcutta and Suburban Police (Amendment) Act (Beng 111 of 1910) s 16 and 31 Sub s (4) of 6A of the Calcutta Police Act and of s 39A of the Suburban Police Act must be strictly construed. It empowers the Commissioner of Police when he considers it necessary to do so for the preservation of the public peace or public safety to prohibit a procession or public assembly but not a particular individual from taking part in the same. The subsection does not require any public notice of an order passed thereunder to be given within the meaning of s 102A of the Calcutta and 40A of the Suburban Police Acts. *Semle*. Indian Legislature is competent to make police regulations of the kind in the interests of public peace and safety. *LEAKAT HO SAIN v. EMPEROR* (1913)*

I L R 40 Calc 470

PROCLAMATION

See MORTGAGE I L R 37 Calc 597

See SALE FOR ARREARS OF INTEREST

I L R 44 Calc 715

—dated 5th August 1914—

See BILL OF EXCHANGE

I L R 41 Bom 566

PROCLAMATION OF SALE

See CIVIL PROCEDURE CODE 1882 ss 287 293

I L R 36 Bom 329

See HIGH COURT (RULES AND ORDERS)

I L R 37 Bom 631

See SALE IN EXECUTION OF DECREE

I L R 39 Calc 26

—Irregularities in—

See APPEAL TO PRIVY COUNCIL

I L R 49 Calc 635

See CIVIL PROCEDURE CODE O XXI

r 54 I L P 44 Mad 293

PRODUCE RENT

See APPRAISEMENT

I L R 48 Calc 1086

PROFESSION

See PROSTITUTION

I L R 37 Mad 585

PROFESSIONAL CONDUCT OF COUNSEL

See BAR COUNCIL, RESOLUTIONS OF
I L R 40 Calc. 898

PROFESSIONAL ETIQUETTE

See COUNSEL I L R 47 Calc 828

See COUNSEL PROFESSIONAL CONDUCT OF
I L R 40 Calc. 898

See PLEADER I L R 47 Calc 1115

PROFESSIONAL MISCONDUCT

See LEGAL PRACTITIONER
I L R 42 All 125

See LETTERS PATENT (ALL) 8
I L R 42 All 450

See PLEADER I L R 47 Calc 1115

See UNPROFESSIONAL CONDUCT

Attorney disciplinary jurisdiction over—Striking off the rolls—Letters Patent 1865 cl 10—Right of aggrieved person—Practice—Verification—Disciplinary action against an attorney rests on the principle that the Court deems him an unfit person to act as an attorney and is not by way of punishment. Any person aggrieved by the misconduct of an attorney has the right to invoke the disciplinary jurisdiction of the Court. In re A Solicitor L P 25 Q B D 17 followed. On an application by an aggrieved party to have an attorney struck off the rolls of attorneys on the ground of professional misconduct Held that where there was a positive sworn denial of the misconduct by the attorney coupled with an explanation which was not demonstrably false even a strong case of suspicion would not justify disciplinary action against the attorney on a summary proceeding. The procedure to be adopted in invoking the disciplinary jurisdiction of the Court against an attorney enunciated. In the Matter of AN ATTORNEY (1913)
I L R 41 Calc. 113

Legal Practitioners Act (XVIII of 1879 as amended by Act XI of 1896) ss 13 14—Scope of s 14—Contempt of Court—

Court meaning of s 14 of the Legal Practitioners Act is not limited in its application to cases covered by cl. (a) and (b) only but covers cases of misconduct under all the clauses of s 13. Misconduct in the presence of the Court which shows disrespect of its authority and which obstructs and has a tendency to interfere with the due administration of justice is contempt. The principle is not limited to misconduct in the actual presence of the Judge. The Court is deemed to be present in every part of the place set apart for its use and for the use of its officers, jurors and witnesses and therefore misbehaviour in such places is misconduct in the presence of the Court. In the matter of Purna Chunder Pal I L P 27 Calc 1023. In the matter of Southeal Krishna Prasad I L P 15 Calc 75. In the matter of Wajid Hussain I L P 2 Calc 890. In the matter of Muhammad Abdul Haq I L P 29 All 61. In the matter of the 5 cont grade Pleaders I L P 34 All 29. In the matter of Ghola Khan T E L I 19. In the matter of Dayaram Sahasrao C W 199. In the matter of Kals Prannana Choudhary 11 C L J 161. In the matter of Padma Charan Chakravarti 4 C I J 29. In the matter of an Advocate a Valid a Pleader and a Mukhtar 4 C L J 96. The District Judge of Aizawa v

PROFESSIONAL MISCONDUCT—contd

Hanumanulu (1915) Mad W P 1600. In the matter of Ganapathi Sastry 19 Mad L J 594. French v French 1 Hogan 138. Pex v Carroll 1 Wilson 75. Poach v Hall 2 Atk 499. Ez parte Burrows 8 Ves 535. Ez parte Jones 13 Ves 23. In re Johnson 20 Q B D 68. Ez parte Wilson 1 Doubling v S 800. Kirby v Webb 3 T L R 63. Charlton v Ca e 3 My d Cr 16. Helmore v Smith 23 Ch 449 referred to. PASK LAL v In the matter of (1916) I L R 44 Calc. 639

Letters Patent cl 10—Valid—Improper advice to client—Obtaining from client a nominal sale-deed for a low value—Misappropriation of client's property—Setting up false defence of ownership in a suit against him by the client for its recovery—Giving false evidence and suborning perjury. A vakil was found guilty of (a) improperly suggesting to a client seeking his advice as to how to recover his properties from his adversary the execution in his (vakils) own favour of a nominal sale deed thereof for a low value (b) setting up after the execution of such a sale-deed a title in himself contrary to the terms of the agreement with the client (c) setting up a false defence of his ownership in a suit against him by the client for a cancellation of the sale deed (d) supporting the false defence by his own false evidence and (e) suborning perjured evidence in support of the same. Their Lordships held that the vakil was guilty of misconduct and suspended him under cl 10 of the Letters Patent from practice for a period of two years. In the matter of a VAKIL OF THE HIGH COURT (1916)
I L R 40 Mad 69

PROFITS

See OFFERINGS TO DEITY
I L R 33 Calc 337

— derived from joint family property—

See HINDU LAW—JOINT FAMILY
14 C W N 221

— suit for—

See ADVERSE POSSESSION
I L R 22 All 399

See AGRA TENANCY ACT (II of 1901)
ss 160 201 I L R 34 All 250

— suit for against landlord—

See AGRA TENANCY ACT (II of 1901)
ss 164 166 I L R 40 All 248

PROFITS A PRENDRE.

Profits a prendre in gross acquisition of by fluctuating body. A right on the part of the members of a tribe such as the Sonthals or a class such as the Chatwals inhabiting the villages on and adjacent to the Jarekhab Hill to hunt in a certain jungle for one day in the year cannot be acquired by 20 years enjoyment under s 26 of the Limitation Act 1903. Neither such a tribe nor such a class is a person within the meaning of the General Clauses Act 1907. Village communities in India bear the strongest resemblance to corporations and they may be regarded as corporate bodies capable of administering a trust in favour of particular classes residing within their jurisdictions. The law of India does not preclude the inference of legal ownership in respect of such a right by grant in trust for the benefit of such a fluctuating body. In India there

PROFITS A PRENDRE—*contd*

is nothing to prevent the acquisition by custom, by such a fluctuating body of a *profit a prendre* in gross so long as it can be shown that the exercise of the right is not unreasonable. Where the *Amindar* of Palganj bound himself and his heirs by an *ekranama* to convey free of costs to the Sitambari Jain Community land for the purpose of constructing temples and guest houses and further agreed that in the event of the executant and his heirs failing to convey such land the Sitambari Jains should be entitled to take such land held that this *ekranama* did not prevent the *Amindar* from permitting other persons to hunt in the jungles until the Sitambari Jains should select a plot for their buildings. Held further that the court ought not to give a party possessing such a remote interest a declaration affecting an entry in the Record of Rights. A person who sues under s 42 of the Specific Relief Act 1877 for a declaration that an easement recorded in a Record of Rights under s 81 of the Chota Nagpur Tenancy Act 1908 is incorrect must show that he has some legal title or interest in the land over which the easement exists. Query whether the manager of an unincorporated society is competent to sue on behalf of the society on an *ekranama* executed in favour of a previous manager of the society. **MAHARAJ BAHADUR SINGH v GANDAUJI SINGH** 2 Pat L J 323

PRO FORMA DEFENDANT

See MORTGAGE I L R 38 Calc 342

PROGRESSIVE RENT

— reservation of—

See LAND TENURE IN BENGAL
L R 46 I A 279

PROHIBITORY ORDER

— Excavation of a tank—
Injury to adjoining house—Likelihood of a breach of the peace—Order passed on personal apprehension of the Magistrate without evidence taken or urgency recorded—Criminal Procedure Code (Act V of 1898) s 144. The petitioner excavated a tank on his own land adjoining the house of the opposite party and the latter objected to the excavation on the ground that his house would be thereby rendered unsafe. No likelihood of a breach of the peace appeared from the police report or the written statements of the parties but the Magistrate made the order under s 144 of the Criminal Procedure Code without inquiry or recording any urgency. Held that the order was illegal and that s 144 was not applicable without inquiry or recording any urgency. **KAMINI MOHAN DAS GUPTA v HARENDRA KUMAR SARKAR** (1911)
I L R 38 Calc. 876

— Jurisdiction—Execution of decree—Civil Procedure Code (Act V of 1908) s XXI r 46—Competency of Court to issue prohibitory order outside its jurisdiction restraining a person from paying a debt due to the judgment debtor. It is not competent to a Court in execution of a decree for money to attach at the instance of the decree holder a debt payable to the judgment debtor outside the jurisdiction by a person not resident within the jurisdiction of that Court. **BROD DUNLOP & CO v JAGANNATH MAHWARI** (1911)
I L R 39 Calc. 104

PROJECTION

See BOMBAY DISTRICT MUNICIPALITIES
ACT (BOM III or 1901) ss 70 113
122 I L R 42 Bom 454
See FIXTURE I L R 48 Calc 602

PROMISE

— breach of—

See CONTRACT I L R 42 Bom. 499

PROMISOR

— heirs of—

See PRE EMPTION I L R 38 Mad 114

PROMISSORY NOTE

See CAUSE OF ACTION
I L R 42 ALL 193

See DEKKHAN AGRICULTURISTS RELIEF
ACT (XVII of 1879) ss 13 15D 16
I L R 38 Bom 73

See EVIDENCE I L R 33 ALL 571

See EVIDENCE ACT (I of 1872) s 91

I L R 38 ALL 159

See HINDU LAW—MINOR

I L R 34 Bom. 72

See KUMAON RULES (1894) s 17

I L R 42 ALL 642

See LIMITATION ACT 1908 ARTS 73 AND
80 I L R 42 ALL 55

See NEGOTIABLE INSTRUMENT ACT 1883

ss 4 and 80 5 Pat. L J 536

See PARTNERSHIP

I L R 40 Mad 727

See PRACTICE—CAUSE OF ACTION

L R 41 I A 142

See VARTHAMANAM

I L R 38 Mad. 680

— acknowledgment contained in—

See LIMITATION ACT (IX or 1908) SCH
I ARTS 116 AND 60 s 19
I L R 38 Bom 177

— Contemporaneous oral arrangement

See EVIDENCE ACT (I of 1872) s 91

PROV 3 I L R 45 Bom 1155

— executed by father before parti-

tion—

See HINDU LAW—DEBT

I L R 41 Mad. 106

— payable on demand—

See LIMITATION ACT (IX or 1908) SCH I

ART 60 I L R 39 Mad. 129

See PRINCIPAL AND SURETY

I L R 41 Calc 978

— payable to a person or order or

bearer illegality of—

See PAPER CURRENCY ACT s 25

I L R 40 Mad. 585

— suit on—

See ALIEN'S ENEMY

I L R 41 Calc. 523

See EVIDENCE ACT (I or 1872) s 92

AND PROV R. 39 Bom. 399

See

2 W N 223

2 r

PROMISSORY NOTE—contd

1 — Construction—Acknowledgment—Deed construction of—Unconditional undertaking and the document styled as promissory note It is no doubt true that the question whether an instrument is a promissory note or not should be judged by the words used and the instrument must contain in words an unconditional undertaking to pay a sum of money and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money *Held* that the following document wherein the executant not only made an unconditional undertaking to pay but also styled it a promissory note was a promissory note and not a mere recital of a liability, and as such was not admissible in evidence for want of a proper stamp

Promissory note executed on _____ in favour of _____ by _____ In the matter of the purchase of piece goods by me from your shop on this date, the sum found due by me as per patty (litt) is Rs 600 _____ which sum I promise to you or to your order on demand with interest at 1½ per cent To this effect
Tirupathi Goundan v Rama Reddi 1 L R 21 Mad 49
Govind v Balwant Rao 1 L R 22 Bom 986
Horne v Redfern, & Bing N C 433 and *White v North & Fitch* 689 distinguished
Morris v Lee 92 F R 409 referred to *KARUTHARAJA ROWTHAN v BAVA MOHIDEEN SASTRI* (1913)

1 L R 38 Mad. 370

2 — Joint execution—Consideration—Surety The consideration paid to any one of several joint promisors is legally sufficient to support the promise of all the joint promisors
Narasimha v Ramaswami 24 Mad L J 91 applied, *Sesha Aiyar v Mangal Dass Jee* 20 Mad L J 144 distinguished *Per CURIAM* S 92 of the Indian Evidence Act precludes an executant from setting up a contemporaneous oral agreement that he should not be made liable on the promissory note *Per SPEKCEER J*—S 127 of the Indian Contract Act shows that the value received by the principal debtor is a sufficient consideration to bind the surety and s 128 makes his liability co extensive
SORNALINGOA MUDALI v PADMAI NAICKAR (1913)

1 L R 58 Mad. 680

3 — Suit by Assignee of promissory note against executants—Payment of consideration by assignee irrelevant *Held* that in a suit by the assignee of a promissory note against the executants the latter are not concerned with the question whether the assignment was for consideration or not All that they are entitled to have ascertained is that the plaintiff is the legal holder of the note and able to give them a good discharge
DALHOY SAHAI v BHARI LAL (1914)

1 L R 37 All 99

4 — By guardian of minor not signing as such whether binding on minor's estate—Negotiable Instruments Act (XXII of 1881) ss 23 and 30 scope of A negotiable instrument executed by the guardian of a Hindu minor for purposes binding on the minor is enforceable against the minor's estate though the instrument was not signed by the executant in his capacity as guardian The minor is not personally liable on the instrument The case is governed by the principles of Hindu Law and ss 23 and 30 of the Negotiable Instruments Act (XXII of 1881) are not applicable. *Subraman Aiyar v*

PROMISSORY NOTE—contd

Arumuga Chetty 1 L R 26 Mad 330 followed
KRISHNA CHETTIAR v NAQMANI AHMAL (1915)
1 L R 39 Mad. 925

5 — Surety—Promissory Note payable on demand—Liability of surety—Guaranteeing such note when arises *Held* that the liability of the surety rose immediately on the execution of the guarantee and limitation ran from that date
SREENATH ROY v PEARY MOHAN MUKHERJEE (1896)
21 C W N 418

6 — Executed in Hyderabad State but stamped with British India Stamp—Hyderabad State Stamp Act s 35—Suit on the promissory note in British Indian Court—Maintenance of suit in British India—Lex Fori—Lex Loci Contractus A promissory note was executed in Hyderabad State It was stamped with a British India Stamp A suit having been brought on the promissory note in a Court in British India it was contended that the promissory note not having been stamped with the stamp required by the laws of the Hyderabad State no suit will lie upon it in the British Indian Court *Held* that though the promissory note be inadmissible in evidence under Hyderabad State Stamp Act that law did not declare the agreement as void and the agreement could therefore be sued upon and enforced in a Court in British India.
Bristow v Sequerville 5 Erch 218 relied on If the law of the foreign country in which the document was executed provides no more than that the agreement shall not be received in evidence because it is not stamped then the agreement may be used upon and enforced in a Court in British India but if the law of the foreign country provides that by reason of the want of stamp the agreement itself which is contained in the unstamped document shall be void then the plaintiff cannot succeed in a Court of British India
DEONDURAM CHATRAPATI v SADASTE SAVATRAK (1918)
1 L R 42 Bom 522

7 — In favour of the managing trustee of a charity—The trustee succeeded by another—Latter's right to sue on the note without any assignment or endorsement A promissory note executed in favour of a trustee of an assignment his successor without endorsement or assignment the Negotiable Instruments Act not affecting devolution of rights by operation of law
Cohen v Wood v *Chetand* 1 B & C 150 applied and followed
Sowcar Ladd Govinda Dass v Masrogo Naidu 1 L R 31 Mad 634 referred to
PANA NADHAN CHETTI v KATHA VELAN (1917)

1 L R 41 Mad 333

8 — When overdue—Negotiable Instruments Act (XX of 1881) s 113 Where a promissory note payable on demand is negotiated it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice by reason that it appears that reasonable time for presenting it for payment has elapsed since its issue The analogy of the rules applicable to questions of limitation is not to be followed in such cases
Nora v Fiam 2 M & W 461
Roe v Young 2 B & D 160
Molloy v Murdock 5 M & W 413
Peck v Mitchell 9 M & W 15
Barrough v Wile 4 B & C 395
Glascock v Balle 21 Q B v 13 referred to
Prayendra Ashoka v Hindustan Cooperative Insurance Society 1 L R 41 Cal 93 distin

PROMISSORY NOTE—contd

guished D N SHAHA & Co : THE BENGAL
NATIONAL BANK LTD (1920)

I L R. 47 Calc 861

PROMPT DOWER

See MAHOMEDAN LAW—DOWER

I L R 35 Bom 386

PROOF

See CUSTOM I L R 45 Calc 450 835

See CUSTOM OR USAGE

I L R 45 Calc 285

See MAHOMEDAN LAW—LEGITIMACY

I L R 48 Calc 856

— standard of—

See LIMITATION I L R 40 Calc 898

See PROBATE I L R 39 Calc 245

1 ————— Per WOODROFFE
J—A Court cannot assume that a document
was proved from the refusal of opposing counsel
to cross examine on it The latter is entitled
to wait until the Court ruled whether the docu-
ment was proved or not In the goods of GORESSUN
DUTT (1911) I L R 39 Calc 245
15 C W N 285

2 ————— Title evidence of
direct proof when not available—Conduct and
admissions of defendant as proof of title—Mulla's
papers evidentiary value of—Registers kept under
Reg VIII of 1800 entries in—Statements against
proprietary interest—Statements in read-cess returns
a in character of interest—Burden of proof when
shifted—Effect of erroneous statement as to nature
of tenure by unauthorised person—Purchase at
execution sale held under s 124 (Beng Act I of
1879) limited to interests actually sold When
owing to lapse of time and other causes direct
evidence of title e.g. a sanad or grant is not
available it is enough for the plaintiff to estab-
lish a *prima facie* case if the evidence on which
it is based is corroborated by the conduct and
admissions of the defendant or his predecessors
in interest or un rebutted by any positive evidence
which can be relied on KALI SANKAR SARKAR :
PRATAP UDAI NATH SARKAR Do (1911)
16 C W N 683

3 ————— Penal Code (Act
XLV of 1860) s 147 s 304 read with s 119—Pro-
secution evidence mostly disbelieved—Hypothetical
case made by the Court—Propriety of conviction
Where the Sessions Judge discarded almost in
their entirety the accounts of the occurrence given
by the witnesses for the prosecution and substi-
tuted a narrative of his own founded for the most
part on surmise and conjecture and the story
of the origin of the occurrence and the course of
events as reconstructed by the Sessions Judge
were wholly inconsistent with the story told by
the witnesses and the appellants were convicted
under s 147 and s 304 read with s 149 Penal
Code Held that the conviction should be set
aside KALU KHALASHI : THE KING EMPEROR
(1912) 17 C W N 538

4 ————— Suspicion and
proof difference between Where a decree holder
sued for a declaration against a purchaser for
the judgment debtor that the purchase was a
benami Held that the burden of proof lay on
the decree holder and though there were elements
of suspicion the burden had not been discharged

PROOF—contd

It is essential to take care that the decision of the
Court does not rest on suspicion but legal testi-
mony SETH MANTALAL MANSUKHBHAI & RAJA
BIJOY SINGH DUDHORIA 25 C W N 409

PROOF IN COMMON FORM

See PROBATE I L R 42 Calc 480

PROOF OF DOCUMENT

See EVIDENCE ACT 1872 s 68

1 Pat. L J 369

PROOF OF TITLE

See EJECTMENT SUIT

I L R 42 Bom 357

PROPAGATION OF DISEASE

See NUISANCE I L R 38 Calc 298

PROPER COURT

See LIMITATION ACT (IX of 1908) ART
18^o EXPL II I L R 45 Bom 453

PROPERTY

See ANCESTRAL PROPERTY

I L R 59 Mad 930

See CRIMINAL PROCEDURE CODE (ACT V
OF 1908) s 520

I L R 42 Bom. 664

— disposal of—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898) s 517

I L R 40 Bom 186

— transfer of, to another jurisdic-
tion—

See CIVIL PROCEDURE CODE (ACT V OF
1909) ss 37 38 100

I L R 37 Mad. 462

— vesting of—

See EVIDENCE ACT (I OF 1872) s 92
PROVS I AND 3

I L R 39 Mad. 226

PROPERTY TITLE

— question of—

See AGRA TENANCY ACT (II OF 1901),
s 177 (c) I L R 38 ALL 183

PROPRIETARY TITLE

See AGRA TENANCY ACT (II OF 1901)—
s 58 *00 I L R 35 ALL 157

s 199 I L R. 37 ALL 94

See UNITED PROVINCES LAND REVENUE
ACT (III OF 1901) s 111 (1) (b)

I L R 41 ALL 211

— question of—

See AGRA TENANCY ACT (II OF 1901)
s 58 1st (a) I L R. 38 ALL 465

PROPRIETOR

See

See L

R.

EDITOR.

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PROSECUTION

See COLLECTOR *I L R.* 40 Calc 465See CRIMINAL PROCEDURE CODE s 478
15 C W N 691See EVIDENCE *I L R.* 42 Calc 784See FUTURE *I L R.* 48 Calc 602See JUDGES PROSECUTION BY
I L R. 45 Calc 169See RECEIVER *I L R.* 46 Calc 432

duty of—

See CHARGE *I L R.* 42 Calc 957See EVIDENCE ACT 1872 s 13
I L R. 30 Mad. 449

duty of, to call all witnesses—

See PENAL CODE s 114
19 C W N 28

for instituting a false case—

See JURISDICTION OF CRIMINAL COURT
I L R. 37 Calc 250

onus on—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898) s 250
I L R. 39 Mad. 593

order for—

See JURISDICTION OF CRIMINAL COURT
I L R. 40 Calc 360

what amounts to—

See MALICIOUS PROSECUTION
I L R. 37 Mad 181

withdrawing from—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898)—
s 248 258 345 *I L R.* 37 Bom 376
25 C W N 615See WITNESS *I L R.* 46 Calc 700See WITHDRAWAL OF PROSECUTION
I L R. 48 Calc 1105

Prosecution—Calcutta

Municipal Act (Beng III of 1899) ss 559 (18)
561 (b) 631—Non compliance with notice to remove
encroachment on public street—Institution of prosecu-
tion more than three months after expiry of notice—
Limitation—Continuing offence—Bye laws validity
of—Ultra vires A prosecution for failure to
comply with a notice by the Chairman to remove
an obstruction on a public street instituted more
than three months after the expiry of the date
fixed therein is barred under s 631 of the Calcutta
Municipal Act A bye law must conform to the
provisions of the law under which it purports to
be made Rule (1) of the bye laws framed under
s 559 (18) of the Act is ultra vires in so far as it
creates a continuing breach after notice in viola-
tion of the terms of s 561 (b) NARAIN CHANDRA
CHATTERJEE v CORPORATION OF CALCUTTA (1909)
I L R. 37 Calc 545

To prove charge truth

or falsehood of defence immaterial If the case for
the prosecution is false on the whole the accused
is entitled to an acquittal whether his defence be
true or not GOVIND NARAYAN BARRULA v THE
IRAM CHETRI
25 U W N 838

PROSECUTION WITNESSES

cross-examination of.

See CROSS EXAMINATION

I L R. 37 Calc. 236

See CHARGE CANCELLATION OF

I L R. 39 Calc 885right of accused to recall and cross
examine—See CRIMINAL PROCEDURE CODE (ACT V
OF 1898) s 250*I L R.* 39 Mad. 503

PROSECUTOR

See CONTENT OF COURT

I L R. 41 Calc. 173

PROSPECTIVE LEGISLATION

See ASSESSMENT *I L R.* 43 Calc. 873

PROSTITUTE'S PROPERTY

See HINDU LAW—SRIDHAR

I L R. 40 Calc. 650

See HINDU LAW—SUCCESSION

I L R. 38 Calc 493

PROSTITUTION

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898) s 498 (1)*I L R.* 37 Mad. 565

See HINDU LAW—INHERITANCE

I L R. 38 Mad. 1144

PROTECTION

doctrine of—

See OCCUPANCY HOLDING
I L R. 42 Calc 745

PROTECTION OF JUDICIAL OFFICERS

See TREPASS *I L R.* 39 Calc 953

PROTECTION ORDER

See PRESIDENCY TOWNS INSOLVENCY
ACT (III OF 1909) ss 6 8 25 39 39
(2) (a) (b) (c) (d) (f) (j)*I L R.* 40 Bom 461

Presidency Towns In
solvency Act (III of 1909) s 25—Previous decisions
on applications for interim orders—Discretion—
Practice It has never been the practice of Com-
missioners in Insolvency under the Indian Insol-
vency Act (II and 12 Vict s 21) to consider
themselves bound by their previous decisions on
applications for interim orders when it has been a
matter for their discretion and it by no means
follows that because an application has been
refused on the first occasion it must also be refused
on the second occasion s 25 of the Presidency
Towns Insolvency Act (III of 1909) clearly intends
that while an insolvent diligently performs the
duties prescribed by the Act he should not be
harassed by execution creditors and should not
be rendered liable to pressure whereby one cre-
ditor may get undue advantage over another
The section does not deprive the Court of its dis-
cretion in granting or refusing protection but
sub s (4) indicates clearly the lines along which
that discretion should be exercised when a creditor
opposes the grant If an insolvent can produce
the certificate referred to the onus is thrown on
the opposing creditor of showing cause why the

PROTECTION ORDER—contd

protection order should not be granted *In the matter of MEHRAJ GARGARUX* (1910)

I. L. R. 35 Bom. 47

PROTHONOTARY

See HIGH COURT RULES BOMBAY
RL. 81 321 I. L. R. 38 Bom. 418

PROTRACTION OF LITIGATION

See GRANT I. L. R. 44 Calc 585

PROVIDENT FUND ACT (IX OF 1897 AS AMENDED) BY ACT IV OF 1903)

See EXECUTION OF DECREE
I. L. R. 46 Calc 962

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 43 I. L. R. 44 Bom. 673

PROVIDENT INSURANCE

Company with share capital carrying on business of a provident insurance society—Liability to registration as such before receiving premiums—*Provident Insurance Societies Act* (I of 1912) ss 3 (8) 6 7 91 A company having a share capital divided into shares must if it intends to carry on the business of a provident insurance society be registered under the *Provident Insurance Societies Act* (I of 1912) before it receives any premium or contribution *Oriental Government Security Life Insurance Co v Oriental Assurance Co* I. L. R. 40 Calc 570 explained *DEPUTY LEGAL MEMORANDUM v SITAL CHANDRA PAL* (1914)

I. L. R. 42 Calc 300

PROVIDENT INSURANCE SOCIETIES ACT (V OF 1912)

ss. 2 (8) 6 7 21—

See PROVIDENT INSURANCE
I. L. R. 42 Calc. 300

ss. 5 6—

See TRADE NAME I. L. R. 40 Calc 570

PROVIDENT INSURANCE SOCIETY

See TRADE NAME I. L. R. 40 Calc 570

PROVINCIAL INSOLVENCY ACT (III OF 1907)

See LIMITATION ACT (IX OF 1908) s 20 (1) (b) I. L. R. 41 Mad. 169

No bar to a suit to establish rights to property attached by Insolvency Court as belonging to the insolvent—

See INSOLVENCY I. L. R. 3 Lah. 147

One petition in Insolvency against several joint debtors of proper—Application against partners of a firm—Amendment A declaration of insolvency cannot be asked for in one petition against several joint debtors There is no provision in the Provincial Insolvency Act for proceeding against two or more persons being partners in the name of the firm *HALI CHARAN SAHA v HARI MOHAN BASAK* 33 C W N 461

ss 3 (c) and (g), 22, 46 and 52—Dismissal of insolvency petition by Official Receiver—Application to District Court to revise under s 27 whether an appeal—Official Receiver whether a Court—Appeal to High Court from order of

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd

ss 2 (c) and (g), 22 46 and 52—
contd

District Court maintainability of A District Judge transferred a petition of a debtor to be adjudged an insolvent to the Official Receiver The petition was dismissed by the Receiver on the grounds that the debtor had no realizable assets that he might be concealing his assets ready cash and outstandings that he was not likely eventually to get his discharge and that therefore the petition was an abuse of process of Court On an application by the debtor under s 22 of the Provincial Insolvency Act (III of 1907) the District court confirmed the order Held that an appeal lay to the High Court under s 46 of the Act from the order of the High Court Held further that the Official Receiver is not a Court subordinate to the District Court within s 46 (1) of the Act and that an application to the District Court under s 22 of the Act to revise the order of the Official Receiver is not an appeal within s 46 Held also that the order of dismissal was based on a misconception of the Insolvency Procedure and should be set aside *Jeer Chetti v Rangaswami Chetti* 29 Mad L J 52 followed *ALLA v KUPPAI* (1916)

I. L. R. 40 Mad. 752

ss 2 (1) (g) 18 20 (c) 40 (1), 41

47—

See RECEIVER I. L. R. 40 Calc 678

ss 3 16 18 33 and 37—Order of adjudication—Appointment of Receiver by District Court—Sale in execution of money decree held by District Munsif's Court subsequent to appointment of Receiver—Application by Receiver to the District Court for cancellation of sale and for delivery of possession—Application whether competent—Jurisdiction of District Court Where after the appointment of a Receiver for the estate of an insolvent had been made by a District Court some of the properties of the insolvent were sold in auction by a District Munsif's Court in execution of a decree for money passed by the latter Court prior to the order of adjudication Held it was competent to the Receiver to make an application to the District Court for annulment of the sale and for delivery of possession of the properties from the purchaser under s 18 cl (3) of the Provincial Insolvency Act (III of 1907) *OFFICIAL RECEIVER TENNEVELLY v SANKARANINGA MUDALIAR* (1921)

I. L. R. 44 Mad 524

ss. 3, 43 (2)—Subordinate Judge is vested with jurisdiction under s 3 declines to take action under s 43 (2) against insolvent—Whether appeal lies to District Judge against the order under s 46—Creditor of an aggrieved person The appellant was adjudicated an insolvent by a Subordinate Judge invested with jurisdiction under the provisions of s 3 of the Provincial Insolvency Act and thereafter certain creditors of the insolvent made applications before the Subordinate Judge to the effect that the insolvent had concealed certain properties and prayed that he should be punished under s 43 (2) The Subordinate Judge after hearing the creditors and the insolvent rejected the applications whereupon some of the creditors applied to the District Judge who, after examining witnesses on both sides sentenced the insolvent to three months simple imprisonment Held,

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd

ss 3, 43 (2)—contd

per **TRIVORA J** The orders made by the Subordinate Judge while he has jurisdiction of the case could be interfered with by the District Court only under the provisions of s 46 which in the matters therein dealt with subordinates all other Courts to the District Court or under the powers conferred by the Code of Civil Procedure in regard to Civil suits as provided in s 47 That no appeal lay against the order of the Subordinate Judge declining to take action against the insolvent under s 43 (2) Per **NEUBOLD J** The word Court in s 43 of the Act does not mean the Court of original jurisdiction only and the District Judge's order in this case was an original and not an appellate order **DIGAMPA CHANDRA BASAK v PAMANI MOHAN GOSWAMI** (1918)

22 C W N 958

s 4—Decision of question of title how far discretionary with Court—Sub sec (3) Court is bound to take evidence or give reasons for refusing to decide questions of title or for holding that the insolvent has a saleable interest in any property and ordering its sale—Nature of materials upon which Court may come to such decision A was adjudicated an insolvent and a Receiver was appointed After various intermediate proceedings the insolvent's brother B appeared in Court and laid claim to certain properties The Judge put to him certain questions and elicited certain answers The Receiver also submitted a report and a petition on the same date The Judge after considering the report and the petitions submitted and after hearing pleaders refused to go into the question of title and decided that the insolvent had a saleable interest in the properties He thereupon directed the Receiver to sell the insolvent's right title and interest in the properties under the provisions of sub sec (6) of s 4 of the Provincial Insolvency Act Power under sub sec (1) of sec 4 to decide a question of title it had full discretion to follow the course laid down in sub sec (7) i.e. to refuse to decide questions of title and to direct sale of insolvent's right title and interest whatever that might be Where the Court has reason to believe that the debtor has a saleable interest in any property it may without further enquiry sell such interest The matters stated in the report of the Receiver and the answers given by the claimant when questioned by the Judge were sufficient materials for his coming to the conclusion that the debtor had a saleable interest in the property **JIRENDRA NATH BHATTACHARJEE v FATEH SINGH NAHER**

26 C W N 922

ss 4 to 6 11 to 18 26 43 44 and 47—What matters are necessary to be enquired into before adjudication—What are proper subjects of enquiry before deciding on final discharge Before passing an order of adjudication under the Provincial Insolvency Act it is not for a Court to decide whether the debts stated in the petition for insolvency are real whether the petitioner has not concealed any property of his from his lists of assets or whether he is unable to pay his debts and similar questions All these are properly subjects that ought to be enquired into before giving a discharge The only things that are necessary to be decided before adjudication are

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd

ss 4 to 6 11 to 18, 26 43, 44 and 47—contd

whether the creditor or debtor is entitled to present the petition, whether the required notices have been served and whether the debtor has committed the alleged act of insolvency Per **CUNHAM S 14 (2)** provides that the Court shall also examine the debtor if he is present as to his conduct dealings and property in the presence of such creditors as appear at the hearing and the creditors have the right to question the debtor thereon There is no doubt that both these clauses require that the acts referred to therein should be done But it does not follow that every matter which forms the subject of the examination of the debtor should be decided before an order of adjudication is made The scheme of Act III of 1907 is to make an order of adjudication at first and then to make a full enquiry into all matters connected with the insolvency before the final discharge is decided The Court has power to refuse to make an order not only on non-compliance of matters stated in s 14 (1) but also on other grounds (e.g.) prevention of abuse of process of the Court unnecessary harassing of a debtor by the creditor Per **SCUDRA AYYAN J**—The object of the provision for examination in s 14 (2) is as in England to obtain information at as early a stage as possible of the property and the whole conduct of the debtor in his relations to the insolvency proceedings **Edas Chand Maht v Pam Kumar Khara 15 C W N 213 Ghirva dhari v Jas Narain 1 L R 30 All 615 and Nathu v The District Judge of Benares 1 L R 32 All 517** disapproved Various sections of the Act and of the English Bankruptcy Act considered **JENA v REGOASWAMI** (1913)

1 L R 30 Mad. 402

ss 4 clis (b) (9) 18—

See **MIRON** 1 L R 42 Calc 225

ss 5—

See s 4 1 L R 36 Mad. 402

ss 5 11 18—

See **INSOLVENCY** 1 L R 44 Calc 535

Insolvency—Petition by debtor—Grounds for dismissing petition—Possibility of assets exceeding liabilities Where an insolvency petition is presented by a debtor whose debts amount to Rs 600 and such petition fulfils the requirements of s 11 of the Provincial Insolvency Act 1907 it is not a valid ground for dismissing the petition that there may exist some reason for supposing that the debtor may not after all be unable to pay his debts in full unless there are circumstances indicating that the presentation of the petition was fraudulent and an abuse of the process of the Court The provisions of s 15 of the Act are intended to apply to a creditor's petition and not to one presented by a debtor **Uday Chand Maht v Pam Kumar Khara 15 C W N 213 Kali Kumar Das v Gopi Krishna day 15 C W N 290 Girvadhari v Jas Narain 1 L R 32 All 645 Baidata Din v Jagannath 9 All L R 699** referred to **Nathu Mal v The District Judge of Benares 1 L R 32 All 647** distinguished **Ponnusami Chetti v Narayana Chetti 25 Mad L J 645** not followed **TRIVORA NATH v BADRI DASS** (1914)

1 L R 30 All 250

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

— ss 5, 6 15, 16 43—*Insolvency—Petition by debtor—Debtor's right in order of adjudication—Dismissal of application on ground of alleged misappropriation of property belonging to a creditor* It is no ground for the rejection of a petition to be declared insolvent filed by the debtor that the petitioner may perhaps have been guilty of criminal misappropriation in respect of property belonging to one of his creditors *Chhatrapal Singh Dugar v Kharag Singh Lachmaram* 1 L R 44 Calc 535 and *Triloki Nath v Badri Das* 1 L R 36 All 450 referred to *JAGAN NATH v GANGA DAT DUBE* (1919)

L L R 41 All 486

— ss 5 15 16—*Insolvency—Grounds for dismissing petition to be adjudged an insolvent* A petition to be adjudged an insolvent presented under the provisions of the Provincial Insolvency Act 1907 can be dismissed only upon one or other of the grounds mentioned in s 15 of the Act. It is not a good ground for dismissing such a petition that the petitioner's brother being joint with the petitioner has not been made a party to it. *Chhatrapal Singh Dugar v Kharag Singh Lachmaram* 15 A L J R 87 and *Triloki Nath v Badri Das* 1 L R 36 All 250 referred to *NET RAM v BHAGIRATHI SAE* (1917) L L R 10 All 75

— s 6—

See INSOLVENCY 1 L R 44 Calc 535

Application by debtor—

Residence within jurisdiction—Temporary residence It is not necessary for a petitioner applying to be declared an insolvent to have resided for a long time at a place within the jurisdiction of the Court. Even temporary residence for a time and for a particular purpose is enough to give the Court jurisdiction to deal with an application for insolvency. *Ex parte Heegard* 24 Q B D 71 followed *ABDUL REZAK v BASIRUDDIN AHMED*, 311, 17 C W N 405

Jurisdiction of Court—

Ordinarily resides meaning of—Order of adjudication by Court not having jurisdiction—S 47 sub s (1) effect of—Civil Procedure Code (Act I of 1908) s 21 if applies to proceedings under the Provincial Insolvency Act The respondent lodged an application for insolvency in the Court of the District Judge of Midnapur and obtained an order of adjudication. It appeared that the respondent who was employed as a guard on the Bengal Nagpur Railway resided at Dungargarh in the Central Provinces and ran his train ordinarily from Dungargarh to Nagpur and only occasionally from Dungargarh to Kharagpur where he stopped with his son in law having no permanent residence there. The application for insolvency was filed immediately after the appellant had obtained a decree against the respondent in the Court of the Munsif of Midnapur. Held that it could not be held that the respondent ordinarily resided or personally worked for gain at Kharagpur within the meaning of sub s (2) of s 6 of the Provincial Insolvency Act and consequently the Court of the District Judge of Midnapur had no jurisdiction to deal with the application for insolvency filed by the respondent. That sub s (1) of s 47 of the Provincial Insolvency Act does not directly or by implication make s. 21 of the Civil Procedure Code in 1908 applicable to proceedings under the

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—c mid

— s 6—contd

Provincial Insolvency Act and consequently the doctrine that no objection as to the place of suing shall be allowed by an Appellate Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and unless there has been a failure of justice could not be applied to proceedings under the Provincial Insolvency Act. Meaning of the term resides in sub s (2) of s 6 considered *MADHO PERSHAD v A L WALTON* (1913) 18 C W N 1050

— ss 15 16—*Insolvency—Petitioner examined and evidence taken—Case adjourned—Petitioner absent on adjourned date—Petition dismissed for want of prosecution* When a petition for a declaration of insolvency has once been presented conformably to the requirements of Act No III of 1907 the Court is bound after completing the necessary inquiries to come to a decision in respect of the various matters spoken of in s 15 of the Act and either to dismiss the petition under the provisions of that section or to make an order of adjudication. But it cannot dismiss the petition merely because on an adjourned date the petitioner does not appear. *LACHMI NARAIN DUBE v KISHAN LAL* (1918)

I L R 40 All 665

— s 11—

See s 4 I L R 36 Mad 402

— s 12—

See s 4 I L R 38 Mad 402

See s 16 I L R 39 Mad 693

— s 13—

See s 4 I L R 36 Mad 402

— ss 13 16 34—

See INSOLVENCY 1 L R 42 Calc 289

— ss 13 (3) 47—*Attachment of property as that of the insolvent before adjudication of insolvency—Civil Procedure Code (1908) O XXI s 58 O XXXVIII rr 5 to 12—Procedure—Appeal* Where certain property was attached under s 13 (3) of the Provincial Insolvency Act 1907 by a Court exercising jurisdiction under that Act before the petitioner was declared an insolvent and a receiver appointed it was held that the Court was bound to hear and adjudicate upon any claims which might be preferred by persons alleging themselves to be in fact the owners of such property. Procedure under s 13 (3) of the abovementioned Act was analogous to attachment before judgment under the Code of Civil Procedure. It might have been open to the objectors to wait until the receiver had taken some action in respect of the property attached and then to apply under s 22 of the Act but this they were not bound to do. *HASHMAT BEE v BHAGWAN DAS* (1913)

I L R 36 All 65

— s 14—

See s 4 I L R 36 Mad 402

Provincial Insolvency Act (III of 1907) s 15—*Debtor's application for adjudication if may be refused because of his acts of bad faith—Adjudication as of course when ss 6 and 6 complied with—Civil Procedure Code (Act XIV of 1859) Chap XX* Where an application by a debtor to be declared an insolvent being

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s 14—contd

opposed by a creditor the debtor was examined under s 14 cl (3) of the Provincial Insolvency Act and the application was dismissed on the ground that one of the creditors mentioned in the application was fictitious and that the applicant was concealing the real facts. *Held* that where the requirements of ss 11 and 12 of the Act have been complied with an order of adjudication should follow almost as a matter of course and the application dismissed on the grounds stated. Whether the debtor has or has not committed acts of bad faith is to be determined by the Court not at the stage when the order of adjudication has to be made but at the final stage when an application is made for an order of discharge the provisions of the Provincial Insolvency Act differing in this respect from those of Chap XX of Act XIV of 1892 which have been repealed by the Act. In *Buton* [1907] 1 K B 397 relied on *UDAY CHAND MAITI v RAM KUMAR KHARA* (1910) 15 C W N 213

ss 14 5 and 47—Civil Procedure Code (Act I of 1908) O I r 3—Single petition by creditor to adjudicate debtors as insolvents—Debtors members of a joint Hindu family—Joint debt—Joint acts of insolvency—Single petition against joint debtors whether maintainable—Multifariousness in suits—Test of The members of a joint Hindu family can be adjudicated insolvents on a single petition by a creditor if they are liable on a joint debt and have been guilty of a joint act or acts of insolvency. The test is whether if the application were treated as a suit the suit would be bad for multifariousness that is for misjoinder of different causes of action against different defendants if no such objection can be successfully advanced a single application for adjudication is maintainable. *Sarada Prasad Ukil v Ram Sukh Chandra* (1905) 2 C L J 318 dissented from. *MAMAYYA v K. P. RICE MILL Co* (1921) 1 I L R 44 Mad 310

s 15—

See s 4 1 I L R 36 Mad 402

See s 8 1 I L R 40 All 75

See s 6 1 I L R 40 All 685

See INSOLVENCY 1 I L R 44 Cal 535

1 Insolvency—

Grounds for dismissing petition. Under the Provincial Insolvency Act 1907 transfer of property by the debtor with intent to defraud his creditors or reckless contracting of debts or giving unfair preference to any of his creditors or committing any other act of bad faith are grounds for refusing an absolute order of discharge but not grounds for refusing to make an order of adjudication. Where therefore a petitioner for a declaration of insolvency feigned ignorance about the existence of his account books and prevaricated about other matters. *Held* that his petition could not be dismissed on these grounds the object of the Legislature by enacting the Insolvency Act being to make it easier to obtain an order of adjudication. *Ex parte King Re Davies* L R 3 Ch D 461 *Ex parte Griffin Pe Adams* L R 12 Ch D 480 and *Ex parte Tynte L R 15 Ch D 125* referred to. *GERWARDHARI v JAI NARAIN* (1910) 1 I L R 32 All 645

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd

s 15—contd

2. Debtor's application for adjudication—Inability to pay debts if must be proved. A debtor's application to be adjudicated an insolvent cannot be dismissed on the ground that he could not satisfy the Judge that he was unable to pay his debts. *KALI KUMAR DAS v GORI KRISHNA RAY* (1911) 15 C W N 890

3. Debtor's application for insolvency not made bona fide—Adjudication if may be refused. *Quere* Whether if upon the facts before the Court it is clear to the Judge that the debtor applying for insolvency is not an insolvent he is bound to adjudicate him an insolvent. *Gurwardhari v Joy Narain* 1 L R 37 All 645 *Uday Chand Maiti v Ram Kumar Khara* 15 C W N 213 *Sheikh Samruddin v Srimath Kadumoyi Das* 15 C W N 244 and *Kali Kumar Das v Gopi Krishna Ray* 15 C W N 890 referred to. *SHEIKH GOLAM IAHMAN v SHEIKH WAHED ALI* (1912) 16 C W N 833

4. Application by debtor to be declared insolvent—Acts of bad faith if ground for rejecting petition. An application by a debtor to be declared an insolvent cannot be rejected on the ground of his having committed acts of bad faith. *Uday Chand Maiti v Ram Kumar* 15 C W N 213 *13 C L J 400* and *Samruddin v Kadumoyi* 15 C W N 244 referred to. *ABDEL PRIZAK v HASBI RUDDIN AHMED* (1911) 17 C W N 405

5. Provincial Insolvency Act (III of 1907) s 15 41 46—Order for adjudication if may be refused on ground of improper alienation of property by debtor—Fictitious state ment of debt. Neither an order for adjudication nor one dismissing a petition for declaring a person an insolvent can be treated as a decree between the parties in a contested or uncontested suit and a creditor who did not oppose the debtor's application to be declared an insolvent need not be added as a respondent in an appeal preferred by the debtor under s 46 of the Indian Insolvency Act against an order dismissing the application. Where an application by a debtor to be adjudged an insolvent was refused on the ground that the debtor had transferred a portion of his property in lieu of dower and had thus committed an act of bad faith. *Held* that questions of bad faith or improper dealing by the debtor with his property do not arise for consideration until after the order for adjudication has been made and the insolvent applies for final discharge and the order for adjudication could not have been refused on the ground stated. *Uday Chand Maiti v Ram Kumar Khara* 15 C W N 213 and *Gurwardhari v Jai Narain* 1 L R 32 All 645 referred to. *Nathumal v District Judge of Benares* 1 L R 30 All 547 disapproved. That it was open to the opposing creditor to prove that the debt shown to be due to another creditor was fictitious so as to show that the petitioner's debts did not really amount to Rs 500 as required by s 5 of the Act. *SAMRUDDIN v KADUMOYI DAS* (1910) 15 C W N 244

ss 15 16 17 22, 46 and 52—

Official Receiver's order dismissing insolvency petition—No appeal direct to

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

—contd.

s 15, 16, 18, 20, 22, 46 and 52—

High Court—Practice—No interference in revision where other remedy open No appeal lies under s 46 cl (2) of the Provincial Insolvency Act to the High Court from the order of an Official Receiver dismissing an insolvency petition but an appeal against orders passed by the Official Receiver lies under s 2ⁿ only to the District Court. The language of s. 22 read with s. 50 cl (2) shows that such right of appeal is not confined to orders made under ss 18, 19 and 20 but extends to all orders of the Receiver. *Obster* An Official Receiver invested with the power mentioned in cl (a) of s. 52 (1) has the power to dismiss an insolvency petition under s 15. The Court will not interfere under s 115 Civil Procedure Code in a case where other adequate remedy was open. *CHIDAMABARAM v NAGAPPA* (1912)

I L R 38 Mad 15

s 16—

See s 3 I L R. 44 Mad. 524

See s 4 I L R. 36 Mad. 402

See s 5 I L R 10 All. 75

See s 8 I L R 40 All. 665

See s 15 I L R 38 Mad. 15

See INSOLVENCY I L R 42 Calc 239

I L R 44 Calc 535

See LIMITATION ACT 1908.

s 15 I L R 42 Mad. 319

See MINOR I L R 42 Calc 225

See RAILWAY PECKIFF

I L R 38 Mad. 664

sub-s (1)—Adjudication by Official Receiver—No order vesting property in Receiver effect of—Action for money had and received scope of—Privy of plaintiff and defendant necessity for—Nature of privy The Official Receiver in the insolvency of R put up for sale the debts of a firm in which R and the second, third and fourth defendants were partners and the first defendant purchased them from the Receiver and afterwards recovered a debt due to the firm. The plaintiff having attached three fourths of the money so recovered by the first defendant in execution of a decree obtained by him against the second, third and fourth defendants for a debt due by the firm and having been appointed Receiver in the execution proceedings sued the first defendant to recover the said three fourths of the money as money had and received to the use of the second, third and fourth defendants. *Held* that the plaintiff had no cause of action against the first defendant because in an action for money had and received there must be as shown by the English decisions privity of a legally recognizable nature between the plaintiff and the defendant and no such privity existed in this case and that the suit also failed as regards the shares of the second and third defendants by reason of their adjudications as insolvents prior to the attachment. Scope of the action for money had and received pointed out. English and Indian cases reviewed. *Sinclair v Brougham* (1914) A C 398 explained. *Sankaran v Gopindan* I L R 37 Mad 381 referred to. *Per* SADASIVA AYYAR J. While privity of contract between the parties is of course not necessary to sustain an

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s 16—contd.

action for money had and received there must be what might be called some privity of a legally recognizable nature as such some knowledge of particular facts in the man who received the money and some mistake or ignorance of fact on the part of the man who paid the money or some relation of trust and confidence between them on which the Court could fasten as creating the relation of principal and agent (though by fiction) between the plaintiff and the defendant. *Per* OLDFIELD J. *Obster* It may be permissible in India as it is in England to sue only the solvent members of a firm when a decree is sought against it. *Hawkins v Pambolam 6 Taunton 19* referred to. *RAMASAMI NAIDU v MUTHUSAMI PILLAI* (1918) I L R 41 Mad 923

sub-s (2)—Whether bar in the passing of a decree in a pending suit—Meaning of the words "remedy and commence any suit or legal proceeding in the section explained A O was adjudicated insolvent in January 1911. At that time he was defending a case for recovery of Rs 60 3/4 on a mortgage deed. In spite of his adjudication he continued the defence of the suit and the first court decreed it against him. On appeal to the Chief Court the decree was modified to this extent that a preliminary decree for the sale of the mortgaged property was passed but plaintiff was left at liberty to apply subsequently for a personal decree against A O in the event of the sale proceeds proving insufficient to meet the mortgage debt. The sale proceeds did prove insufficient and the plaintiff moved the Court for first instance to take action under O XXXIV r 6 Civil Procedure Code and a personal decree for the balance due issued against A O the defendant who appealed against that decree. *Held* that the application by the plaintiff under O XXXIV r 6 was not a new proceeding but a continuation of the original suit and the decree passed thereon was not a remedy against the person of the insolvent and did not therefore contravene the provisions of s 16 (2) of the Provincial Insolvency Act 1907. *Held* further that a decree is not a remedy for a civil wrong but merely a step towards the remedy. The remedy is the benefit accruing to the creditor through the execution of his decree and that remedy he can secure only through the Insolvency Court by proving his debt. *Mamraj v Briji Lal* (I L R 34 All 106) dissented from. *KISHAN CHAND v SOHAN LAL*

I L R. 2 Lah 95

Secured Creditor—Landholder and tenant—Suit for arrears of rent—Declaration of insolvency in force at date of suit A land holder is not as regards an agricultural tenant a secured creditor within the meaning of s 16 (5) of the Provincial Insolvency Act 1907. Although he possibly may be in a position to distrain even whilst a declaration of insolvency is in force he cannot without the leave of the Court sue for arrears of rent. *PACHUBH SINGH v RAM CHANDAR* (1911) I L R 33 All 121

Civil Procedure Code (1908) s 60—Insolvency—Attachment of half the salary of the insolvent One of the creditors of a person who had been declared an insolvent by the Small Cause Court of Cawnpore but who had since obtained employment in the Government Press in

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s 16—contd

Calcutta applied to the Court for attachment of half the insolvent's salary for the benefit of his creditors. *Held* that it was no valid reason for rejecting the creditor's application that its allowance would not leave the insolvent enough to live on. *Ram Chandra Neogi v Shyama Charan Bose* 18 C W N 1050 and *Tulsi Lal v Girsham* 38 Indian Cases 410 followed. *DEVI PRASAD v LEWIS* (1918) I. L. R. 40 All. 213

Effect of order of adjudication on institution of suits by creditors to set aside fraudulent alienations by insolvent. The effect of an order adjudicating a person an insolvent under s 16 (1) of the Provincial Insolvency Act is to vest the administration of his estate including the realization of his assets under the control of the Court. Hence after such an order a creditor (whether decree holder or otherwise) is by s 16 (2) (b) of the Act prevented from instituting without the leave of the Court of Insolvency a suit to set aside a transfer made by the insolvent as being in fraud of creditors. *VASUDEVA RAMATH v LAKSHMINARAYANA RAO* (1918) I. L. R. 42 Mad. 534

Mortgage executed without objection on the part of either the receiver or the Court by insolvent to pay off principal or only creditor. Heirs of insolvent not entitled to object. During the pendency of proceedings in insolvency the insolvents whose principal if not the only creditor was a mortgagee executed another mortgage in favour of a third party and paid off the first mortgage. Neither the receiver nor the court in which the insolvency proceedings were took any objection to the execution of the second mortgage. *Held* on suit brought by the second mortgagee on the mortgage in his favour against the heirs of the mortgagors that it was not open to the defendants to contest the suit upon the ground that the execution of the mortgage involved a breach of the insolvency law. *SHAM SARUP NAND RAM* I. L. R. 43 All. 555

ss 16 (c) 18 (3)—*Property alleged to be held by stranger in benami for insolvent if may be recovered without suit.* Judge's power to order inquiry by Receiver. Where a creditor of an insolvent alleged that certain Government promissory notes were being held by the insolvent's brother in benami; for the insolvent and the insolvent's brother denied that the insolvent had any title to the Government promissory notes and alleged that they were his own property and the Judge called for a report on the matter from the Receiver. *Held* that it was open to the Judge to direct the Receiver to enquire and report to him for his own information. That on receipt of such report it was for the Judge to consider whether upon the facts before him he should direct the Receiver to bring a suit in order that the question of title may be decided or whether the case is so clear (that is to say the title is not really in dispute) that it can be dealt with in the insolvency without the necessity of a suit. If the question of title be seriously in dispute the Judge should direct the Receiver to bring a suit to have the question determined. *SATYA KUMAR MUKHERJI v MANAGER BENARES BANK LD* (1917) 22 C W N 700

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd

s 16, sub-s (2) cl (a) ss 27, 42 sub-s. (1)—*Direction for deposit in Court of one fourth of insolvent's monthly salary which exceeded Rs 40 if legal—Order for adjudication when can be subsequently annulled—'Salary' if property of insolvent—Jurisdiction of High Court to give directions regarding order of adjudication when only the order annulling it is under appeal.* A debtor who was arrested in execution of a decree applied to be and was adjudged an insolvent. In the order of adjudication the insolvent was directed pending realisation by sale of his assets to pay a quarter of his monthly salary of Rs 100 a month into Court until the sum realised from him should equal one third of the debts for which the creditor had obtained a decree. Subsequently the District Judge annulled the order of adjudication on the ground that the insolvent had failed to abide by the condition regarding payment of one fourth of his salary. *Held* that the direction regarding the payment of one fourth of the insolvent's salary could not have been given under the Provincial Insolvency Act. The proper course for the District Judge would have been to direct the Receiver to arrange for payment to him of one half of the salary earned by the insolvent salary being property of the insolvent within the meaning of s 16 sub-s (2) cl (a) only one half of the salary which exceeded Rs 40 a month being exempt from attachment under s 60 Civil Procedure Code. That the subsequent order of the District Judge annulling the order of adjudication could not have been made under sub-s (1) of s 42 the conditions required by that section being absent in the present case. That when setting aside at the instance of the insolvent the order of the lower Court whereby it annulled the adjudication and which was the only order under appeal it was open to the High Court to consider what directions should be given regarding the order of adjudication which was modified to the extent that the condition imposed was discharged. The District Judge being ordered to give the necessary direction according to law. *RAM CHANDRA NEOGI v SHYAMA CHARAN BOSE* (1913) 18 C W N 1052

ss 16 (2 and 6) and 38—*Insolvency—Date of testing of insolvent's property in the Receiver—Alienation of property by insolvent between the dates of the representation of the petition and the order of adjudication.* The effect of sub-s (2) and (6) of s 16 of the Provincial Insolvency Act 1907, is that while no vesting of the property of the insolvent in the Receiver takes place until an order of adjudication is made and it is order of adjudication which vests the property nevertheless by a legal fiction the vesting of the property of the insolvent in the Receiver must be deemed to have taken place when once an order of adjudication has been made at the date of the presentation of the petition or in other words the commencement of the insolvency. It follows therefore that the insolvent cannot make a valid alienation of his property between the dates of the presentation of the petition and the order of adjudication. *T F Sankaranarayanan v Alagiri Aiyar* 49 Indian Cases 253 referred to. *SRO-NATH SIKOH v MUNSHI RAM* I. L. R. 42 All. 433

ss 16 (2) 18 (2), and 19 (2)—*Adjudication of a person as insolvent—Necessity of an*

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd—

ss. 16 (2) 18 (2) and 10 (2)—contd

order appointing a person as Receiver of the insolvent estate S 18 (2) of the Provincial Insolvency Act (III of 1907) contemplates on every adjudication of insolvency an order by the Court appointing a Receiver for the insolvent estate and without such an order the estate does not vest in the Official Receiver under s. 19 (2). Hence a sale of the estate by the Official Receiver without such an order does not give the vendee any title. *Official Receiver of Trichinopoly v. Somasundaram Chetty* (1916) 39 M L J 415 followed. *MUTHUSWAMI SWAMIAH v. SOMMO KANDIAR* (1910) I L R 43 Mad. 869

Sub-s 4—Muhammadan law—Bequest to an heir—Consent of other heirs to bequeath such consent not affected by insolvency of other heirs. When the consent of the heirs of a Muhammadan to a bequest in a will in favour of an heir has been signified the legatee takes from the testator and the consent does not operate as a transfer by the heirs of a right which has in the meantime vested in them. Such consent would not be affected by the fact of the consenting heirs being insolvents. *AMIR UDDIN BISI v. CHIEVE*

I L R 42 All. 593

ss. 10 (6) 38—

See INSOLVENCY I L R 46 Cal. 991

Order of insolvency of relates back to date of presentation of petition—Transfer made within two years of date of petition if comes within s. 36. The provisions of s. 36 are to be read with s. 16 (6) of the Act and an order of adjudication relates back to and takes effect from the date of the presentation of the petition for the purpose of making the properties of the insolvent liable to the creditors and a transfer made within two years of the date of the petition comes within the provisions of s. 36. *RAHMAN CHANDRA PURKAIT v. SUDHINDRO NATH BOSE* 24 C W N 172

ss. 16 22—Mortgage of factory—

Decree for sale—Appointment of receiver to get in profits for benefit to decree holder—Insolvency of judgment debtor—Profits appropriated by creditors of insolvent—Suit by mortgagee decree holder to recover profits. One J L being the mortgagee of a cotton spinning factory obtained a decree for sale on his mortgage but instead of the factory being sold in execution of this decree a receiver was appointed for the period of one year by consent of the decree holder. The receiver was to work the factory receive the profits and hand them over to the decree holder. Notwithstanding that no fresh order was passed by the executing court the receiver remained in possession of the factory for more than two years. He received the profits but in accordance with the local practice of the trade made them over to a certain association for the collection and distribution of the profits of cotton spinning factories. Meanwhile the mortgagor became insolvent and creditors holding simple money decrees against him proceeded to attach the profits of the factory in the hands of the association and the profits were divided rateably between these creditors. The mortgagee then sued to recover the profits of the factory earned whilst the receiver had been in charge making defendants (i) the receiver

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—contd—

ss. 11 22—contd

originally appointed by the Court (ii) the creditors of the insolvent mortgagor and (iii) the receiver in insolvency. Held that the appointment of the original receiver having been made with the consent of the decree holder and the judgment debtor was not made without jurisdiction that the profits of the factory for the year for which the receiver was appointed were assignable entirely to the satisfaction of the mortgage decree and that the suit against the receiver in insolvency was not barred by either s. 16 or s. 22 of the Provincial Insolvency Act 1907. *In re Latta Ex parte Taylor* [1893] 1 Q B 649 and *Croschew v. Lyndhurst Ship Company* [1897] 2 Ch D 101 distinguished. *JUNJUN LAL v. PIRANI LAL* (1916) I L R 39 All. 204

ss. 11 31—Civil Procedure Code 1908

O XXXI v. 6—Application for decree over against two judgment debtors one of whom had been declared insolvent. Where one of two mortgagors against whom a decree under O XXXI v. 6 of the Code of Civil Procedure was otherwise obtainable had been declared an insolvent under the provisions of the Provincial Insolvency Act 1907 but the other had not. Held that the decree holders could not be granted a decree over as against the insolvent but could only prove their debt in the insolvency proceedings. *Barley v. Dubeux and Company* I L R 7 Q B D 413 referred to. *MAHARAJ v. BRIJ LAL CHAKRAVARTI* (1911) I L R 34 All. 106

ss. 16 and 34—

Decree holder and Receiver priority between title of in respect of asset realized by date of adjudication. S 16 of the Provincial Insolvency Act 1907 is controlled by s. 34 of that Act. The title of a decree holder in respect of assets realized before the date of the order of insolvency prevails over the title of a Receiver appointed on or after such date. *PALLI RAM v. SREKANTH PRASAD* 2 Pat L J 235

Execution of decree against insolvent during pendency of insolvency proceedings—Right of decree holder in respect of property attached and sold and money attached before adjudication. Whilst proceedings in insolvency under the Provincial Insolvency Act 1907 were pending certain immovable property of the insolvent was attached and sold in execution of a decree against him and the proceeds deposited in Court for the benefit of the decree holder. The decree holder also attached certain moneys which had been paid into Court to the credit of the insolvent but up to the date of the order of adjudication had taken no further steps to possess himself thereof. Held that the decree holder was entitled as against the receiver to the benefit of the proceeds of execution of his own decree but not to the money of the insolvent which he had attached. *PACCCKI v. Madan Gopal* I L R 29 Cal. 48 followed. *SRI CHAND v. MURARI LAL* (1912)

I L R 33 All. 628

ss. 16 and 35—

See TRANSFER OF PROPERTY ACT 1882
s. 56 I L R 42 All. 336

ss. 11 36, 43—Insolvent—Property of insolvent which does not vest in the receiver—Occu

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

ss 10 38 43—contd.

pancy holding—House of agriculturist. A person who was an agriculturist by occupation was adjudicated an insolvent. Shortly before his insolvency he had granted a lease of his occupancy holding. The zamindar was the principal creditor. The District Judge ordered the land to be surrendered to the zamindar and the insolvent a house to be sold. Held that the property of the insolvent which is exempted by an enactment for the time being in force from liability to attachment and sale in execution of a decree does not vest in the Court or the receiver therefore the District Judge had no jurisdiction to direct the receiver to surrender the tenancy and to set aside the lease. Further the order directing the sale of the house was illegal inasmuch as the house being that of an agriculturist and being exempted from attachment and sale in execution of a decree never vested in the Court or the receiver. *SAGAR MAL v. RAO PINNAJ SINGH* (1916).

I. L. R. 39 All. 120

ss 10 41 42, 45—*Insolvent—Assets declared by receiver not realisable—Discharge of insolvent—Subsequent sale by insolvent of assets so declared unrealisable*. Part of the apparent assets of an insolvent consisted of mortgage rights in certain property. The rights were not dealt with by the receiver because he considered that it would be impossible to realize anything on them. The insolvent was accordingly discharged. Thereafter the insolvent managed to sell the mortgage rights which had been declared unsaleable by the receiver. Held that in the circumstances the sale was good and passed whatever rights the discharged insolvent had to the purchaser. *SHYONANDAN v. KASHI* (1916).

I. L. R. 39 All. 223

ss 10 47 12, cl (3) and 51—*Insolvency Rules XXI cl (3) and cl (2) and (3)—Civil Procedure Code (V of 1908) O III r 3 and O V r 12—Petition by creditor to adjudicate debtor an insolvent—Service of notice on agent if sufficient—No notice sent by Court through registered post effect of—Act of insolvency committed by agent if sufficient—Difference between English and Indian Law*. Where a petition was filed in a District Court by a creditor praying for an order to adjudicate his debtor an insolvent under s 16 of the Provincial Insolvency Act and a notice of such petition was served on his local agent with a general power of attorney from the debtor who was residing outside the jurisdiction of the Court. Held that the service of notice on the agent was in law sufficient though no notice was sent by the Court to the debtor through registered post. Effect of s 47 of the Provincial Insolvency Act and r XXI cl (2) and (3) and r V cl (2) of the Insolvency Rules considered. Under s 4 of the Provincial Insolvency Act a debtor can be adjudicated an insolvent upon acts of insolvency committed by his agent. In the matter of *Brijmohan Dobay* 2 C W N 306 referred to. Under the English law an act of bankruptcy must be a personal act or default of the debtor and could not be committed through an agent. *Ex parte Blain* 12 Ch D 522 and *Coole v. Charles A. Fogler* Co [1901] A C 102. Though under s 16 of the Provincial Insolvency Act an adjudication of the debtor as an insolvent relates back to the

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—contd.

ss 10 47, 12, cl (3) and 51—contd.

date of the petition the power of the debtor's agent under a general power of attorney ceases only with reference to his dealings with the debtor's property and the carrying on of the trade but not with reference to other acts of the agent and one of those acts must be taken to be to state of bankruptcy orders against the principal. In re *Folliott* [1893] 1 Q B 415 referred to. *KALLANJEE v. THE BANK OF MADRAS* (1915).

I. L. R. 39 Mad. 693

ss 10 and 56—*Act (Local) No II of 1901 (Agra Tenancy Act) ss 103 and 104—Insolvency—Occupancy holding—Position of insolvent occupancy tenant*. An occupancy holding being altogether out side the provisions of the Provincial Insolvency Act 1907 that Act is so far as a suit for arrears of rent brought by the zamindar pending proceedings in insolvency. *Paghyab Singh v. Ram Chander* I L R 34 All. 121 overruled. *HALKA DAS v. CAJIB SINGH*.

I. L. R. 34 All. 510

s. 18—

Sr s 3

I. L. R. 34 Mad. 624

Sec s 16

I L. R. 39 Mad. 15

Sec s 16

22 C W N 700

see Receiver

I L. R. 43 Mad. 869

I L. R. 40 Cal. 878

1—*Sale of executed benami by the insolvent—Receiver entitled to remove the so-called purchases from possession of properties sold—Indian Limitation Act (I of 1908) Sch I art 31*. Where in orders in order to save their property from their creditor had executed fictitious sale deeds thereof in favour of relations but never gave and never intended to give the so-called purchasers possession. Held that such transaction was no bar to the receiver taking possession of the property comprised in the said sale deeds as the property of the insolvents. *Patharpermal Chetty v. Muniamma Sertai* I L R 35 Cal. 551 referred to. *JAGDIP SARTI v. RAMANAND SARTI* (1917).

I. L. R. 39 All. 833

2—*Decree obtained by insolvent before adjudication—Attachment of decree—Effect of subsequent adjudication on right of attaching creditor to execute decree*. Where a decree has been attached by a creditor of the decree holder and subsequently the decree holder is adjudged an insolvent the right to execute such decree vests in the receiver in insolvency and is not retained by the attaching creditor. *Raghunath Das v. Sundar Lal Khatri* I L R 42 Cal. 72 referred to. *DANBAR SINGH v. MUNAWAR ALI KHAN* (1917).

I L. R. 40 All. 86

3—*Credit or alleged property of insolvent being kept in benami by his wife—Court if may summarily enquire into allegation—Proper procedure—Court to award Receiver to sue on creditor putting him in funds and indemnifying him for costs*. Where a creditor of an insolvent applied to the District Judge complaining that the insolvent had concealed certain properties by having them vested in the name of his wife and prayed that certain persons and the insolvent and his wife be examined in regard to the matter.

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—*contd.*s 18—*contd.*

Held that such a summary inquiry is not supported by any provision of the Provincial Insolvency Act and the Judge was right in refusing to order such an inquiry. But the creditor could not be told to bring a suit for title against the alleged *benamidar*. The proper procedure was for the creditor to apply to the Court to direct the Receiver to institute and continue a suit against the wife of the insolvent to recover the property in question making it a condition precedent that the creditor so applying put the Official Receiver in funds and properly indemnify him against the costs of the suit and the Court should make such an order if in its opinion the creditor has a *prima facie* case. *Jai Chandra Das v Mahomed Amir* (1917) 22 C W N 702

s 18 (3) 20—*Transfer by insolvent challenged as benami*—Judge if may order transferee to be disposed of without suit—Judge if may direct Receiver of insolvent's properties to hold a judicial inquiry—Receiver may report administratively—Judge when he directs a suit should order or direct to put Receiver in funds and indemnify him. Where a transfer dated the 10th March 1913 by a person who was adjudicated an insolvent on 11th February 1910 having been attacked in the interest of his creditors as *benami* the Judge ordered the Receiver appointed to take over the insolvent's properties (who was not the Official Receiver appointed by the Local Government under s 19 of the Provincial Insolvency Act) to enquire and report and the Receiver after holding an enquiry of a judicial character submitted his report which however the Judge did not accept but directed the enquiry to be reopened in Court. *Held* that the duties of an ordinary Receiver under s 20 of the Act are executive in their character and the Receiver is not a Judicial Officer and has no jurisdiction to make anything in the nature of a judicial inquiry. s 18 (3) of the Act is not intended to authorise the removal of any person whom the insolvent himself could not remove without the aid of legal proceedings. When the *benami* character of the title is admitted or when the veil is transparent and the insolvent is in substantial beneficial possession the Court may order the delivery of the property to the Receiver. But where the alleged *benamidar* is in possession claiming adversely to the insolvent then any claim made by the Receiver or the creditor that the property is really the property of the insolvent can only be enforced by suit in the regular court. The Court may direct an administrative inquiry by the Receiver for the purpose of informing his mind and deciding what action should be taken and if in the result he is of opinion that a suit should be brought he should make the order on terms requiring the creditor at whose instance the suit is directed to put the Receiver in funds and indemnify against the costs of the suit. *Nilmmoni Chowdhury v Durga Charan Chowdhury* (1918) 22 C W N 704

s 18 20 (a)—*Receiver sale of insolvent's properties by*—*Procedure*—Sales by the Receiver in whom the property of an insolvent vests under s 18 of the Provincial Insolvency Act are really sales by the owner and may be held either by public auction or by private treaty. The procedure for sales in execution of decrees

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—*contd.*ss 18, 20 (a)—*contd.*

under the Civil Procedure Code does not apply to them. *Latazuddi Sheikh v Ram Krishna Banik* 24 C W N 1072

ss 18 20 (a) (c) and 23—*Ordering order in favour of Receiver*—*Order to Official Receiver to adjudicate and administer the insolvent's estate effect of*—On an application for adjudication of insolvency the District Court passed the following order—The petition is transferred to the Official Receiver for adjudication and for the administration of the estate. After adjudication by the Receiver no separate order vesting the insolvent's estate in the Receiver was passed by the District Court under s 18 of the Provincial Insolvency Act. *Held* that by the combined effect of s 20 (a) and (c) and s 23 of the Act the order to administer the estate empowered the Receiver to sell the insolvent's estate. *Mulhuswami Swamin v Somoo Kandiar* (1910) 1 L R 43 Mad 869 distinguished. *Subba Aiyar v Ramaswami Ailango* (1911) 1 L R 44 Mad 54

ss 18 36 47—*Power of Court to dispossess third person of property belonging to an insolvent*—*Inquiry as to ownership of property alleged to belong to the insolvent*—*Procedure*—A Court exercising jurisdiction under the Provincial Insolvency Act 1907 has power to inquire whether property in the possession of a third party and alleged by the receiver to be property of the insolvent is really so or not and if it finds that such property is the property of the insolvent to order its delivery to the receiver. But in making such an inquiry the Court should follow the procedure of a Civil Court in a civil suit should require the receiver and the party in possession to state their respective cases in writing should fix issues and should give the parties an opportunity of producing evidence. *Bansidhar v Khargajir* (1914) 1 L R 37 All 85

s 18 (2)—

See s 16 (2) 1 L R 43 Mad 869

ss 19—20 suit against a Receiver

—*Necessity of notice*—

See CIVIL PROCEDURE CODE 1908 ss 2 AND 80 1 L R 44 Bom 895

s 20—

See s 2 1 L R 40 Cal 678

See s 15 1 L R 38 Mad 15

See s 18 (3) 22 C W N 704

24 C W N 1072

ss 20 22—*Properties advertised for sale by the Official Receiver as subject to mortgage*—*Change in the sale proclamation on the day of sale*—*Sale free of incumbrance*—*Irregularity vitiating the sale*—s 22 of the Provincial Insolvency Act gives unfettered discretion to the Court to set aside a sale held by the Official Receiver if the change in the conditions of the sale proclamation had the effect of preventing intending bidders from coming forward. *In re Bhulandas v Board of Trade* 7 Bom L R 304 distinguished. *Ex parte Lloyd's Pe Peters* 4 L T 164 A creditor who is entitled to a decision in respect of the sale of the property of the insolvent is a person aggrieved if the decision goes against him. *In re Laid Ex parte Board of Trade* [1894] 2 Q B 805 and *ex parte Official Receiver* 19

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—contd.

ss 20, 22—contd

Q B D 171 followed *TIRUVENKATCHARIAR v. THANYAYIAH* (1915) 1 L R 39 Mad 479

ss. 20, 22, 48—Civil Procedure Code (1908) s 111 r 65—Insolvency—Property taken by receiver as property of insolvent—Objection

b, third party claiming to be owner—Procedure—Appeal A receiver appointed under the Provincial Insolvency Act 1907 took possession at the instance of one of the creditors of certain property which was believed to be that of the insolvent. A third party came into Court and applied under O 111 r 58 of the Code of Civil Procedure claiming the property as his and when his application was rejected appealed to the High Court. Held that the applicant's proper remedy was under s 22 of the Provincial Insolvency Act and that an appeal did not lie as of right but only by leave of the District Court or of the High Court. Quere Whether an Additional District Judge to whom a matter under the Provincial Insolvency Act had been made over by the District Judge was a District Court within the meaning of the Act. *VEL CHAND v. MURARI LAL* (1913)

1 L R 36 All 8

ss 20, 47—Sale by receiver of property alleged to belong to an insolvent—Property in possession of third person—Obstruction by such third person—Summary enquiry by District Judge—Order directing delivery of possession legally of—Proceedings in s 47 of the Act meaning of Certain property alleged to belong to an insolvent was sold by the receiver under s 20 of the Provincial Insolvency Act. The purchaser whilst attempting to take possession was obstructed by the appellants who claimed to be in possession of the property as owners thereof. The District Judge purporting to act under s 47 of the Act after a summary enquiry ordered possession to be given to the purchaser. Held that the District Judge had no jurisdiction to pass such an order as s 47 only lays down the procedure to be followed by the Insolvency judge with regard to proceedings under the Act. Held also that the word proceedings in s 47 of the Act means the proceedings of the Court and not the act of the receiver under s 20 of the Act. *Minaloonnessa Bibee v. Khatoonnessa Bibee* 1 L P 21 Cal 479 and *Colam Hossein Cassim Arif v. Falsma Begam* 1 C 300 explained. *Chida Lal v. Luchman Parashad* 37 I C 330 approved. *NARAYINKATA v. VIKRAGHA VULU* (1917)

1 L R 41 Mad 440

s 21—whether Insolvency Court can proceed against the land of an insolvent who is a member of an agricultural tribe—

See INSOLVENCY 1 L R 2 Lab 78

s 22—

See s 2 1 L R 40 Mad 752

See s 15 1 L R 38 Mad 15

See s 16 1 L R 39 All 204

See s 20 1 L R 39 Mad 479

1 L R 36 All 8

1 Status of any person bringing conduct of Official Receiver to notice of Court—Inherent power of Court to rectify clerical errors—Limitation Held that any

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—contd

s 22—contd

person and not merely the insolvent or the creditors or any other aggrieved person can take action to bring the conduct of a Receiver in any particular respect to the notice of the Court with a view to having his act or decision in any particular matter reversed or modified. Also that the Court has inherent powers to rectify the Receiver's errors or mistakes or to reverse or modify his acts or decisions. *HANSEHUR v. RAJAL DAS* 18 C W N 266 followed. Held further that where the Court acts upon information supplied by persons who are outside the scope of s 22 of the Insolvency Act, the time limit prescribed in that section would be no bar to action being taken by the Court. *DITTA RAM v. DEEPI NANDAN*

1 L R 1 Lab 307

2 Receiver of adjudicated insolvent's estate issue of sale proclamation by—Property belonging to stranger included in sale—Right of stranger to move Court—Stranger if a person aggrieved—Limitation—Inherent power of Court to restrain its officer from acting in excess of authority When during the pendency of insolvency proceedings against the judgment debtor the decree holder executed his decrees which was a mortgage decree and in execution purchased the mortgaged properties and the judgment-debtor was subsequently adjudicated an insolvent and a Receiver was appointed who sent to Court a sale proclamation which included the properties purchased by the mortgagee and more than 21 days after the sale proclamation was served the mortgagee presented a petition in Court urging that the Receiver had no authority to sell the properties purchased by him. Held that the mortgagee was not a person aggrieved by the Receiver's act within the meaning of s 20 of the Insolvency Act and his objection was not subject to the limitation provided in that section. That the Court was competent to deal with the objection as the Court has inherent authority to review the conduct of a Receiver appointed by it and to make an appropriate order so that a stranger may not be prejudiced by any act of the Receiver in excess of his authority. That it was competent to such stranger to bring any such act of the Receiver to the notice of the Court and it was the duty of the Court to inquire into it. A person aggrieved is a person who has suffered a legal grievance—a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title to something and does not mean a person who has lost a benefit which he might have obtained if an order had been made. *Ex parte Sridotham* 14 C D 458 referred to. *HANSEHUR GROSS v. RAJAL DAS GROSS* (1913)

18 C W N 386

3 Attachment of property as that of an insolvent—Decision of Insolvency Court as between rival claimants to property attached that it properly belonged to one of the claimants—Suit by the other to recover possession—Res judicata Held that the decision of an Insolvency Court as between two rival claimants to property attached by a receiver as the property of the insolvent that the property belongs to one or the other claimant does not operate as res judicata in respect of a suit on title by one claimant

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—co id.

s 22—contd

ant against the other for the recovery of such property **HUKMAT RAI v. LADAN NARAY (1917)** I L R 39 All 353

Insolvency—

Execution of decree—Attachment—Application of claimant to attach property disallowed—Judgment debtors declared solvent—Suit by claimant for declaration of title. Certain property was attached in execution of a decree. *U* claiming that the property attached belonged to her and not to the judgment-debtors filed an objection to the attachment. Her objection was disallowed. *She* then filed a suit for a declaration of her title and as the judgment-debtors had meanwhile been adjudicated insolvents joined as a defendant the receiver of their property. *Held* that the suit was maintainable and was not barred by s 22 of the Provincial Insolvency Act 1907. *Ud Chand v. Murari Lal* I L R 39 All 5 distinguished. *Jhanku Lal v. Puri Lal* I L R 39 All 204 referred to. **MONI v. BALU NATH (1918)** I L R 40 All 582

5

Insolvency—Dis-

missal of objection to attachment of property by receiver—Subsequent suit by objector for declaration of title—*Pes judicata*. Upon certain property, namely a share in a house having been attached by a receiver in insolvency as the property of the insolvent a claim thereto was preferred by the son and nephew of the insolvent who filed an application under s 22 of the Provincial Insolvency Act 1907. Evidence of the title of the applicants was produced before the Insolvency Court but the application was rejected and an appeal from the order of rejection was dismissed on the merits. The applicants then filed a regular suit for a declaration of their title to the same property. *Held* that the suit was barred by reason of the previous order of the Insolvency Court. *Pita Ram v. Jughar Singh* I L R 39 All 696 referred to. **IRSHAD HUSAIN v. GORI NATH (1919)** I L R 41 All 378

s 22, 46—

See CIVIL PROCEDURE CODE (1908)
s 11 I L R 39 All 628

1

Person ag-

grieved—Right of appeal—*Veces ary partes*. *Held* that one creditor out of the general body of creditors of an insolvent has no locus standi in an application in the Insolvency Court made against the estate of the insolvent represented by the receiver by a person claiming adversely to the insolvent's estate. He has therefore no right of appeal against the decision on such an application. *Ex parte Sudebotham* 14 Ch D 488 and *Balls v. Vand Lal* 33 Indian Cases 77, referred to. *Keto Key Churan Banerjee v. Sreemutty Sarat Kumar Debee* 20 C W A 995 distinguished. **JHANRA LAL v. SHIB CHARAN DAS (1916)**

I L R 39 All 152

2

Appeal—Per-

son aggrieved. In the course of proceedings in insolvency before a District Judge the insolvent filed an application in court complaining of a sale of property which had been held by order of the receiver and urging that it should not be confirmed. His objections having been disallowed and the sale confirmed the insolvent appealed

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—co 1

s 22 45—contd

to the High Court having obtained leave to appeal under s 46 (3) of the Provincial Insolvency Act 1907. *Held* that no appeal lay inasmuch as the insolvent could not be held to be a "person aggrieved" in the legal sense of the term and the fact that he had obtained leave to appeal from the Court below could not give him a right which was not conferred by the Act. *Jhalda Lal v. Shib Charan Das* I L R 39 All 150. *Ladu Ram v. Mahabir Prasad* I L R 39 All 171. *Ex parte Sheriff* 10 Ch D 434 and *In re Leabiller* 10 Ch D 354 referred to. **SAKHAWAT ALI v. HADHA MOHAM (1918)** I L R 41 All 243

s 22, 46 52—Limitation Act (IX of 1908) s 5—Insolvency—Application to Court to reverse act of receiver—Limitation. *Held* that s 5 of the Indian Limitation Act 1908 does not apply to applications contemplated by s 22 of the Provincial Insolvency Act 1907. *Dro pads v. Hira Lal* I L R 39 All 496 distinguished. **THAKUR PRASAD v. PAVO LAL (1913)** I L R 35 All 410

s 23—

Sec s 18

I L R 44 Mad 547

Insolvency—Attach-

ment of applicant's property prior to adjudication—Effect of adjudication on the attachment. After an adjudication in insolvency an attachment of property though made before the adjudication ceases to have any effect and the property of the insolvent vests in the receiver who is the person to maintain all proceedings. Where no receiver is actually appointed the Court is the receiver under s 23 of the Provincial Insolvency Act. **GOBIND DAS v. KARAN SINGH (1917)**

I L R 40 All 197

s 23 and 25—Where a plaint is returned under s 23 the High Court will not interfere under s 23 nor s 113 of the Civil Procedure Code nor s 107 of the Government of India Act unless the Court of first instance has exercised its discretion ignorantly or perversely or has refused to exercise it and thereby caused injury to the parties which would be irreparable if not set right. **GANGA PRASAD v. NANDU RAM**

I Pat L J 485

s 26—Insolvency—Application by a creditor to have his name entered in the schedule of creditors—Right of the scheduled creditors to make objections—Revision. Creditors whose names are already in the schedule prepared under s 24 of the Provincial Insolvency Act 1907 are entitled to be heard before the debt of a creditor who comes in at the last minute under s 24 (3) of the Act is entered in the schedule. **ALLAHABAD BANK Ltd v. MURLIDHAR (1912)** I L R 34 All 442

s 24, 26 36 52—Powers—Official Receiver—Delegation of powers—Framing of schedule by Receiver—Enquiry nature of—Order of Receiver, if judicial or final—Entry of name of a creditor in schedule—Subsequent application by Receiver to Court to expunge name—Power of Court to entertain application. An Official Receiver under the Provincial Insolvency Act in framing a schedule of creditors does not decide judicially or upon contested claims. Where therefore Official Receiver passed an order upon the of a creditor of an insolvent to rank as a

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—contd

ss 24 25 52—contd

creditor under a mortgage which was disputed by another creditor the action of the Receiver amounted only to an entry of the name of the creditor in the schedule framed under s 24 of the Act and did not preclude the Court from entertaining an application by the Receiver under ss 28 and 38 of the Act to expunge the name of the creditor from the schedule. **RAHADIRSHAW MA RAIKAR v THE OFFICIAL RECEIVER, TRIVELY** (1917) **I L R 41 Mad 30**

■ 21 27 47—

See INSOLVENCY **I L R 48 Calc 87**

s 20—

See s 4 **I L R 36 Mad 402**See s 24 **I L R 34 All 442****I L R 41 Mad 30**

s 27—

See s 18 (c) (a) **18 C W N 1052****I L R 48 Calc 87**

■ 22 23 24—Proposal for composition subsequent to adjudication of insolvency rejected by District Judge—Private arrangement with creditors and payment in accordance therewith—Subsequent petition by creditors alleging inducement by misrepresentations—Such creditors if entitled to prove claims as on date of adjudication on deposit in Court of sums received by them—Person making payment to such creditors if entitled to be substituted in place of creditors—Duty of Court to prepare schedule of creditors and debts After being adjudicated insolvents the Appellants proposed a scheme for composition which was rejected by the District Judge They subsequently represented to the Court that a majority of the creditors had accepted from one M half their respective dues in full satisfaction of their claims as suggested in the scheme for composition These creditors subsequently filed petitions in Court stating that they had been induced by false and fraudulent misrepresentations of the insolvents to accept from them half of the principal sums due to them and prayed that on payment by them into Court of the said sums they should be permitted to prove their claims—Held—That in view of the provisions of ss 28 and 38 of the Act these transactions could not be recognised in insolvency proceedings and the petitioning creditors were entitled to prove their claims as they stood on the date of adjudication That the framing of the schedule of creditors and debts under s 24 of the Act is the duty of the Court which is to decide on each claim on evidence and in case of contests after hearing necessary parties. **BEHARY LAL SIKDAR v HARSUKH DAS CHAKMAL** **25 C W N 137**

s 30—

See SET OFF **I L R 45 Bom. 1219**

s 31—

See s 18 **I L R 54 All 106**

Secured creditor—

Insolvency—Agreement appointing creditor agent for sale of debtor's goods—Proceeds to be paid to creditor The owners of a printing and publishing business who owed money to a bank entered into an agreement with the bank the substance of which was that all books then in stock and all

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—contd

s 31—contd

books to be published thereafter were to be made over at once to the bank that a commission at a certain rate was to be allowed to the bank on the sale of the books and that the sale proceeds of the books were to be credited to the debtor's loan account every month after deducting the commission due to the bank. There was also other clauses and finally one Ram Charan Shukul agreed to act on behalf of the bank as sole agent for the sale of the debtor's books. Held that the bank was on this agreement entitled to rank as a secured creditor of the owners of the printing and publishing business in the insolvency of the latter. **ALLAHABAD TRADING AND BANKING CORPORATION LD v GHULAM MUHAMMAD** (1915) **I L R 37 All 383**

s 34—

See s 16 **I L R 34 All 628****2 Pat L J 235**See INSOLVENCY **I L R 42 Calc 289**

1 Attachment before judgment—Plaintiff obtaining decree if acquiescence on money deposited to have attachment with drawn—Defendant adjudicated in solvent before money could be realised in execution of decree—Receiver in insolvency if may claim money deposited Where defendant's properties were attached before judgment in plaintiff's suit but the Court directed the attached properties to be released from attachment on the defendant's paying Rs 500 as cash security and after the same was paid and the properties released the defendant was adjudged an insolvent under Act III of 1907 but not before the plaintiff's suit was decreed. Held that the plaintiff acquired no lien or charge upon the money deposited as security for getting the attachment before judgment withdrawn and the Receiver in solvency was entitled to have the money paid to him. The money not having been realised in execution of a decree prior to the adjudication order s 34 of Act III of 1907 did not apply. **PROMOTHA NATH CHAKRAVARTY v MOHINI MOHAN SEN** (1916) **19 C W N 1200**

2 Decree for sale of certain property was obtained by one of the creditors—Prior to sale judgment debtor was adjudged insolvent—Position of other creditors s 34 of the Provincial Insolvency Act was intended to put the creditors of the insolvent who have not actually attached the property before the date of the order of adjudication in as good a position as creditors of the insolvent who but for his insolvency would have been entitled to a rateable distribution of the assets realized on an execution sale. Certain property was attached before judgment and a decree was subsequently obtained for its sale but prior to a sale actually taking place the judgment debtor was adjudged an insolvent. Held that as the order of adjudication was passed prior to the sale of the property it must be regarded as the property of the judgment debtor and as such was available to the general body of creditors. **KASUR NATH v KANHAIYA LAL SHARMA** (1915) **I L R 37 All 452**

3 Right of execution creditor to assets realised before adjudication Where the assets have been realised in the course of execution by sale or otherwise as mentioned in s 34

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—contd.

s 34—contd.

before the date of the order of adjudication an execution creditor is entitled to the benefit of the execution against the Receiver. **GOPI CHARAN GANGA CHARAN SAMA v. TOTARBIDDIN AHMED** (1918) 23 C. W. N. 461

s. 34 35—Application for declaration of insolvency—Property of applicant a cash—Lower of Insolvency Court to stay proceedings in execution. An Insolvency Court has no power to interfere with execution proceedings pending in another Court against a person who has filed his petition to be declared insolvent at least until either the debtor has been declared insolvent or until a receiver has been appointed. **ANUR KUMAR v. KESHO DAS** (1917) 1 L. L. R. 39 All. 547

ss. 34, 35 and 37—

See INSOLVENCY PROCEEDINGS

3 Pat. L. J. 456

s. 35—

See TRANSFER OF PROPERTY ACT 1882

s. 50 1 L. R. 42 All. 336

See s. 34 1 L. R. 39 All. 547

s. 36—

See s. 3 1 L. R. 44 Mad. 524

See s. 10 1 L. R. 39 All. 120

24 C. W. N. 172

See s. 11 1 L. R. 37 All. 65

See s. 24 1 L. R. 41 Mad. 30

See INSOLVENCY 1 L. R. 46 Cal. 991

1—contd. s. 36 46 (?) 50—

Order cancelling anation of property by insolvent—Transfer if may appeal—Aggrieved person—Receiver if necessary party to appeal—Property outside local limits if may be dealt with—Calling in the aid of Court in whose jurisdiction property situate. Where an alienation of property made by an insolvent prior to his adjudication as such is annulled under s. 36 of the Provincial Insolvency Act the transferee is an aggrieved person within s. 46 (2) of the Act and is entitled to prefer an appeal against the order. The transferee is moreover a necessary party to the proceeding and entitled to appeal as such. The proper person to make an application under s. 36 is the Receiver in whom the insolvent's properties have vested and he is a necessary party to such a proceeding and to an appeal arising out of it. But where the application was made and prosecuted in the lower Court by the creditors the Receiver not having been joined as a party and the creditors were represented on the appeal and were fully heard in support of the order and the order proposed to be made did not in any way affect the position of the Receiver the appeal to avoid needless delay was heard and disposed of in the Receiver's absence. Under s. 36 of the Provincial Insolvency Act the Court has jurisdiction to deal with alienations made by the debtor of properties situated outside its local limits and such jurisdiction is not affected by the provisions of s. 16 of the Civil Procedure Code. A proceeding under s. 36 of the Act is not in the nature of a suit. It is only an incidental proceeding in the course of a more comprehensive one for adjudging a person an insolvent regard being had to the fact that the petitioner

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—contd.

s 36—contd.

under s. 36 lived in Calcutta that the Court in which the proceedings in insolvency were pending was at Dacca that the property in question was situated at Mongher and the transferee and the principal witnesses to the transfer were residents of that place and that three of the petitioners own witnesses were residents respectively of Bhagalpur, Purnan and Calcutta. Held that this was a fit case for proceeding under s. 40 and the case was remanded to the lower Court with directions to call in the aid of the Court at Bhagalpur in regard to the matter. **LALJI SANA SING v. ABUL GANI** (1910) 15 C. W. N. 253

2—Insolvent—Question of transfer by order—District Judge not competent to refer to subordinate Court

Held that a Court exercising insolvency jurisdiction under Act No. III of 1907 has no power to refer for inquiry to a subordinate Court a question arising under s. 36 of the Act as to whether a mortgage executed by an insolvent was bona fide or not. **JAGANNATH v. LACHMAN DAS** (1914) 1 L. R. 36 All. 549

3—Insolvent—Right of one creditor to challenge claim of another—Duty of Court to enquire—Jurisdiction

Held that it is open to any creditor of an insolvent to challenge the validity of a debt set up by another creditor and if he does so the Judge is bound to inquire into the truth of his allegations in the insolvency and cannot merely refer the applicant to his remedy by suit. **KULSHALLI RAM v. BUDHAR MAL** (1915) 1 L. R. 37 All. 252

4—Insolvent—Transfer of property by insolvent—All of a transfer

s. 36 of the Provincial Insolvency Act is wider in its scope than s. 53 of the Transfer of Property Act. Under the former Act it is not necessary to show that the transfer was made with intent to defeat or delay a creditor. All that it is necessary to show is that the transfer was made within two years of the adjudication of the insolvency of the debtor unless it is a transfer made before and in consideration of marriage. In order to determine the validity of a transfer by a debtor of all his property in lieu of a debt it is a matter for consideration whether a real transfer was intended by the transferor or it was merely fictitious and whether it was made in good faith the onus of proving good faith being upon the transferee. **MUHAMMAD HABIB ULLAH v. MUSHTAQ HUSAIN** (1916) 1 L. R. 39 All. 75

5—Insolvent—Procedure—Application by receiver to have annulled a transfer made by the insolvent

Where a receiver in insolvency seeks to have set aside under the provisions of s. 36 of the Provincial Insolvency Act 1907 a transfer made by the insolvent he should file a written statement (similar to a plaint in ordinary suits) setting forth the grounds on which the transfer is challenged. The transferee should put in a written reply and the proceeding should continue very much as in a suit. Such matters should not and cannot properly be disposed of in a summary manner. **CHUNDOO LAL v. LACHMAN SONAR** (1917) 1 L. R. 39 All. 391

6—Mortgage of moveable property in good faith—Onus Under s. 36 of the Provincial Insolvency Act

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—contd

■ 36—contd

cial Insolvency Act the onus of proving that a mortgage executed by an insolvent within two years before his adjudication as such was made in good faith and is therefore binding on the Receiver is on the mortgagee **NILMOI CHAUDHURI v BASANTA KUMAR BANERJI** (1914)

10 C W N 885

7 ———— *Proceeding questioning transfer—Onus* In a case arising under s 36 of the Provincial Insolvency Act the burden of proving that the transaction impugned was carried out in good faith and for valuable consideration is on the transferee **BASIRUDDIN THAKURDAR v MOHAMED BIRI** (1918)

22 C W N 709

■ *Fraudulent transfer whether creditor may institute suit to set aside* Under s 30 of the Provincial Insolvency Act 1907 if a transaction by way of transfer of an insolvent's property takes place within two years prior to the act of insolvency or to the declaration of insolvency then nothing more is necessary on the part of the person impeaching the transaction than to prove that it took place within two years prior to the act itself. When this has been done the onus is shifted on to the transferee to establish the bona fides of the transaction which he seeks to maintain. ■ 3b contemplates that the Receiver is the proper person to impeach a fraudulent transfer by the insolvent of his property. If the Receiver refuses to do so then it is open to any creditor to apply to the court for leave to institute a proceeding under s 3b on his own behalf and on behalf of the other creditors. Until however the Receiver has refused or declined to act no one else is entitled to do so as the Receiver is the proper person to institute a proceeding under s 3b **HENIRAJ SHANKAR LALL v RAMESHWAR RAM**

2 Pat L J 101

0 ———— *Void meaning* *o*—*Exclusive jurisdiction of Insolvency Court* ■ *avoid transfers falling under the section* A transfer of property falling under s 3b of the Provincial Insolvency Act remains valid unless and until set aside at the instance of the Official Receiver. The word void in that section means only voidable. It is only the Official Receiver and not anybody else e.g. a purchaser from him that can get such a transfer set aside. After an adjudication in insolvency the only Court that has jurisdiction to annul a transfer voidable under the Law of Insolvency is the Court of Insolvency and no other Court can adjudicate upon the voidable character of such a transfer in any other proceeding e.g. a suit either at the instance of a plaintiff or of a defendant **MARIAPPA PHILLAI v PAMAN CHETTIYAR** (1918)

I L R 42 Mad. 322

■ 37—

See s 3 I L R 44 Mad 521

See COMPANIES ACT 1913 s 21

I L P 2 Lah 102

See FRAUDULENT PREFERENCE

I L R 43 Cal 640

1 ———— *Subsections (1)*
(2) *Fraudulent preference how determined—Debtor's intention and motive material—Preference due to pressure from creditor if fraudulent—Creditor if may plead good faith—Onus* Under

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—contd

■ 37—contd.

s 37 of the Provincial Insolvency Act good faith on the part of the creditor affords him no protection where the intention of the debtor to give him preference is established although sub s (1) of the section protects a person who in good faith and for valuable consideration has acquired title through or under a creditor of the insolvent. Preference implies an act of free will and there can be no

preference where the act is the result of pressure brought to bear on the debtor by the creditor though there would be fraudulent preference where notwithstanding that the payment or disposition might never have been made but for the importunity of the creditor it is also a fact that the payment never would have been made but for the desire to prefer. The presumption of fraudulent intention may be repelled if it is apparent that the debtor acted in fulfilment of a prior agreement but it will not suffice to prove that the debtor was moved by a mere sense of honour or a sense of duty or of moral obligation or that he acted from motives of kindness or gratitude. The intention of the debtor is the paramount consideration and if the transaction can be properly referred to some other motive than that of giving the particular creditor a preference over the others the payment is not fraudulent. In the determination of the question whether a person is able or unable to pay his debts as they become due from his own money the fact that he has money locked up which at a later period may be available for the payment of his debts is immaterial. Where an act is impeached as a fraudulent preference the onus of proof lies on the Receiver even if the debtor was insolvent at the time of the payment and knew himself to be so though in such a case the onus may shift **NARENDRA NATH SARKAR v ASHUTOSH GHOSH** (1914)

19 C W N 187

2 ———— *Insolvent—Effect of lease of occupancy holding granted shortly before filing petition of insolvency* S 37 of the Provincial Insolvency Act 1907 has no application to the case of a lease granted for good consideration by an insolvent shortly before the filing of his petition unless the object thereof is to give a preference to one creditor over the others. If the lease is found to be a merely colourable transaction the insolvent still retaining possession of the property leased it can be avoided and the property placed in the hands of the Receiver otherwise the rents should be paid to the Receiver for the benefit of the creditors. The leased property being an occupancy holding held that there was no reason for directing the surrender thereof to the zamindar **DASRAJ v SAGAR MAJUMDAR** (1914)

I L R 33 All 37

3 ———— *Surety for debt of insolvent whether creditor* A person who stands surety for the payment of a debt by the insolvent is a creditor within the meaning of that expression in s 37 of the Provincial Insolvency Act (III of 1907) **Alalam Viswanathan v Official Assignee of Madras** 32 I C 795 overruled **RODRIGUES v RAMASWAMI CHETTIAR** (1916)

I L R 40 Mad 733

■ 38—

See S 16 (2) AND (6)

I L R 42 All 433

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s. 40—

See RECEIVER I L R 40 Cal 678

s. 41—

See s. 16 I L R 39 All 223

s. 42—

See s. 16 I L R 39 All 223

See s. 16 (7) (a) 18 C W N 1052

Adjudication—Annulment of if permissible on other than a statutory grounds—Failure of Receiver to pay debts—Consent of opposing creditor The Court has no power to annul an adjudication of insolvency otherwise than in exercise of the authority vested in it by the statute. Where therefore none of the circumstances mentioned in s. 42 of the Insolvency Act as grounds for annulment had been established the order of the Court annulling adjudication on the petition of the insolvent was erroneous and the fact that the Receiver of the insolvent's property had been unable to satisfy the debts was no ground for annulment. The fact that the opposing creditors was proved to have at one time consented to a composition was not sufficient to authorize the Court to annul an adjudication. The consent of all the creditors is not by itself sufficient to justify an order of annulment. The Court had to consider not merely that what they have agreed to is for the benefit of the creditors as a whole but also that the annulment would not be detrimental to commercial morality. *Quare* Whether under s. 42 of the Provincial Insolvency Act the Court has discretion to refuse to annul an adjudication when the circumstances mentioned in sub-s. (1) to that section are established. *MORI LAL v. GANAPATRAM* (1910) 21 C W N 938

s. 43—

See s. 4 I L R 36 Mad 402

See s. 16 I L R 39 All 120

1 *In solvent acts of* *had for it—Proceedings in their nature criminal—Necessity of framing charge etc.* A proceeding against a debtor under s. 43 (2) of the Provincial Insolvency Act is in the nature of a criminal proceeding and as in all criminal cases it is necessary in such a proceeding that there should be a charge, a finding and a conviction as a foundation for the sentence and everything should be strictly and accurately pursued and if on any of these three points a substantial defect should appear it would be a ground for reversing the proceeding. *HARINAR SINGH v. MANESHUR PRASAD* (1912) 18 C W N 692

2 *Receiver's report—*

Insufficient to base a conviction on On report by a Receiver of an insolvent's property to the effect that the insolvent had fraudulently transferred certain property of his just before he was declared an insolvent and that he had concealed the fact that he was the owner of a certain shop the Court convicted him under s. 43 of the Provincial Insolvency Act. *Held* that a Receiver's reports do not constitute local evidence upon which an order under s. 43 of the said Act can be based and therefore a conviction under s. 43 based only on a Receiver's report is bad in law. *Emperor v. Chiranj Lal* I L R 36 All 576 *Nathu Mal v. The District Judge of Benares* I L P 39 All 547

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s. 43—contd.

Ex parte Campbell In re Wallace 15 Q B D 213 referred to NATHU KISHOR v. SURAJ MAL (1910) I L R 37 All 429

3

Insolvency—Inquiry as to alleged fraudulent acts committed by debtor—Procedure—Evidence *Held* that proceedings under s. 43 (a) of the Provincial Insolvency Act 1907 should not be based merely upon the evidence given on behalf of the creditors when opposing the debtor's application to be adjudged an insolvent but evidence as to the specific acts alleged against the debtor should be recorded *de novo*. *In the matter of Fash Bihari Roy* I L P 17 Cal 709 referred to NATHU MAL v. THE DISTRICT JUDGE OF BENARES (1910) I L P 32 All 547

4

Provident Funds Act (IX of 1907) s. 4—Provident Fund—Railway employé drawing his Provident Fund after his adjudication as insolvent—Payment of the money to his wife—Fraudulent transfer The appellant who was in the employ of a Railway Company was adjudged an insolvent under s. 16 of the Provincial Insolvency Act 1907 and a Receiver was appointed. Subsequently the insolvent resigned his appointment and drew his Provident Fund from the Railway Company. A large portion of the amount so drawn was paid by the insolvent to his wife. The District Judge held that the transaction amounted to a fraudulent act within the meaning of s. 43 (2) of the Act and sentenced the insolvent to 3 months imprisonment. He appealed. *Held* setting aside conviction that there was no fraudulent dealing by the insolvent with s. 43 in as much as neither the Receiver nor the creditor had any claim to the money drawn by insolvent for his Provident Fund having regard to the provision of the s. 4 of the Provident Fund Act. *Cocher v. Mitchell* 1890 25 Q B D 62 and *Official Receiver of Madras v. Mary Dalajams* 26 Mad 440 referred to NAGVI DAS BRICKHANDAS v. JHULABHAI (ULABDAS) (1910) I L R 44 Bom 673

ss. 43 46—

See CIVIL COURTS ACT 1887 ss. 8 20

I L R 34 All 383

1

Additional District Judge—Order punishing debtor for fraudulent dealings with account books—Appeal whether civil or criminal and to what Court *Held* by RICHARDS C. J. and PARBRIDGE J. (KNOX J. dissenting) that an appeal from an order of Additional District Judge under s. 43 (2) of the Provincial Insolvency Act 1907 lies directly to the High Court and not to the Court of the District Judge. *Malhan Lal v. Sri Lal* I L R 34 All 337 followed. *Held* also by RICHARDS C. J. and KNOX and PARBRIDGE J. J. that such an appeal is an appeal on the civil side of the Court and not a criminal appeal. *EMPEROR v. CHIRANJ LAL* (1914) I L R 36 All 576

2

Creditor's petition to inquire into commission of an offence—Inquiry and refusal to frame a charge—Appeal right of In the course of a proceeding in insolvency a creditor filed a petition alleging the commission of an offence by the insolvent and asking the Court to take action against him under s. 43 cl. 2 (b) of the Provincial Insolvency Act (III of 1907). The Judge inquired into the petition but dismissed it.

PROVINCIAL INSOLVENCY ACT (III OF 1907)

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd

—contd

ss 43, 46—contd

s 45—contd

refusing to frame a charge *Held* that the creditor had no right of appeal as he is not a person aggrieved, within the meaning of s 46 of the Act *Iyappa Nainar v Manicka Asari* (1914)

if it be a *dies non* must be excluded *Rama Swami Pillai v Venkateswara Ayyar* (1918)
I. L. R. 42 Mad. 13

I. L. R. 40 Mad. 630

3 ———— *Creditor—Person aggrieved—Appeal* One of the creditors of an insolvent in whose case no Receiver had been appointed applied to the Court making allegations that the insolvent had been guilty of an offence under s 43 sub s (2) of the Provincial Insolvency Act 1907 the Court however held that no case was made out and refused to move in the matter *Held* that the creditor applicant was not a person aggrieved within the meaning of s 40 sub s (2) of the Act and had no right of appeal against the Court's order *Iyappa Nainar v Manicka Asari* 27 Indian Cases 451 referred to *Ladhu Ram v Mahabir Prasad* (1916)
I. L. R. 89 All. 171

See s 2 I. L. R. 40 Mad. 752

See s 15 I. L. R. 38 Mad. 15

See s 20 I. L. R. 80 All. 8

See s 22 I. L. R. 41 All. 243

I. L. R. 35 All. 410

I. L. R. 39 All. 162

See s 43 (?) I. L. R. 39 All. 171

See s 43 I. L. R. 38 All. 516

I. L. R. 40 Mad. 630

I. L. R. 42 Mad. 13

See *Bengal Civil Courts Act 185*

ss 8 20 I. L. R. 34 All. 383

See *Civil Procedure Code 1908* s 11

I. L. R. 39 All. 625

4 ———— *Order refusing application by a creditor to take action against the insolvent—Whether appealable* The appellant a creditor applied to the District Court to have action taken against the insolvent (the respondent) under s 43 of the Insolvency Act This application was rejected by the Court and the present appeal was lodged in the High Court against the order of rejection It was objected for the respondent that no appeal was competent *Held* that an order refusing an application by a creditor to take action against the insolvent is not appealable because—(a) the application is not one which the Insolvency Act entitles a creditor to make and the applicant is therefore not a person aggrieved by the order refusing the application within the meaning of s 46 and (b) the order is not one under s 43 (2) which makes provision only for an order sentencing the debtor *Iyappa Nainar v Manicka Asari* (I. L. R. 40 Mad. 630) and *Ladhu Ram v Mahabir Prasad* (I. L. R. 39 All. 171) followed *In re Burden ex parte Wood* (21 Q. R. B. D. 24) distinguished *Baldwin's Law of Bankruptcy and Bills of Sale* p. 35 referred to and explained *Gujar Shah v Barkat Ali Shah*
I. L. R. 1 Lah. 213

1 ———— *Leave to appeal refused by District Judge—Concurrent jurisdiction of High Court to grant leave—Order to District Judge to be set aside before grant of leave—Principle—Civil Procedure Code (Act V of 1908) O. XXI r. 11 hearing under if necessary after leave granted* The High Court having concurrent jurisdiction with the District Judge to grant leave to appeal from an order under the Insolvency Act can do so when such leave has been refused by the District Judge Where such leave is granted there is no necessity for a further hearing under O. XXI r. 11 of the Civil Procedure Code *Madhu Sadas Pal v Parbati Sundari Datta* (1914)
19 D. W. N. 780

s 44—

See s 4 I. L. R. 36 Mad. 402

s. 45—

See s 16 I. L. R. 39 All. 223

5 ———— s 45 46—*Appeal time for—Limitation Act applicability of—Period of limitation commencement of—General principles—General Clauses Act (X of 1897) ss 2 and 10 applicability of—Ninety day dies non—Exclusion of* In computing the time for preferring an appeal to the High Court under s 46 of the Provincial Insolvency Act (III of 1907) though the general provisions of the Indian Limitation Act do not apply the period of ninety days specified in s 45 of the Act should be reckoned from the date of the order appealed against and thereupon the general principles contained in s 2 of the General Clauses Act (X of 1897) should be applied and the day on which the order appealed against is passed should be excluded Further under s 10 of the General Clauses Act the ninetieth day

2 ———— *Appeal out of time—Deduction of time for obtaining copy if per-
missible—Delay if excusable—General Provisions of Limitation Act if applicable—Limitation Act (IX of 1908) ss 5 12 and 29—Conversion of Appeal into Civil Revision Petition when permitted—Order without notice to Official Receiver illegal* An appeal under s 46 cl (3) of the Provincial Insolvency Act which was preferred to the High Court beyond the period of time fixed therein is barred by limitation as the time requisite for obtaining a copy of the order appealed against cannot be deducted under that Act or under ss 12 (2) and 29 of the Limitation Act *Quere* Whether the Court can excuse the delay under s 5 of the Indian Limitation Act (IX of 1908) *Case* law on the subject considered The High Court is competent to convert such an appeal into a Civil Revision Petition under s 15 of the Charter Act and to set aside the order where the lower Court passed the order in favour of a creditor of an insolvent without the notice to the Official Receiver *Abdulla v Salaru* I. L. R. 13 All. 4 followed *Sivaramayya v Bhujanga Rao* (1915)
I. L. R. 39 Mad. 593

3 ———— *Limitation Act (IX of 1908) ss 12 and 29—Appeal—Limitation—Time requisite for obtaining copies* The Provincial Insolvency Act was intended to be and is so far as matters governed by it are concerned a complete code in itself and contains its own limitation law In computing therefore the period of limitation prescribed for presenting an appeal under the

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—*contd.*s 45—*co 1d*

said Act the time requisite for obtaining a copy of the order complained of cannot be excluded. *Behari Lal Woolerjee v Yungolanath Woolerjee* I L R 5 Calc 110 and *Vengendra Nath Mullick v Mathura Mohun Parhi* I L R 18 Calc 368 referred to. *Benu Prasad Kuari v Dillipai Poo* I L R 23 All 20 and *Jugal Kishore v Gur Narain* (1911) I L R 33 All 738

4 Appeal—Limitation—Application of general provisions of the law of limitation—Limitation Act (IV of 1908) s 1 and 29

The Provincial Insolvency Act is a special law within the meaning of s 29 of the Indian Limitation Act but inasmuch as it is not in itself a complete Code there is nothing to prevent the application thereto of the general provisions of the Indian Limitation Act. Such general provisions do not affect or alter the period prescribed by a special law but only the manner in which that period is to be computed. *Jugal Kishore v Gur Narain* I L R 33 All 738 overruled. *Benu Prasad Kuari v Dharaka Rai* I L R 23 All 7. *Joti Sarup v Pann Chandar Sinha* 48 Weekl Notes 190 34 and *Iyeramma v Vithal* I L R 18 Mad 99 followed. *Poul on v Modhoooodun Paul Choudhry* 2 W R Act X 21. *Unnoda Perumud Woolerjee v Kriato Coomarr Montro* 15 B L R 60 note. *Vengendra Nath Mullick v Mathura Mohun Parhi* I L R 18 Calc 368. *Cirija Nath Poo Paladur v Palane Dibee* I L R 1 Calc 263. *Behari Lal Woolerjee v Yungolanath Woolerjee* I L R 5 Calc 110. *Gopal Chand Wooluckia v Kriato Chandar Das Bhow* I L R 5 Calc 314. *Nyab Noola v Na vili* I L R 8 Calc 510. *Ketter Mohun Chikherbuzi v Dinabai Sata* I L R 10 Calc 975. *Girocharya v President of the Delgaor m Town Municipality* I L R 8 Bom 509. *Kullayappa v Lakshmiathi* I L R 12 Mad 467. *Abd Halim v Lofsun veta Khatun* I L R 30 Calc 53 and *Suaj Hal Prasad v Thoma* I L R 23 All 48 referred to. *DROPADI v HIRA LAL* (1912)

I L R 34 All 496

ss 46 47—

See APPEAL TO PRIVY COUNCIL

I L R 40 Calc 685

ss 46 47 (1) and (2)—Appeal under s 46 filed out of time—Dismissal of memorandum of objections right of respondent to file—Civil Procedure Code s 108 (?) O XXI s 22 s 47 (2) of the Provincial Insolvency Act and s 108 (?) Civil Procedure Code apply the procedure of the Civil Procedure Code to appeals filed under s 46 of the Provincial Insolvency Act hence a respondent in such an appeal is entitled to file a memorandum of cross objections under O XXI r 22 Civil Procedure Code. When an appeal is dismissed as filed out of time a memorandum of objections filed by a respondent under O XXI r 22 cannot be heard. *Ranjivan Mal v Chand Val* I L R 10 All 587 followed. Decisions on O XXI r 22 (formerly s 661 Civil Procedure Code) reviewed. *ALAGAPPA CHETTIAR v CHOCKALINGAM CHETTIAR* (1918)

I L R 41 Mad 904

s 47—

See s 4 I L R 36 Mad 402

See s III (3) I L R 36 All 65

See s 16 I L R 39 Mad 693

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—*contd.*s 47—*contd*

See s III I L R 37 All 65

See s 20 I L R 41 Mad 440

See s 24 I L R 48 Calc 57

See s 46 I L R 41 Mad 904

See APPEAL TO PRIVY COUNCIL

I L R 40 Calc 685

See INSOLVENCY PROCEEDINGS

3 Pat L J 456

See RECEIVER I L R 40 Calc 678

Civil Procedure Code (1905) O XXI r 71—Sale of property of insolvent by receiver—Default of purchaser—Re sale—Order by Court on purchaser to make good deficiency—Proceeding s 47 of the Provincial Insolvency Act 1907 has not the effect of making the provisions of O XXI of the Code of Civil Procedure 1908 applicable to a sale of the property of an insolvent held by a Receiver under the orders of the District Judge. If therefore the purchaser at such a sale defaults and the property is re sold for a sum less than the original bid the first purchaser cannot be called upon under O XXI, r 71 to make good the deficiency. *Mul Chand v Murari Lal* I L R 36 All 9 referred to. *CHEDA LAL v LACHMAN PRASAD* (1916)

I L R 39 All 267

s 50—

See INSOLVENCY I L R 40 Calc 78

s 51—

See s 16 I L R 39 Mad 693

s 52—

See s 2 I L R 40 Mad 752

See s 15 I L R 36 Mad 15

See s 24 I L R 41 Mad 30

s 56—

See s 16 I L R 43 All 510

PROVINCIAL INSOLVENCY ACT (V OF 1920)

See PROVINCIAL INSOLVENCY ACT 1907

Comparative Table of Acts III of 1907 and V of 1920

Section of Act III of 1907	Corresponding of Act V of 1920
1	1
2	-
3	3
4	6
5	7
6 (1)	12 and 18
6 (?)	11
6 (3)	10
6 (4)	9 (1)
6 (5)	9 (?)
6 (6)	8
7	14
8	15
9	16
10	17
11	13
12	19
13	21
14	24

PROVINCIAL INSOLVENCY ACT (V OF 1920)

—contd

Comparative Table of Acts III of 1907 and V of 1920—contd

Section of Act III of 1907	Corresponding of Act V of 19 0
15 (1)	25
15 (2) (3)	26 (1) (2)
16 (1)	27
16 (2) to (6)	28
16 (7)	30
17	36
18	56
19	57
20	59
21	60
22	68
23	58
24	33
25	49
26	50
27	38
28	34
29	33 (3)
30	46
31	47
32	48
33	61
34	51
35	52
36	53
37	54
38	55
39	62
40	66
41	67
42	35
43	22 and 69
44	41
45	44
46	75
47	5
48	74
49	76
50	77
51	79
52	80
53	72
54	81
55	82
56	Sch III

— ss 54 and 55—Insolvent—Fraudulent preference—Intention of insolvent rather than actual effect the test whether a transaction amounts to a fraudulent preference. In order that a transaction entered into by an insolvent may be set aside as a fraudulent preference of one creditor over the others it is not sufficient merely that it should in fact lead to that result. Where the transaction is entered into by the insolvent solely for the purpose of securing some ready money for himself it does not necessarily fall within the purview of s 54 of the Provincial Insolvency Act 1920. *Ex parte Hodgkin* L R 20 Eq Ca 746 *New France and Garrard's Trustee v Hunting* 2 Q B 19 and *Sharp v Jackson* A C 419 referred to S 55 of the Act protects all transactions, unless they are in themselves acts of insolvency or fraudulent preferences, entered into with a debtor by third persons for valuable consideration and *bona fide* namely *bona fide* in the sense that the person with whom such transaction takes place had not at the

PROVINCIAL INSOLVENCY ACT (V OF 1920)

—contd

— ss 54 and 55—contd

time notice of the presentation of any insolvency petition by or against the debtor *BRAGWAN DAS & Co v CHUTTAN LAL* I L R 43 ALL 427

— s 68 (c) (ii)—Insolvent fraudulently making away with or concealing property—A of wrong means of ascertainment tantamount to active concealment. A man in the position of an insolvent who has the means of ascertaining where property of his has been disposed of even if he has not been actually a party to the making away with it and who does not use the means is just as guilty of concealment within the meaning of s 68 (c) (ii) of the Provincial Insolvency Act as if he actively conceals the locality in which the property actually is. *In the matter of QASIM ALI AN INSOLVENT* I L R 43 ALL 406

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)

See CRIMINAL PROCEDURE CODE s 195
4 Pat L J 809

— power of—

See ATTACHMENT BEFORE JUDGMENT
I L R 46 Calc 717

— s 1 (f)—Security on application for order to set aside *ex parte* decree—Limitation Act (IV of 1877) Sch II Art 164—Notice under s 48 of Civil Procedure Code (Act XIV of 1859)—Execution of process. When security is not deposited under s 17 of Act IX of 1887 until after the application to set aside the *ex parte* decree is disposed of the hearing of the application must be held to have been barred. But where no objection is taken on this ground at the hearing the High Court will not set aside the order in *revi* 107 *Bamasuam v Kuruvu* I L R 13 Mad 178 explained. A process is executed when notice under s 248 Civil Procedure Code (Act XIV of 1882) has been served and limitation under Sch II Art 164 of the Indian Limitation Act will run from the date of service of such notice. *Bimola Soondree Da see v Kelee Krishen Mojomdar* 22 L J 6 followed *Stra* *ANABALANA v PAMAMMA* (1910)
I L R 54 Mad. 89

— s 15—

See CIVIL PROCEDURE CODE 1908 s 10
I L R 44 Mad. 697

— ss 15 33—Suit to recover a sum of money as the value of trees fell by the defendant—Ownership of the trees in the plaintiff because the land on which they stood belonged to him—*Ir*, *rental* as we as to title to immovable property—Jurisdiction of the Small Causes Court. The plaintiff brought a suit in the Court of Small Causes to recover Rs 12 as the value of certain trees felled by the defendant. The plaintiff's claim to *re*ceded on the basis that the trees belonged to him because the land on which they stood also belonged to him. A question having arisen as to the jurisdiction of the Court of Small Causes to entertain the suit. *Held* by the Full Bench that a Court of Small Causes could entertain a suit the principal purpose of which was to determine a right to immovable property provided the suit in form did not ask for that relief but for payment of a sum of money. *PATTABOUDA v NIKANTH KALO DESHPANDE* (1913)
I L R 37 Bom 675

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—contd.

s. 16—

See CRIMINAL PROCEDURE CODE 19

2 Pat L J 1

s. 10 2nd Sch. II, cl. (2) and

(3)—*Suit for the recovery of certain sum representing a share in the produce of immovable property—Cognizance by the Court of Small Causes—Decree final—Appeal—Jurisdiction by consent of parties*—*Suit for the recovery of Rs. 12116 representing plaintiff's share in the produce of immovable property is a suit for money had and received to the plaintiff's use and is cognizable by the Court of Small Causes and the decree in such a suit is final under s. 27 of the Provincial Small Causes Courts Act (IX of 1887). Notwithstanding its finality an appeal was preferred to the District Court of Ahmedabad which Court entertained the appeal and reversing the decree allowed the plaintiff's claim. The defendant thereupon preferred a second appeal and at the hearing prayed that the second appeal might be treated as an application for revision under s. 115 of the Civil Procedure Code (Act V of 1908) on the ground that the District Court acted without jurisdiction in entertaining the appeal. The respondent (plaintiff) urged that a second appeal lay and further that by reason of the conduct of the parties and the fact that the appellant (defendant) had not objected to the jurisdiction of the District Court it was too late in second appeal to take the point. Held that the District Court had no jurisdiction to try the case and the conduct of the parties could not give it jurisdiction. *Ledgard v. Bull* L R 13 I A 134 and *Meenakshi Sundari v. Sulramanaya Sastry* L P 141 A 160 referred to. Decree of the District Court reversed and that of the first Court restored. *DAVLAT SINGH (MAHARAJA SINGH) v. KHASARAN HANUM MOH* (1909) I L R 34 Bom 171*

s. 17—

See LIMITATION ACT 1908—

SCH I ART 161 24 C W N 30

SCH I ART 164 15 C W N 102

See SMALL CAUSE COURT SUIT

I L R 44 Cal 950

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—contd.

s. 17—contd

I I P 3 All 470 distinguished CHHOTEL LAL

v. LAKHMI CHAND MAGAN LAL (1916)

I L R 38 All 425

2—*Decree ex parte—Claim decreed in full but incorrect amount entered—Application for rehearing—Deposit of amount named in decree*—Where an ex parte decree passed by a Court of Small Causes was incorrectly drawn up inasmuch as the principal sum decreed was wrongly entered the costs were wrongly entered and no sum at all was entered on account of interest *pendente lite* it was held that the defendant in applying for a rehearing had sufficiently complied with the terms of the proviso to cl (1) of s. 17 of the Provincial Small Cause Courts Act 1887 when he deposited in court the sum which was in fact named in the decree. *BASDEO RAM SARTI v. NUL CHAND NEMI CHAND*

I L R 43 All 438

3—*Proviso—Ex parte decree application to set aside—Whether proviso mandatory or directory—Time within which deposit to be made or security given*—By the Full Bench (*SESHAGIRI AYYAR J* dissenting) The provisions of s. 17 (1) Provincial Small Cause Courts Act are mandatory. By the Full Bench—But the deposit of the decretal amount may be made or the security given within the period prescribed by the law of limitation for applications under the section namely thirty days from the date of the ex parte decree although it did not accompany the application itself. *Jeem Muchi v. Budhram Muchi*—(1905) I L R 32 Cal 389 followed. *ASRAM MOHAMED SAHIB v. RAHMAT SAHIB* (1920)

I L R 43 Mad (F B) 579

s. 23—

Se s 35

5 Pat L J 248

1—*Plant in suit of Small Cause Court nature involving question of title returned by Small Cause Court for presentation in Civil Court—Refusal of latter to receive plaint—Remedy if by appeal or revision—Civil Procedure Code (Act V of 1908) O VII s 10 O XLIII r 1 (a)*—When a plaint originally presented in the Small Cause Court is under an order under s. 23 of the Provincial Small Cause Courts Act presented in the ordinary Civil Court the latter has no authority to refuse to entertain the suit. An order by the latter Court returning the plaint for presentation to the Small Cause Court was not an order under O VII s 10 of the Civil Procedure Code as the plaint had not been originally filed in that Court and such an order did not require to be set aside by an appeal under O XLIII r 1 (a). The High Court in revision set aside the order as one made in violation of the provisions of s. 23 of the Provincial Small Cause Courts Act. *CHANDERBODAN KOER v. SHYODHOP PURSAD* (1912)

18 C W N 380

2—*Return of a plaint under—High Court's power of interference—S 95 Provincial Small Cause Courts Act s 115 Civil Procedure Code (Act V of 1908) and s 10 Government of India Act of 1915*—Where a Provincial Small Cause Court returned a plaint for presentation to a proper Court on the ground that the suit involved a question of title which should be tried in a regular suit and the plaintiff thereupon

1—*Civil Procedure Code (1908) s 24—Suit transferred from Subordinate Judge with Small Cause Court powers to Munsif—Ex parte decree—Procedure*—Held that s. 24 sub cl (4) of the Code of Civil Procedure contemplates a Court vested with the powers of a Court of Small Causes and that when a suit is transferred from that Court to another Court the Court trying it is to be deemed a Court of Small Causes and its procedure is to be governed by the provisions of the Provincial Small Cause Courts Act. Therefore when such a suit is transferred to a Munsif from the Court of a Subordinate Judge vested with Small Cause Court powers and the former passes an ex parte decree in the suit an application to have the ex parte decree set aside must be accompanied by a deposit of the amount of the decree or a security in respect of the amount as required by s. 17 of the Provincial Small Cause Courts Act the provisions of which are mandatory. *Mangal Sen v. Rup Chand* I L P 13 All 394 *Jagan Nath v. Chet Ram* I L P 28 All 470 referred to. *Sarju Prasad v. Mahadeo Pande*

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—contd

ss 23—contd

moved the High Court and obtained a rule on a preliminary objection taken that the order under s 23 (1) is not covered by a 2 of the Provincial Small Cause Courts Act. *Held* that there is a good deal of distinction between disposing of a case and deciding a case. A case is something less definite than a suit. The meaning of the word decided as held in *Subal Ram Dutt v Jagadananda* 13 C N A 403 approved. *Umesh Chandra v Rakhai Chandra* 15 C N A 666 referred to. Under s 11 of the Civil Procedure Code the High Court would only interfere if the question were one of jurisdiction. The Calcutta High Court's powers under the Charter Act have been exercised with few exceptions only in cases where jurisdiction has been exceeded or the Judge has ignorantly or perversely refused to exercise or made only a colourable pretence at exercising jurisdiction vested in him by law. This limited power should be exercised only when irreparable injury would be caused to one of the litigants if matters were not set right. *Chandi Ray v Kripal Ray* 15 C N A 69 and *Imajod Ali v Ali Husain Jolar* 15 C N A 353 referred to. S 23 (1) of the Provincial Small Cause Courts Act is designed to meet cases in which a Small Cause Court Judge is satisfied that the question of title raised is so intricate that it should not be decided summarily but in a Court in which the evidence is recorded in full and the decision is open to appeal the matter is one of discretion and where discretion is vested in a Court it is not open to interference unless it has been exercised ignorantly or perversely. *GANGA PRASAD v NANDU RAM* (1916) 20 C W N 1080

ss 23 25—

Jurisdiction—

Suit for sacrificial goat based on plaintiff's title as shebait to a temple if may be decided by Small Cause Court Where the plaintiff claiming to be the shebait of a goddess sued the defendant for damages for unlawfully taking away a goat sacrificed at the altar of the goddess. *Held* that the question could be properly tried in a Small Cause Court without any elaborate investigation into the general question of the title of the plaintiff as shebait. The plaintiff having been returned by the Small Cause Court for presentation to the proper court under s 23 of the Small Cause Courts Act. *Held* that the High Court had jurisdiction to revise that order either under s 23 of the Provincial Small Cause Courts Act or under s 10 of the Charter Act. *Quere* Whether decide in s 23 means finally adjudicate. *UMESH CHANDRA JALODHI v RAKHAI CHANDRA CHATTENJEE* (1911) 15 C W N 666

Questions of title

Return of plaint—Revision Where a plaint presented to a Small Cause Court is returned under s 23 (1) of the Provincial Small Cause Court Act the High Court will not interfere under s 2 of that Act, nor under s 11 of the Code of Civil Procedure 1908 nor under s 107 of the Government of India Act 1915 unless the Court of first instance has exercised its discretion ignorantly or perversely or unless the Court has exceeded its jurisdiction or has ignorantly or perversely refused to exercise or has made only a colourable pretence at exercising a jurisdiction vested in it by law and has thereby caused injury to the parties which

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—contd

ss 25—contd

would be irreparable if not set right. *GANGA PRASAD v NANDU RAM* 1 Pat L J 465

ss 25 27—*Small Cause suit—Question of title—Suit transferred to the ordinary jurisdiction of the Court—No substantial irregularity—Decision on title—Decree not final—Appeal* In a suit which was originally filed as a Small Cause Court suit in the Court of the Subordinate Judge having both Small Cause and regular jurisdictions the Judge transferred the suit at a very early stage to his file as ordinary Judge as the relief claimed by the plaintiffs depended upon proof or disproof of a title to immovable property. The Judge then passed a decree deciding the question of title. *Held* that there was no substantial irregularity in thus effecting the transfer and that it must be taken that the powers conferred by s 23 of the Provincial Small Cause Courts Act (IX of 1887) were put in force in a regular manner. *Held* also that as it was a decree which could not be passed by a Court of Small Causes it was not a decree falling within the terms of s 27 of the Provincial Small Cause Courts Act (IX of 1887) and was therefore not final but appealable. *HARI BALU v GANPATRAO LAKHURAO* (1913) 1 L R 33 Bom. 190

s 25—

See s 23

See WITHDRAWAL OF SUIT

2 Pat L J 682

2 *Jurisdiction of High Court—Revision—Refusal of leave to amend plaint* *Held* that the refusal on the part of a Court of Small Causes of permission to amend a technical defect in the plaint amounted to an irregularity such as would justify the interference of the High Court in revision under s 25 of the Provincial Small Cause Courts Act 1887. *HER DORY AND COMPANY v MEHARAJAN SHAW* (1911) 1 L R 44 All. 848

2 *Revision—Jurisdiction of High Court—Execution of decree—Limitation—Application to Court to take a step in aid of execution—Application for extension of time* A bond fide application made by the decree holder praying for extension of time for the purpose of ascertaining the whereabouts of his judgment debtor is an application to take a step in aid of execution and saves limitation. Where a Small Cause Court without any materials on the records gratuitously assumed that such an application presented by the decree holder was not bond fide and consequently that a subsequent application for the execution of the decree was time barred, it was *held* that there was ground for interference by the High Court in revision. *BHAIKOT PRASAD v AMINA BEGAM* (1910) 1 L R. 33 All. 630

3 *Decision of a preliminary question of jurisdiction which does not dispose of the suit—Revision* *Held* that no revision would lie under s 25 of the Provincial Small Cause Courts Act 1887 from an order of a Court of Small Causes deciding a question of jurisdiction, which decision still left the suit undisposed of in the Small Cause Court. *Pamanathan Chetty v Morathappa Aone* 25 Indian Cases 613 referred to. *MARHAN LAL PAROYTAM DAS v CHUNNI LAL BISHI LAL* (1918) 1 L R. 42 All. 4

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

s 25—*co 12*

4. — *Petition—Suit fled before Mun if not having Small Cause Court powers but decided by one who had though as a regular suit—Appeal* A suit which according to the frame of it was a Small Cause Court suit was filed in the court of a Mun if at a time when the permanent incumbent who was invested with Small Cause Court powers, was on leave and the temporary incumbent was not invested with Small Cause Court powers. Before the suit came to a hearing the permanent incumbent returned. He tried the suit and tried it as an ordinary suit and not as a Small Cause Court suit. Held that the Mun if was right in so doing and that an appeal lay from his decision to the Subordinate Judge. *Jag Malon Lal v Laloo 9 Indian Cases 961 Mahan Chandra Sarda v Kali Mondal 10 C W 167 Hari Kamayya v Hari Venkayya 1 I L R 96 Mad 910 and Samliu Dhanu v Jan Vishu 1 I L R 25 Bom 411* referred to. *BINDERI v GANGA PRASAD* I L R. 42 All. 195

5. — *High Court—Jurisdiction to revise findings of fact* Under s 2 of the Provincial Small Cause Courts Act 1887 the High Court can interfere on questions of fact. *Poona City Municipality v Pampy (1895) 21 Bom 209 and Turner v Jogmool Singh (1900) 27 All 531* referred to. *Per Fawcett J* Interference in regard to appreciation of evidence should in general only be exercised when there appears to the Court to be a very clear case of misappreciation which has resulted in injustice to a party and makes the decree one that cannot be regarded by a Provincial Court as according to law. *NATHAN SHIVARAYA v DHULARAM HARIRAM (1920)* I L R 45 Bom 292

s 25 and 23—*Provincial Small Cause Court Act 1887—Deposit of arrears of revenue—Held that in order to determine whether a mortgagee was entitled to deposit the arrears of revenue it was incumbent on the Court to determine whether the bond was genuine or not and that omission to do so amounted to an error in law so that the High Court had power to transfer under s 25 of the Provincial Small Causes Act 1887* *RAJ KUMAR LAL v JAIKARAN DAS* 5 Pat L J 248

s 25 Sch II, Art 41—*Jurisdiction—Debt of deceased person paid in whole by one of the heirs—Suit for contribution* Two heirs of a deceased Mahomedan became entitled to the property left by him in the proportion of eight tenths and two tenths. The owner of the eight tenths share paid off the whole of a debt due by the deceased and thereafter sued the owner of the two tenths share for contribution. Held that the suit was not excluded from the jurisdiction of a Court of Small Causes by Art (41) of the second schedule to the Provincial Small Cause Courts Act 1887. *MAHMUD ALI v TANIZ UN NISSA BINI (1918)* I L R 41 All 51

s 27—

I L R 38 Bom 190

ss 27 32, 33 and 35—

See CIVIL PROCEDURE CODE 1908 s 24

I L R 38 Mad. 25

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

s 32—

See s 16

I R L 24 Bom 171

Suits instituted in Court not invested with powers—Transfer of suits as money suit—Pe transfer as Small Cause Court suits—Code of Civil Procedure (Act 1 of 1908) s 24 Fifty two suits were instituted against various tenants. The suits were cognizable by a Court of Small Causes but they were instituted in the Court of the Munsiff of Motihari who had not been invested with Small Cause Court powers. This Munsiff was transferred and another Munsiff invested with Small Cause Courts powers took his place. The latter held that by virtue of s 37 (2) of the Provincial Small Cause Courts Act 1887 the suits were triable as money suits and he accordingly transferred them to the file of the Additional Mun if. Subsequently the plaintiff applied to the District Judge to re transfer the 52 suits under s 24 of the Civil Procedure Code 1908 to the Court of the Munsiff who had transferred them and to direct him to hear them as money suits. The petition was filed with the Mun if's order in one of the suits only. The District Judge transferred all the suits to the Munsiff's Court to be treated as Small Cause Court suits. Held (1) that as there was no Small Cause Court in existence at Motihari when the suits were instituted the procedure to be adopted with regard to them was the procedure laid down in the Civil Procedure Code (2) that the District Judge had power to transfer a money suit from the Court of one Munsiff to the Court of another Munsiff and (3) that the order transferring the 51 suits in which no separate stamped application was made was incompetent. *LOAR SINGH v MOTIHARI COMPANY LIMITED* 4 Pat L J 11

s 32 to 35—

See CIVIL PROCEDURE CODE (1908)

s 24 (4) I L R 39 All 214

I L R 38 Mad 25

s 33—

See s 15

I L R 37 Bom. 375

s 35—

See CIVIL PROCEDURE CODE (1908) s 24

I L R 40 All 525

1. — *Jurisdiction—Munsiff vested with the powers of a Judge of the Court of Small Causes succeeded by one not vested with such powers—Appeal* When a Munsiff vested with the powers of a Court of Small Causes is succeeded in office by a Munsiff not vested with such powers the latter under s 35 of the Provincial Small Cause Courts Act bound to try the suits pending on the file as regular suits and an appeal lies against his decision. *Sham Behari Lal v Kali 17 All J R 109* followed. *Mangal Sen v Rup Chand 1 I L R 13 All 304* distinguished from *Kamla Prasad v Mahabul Singh 60 C 81 Dular Chandra Deb v Pam Narain Deb 1 I L R 31 Calc 1057 Ram Chandra v Ganesh 1 I L R 23 Bom 382* referred to. *SARJU PRASAD v MAHADEO PANDE (1915)* I L R 57 All 450

2. — *Decree passed by Small Cause Court—Small Cause Court abolished and execution transferred to a Munsiff—Jurisdiction—Appeal—Indian Limitation Act (IX of 1908) s 19—Acknowledgment* Where a Court of Small

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

§ 35—*contd*

Causes had passed a decree and was then abolished and the execution proceedings were taken in the Court of a Munsiff. *Held* that the Munsiff's orders in execution were not the orders of a Court of Small Causes and were therefore open to appeal. *Sargu Rasad v Mahadeo Lande* 1 L R 37 All 450 followed. *Mangal Sen v Rupchand* 1 L R 13 All 324 dissented from. *Held* also that an objection filed in answer to an application for execution of decree by the arrest of the judgment debtor upon which a warrant of arrest had been issued to the effect that the judgment debtor was a poor man and that the warrant should not be executed could not be construed into an acknowledgment of the decretal debt within the meaning of s 19 of the Indian Limitation Act 1908. *Ramshi Ras v Saigur Ras* 1 L R 3 All 247 distinguished. *LAOHMAN DAS v AHMAD HASAN* (1917)

1 L R 29 All 357

§§ 35 and 23—Deposit of arrears of revenue by mortgagee—Suit to recover amount of arrears—Whether Court bound to decide validity of mortgage—Bengal Revenue Sales Act (XI of 1859) s 9—Transfer of Property Act (I of 1882) s 100—Code of Civil Procedure (Act I of 1908) O XXXI r 15. A mortgagee who had paid the arrears of Government revenue in order to prevent the mortgaged property being sold sued the defendant who had purchased the property subsequently to the mortgage in the Court of Small Causes for recovery of the arrears paid. The defendant pleaded that the mortgage was not genuine. The court declined to decide the question of the genuineness of the bond on the ground that it was beyond the scope of the suit and decreed the suit. *Held* (1) that in order to determine whether the mortgagee was entitled to deposit the arrears of revenue it was incumbent on the Court to determine whether the bond was genuine or not and that omission to do so amounted to an error in law so that the High Court had power to interfere under s 25 of the Provincial Small Cause Courts Act 1887 (2) that if the court was of opinion that the question of the genuineness of the bond was beyond the scope of the suit it was incumbent on the court to exercise the discretion vested in it by s 23 and to return the plaint to be presented to the proper court and failure to do so brought the case within the purview of s 20 (3) that if the alleged mortgage was genuine the amount paid as arrears of revenue should have been added to the mortgage debt under s 9 of the Bengal Revenue Sales Act 1859 and that even if the plaintiff's lien was not in fact a mortgage it was a charge upon immovable property within the meaning of s 100 of the Transfer of Property Act 1882 read with O XXXI r 15 of the Code of Civil Procedure 1908 and could only be enforced by a suit under O XXXIV (4) that even if the plaintiff was entitled to relinquish his lien and claim a money decree the present suit not having been framed as such he could not succeed. *PAJ KUMAR LAL v JAIPARAN DAS* 5 Pat L J 248

Sch II, Arts 2 and 3—

See s 16 1 L R 114 Bom 171

Sch II, Art 3—Failure to perform a contract whether an act within Art 3—Suit to recover money under a contract with Government

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

Sch II Art 3—*contd*

whether of a small cause nature—Second appeal failure by Government to carry out a contract under which the plaintiff was entitled to a sum of money on account of certain constructions made by him is not an act purporting to be done by an officer of Government in his official capacity within the meaning of Art 3 Sch II of the Provincial Small Cause Courts Act (IX of 1887). The article applies only to a suit relating to some distinct act done by an officer of Government. *Rajmal Mansikhand v Hannant Anyaba* 1 L R 90 Bom 697 and *Chaganlal Ashoredas v The Collector of Kaira* 1 L R 35 Bom 42 applied. *Sunwar Lal Mookerjee v The Secretary of State for India* 1 L R 17 Cal 290 and *Motilal Rangayya Chetty v The Secretary of State for India* 1 L R 23 Mad 213 referred to. A suit to recover a sum of money being less than Rs 500 under such a contract is a suit of Small Cause Court nature and no second appeal lies. *SECRETARY OF STATE FOR INDIA v RAMAUBAHMAN* (1917)

1 L R 37 Mad 533

Sch II, Art 7—Suit involving apportionment of rent whether a suit of small cause nature—Transfer of Property Act (I of 1882) s 2 (d) and 36 applicability of to transfer in execution and the determination of which involves apportionment of rent by the Court falls within Art 7 of the second schedule of the Provincial Small Cause Courts Act and is exempted from the cognizance of a Provincial Small Cause Court. Though according to s 2 (d) of the Transfer of Property Act the Act does not apply to sales in execution yet the principle of s 36 of the Act which embodies a rule of justice equity and good conscience can be applied and rent apportioned from day to day as between a lessor and the transferee of his right in execution in the course of a year of the lease. *PANOLAH CHETTY v VAJRAVELU MUDALIAR* (1917)

1 L R 41 Mad 370

Sch II, Art 8—

See *HONESTEAD LAND* 1 L R 42 Cal 633

See *LANDLORD AND TENANT* 2 Pat L J 97

1—Grant of forest rights—Suit for rent by grantor if may be entered by Small Cause Court—Rent what is—Bengal Tenancy Act (VIII of 1855) s 141 193. A grant under which the grantee becomes entitled to cut and remove during a specified period trees which might during that period attain a prescribed size (whether it creates an interest in land or not) is a grant of forest rights within the meaning of s 193 of the Bengal Tenancy Act. The transaction cannot be regarded as a sale of timber and the consideration payable for such rights is rent within the meaning of the terms as used in cl. (3) of Sch II of the Provincial Small Cause Courts Act. Such a suit cannot be entertained by a Small Cause Court and should be instituted under s 144 of the Bengal Tenancy Act in the Court which would have jurisdiction to entertain a suit for the possession of the trees. *BANDE ALI FAHIM v AMUD ARKAT* (1914)

19 C W N 415

2—Special authority to try rent suits under Small Cause Court procedure if may be conferred generally on the Court. Cl 9

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Sch II Art 8—*contd*

of Sch II of the Provincial Small Cause Courts Act requires that the Judge personally should have been invested with authority to exercise jurisdiction and not that jurisdiction should be conferred upon the Court. A notification of the Local Government vesting all Munsiffs of certain places with power to try under the Small Cause Court procedure suits for recovery of rent of homestead lands within their respective jurisdictions when the value did not exceed Rs 500 was insufficient to confer on the officers concerned the power referred to in cl 8 of Sch II of the Provincial Small Cause Courts Act. **SAYER ALI MONDAL v. GOLAM MONDAL (1910)** 10 C W N 1238

Sch II, Art 8—Suits for rent—Suits of a nature cognizable by the Court of Small Causes—Civil Procedure Code (Act I of 1908) s 10—Second appeal. A suit for rent for an amount less than Rs 500 was filed in the Second Class Subordinate Judge's Court. By a Government Notification contemplated by Art III of the Second Schedule of the Provincial Small Cause Courts Act 1887 the Subordinate Judges of all districts in the Bombay Presidency proper were invested with authority to try on the Small Cause Side of their Courts all suits for the recovery of rent arising within the local limits of the ordinary jurisdiction of their Courts and falling within the pecuniary limits up to which suits are cognizable by them as Judges of Courts of Small Causes. Both the lower Courts decreed the claim. In the High Court a preliminary objection was taken that no second appeal lay on the ground that the suit in which it was preferred was of a nature cognizable by Courts of Small Causes within the meaning of s 102 of Civil Procedure Code 1909. Held allowing the objection that no second appeal lay. **PANKRISHNA YESHWANT v. THE PRESIDENT OF THE VANDRUA MUNICIPALITY (1916)** 1 I R 41 Bom 367

Sch II, Art 13—

See CIVIL PROCEDURE CODE 1908 s 100
1 I R 41 Mad 374

See GENERAL CLAUSES ACT s 3 (2)
1 I R 35 All 156

See LIMITATION ACT (IX of 1908) Sch IO
ARTS 4 7 101 102 AND 10
1 I R 41 Mad 528

See MADRAS ESTATE LANDS ACT 1908
s 3 1 I R 36 Mad 128

1—Land Cess—Suits by zamindar against inamdar for recovery of not a suit of small cause nature. A suit by a zamindar for the recovery of land cess from the inamdar is not a suit of a small cause nature within Art 13 of the Provincial Small Cause Courts Act. **MAHARAJA OF VIZIANAGRAM v. VEPRANA (1913)** 1 I R 36 Mad 18

2—Petition Jurisdiction Act (Bom V of 1876) s 6 cl (c)—Civil Procedure Code (Act V of 1908) O VIII r 6—Suits by an Inamdar against a Khatedar for recovery of sums—Dues—Suits not cognizable by Small Cause Court—Set off claimed in a capacity different from that in suit not allowable. Sums payable by a Khatedar to an Inamdar as superior holder are dues and a suit to recover such dues though

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

Sch II Art 13—*contd*

less than Rs 500 is not cognizable by a Court of Small Causes and a decree passed in such suit is subject to a second appeal. In a suit brought by an Inamdar against a Khatedar for the recovery of dues in respect of certain immovable property payable by the Khatedar the defendant as a payar (warhipper) claimed to set off the stipend payable to him by the plaintiff. Held that the defendant could not claim the set off which was due to him in a different capacity from that in which he held as tenant or Khatedar of the plaintiff. **MADHATRAO MORESHWAR v. RAMA HALU (1914)** 1 I R 39 Bom 131

3—Small Cause Court—Jurisdiction—Suits by zamindar to recover a kagga cess or due from tenant. Held that a suit by a zamindar to recover from one of his tenants dues payable in kind under the provisions of the village wajib ul arz was excluded from the jurisdiction of a Court of Small Causes by Art 13 of the second schedule to the Provincial Small Cause Courts Act 1887. **BALDEO v. PADMA LAL (1918)** 1 I R 40 All 663

4—Small Cause Court—Jurisdiction—Suits by zamindar to recover part of price of trees sold by tenant. Held that a suit brought by the zamindars of a village upon the basis of a custom recorded in the village wajib ul arz to recover from a tenant half of the price of certain trees alleged to have been sold by him was not a suit excluded from the jurisdiction of a Court of Small Causes. **BOHRA BHICHAJI RAJ v. RAM CHANDRA (1918)** 1 I R 42 All 448

5—Suits for recovery of khaq chaharum cognizable by a Small Cause Court—Custom—Wajib ul arz—Halat dehi—Sale of the halat dehi as evidence of the discontinuance of a custom recorded in the Wajib ul arz. A suit brought by a zamindar to recover money alleged to be due to him on account of khaq chaharum is not a suit of the nature cognizable by a Court of Small Causes. **DOIRA BH v. PAM CHANDRA (1918)** 1 I R 44 All 448 referred to. The evidential value of the document known as halat dehi on the question of the discontinuance of a custom recorded in a wajib ul arz of earlier date discussed. **BECHAI v. LADRI NARAI (1918)** 1 I R 43 All 651

Sch II Arts 15 and 16—

See SPECIFIC PERFORMANCE

1 I R 43 Cal 59

Mortgage money unpaid balance of suit by mortgagor for recovery of—Suits—Civil Court jurisdiction of a mortgagor cannot sue for recovery of the balance of the amount promised to be advanced but not paid to him and such a suit is not cognizable by the Court of Small Causes but it is open to the mortgagor to sue in the Small Cause Court for damages for the breach of contract provided the damages claimed are within the pecuniary jurisdiction of the Court. **SHAIK GALEM v. SADARJAN BINI (1914) 1 I R 43 Cal 59**

1 I R 43 Cal 59

Sch II, Arts 15 24—Suits to enforce—part of an award partitioning immovable properties whether cognizable in a Court of Small Causes

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

Sch II Arts 15-24—*contd*

suit to enforce an award is in essence a suit for specific performance of a contract and is excluded from the cognizance of a Small Cause Court by Art 15 of the Provincial Small Cause Courts Act. A suit to enforce part of an award which amongst other things partitions immovable properties if it lies at all does not lie in a Provincial Court of Small Causes. **KUNJA BEHARY BARDHAN v GOSTA BEHARY BARDHAN** (1917) **I L R 38 All 570**
22 C W N 66

Sch II Art 18—Suits relating to Trust *what are* Suit by a company by its President to recover from defendants Nos 2 to 4 the subscriptions due under the Articles of Association of the Company. The first defendant was a trust defendant Nos 2 to 4 were the trustees of the trust and members of the plaintiff company in their capacity of trustees. The plaintiff prayed that the moneys due may be recovered from the trust property in the first instance and if not so recoverable from the defendants Nos 2 to 4 personally. The suit was instituted on the Small Cause side and the Subordinate Judge returned the plaints on the ground that the suit was one relating to a trust within the meaning of Art 18 of Sch II of the Provincial Small Cause Courts Act and was not triable on the Small Cause side. The High Court was moved by petition under a 2o of the Act *Held per WHITE CJ and SANKARAN NAIR J* (BENSON J dissenting) the suit was to enforce payment of moneys due under the Articles of Association and not one relating to a trust within the meaning of Art 18. The fact that issues relating to the trust and the rights and liabilities of the trustees may have to be tried will not make the suit one relating to a trust. **SRI VENKATACHALLAPATHY SAHAYA VIJAYASAYA COMPANY v KANAGASABATHATHA PILLAI** (1910)
I L R 32 Mad 494

Sch II Art 24—

See Sch II, Art 15

I L N 38 All 570

Suit for money due under an award—Jurisdiction of Small Cause Court A suit to recover money made payable by the terms of a private award is not a suit which is excluded from the jurisdiction of a Court of Small Causes. **Madho Prasad v Lalita Prasad Weekly Vols 1881 p 159** distinguished. **MIZAJI LAL v PARTAD KUNWAR** **I L R 42 All 169**

Sch II Art 28—

1—Suit of a small cause nature—Second appeal Plaintiff sued for the recovery of certain jewels which she had presented to her daughter and son-in-law at their marriage basing her claim on a caste custom by which she was entitled after the death of the pair to return of the jewels presented by her. *Held* that the right claimed was not a right to inherit the jewels as the property of the bridegroom or the bride and Art 28 of Sch II of Act IX of 1887 did not apply to such a case. No second appeal lay as the suit (being for the recovery of less than Rs 500) was within the cognizance of the Small Cause Court. **CHINNAYYA v ACHAMMAH** (1912)
I L R 37 Mad. 538

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

Sch II, Art 28—*contd*

2—Suit by heirs of intestate against wrongdoer if within Suits for the whole or a share of the property of an intestate excluded by Art 28 of Sch II of the Provincial Small Cause Courts Act from cognizance by the Small Cause Court are suits for the recovery of the property of an intestate between rival claimants to the estate or against persons administering the estate. The Article does not apply to suits by heirs against wrongdoers. **Kapalee Bewah v Keshram Kooch** **11 W R 93** **Moheshur v Kaylash Nath** **7 C L R 71** and **Ched v Gulah** **I L R 27 All 622** followed. **Gurish Chunder v Anna Dasree** **17 W P 46** **Robin Chunder v Dribomoyee** **17 W R 520** and **Kapalee Bewah v Keshram Kooch** **11 W R 93** referred to. **TIKA SAHU v CHIEKAT SAHU** (1914)
19 C W N 614

Sch. II Art 31—

See TRESPASS **I L R 35 Mad 726**

1—Small Cause Court—Jurisdiction—Suit by joint owner to recover rent of a house received by the other joint owner—Money had and received—Revision—Objection to jurisdiction not raised in the Court below *Seemle* That a suit by one or two joint owners to recover from the other a share of the rent of a house received in the first instance by the defendant with the plaintiff's consent is a suit for money had and received and as such within the jurisdiction of a Court of Small Causes. But in any case the question of jurisdiction not having been raised in the Court below and the case having apparently been correctly decided the High Court was not bound to interfere in revision. **Pam Lal v Abdul Singh** **I L R 25 All 135** followed. **SURAJ LAL v NANNU PRASAD** (1918) **I L R 40 All 666**

2—Suit for mesne profits of a grove—Jurisdiction *Held* that a suit for recovery of mesne profits of a grove from which the plaintiff had been wrongfully dispossessed is a suit the cognizance of which by a Court of Small Causes is barred by Art 31 of Sch II to the Provincial Small Cause Courts Act 1887. **Prasadi Lal v Imdad Hussain** **All Weekly Notes (1898) 10** distinguished. **Shree Boda v Surjan** **11 A L J 238** followed. **DRIGPAL SINGH v KENJAL** (1917)
I L R 40 All 142

3—Jurisdiction of Court determination of—Suit for account whether claim for ascertained sum is The question whether a particular suit is cognizable by a Small Cause Court or not must be determined on a consideration of the plaint irrespective of the allegations made in the written statement. Where the plaintiffs claimed a definite ascertained sum representing in certain land under the sole management of the defendants *held* that the suit was not barred by Art 31 of the Second Schedule to the Provincial Small Cause Act 1887. It is not every case in which accounts have to be looked into which is a suit for accounts. **RAJIVA NARAYAN SAHAY v HIRAT NARAYAN SINGH** **3 Pat L J 423**

Sch II Art 32

See REDEMPTION SUIT FOR
14 C W N 1001

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Sch. II, Art 35 (ii)—Suit for compensation for removal of trees and crops—Jurisdiction—Wast of jurisdiction not urged in defence—Decree if should be set aside on review—Objection if may be waived A suit for compensation for a tree alleged by plaintiff to have been grown by him and cut by the defendant and for crops of mustard raised by him and misappropriated by the defendant from land alleged to be plaintiff's property and in his possession is excluded from the jurisdiction of the Small Cause Court under the Art 35 sub cl (ii) of Sch II of the Provincial Small Cause Courts Act Where no objection to the Court a jurisdiction having been taken at the original trial the suit was decreed and an application by the defendant for review was dismissed on the ground that the objection was not raised at the trial *Held* that the review application should have been granted as where there is an entire absence of jurisdiction no action on the part of the plaintiff or inaction on the part of the defendant can invest the Court with jurisdiction **PAMPROSAD PRAMANIK v SRICHARAN MANDAL (1917)** 21 C W N 1209

See CRIMINAL BREACH OF TRUST

I L R 48 Calc 870

Sch. II, Art 35 (g)—Contract to marry breach of—Lo s of provisions and articles A suit by a father of a Mahomedan girl against the father of a minor boy for breach of contract to marry the boy to the plaintiff's daughter and for compensation for the loss sustained by the wife of articles and provisions in consequence of such breach is governed by Art 35 cl (g) of the second schedule to the Provincial Small Cause Courts Act (IX of 1887) and is therefore not cognisable by a Provincial Small Cause Court *Al v Under Dass v Koylash Chunder Dass I I P 15 C 1c 833 followed Moidin KUTTI v IOKPER (1913)*

I L R 38 Mad 274

Sch. II, Art 35 (i)—

See EXECUTION OF DECREE

I L R 33 All 306

Sch. II, Art 35—(L)—Threat to assault—Injury to the person—Exemption from the cognizance of the Court of Small Causes A suit to recover damages from the defendant who ran after the plaintiff with a shoe in hand threatening to beat him and using abusive language but did not actually touch the plaintiff's person is a suit for injury to the person within the meaning of Art 35 sub cl (i) of the second schedule of the Provincial Small Causes Courts Act (IX of 1887) and is not within the cognizance of the Small Cause Court **GOVIND BALKRISHNA v PANDURANG VITAYAK (1912)** I L R 36 Bom 443

Sch. II, Art 38—

L.—Suit for money for

maintenance under an agreement cognisable by a Small Cause Court A suit to recover from the defendant paid by expended by the plaintiff for the maintenance of their grand mother for which under the agreement of partition between them the defendant was bound to pay a certain quantity is a suit of a small cause nature the basis of the suit being the agreement **Ramaswamy Pantulu v Narayana moorthy I I Mad L J 480 applied ANNASAMI SASTRIAL v RAMASAMI SASTRIAL (1913)**

I L R 111 Mad. 553

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Sch. II, Art 38—*contd.*

2.—Suit relating to maintenance—Jurisdiction Plaintiff's father in law left by his will certain property to plaintiff and three brothers in law charged with the payment of Rs 36 per annum to the plaintiff during her life Subsequently the brothers in law agreed amongst themselves to divide their liability for payment of this annuity so that each became liable individually for the payment of Rs 12 per annum *Held* on suit brought by the annuitant to recover arrears of her maintenance allowance against one of her brothers in law that the suit was a suit relating to maintenance and that the cognizance thereof by a Court of Small Causes was barred by Art 38 of sch II to the Provincial Small Cause Courts Act. 1887 **Mohadeo has v Deo Narain Pasi 2 A L J 617 and Masum Ali v Mofsin Ali (1890) All Weekly Notes 201 distinguished MUNIR UD DIN v SAMIR U NISSA BIBI (1917)**

I L R 40 All 52

Sch. II Art 41—

See S 2a

I L R 41 All 51

Contribution suit for Rent decree—Execution by assignee against a joint tenant—Payment under compulsion—Suit is cognisable by Small Cause Court—Bengal Tenancy Act (I of 1885) s 148 (h)—Contract Act (I of 1872) ss 69 70 Where an assignee of a rent decree having attached the moveables of plaintiffs who were joint tenants of the holding with the defendants the plaintiffs satisfied the decree and then sued the defendants for contribution *Held* that the suit was excluded from the cognizance of the Small Cause Court by Art 41 of the Second Schedule to the Provincial Small Cause Courts Act That if it were assumed that an assignee of a decree for rent is precluded from executing it even as a decree for money the decree itself was not extinguished and could be executed on the assignee obtaining an assignment of the landlord's interests or on his retransferring the decree to the landlord Where therefore on the assignee's application for execution the Court ordered execution to issue and the plaintiff paid in the decretal amount under compulsion of legal process *Held* that the plaintiff was entitled to sue for contribution under s 70 as al o under s 69 of the Contract Act The benefit which the defendants got was that they were absolved from the liability to be pursued either by the assignee or assignor of the decree If a payment made to an assignee of a rent decree is accepted by him the decree is satisfied and there is nothing in s 148 (f) of the Bengal Tenancy Act to prevent it **RAJANI KANTA GHOSH v RAMA NATH ROY (1914)**

19 C W N 458

Contribution—Where a decree was obtained against 3 brothers for maintenance of fourth brother's widow and one paid and sued his brothers *Held* that the suit was one for contribution and cognizable by Small Causes Court **ANU RAM v NITHAN LAL**

I L R 40 All 135

PROVISIONAL APPOINTMENT

See UNIVERSITY LECTURERSHIP

I L R 41 Calc. 518

PROVISO

object of—

See PRE S ACT (I OF 1910) s 3 (1)
PROVISO I L R 39 Mad 1164

use of, to interpret section—

See LAND IMPROVEMENT LOANS ACT
(XIX OF 1883) s 7 (1) (c)
I L R 41 Mad 691

PROXY

See CIVIL PROCEDURE CODE (ACT V OF
1909) O XXIII R 3
I L R 38 Mad 850

PUBLIC AUTHORITY

See NEGLIGENCE 5 Pat L J 359

PUBLIC BODY

S e ELECTION I L R 40 Mad. 941

PUBLIC CHARITY

See CIVIL PROCEDURE CODE (ACT V OF
1908) s 92

See HINDU LAW RELIGIOUS ENDOWMENTS.

Suit respecting public charities—

Civil Procedure Code (Act V of 1909) s 92 115—
Suit with *Alto ate* General's sanction in respect
of public charities—Court fee—Court Fees Act (I of
1870) s 4 II Art 1 (i)—Striking off a prayer
for relief—Advocate's General's sanction if necessary
—Interlocutory order—Revision by High Court A
plaint in a suit under s 92 of the Civil Procedure
Code (relating to public charities) should bear a
Court fee stamp of Rs 10 only as required by
Art 17 cl (iv) of Sch II of the Court Fees Act
Thaluri v Brahma Narain I L R 19 All 60
Guridhari Lal v Ram Lal I L P 21 All 200
relied on Where the plaintiffs in such a suit
being ordered by the Judge to value the suit and
pay of *valorem* Court fee on such value moved the
High Court without waiting for the dismissal of
the suit for non compliance with the order Held
that the order in effect amounted to a denial of
jurisdiction and though interlocutory was a fit
one for interference in revision by the High
Court A prayer for relief in a plaint in such
a suit not covered by those specified in s 92 may
be struck off on the application of the plaintiff
the sanction of the Advocate General for striking
off such a prayer being unnecessary *Bairee Das*
v Chandra Lal I L R 32 Cal 789 referred to
RAMCHAND DAS v MOHUNT SHIVARAM DAS (1910)
14 C W N 932

PUBLIC CONVEYANCE

See BOMBAY PUBLIC CONVEYING ACT
See HACKNEY CARRIAGE ACT

PUBLIC DEMANDS RECOVERY ACT (BENG
I OF 1895)

See BIHAR AND ORISSA PUBLIC DEMANDS
RECOVERY ACT 1914

4 Pat L J 475

S e PESKOSH I L R 45 Cal 866

S SELF NOT APPROPRIATION OF REVENUE
I L R 42 Cal 765

sale under—

See OCCUPANCY HOLDING
16 W N 351

PUBLIC DEMANDS RECOVERY ACT (BENG
I OF 1895)—contd.

Suit for recovery of
possession on declaration that certificate sale void
ab initio—Secretary of State if necessary party
Where a plaintiff sues to recover possession of pro
perty sold under the Public Demands Recovery
Act on the ground that the certificate and sale
under it had in no way affected his rights being ab
initio null and void and does not seek to set aside
the sale he is not bound to make the Secretary of
State a party to the suit *Gobinda Chandra v*
Hemanta Kumar I L R 31 Cal 159 S C W N
657 distinguished *RAGHURAJ SINGH v MAHARAJ*
LAL (1910) 14 C W N 608

s 9 (2) (3)—Certificates sale when is
vitiated by irregularities—Nullity and irregularity
distinction between—Requisition not signed—Certi
ficate not in due form—Certificate signed mechani
cally—Certificate Officer to exercise discretion in
issuing certificate—Proof of service of notice—Entry
in order sheet if sufficient—Presumption in favour of
regularity of official acts if arises when proceedings
shown to have been carried on carelessly and in
slovenly manner No hard and fast line can be
drawn between a nullity and an irregularity and
when the provision of a statute has been contrave
ned if a question arises as to how far the pro
ceedings are affected thereby it must be deter
mined with regard to the nature scope and object
of the particular provision violated An Appel
late Court should not dismiss a suit on the ground
only that the plaint was not duly signed and
verified such a defect does not affect the merits
of the case or the jurisdiction of the Court So
also proceedings taken upon a certificate should not
be treated as void merely because the requisition
under s 9 (2) of the Public Demands Recovery
Act was not duly signed and verified But there
can be no valid sale on a certificate which did not
specify the amount due and otherwise did not
comply with the forms laid down by the Act and
which the officer issuing the certificate appeared
to have signed mechanically The obvious inten
tion of s 9 (3) of the Public Demands Recovery
Act is that the officer shall use his discretion as to
the issue of a certificate determine whether the
case is a proper one for it whether the money be
due or not *Baynath v Ramgat* L R 23 I A
45 s c I L R 23 Cal 775 and *Baynath v*
Ramgat S C L J 637 followed The mere entry
in the order sheet of the certificate case that notice
had been served is no proof that service was
effected When the circumstances of the case
show that the proceedings have been carried on in a
careless or slovenly manner the Court will be slow
to apply the maxim *omnia praesumuntur rite et*
solemniter esse acta donec probetur in contrarium
MOHTUDDIN v PIRTHCHAND LAL CHOWDHURY
(1914) 19 C W N 1159

s 10—Public Demands Recovery Act
(Beng I of 1895) ss 10 15 17—Arrears of road
cess—Payment—Appropriation—Contract Act (IX
OF 1872) ss 59 60—Certificate and sale when no
arrears if valid—Regular suit to set aside if im
—Imitation—Special Imitation not applicable A
debt under the Public Demands Recovery Act is
nothing but a debt and the law laid down in
ss 59 and 60 of the Contract Act which is nothing
more than a codified statement of the general law
as to the appropriation of payments made by the
debtor is applicable to payments made on account

PUBLIC DEMANDS RECOVERY ACT (BENGAL OF 1895)—contd.

s 10—co 1d

of arrears of road cess in the Collectorate *Ganga Bazar Singh v Mahomed Jan I L R 33 Calc 1193* s c 10 C W N 915 *J v Jara Vohar Sen v Uma Vath Gula I L R 35 Calc 636* s c 12 C W N 616 referred to. The Collector therefore has not authority to appropriate payments made in liquidation of specific arrears of road-cess towards previous arrears, and a certificate sued under the Public Demands Recovery Act in respect of the later arrears so paid off is not a valid certificate under the Act. A sale held in pursuance of such a certificate is without jurisdiction the foundation for the exercise of jurisdiction by the Revenue authority being wanting in such a case. When the arrears in respect of which the certificate purports to have been sued did not exist a suit to set aside the sale held in execution of the certificate lies under the ordinary law s 10 of the Act and the special limitation provided therein for suits to modify or cancel a certificate not applying to such a suit. *Januldhar Lal v Gosiain Lal Bhaya 13 C W N 710* followed. *NANDAN MISIR v LALA HARAKH SARAIN (1910) 14 C W N 607*

ss 10 and 31—What is a proper notice

—Onus of proper service—Public Demands Recovery Act (Bengal of 1895) ss 10 31 Service of notice under s 10 of the Public Demands Recovery Act 1895 must be effected in strict conformity with that section. Where service of notice is effected by fixing it on the outer door of the judgment debtor's house the onus is clearly upon the defendant relying on the notice to show that there was proper service as required by law. *Rakkhal Chandra Pal Chowdhury v The Secretary of State for India I L R 19 Calc 603* and *Joy nar Sahu v Debi Prasad S C L J 355* followed. *NEHAJ CHARAN DE v SECRETARY OF STATE FOR INDIA (1917)*

I L R 45 Calc 498

ss 12 15 17 24 26

See CERTIFICATE OF SALE

I L R 37 Calc 107

ss 20 21—Sale without notice to representatives of a deceased judgment debtor is a nullity

—Failure of Collector to act under s 21 though deposit duly made if a ground for treating sale a nullity—Irregularity—Sale voidable only—Proper remedy. On 14th March 1898 a Court holding a sale under the Public Demands Recovery Act was apprised of the death on 10th March 1898 of one of the judgment debtors but the property was nevertheless sold without notice to the legal representatives of the deceased judgment debtor. In a suit by the purchaser brought more than a year after to recover the land Held that the legal representatives of the deceased judgment debtor could not ask the sale to be treated as a nullity on this ground by way of defence in this suit. It was an irregularity which made the sale voidable by either a proceeding under s 311 of Act XIV of 1882 or a suit brought within one year as contemplated by Art 12 (a) of the Limitation Act of 1877. Nor could the sale be declared a nullity in such a suit upon proof only of improper rejection by the Collector of an application to set aside the sale although the amounts mentioned in s 21 of the Public Demands Recovery Act were duly deposited. *BEJIN BHUPAT BEPA v SASTI BIKRAN DATTA (1913)* 18 C W N 768

PUBLIC DOCUMENT

See EVIDENCE ACT (I of 18 2) s 30

I L R 36 All 181

See LIBEL I L R 48 Calc. 304

See REGISTER OF DEATHS

I L R 48 Calc 152

PUBLIC DRAIN

House drain—Tille—

Calcutta Municipal Act (Beng 111 of 1899) ss 3 cl (16) 256 31—Laying of a street in a municipality—its effect—Rights of the owner. The legal effect of the statutory vesting of a street in a municipality is not to transfer to the municipality the ownership in the site or soil over which the street exists. The effect of the statutory provision is merely to vest in them the property in the surface of the street road or drain and in so much of the actual soil below and air above as may reasonably be required for its control protection and maintenance as a highway or drain for the use of the public. The Court will not presume that the intention of the Legislature was to confiscate private property and vest it in a public corporation without compensation granted to the proprietor. The right of the owner was intended to be abridged only to the extent necessary for the discharge of the statutory duties imposed on the Corporation for the benefit of the public. The property of the local authority concerned does not extend further than is necessary for the maintenance and use of the highway as a highway that subject to this qualification the original owner's rights and property remain and that if the highway ceases to be a highway the owner becomes entitled to full and unabridged rights of ownership in the property. *Sundaram Ayyar v Municipal Council of Madura I L R 25 Mad 635* and *Madathapu Ramaya v Secretary of State for India I L R 97 Mad 386* followed. *Chairman of the Vaitathi Municipality v Aishori Lal Goswami I L R 13 Calc 171* *Modhu Sudan Kundu v Promoda Nath Roy I L R 20 Calc 73* *Chairman of the Hourah Municipality v Akhetra Krishna Mitter I L R 33 Calc 1290* *Ashal Chand v A mat Ali I L R 7 All 362* *Nagar Valab Narai v The Municipality of Dhandulka I L R 12 Bom 490* *The Municipal Commission rs of Madras v Sarangapani Mudaliar I L R 19 Mad 154* *Sundaram Ayyar v The Municipal Council of Madura I L R 25 Mad 635* *Madathapu Ramaya v Secretary of State for India I L R 97 Mad 386* *The Mayor of Tunbridge Wells v Baird (1896) A C 431* *Municipal Council of Sydney v Young (1898) 4 C 457* *Finchley Electric Light Co v Finchley Urban Council (1903) 1 Ch 437* *Foley v Clarist Trustees v Dudley Corporation (1910) 1 K B 317* *London and N W Ry Co v Westminster Corporation (1905) A C 46* *Lodge Holes Colliery Co v Wednesbury Corporation (1905) A C 33* *Batter sea Vestry v Council of London (1899) 1 Ch 414* referred to. *CUNENDRA MOHAN GHOSH v CORPORATION OF CALCUTTA (1916)*

I L R 44 Calc 689

PUBLIC FERRY

declaration of limits of—

See FERRY I L R 37 Calc 543

PUBLIC GAMBLING ACT (III OF 1887)

ss 1 3—Place—Bullock run of disused well surrounded by low wall of loose bricks—Common gaming house Held that the lower

PUBLIC GAMBLING ACT (III OF 1867)—
*contd***ss 1, 3—contd**

end of a bullock run round which in the shape of a semi circle was raised a low wall of loose bricks was a place within the meaning of the public Gambling Act, 1867 *King Emperor v Fattoo Mahomed Shermahomed I I R 37 Bom 651 followed Powell v The Kempton Park Race Course Co Ltd [1899] A C 143 referred to* **EMPEROR v MIAN DIN (1915)**

I L R 38 ALL 47**ss 3 4—**

1—Presumption—
Warrant not in accordance with provisions of Act **Held** that a warrant authorising the search of any house which the police officer to whom it was issued might think proper to search was not a legal warrant within the provisions of the Public Gambling Act 1867 **EMPEROR v HARGOBIND (1912)**

I L R 35 ALL 1

2—Common gaming house—Order for confiscation of money found on the persons of accused In the case of men convicted under s 3 or 4 of the Public Gambling Act 1867 the law does not contemplate the confiscation of money found on the persons of the accused **Emperor v Maturwa I L R 40 ALL 517 referred to** **EMPEROR v TULLA (1910)**

I L R 41 ALL 366

ss 3 4 5 10 and 11—Search warrant
—Endorsement of warrant by officer to whom it was issued—Procedure—Examination under s 10 of persons sent up as accused under s 4—Effect of order passed under s 11 When a search warrant has been issued by a Magistrate under the provisions of s 5 of the Public Gambling Act 1867 the police officer to whom it is addressed may endorse it over to another police officer provided that the latter is an officer to whom such a warrant might have been issued in the first instance **Emperor v Kashi Nath I L R 30 ALL 60 followed** **Effect of an order under s 11 of the Public Gambling Act 1867 and procedure necessary to terminate the legal liability of persons in whose favour such an order is passed whilst proceedings under s 4 of the Act are still pending against them discussed** **EMPEROR v MAHADEO**

I L R 42 ALL 385

ss 8 and 10—Act (Local) No 1 of 1917 United Provinces Public Gambling (Amendment) Act s 2—Instruments of gaming—Cowries—Value of evidence of person examined under s 10 Cowries if used for the purpose of carrying on gaming are instruments of gaming within the meaning of s 1 of the Public Gambling Act 1867 as amended by s 2 of Local Act No 1 of 1917. A person examined as a witness under the provisions of s 10 of Act III of 1867 is not examined as an approver within the meaning of the Code of Criminal Procedure **EMPEROR v BHAGOT LAL**

I L R 42 ALL 470

ss 4 8—Conviction for being found in a common gaming house—Forfeiture of money found in the house legal A conviction under s 3 or s 4 of the Public Gambling Act 1867 differs from a conviction under s 13 in that in the case of the latter the forfeiture of money found with the persons convicted is not lawful but in the case of the former the forfeiture of money or securities for money found in a common

PUBLIC GAMBLING ACT (III OF 1867)—
*contd***ss. 4, 8—contd**

gaming house is lawful **Emperor v Tola I L R 26 ALL 270 referred to** **EMPEROR v KIPAYAT (1918)** **I L R 41 ALL 272**

ss 5—**See S 3****I L R 42 ALL 385**

Jurisdiction—Power to issue search warrant— Officer invested with the full powers of a Magistrate—Sub divisional officer issuing warrant for search outside his sub division **Held** that a search warrant issued under s 5 of the Public Gambling Act 1867 by a first class Magistrate was not invalid by reason of the fact that the house to be searched was situated outside the limits of the tahsil in respect of which such Magistrate had been appointed sub-divisional officer **EMPEROR v ABHU SINGH (1912)**

I L R 34 ALL 597**ss 8—****See S 4****I L R 41 ALL 272****ss 10 and 11—****See S 3****I L R 41 ALL 385 40**

ss 12— Mere game of skill—Game of chance **Held** that a game which is in fact only to a very slight extent a game of skill and almost entirely a game of chance is not a game which is excluded by reason of s 12 of the Gambling Act 1867 from the previous provisions of that Act **Hari Singh v King Emperor G C L J 708 distinguished** **EMPEROR v AHMAD KHAN (1911)** **I L R 34 ALL 96**

ss 13—

Gaming in public place
—Seizure of money as well as instruments of gaming illegal Where persons are found gambling in a public place in circumstances to which s 13 of the Gambling Act 1867 is applicable although instruments of gambling etc may be seized by the police there is no authority for the confiscation of money found with the persons arrested **Emperor v Tola I L R 26 ALL 270 followed** **EMPEROR v MATURWA (1918)** **I L R 40 ALL 517**

PUBLIC GOOD**See DEFAMATION I L R 41 Calc 514****PUBLIC NAVIGABLE RIVER**

Dry land appearing through recession assessed with revenue— Suit to declare beds formed parts of permanently settled estate—**Onus—** Plaintiff to prove river non navigable at permanent settlement—**River beds shown within boundaries of mouzas in thak and revenue maps sufficient to prove beds parts of estates—** **Thak and survey maps evidentiary value of** Pennell's map which was based on surveys made between 164 and 1773 indicated the existence of Kaliganga and Dhulia (which were surveyed in 1800 60 as large navigable rivers) as large navigable rivers and the map prepared by Alexander Hodges in 1831 indicated that at that time Dhulia was a large navigable river **Held** that it lay on the Plaintiff who sued for a declaration that lands recently the beds of these rivers but now dry ly reason of the rivers receding from their beds were included in their permanently settled estates to prove their allegation that at the date of the permanent settlement of their adjoining remembrances in 1703

PUBLIC PATHWAY—contd

persons alleging various acts of unlawful obstruction to the public way the initial and final orders must state accurately the specific obstruction caused by each and which he is required to remove unless it is alleged that all of them are jointly responsible for all the obstructions complained of. An order under the section should not be vague indefinite or ambiguous but such as to afford information by its terms to the person to whom it is directed what he is to do in order to comply with it. *Kali Mohan Kar v Lakari Chandra Das* 11 C L J 114 followed. It is desirable that responsible opportunity should be given the parties proceeded against under s 133 to show cause under s 135 (b) or adduce evidence under s 137 (1). The report or other information on which the Magistrate has passed the conditional order under s 133 is not evidence against the person to whom it is directed. *Srinath Roy v Aswaddi Halder* 1 L F 24 Cal 395 approved. An order under s 133 cannot even by consent of parties be based on information gathered at a local inquiry. *Chandra Nath Mandal v Kampani* 10 C L J 480 approved. **RAJNORAN KARMAKAR v EMERSON** (1916) 1 L R 44 Cal 61

PUBLIC POLICY

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XVIII s 3

1 L R 38 Mad 850

See CONTRACT 4 Pat L J 542

See CONTRACT ACT 1872—

b 23

S 24 1 L R 42 Bom 339

S 25 1 L R 37 Bom 250

See DEKHN AGRICULTURISTS RELIEF ACT (XVII OF 1879) s 15B cl (2)

1 L R 35 Bom 190

See PALMS OR TURNS OF WORTHIP

1 L R 42 Cal 455

See SLAVERY BOND

1 L R 42 Cal 742

See TRADE MARK 1 L R 40 Cal 814

See TRAFFICKING IN OFFICES

1 L R 43 Cal 115

See TRANSFER OR PROPERTY ACT (IV OF 1882) s 64 1 L R 37 All 631

Inducing Public Officers for consideration to use influence—

See CONTRACT 25 G W N 297

PUBLIC PROSECUTOR

See COMPEL OF COURT

1 L R 41 Cal 173

See SANCTION FOR PROSECUTION

1 L R 41 Cal 448

Memorandum—Practice and Procedure—Criminal Procedure Code (Act V of 1898) ss 4 (1) 417 497—Acquittal or appeal from—The Legal Remembrancer of Bengal as Public Prosecutor for Bengal incompetent to go for an appeal from acquittal for the Government of Bihar and Orissa by a notification published in the Calcutta Gazette on 24th June 1898 the Legal Remembrancer of Bengal was to be ex officio Public Prosecutor in all cases before the High Court on its Appellate Side

PUBLIC PROSECUTOR—contd

except Calcutta cases. On 1st April 1912 the Government of Bihar and Orissa appointed Mr. Adams to be the Legal Remembrancer of that Province. Under instructions from the Government of Bihar and Orissa contained in their letter dated 23rd April 1913 (which did not appoint him Public Prosecutor for this case) the Legal Remembrancer of Bengal (through his Deputy) presented this appeal to the High Court on 2nd May 1913. Held that from 1st April 1912 the Legal Remembrancer of Bihar and Orissa became ex officio Public Prosecutor for that Province and that the mere fact that a person had been directed to present an appeal to the High Court from an order of acquittal did not involve his appointment as Public Prosecutor for Bihar and Orissa for the purposes of the case and that accordingly the appeal presented by the Deputy Legal Remembrancer of Bengal was incompetent. **DEPUTY LEGAL REMEMBRANCER BENGAL v GAYA PRASAD** (1913) 1 L R 41 Cal 423

Appeal against acquittal presented by Legal Remembrancer—Legal Remembrancer as Public Prosecutor—Criminal Procedure Code (Act V of 1898) s 417—Admissibility of evidence of a similar but unconnected transaction to prove the presence of the accused at a certain place and to rebut an alibi. The Legal Remembrancer is a Public Prosecutor within the meaning of s 417 of the Criminal Procedure Code. Where the accused was charged with cheating, a firm in Calcutta under s 40 of the Penal Code and it was alleged that he had, on a certain date sent a telegram to the firm from Cooch Behar purporting to come from their agents there evidence that he had sent a similar telegram on the same date to another firm in Calcutta purporting to come from their branch establishment in Cooch Behar is admissible to disprove the case of the accused that he was in Calcutta on such date and to corroborate the evidence of the witness connecting him with the despatch of the first mentioned telegram. **LEGAL REMEMBRANCER BENGAL v TULSI DAS BARODIA** (1918) 1 L R 48 Cal 544

Duty to produce all the evidence in his power bearing directly on the charge—Duty to call all the available eye witnesses in capital cases—Omission to examine material witnesses effect of—Inference adverse to the prosecution arising therefrom—Practice. The purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a Public Prosecutor is to represent not the police but the Crown and thus duty should be discharged fairly and fearlessly and with a full sense of the responsibility attaching to his position. It is not his duty to call only witnesses who speak in his favour. *Imperial v Dhanoo Das* 1 L R 4 Cal 171 discussed and explained. He should in a capital case place before the Court the testimony of all the available eye witnesses though they give different accounts. The rule is not a technical one but founded on common sense and humanity. *Fry v Holden* 8 C & P 600 followed. Where witnesses (who from their connection with the transactions in question may be able to give important information) are not called without sufficient reasons being shown the Court may properly draw an inference adverse to the

PUBLIC PROSECUTOR—contd

prosecution *Empress v Dhanoo Kanai Lal P*
Chatterji referred to. A conviction under s 114
 of the Penal Code cannot stand where the abet-
 ment charged necessarily requires the presence of
 the abettor. To come within the section the
 abetment must be complete apart from the pre-
 sence of the abettor. *I AM RANJAY ROY v IN*
REBOR (1914) **I L R 42 Calc 422**
19 C W N 23

PUBLIC RELIGIOUS TRUST

See PARTIES **I L R 42 Calc 1135**

Trespasser suit for
removal of—Civil Procedure Code (Act 1 of 1908)
s 92—Advocate General consent of. A suit for the
 removal of a trespasser in possession of trust pro-
 perty is not a suit of the kind contemplated by
 s 92 of the Code of Civil Procedure and therefore
 for the institution of such a suit no consent of the
 Advocate General is necessary. *Budree Das Wulim*
v Chooni Lal Johurry **I L R 33 Calc 789** fol-
 lowed. *Yeti Pama Jogiah v Venkatacharyulu* **I L**
P 26 Mad 459 *Sajdur Poya Clowdhury v Gour*
Mohan Dato Baidhar **I L R 94 Calc 419** *Budh*
Singh Dudhuria v Naradbaran Poo **2 C L J 437**
Muhammad Abdul Majid Khan v Ahmad Siad
Khan **I L R 35 All 403** referred to. *AYATU*
WESSA BIBI v KUTLU KHALIFA (1914)
I L R 41 Calc 749

PUBLIC RIGHT OF WAY

Obstruction—Special damage—Village
pathway obstruction of—Special damage if need
be proved. Where in a suit by the plaintiff for
 the declaration of a public right of way alleging
 special damage it appeared that a previous
 suit for a similar declaration had been dismissed
 on the ground that the plaintiff did not disclose
 any cause of action (there being no allegation
 that plaintiff had suffered special damage) but
 in dismissing the suit the Court had expressly
 stated that the plaintiff was not debarred from
 bringing a fresh suit properly framed. Held that
 the second suit was not barred by *res judicata*.
 Proof by the plaintiff that he and his servants
 had been compelled to go by a longer route and
 thereby incur additional expense was sufficient
 proof of special damage. Infringement of a village
 pathway in which plaintiff had got a right with
 other villagers by reasons of a grant implied from
 long user does not require proof of special damage
 to give the plaintiff a cause of action. *HARTBAR*
DAS v CHANDRA KUNAR GUHA (1918)
23 C W N 91

Right of marching in procession
with a car—Suit for declaration of right—Injunc-
tion re training interference with the right. Plaintiffs
 sued on behalf of themselves and of other members
 of a religious community to have a declaration of
 their right of marching in procession with a car
 along a particular public road to certain temples
 and for an injunction restraining the defendants
 from interfering with the plaintiffs. The defend-
 ants contended that the plaintiffs had no right to
 march along the road. The lower Courts dismissed
 the suit on the ground that the road being public
 the plaintiffs could not sue unless special damage
 were shown and proved. On second appeal by
 the plaintiffs. Held reversing the decree and
 allowing the claim that the suit was not for
 removal of a public nuisance but for a declaration
 of the right of an individual community to use the

PUBLIC RIGHT OF WAY—contd

public road. Every member of the public and
 every sect has a right to use the public streets in a
 lawful manner and it lies on those who would
 restrain him or it to show some law or custom
 having the force of law abrogating the privilege.
Sadhapachariar v A Pama Pao **I L R 96 Mad**
376 followed. *BASLINGAPPA PARAPPA v DHAR*
MAPPA BASAPPA (1910) **I L R 31 Bom 571**

Metalled and unmetalled portions—
—Equally part of road—Right of public way. Where
 the question is as to the breadth of a public road
 it must be taken that all the ground over which
 the public have a right of way is part of the road.
 The mere fact that part of the road may be metalled
 for the greater convenience of the traffic will not
 render the unmetalled portion on each side any
 the less a public road or street. *MUNICIPAL*
BOARD OF AGRA v SUDARSHAN DAS SHASTRI
 (1914) **I L R 37 All 9**

PUBLIC SERVANT

See PENAL CODE ss 21 161—190

ss 339 393 **I L R 37 All 353**
I L R 40 All 28

—assaulting in execution of duty—

See RIOTING **I L R 41 Calc 836**

—instigating a—

See ABETMENT OF AN ABETMENT

I L R 46 Calc 607

—unpaid apprentice if—

See PENAL CODE s 21

15 C W N 319

PUBLIC STREET

See BOMBAY DISTRICT MUNICIPALITIES
 ACT (BOM III OF 1901) ss 70 113
 123 **I L R 42 Bom 454**

See HIGHWAY

See RAILWAY COMPANY

L R 43 I A 310

See RAILWAYS ACT (IX OF 1890) s 7

I L R 38 Bom 565

—definition of—

See PUNJAB MUNICIPAL ACT 1911 s 2
I L R 1 Lah 117

PUBLIC TEMPLE

—manager no right to remove idol—

See HINDU LAW **I L R 44 Bom 466**

PUBLIC TRUST

See CIVIL PROCEDURE CODE (1908)
 s 92

See HINDU LAW

See MUHOMEDAN LAW

Co trustees—Act of on
of two trustees without consent of the other—Grant
of mortgage—Transaction whether valid—Rule of
act of majority of trustee applicability of to cases
of two co trustees. One of two trustees of a public
 trust cannot grant a mortgage or effect any similar
 transaction in respect of the trust properties so as
 to bind the trust without the consent of the
 other trustee even though the latter on consulta-
 tion wrongly refuses his consent. The rule that
 the act of a majority of the trustees is valid,

PUBLIC TRUST—*could*

provided they gave proper opportunity to the others to consider the advisability of the act in question does not apply to cases where there are only two trustees as one of them alone cannot constitute a majority *Bairdi Andarjanam v Raman Nambudri* 1 L R 24 Mad 296 and *Wilkinson v Main* 2 C J 836 followed *CHERU NARAYANAN NAMBUDERI* (1918)

1 L R 42 Mad 335

PUBLIC WAY

See CIVIL PROCEDURE ACT 1908, s 91

See HIGHWAY

See WAY

obstruction to by building a wall—

See PENAL CODE (ACT XLV OF 1860)
ss 147 426 447

1 L R 39 Mad 57

An action for obstructing a public road is not maintainable unless the plaintiff proved some injury or damage peculiar to himself and different from the damage that would be suffered by other people who used the road. Special damage does not mean serious damage but means damage of a special nature that is damage affecting the plaintiff individually or damage peculiar to himself his trade or calling *BATHAM HOTETA AND ORS v SIDRAM DAS AND ANR* 25 C W N 95

PUBLIC WORKS DEPARTMENT

negligence of servants of—

See TORT 1 L P 39 Mad 351

PUBLICATION

See CONTEMPT OF COURT

1 L R 45 Cal 189

See COPYRIGHT 1 L R 98 All 484

of picture copyright in England

See CONTRACT ACT 1872 s 23

1 L R 44 Bom 720

of proceedings in pending case not permissible till case comes on for hearing—

See CONTEMPT OF COURT

1 L R 44 Bom 443

proof of—

See EVIDENCE

1 L R 39 Cal 522 606

of notice of claims in Government Gazette sufficient for purposes of s 14 of Court of Wards Act—

See COURT OF WARDS ACT (No. ACT I OF 1906) s 14

1 L P 44 Bom 493

PUBLICITY

See FETTER & BUDDHIST LAW—ADOPTION

1 L R 45 Cal 1

PUISNE MORTGAGE

See MORTGAGE 1 L P 37 Cal 232

1 L P 37 All 304

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 67

1 L R 40 Mad 7

rights of—

See CIVIL PROCEDURE CODE (1908)

O XXXV ER 4 AND 5

1 L R 38 All 798

PUJARI

dispute concerning to act in—

See CRIMINAL PROCEDURE CODE (V OF 1898) s 147 1 L R 37 Cal 545

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 9 AND 92

1 L R 45 Bom 683

PUNISHMENT

See PENAL CODE ss 63 TO 75

Member of a Criminal Tribe—

Second conviction—

See CRIMINAL TRIBES ACT (III OF 1911)

s 23 1 L R 45 Bom 1062

PUNITIVE POLICE

Costs apportionment of—
Police Act (V of 1861 as amended by Act III of 1895) s 16 cl (4) 16—District Magistrate duty of—Amount realized an apportionment made by a Deputy Magistrate effect of—Secretary of State for India suit against if maintainable An apportionment of costs made by a Deputy Magistrate under s 16 cl (4) of the Police Act for maintenance of a police force is illegal Where therefore an apportionment of costs having been made by a Deputy Magistrate and which on appeal having been affirmed by the District Magistrate the amount of costs assessed was recovered from a person under s 16 of the Act by distress warrant held that the amount not being legally realized a suit for the recovery thereof would lie against the Secretary of State for India in Council *Singh Bhojra v The Secretary of State for India* 1 L P 28 Bom 114 referred to *BATHAM CHANDRA NAO v SECRETARY OF STATE FOR INDIA* (1912)

1 L R 40 Cal 450

PUNJAB

Permanent Tenancy Act—

See LANDLORD AND TENANT

1 L R 47 Cal 1

PUNJAB ACT II OF 1913

See PREEMPTION OF MORTGAGES

1 L P 2 Lah 24

PUNJAB ALIENATION OF LAND ACT XIII OF 1900

s 2 (1) (b)—whether right of a temporary lessee to take the produce of trees is agricultural land—

See PUNJAB PREEMPTION ACT 1913 s 3

1 L R 1 Lah 567

s 16—Prohibits only a sale and not a temporary alienation of agricultural land—

See EXECUTION OF DECREE

1 L R 1 Lah 190

s 16—whether Insolvency Court can attach land of an agriculturist insolvent—

See INSOLVENCY 1 L R 2 Lah 78

s 17—

See REGISTRATION ACT (V OF 1908)

1 L R 2 Lah 702

PUNJAB COLONIZATION OF GOVERNMENT LAND

See COLONIZATION OF LAND

PUNJAB COURTS ACT 1914

See PUNJAB LAND REVENUE ACT 1897
s 11 I L R 1 Lah 387

s 41 (3)—

See *conf. appeal on point of custom—Time of appeal filed beyond time on account of delay in obtaining a certificate—Custom—Khan Khani—Largarwal Jats Tahsil Kharian—Appellant of 1st class under instructions from her husband—Appellant on 8th February 1919 filed a second appeal in the Chief Court against the decree of the District Judge dated 26th August 1918. She did not apply to the latter for a certificate till 21st November 1918 explaining that she was not aware of the necessity of a certificate till advised by a lawyer at Lahore. The District Judge granted her a certificate on 1st February 1919. It was held that under the circumstances and having regard to the provision of cl (3) of s 41 of the Punjab Courts Act 1914, the appeal should be held to be within time. It was also held that among Largarwal Jats of Tahsil Kharian who recognize the practice of making a Khani, a widow who has received instructions in that behalf from her husband has full power to make a partition for a Khani. *Prigat Singh v. D. Singh of Gurgaon*, 1st paragraph 39 and 41 referred to. *MUSAMMAT ALAM BEGUM LATTO* I L R 1 Lah 245*

See *conf. appeal on question of custom—Necessity for a certificate—Adoption of custom as among Brahmins of Amritsar Held following Mussamat Begum v. Kharian (7 P R 1919) that the question of custom is not a question of law but a question of fact and that on the other hand it is not under all circumstances a question relating to the validity or the existence of a custom except in so far as in proving or disproving the validity or existence of a custom a party to a suit may be held to be entitled to an initial presumption in his favour on the strength of a generally accepted rule of custom. Held also that in the present case having regard to the decision in *Lahori Dair v. Thakur Das* (149 P R 1893) the custom problem must be regarded as one relating to the existence of a custom governing the question of the adoption and therefore a certificate under s 41 (3) of the Punjab Courts Act was necessary. *Allah Din v. Salam Din* (96 P R 1915) referred to. *MUSAMMAT PAM RAKHI v. MEHA RAM* I L R 2 Lah 167*

PUNJAB COURT OF WARDS (ACT II OF 1905)

ss 8 and 10—Court of Wards assuming superintendence of property in which the ward has no interest—Action ultra vires—Notice to Deputy Commissioner not necessary before filing a suit regarding such property. Held that if the Court of Wards purporting to act under s 8 of Punjab Act II of 1903 wrongly assumes superintendence of the property of other persons in which the ward has no share its action is ultra vires and it cannot be said that it has assumed superintendence under the powers conferred upon it by the Act though it may have purported to act in accordance therewith. If the Deputy Commissioner acts ultra vires any person affected thereby can object. It is not necessary in such a case to give this officer notice under s 19 of the Act before filing a suit. *TARA SINGH v. GAYDA SINGH* I L R 2 Lah 151

PUNJAB COURT OF WARDS (ACT II OF 1905)—contd

ss 11 and 12—

See *Waqf NAMA* I L R 42 All 609

Injunction against person out of Jurisdiction—

See *REGISTRATION ACT 1877* ss 17 87
125 II W N 123

PUNJAB LAND REVENUE ACT (XVII OF 1857)

s 44—

See *MAHOMMEDAN LAW—FINDOWMENT*
I L R 40 Calc 297

s 117 (2) (b)—Decree by Revenue Officer treating case as a Civil Court what it must contain—Appeal where there is no legal decree—Civil Procedure Code Act V of 1908 s 33 O XX r 1—6 and O XXI r 1. Held that a Revenue Officer who tries a suit under the procedure laid down in s 117 (2) (b) of the Land Revenue Act must record a judgment and a decree containing the particulars required by the Code of Civil Procedure to be specified therein and that a decree sheet signed by the Court in which only the amount of costs incurred by each party is specified but which otherwise has been left blank is no decree at all and that a paragraph in the judgment not drawn up in the form of a decree and not embodied in a separate form is not a decree and therefore no appeal is competent. *Dulhan Golab Koor v. Padma Dulari Koor* per *PIGOT J* (1 I P 19 Calc 463 F B) approved. *GELA RAM v. GANGA RAM* I L R 1 Lah 223

s 117 (2) (c) (As amended by the Punjab Courts Act III of 1914)—Appeal from decree of Assistant Collector in determining a question of title lies to District Judge. Held that since the substitution of the phrase Subordinate Judge for District Judge in s 117 (2) (c) of the Punjab Land Revenue Act by the Punjab Courts Act III of 1914 an appeal from the decree of an Assistant Collector in the matter of the determination of a question of title lies to the Court of the District Judge. *SADDA SINGH v. KIRPALLA* I L R 1 Lah 337

ss 141 153—Suit to recover price of barley sold by Revenue Officer

See *JURISDICTION (CIVIL OR REVENUE)*
I L R 2 Lah 302

s 158 (1) and (2) XVII—Civil suit to rectify grievance arising out of a partition

See *JURISDICTION (CIVIL OR REVENUE)*
I L R 1 Lah 298

PUNJAB LAWE ACT 1872—

No bar to suit to establish rights to property attached by Insolvency Courts as belonging to the insolvent—

See *INSOLVENCY* I L R 1 Lah 147

s 5—

See *CUSTOM* I L R 45 Calc 450

Where custom not proved whether Court can apply personal law

See *CUSTOM (SUCCESSION)*
I L R 2 Lah 98

s 27

See *INSOLVENCY* I L R 37 Calc 418

PUNJAB MUNICIPAL ACT, 1911—

s 11 (10)—Bye Laws of Delhi Municipality inconsistent with the provisions of the Act and unenforceable. By one of the bye laws of the Delhi Municipality framed under s 188 of the Punjab Municipal Act occupiers of stables used for more than six animals were required to obtain a licence from the Committee and the word occupier was defined as meaning the person who is responsible for the letting or sub letting of the premises to the person in charge of animals and may include the owner. The Municipal Act itself in paragraph (10) of s 3 however defined occupier as including an owner in actual occupation of his land or building etc. The petitioner was owner of stables which he had leased to one R. M. and in which more than six animals were stabled without a licence. The petitioner was fined Rs 10 for a breach of the bye laws. *Held* that the definition of occupier as given in the bye laws cannot be enforced in so far as it is inconsistent with that given in the Act itself. *Narayan Chandra Chatterjee v Corporation of Calcutta* (4 Indian Cases 259) followed. *Held* also that the bye law making the owner responsible in a case where he is not in actual occupation and has no power to control the acts of his tenant with regard to the use of the premises leased, is manifestly unjust to the owner and hence unenforceable and that the English law as to the necessity of bye laws being reasonable is applicable to bye laws framed in the exercise of their statutory powers by Municipal Boards in India. *Emperor v. Bal Kishan* (1 L. R. 24 All 439) followed. *Joti Persaud v. The Crown* 1 L. R. 2 Lah 239.

s 3 (13) (b)—Definition of public street. Presumed dedication of road in a private market (Ganj) to the public—Dedication for a limited purpose. The plaintiffs appellants were the absolute owners of Nawab Ganj a market in the City of Karnal. The Ganj was built in the form of a Katra or rectangular close to which entrance was obtained by four gates. One of the gates was missing at the time of institution of the suit. The others existed and were shut at night. Round the close was a series of shops which were leased to grain merchants. The enclosure thus formed was a narrow courtyard on the floor of which the tenants piled up their grain in separate heaps and under the courtyard were masonry bins for storage. The courtyard was neither drained lighted nor cleaned by the Municipality and was by its nature accessary to the shop property and let by the appellants as such to their shop tenants. Recently the Municipal Committee constructed a metalled road through the Ganj on the plea that the area over which the road was laid was a public street under the Municipal Act. The Chief Court held that there existed through this Ganj a public right of way and that this had been acquired by reason of dedication as such by the owner. There was admittedly no dedication expressly or in writing but the Chief Court considered that as the space between the shops had been used by all members of the public who came in to buy and sell grain without any interruption there was a presumption that the owner intended the members of the public to make use of the space left vacant or a part of it as a highway. *Held* that in such cases it is of crucial importance to distinguish between the grant to the public as such of a right of way and the permission which naturally flows from the use of the ground as a passage for visitors to or traders with

PUNJAB MUNICIPAL ACT 1911—contd

the tenants whose shops abut upon it. That it was extremely doubtful in the present case whether the term dedication could with propriety be applied to what took place. If the term be employed it could only be in this sense that the dedication of the *solium* of the courtyard was dedication, not to the public but to the uses of the shop keepers and their customers the principal being the storing and display of grain. *Held* also that the fact that members of the public get access to a place which is used by customers and might or might not pass through it did not justify an interference of dedication. A person dedicating land to public use may place such limits as he wishes upon the dedication if he makes those limits clear and definite although there can in law be no such thing as a public right of way constituted by dedication to only a section of the public. *H. Pool v. Huskin* on (M and W 327) per BARON PARKE referred to. **NAWAB BAHADUR MUHAMMAD RUSTAM ALI KHAN v. MUNICIPAL COMMITTEE OF KARNAL** 1 L. R. 1 Lah 117.

— s 188—

See s 3

1 L. R. 2 Lah 239

PUNJAB PRE EMPTION ACT I of 1913

s 3—Whether the right of a temporary lessee to plant trees and take their produce (sardrakhti) is agricultural land or village immovable property within the meaning of the Act—Punjab Alienation of Land Act XIII of 1900 s 2 (3) (6)—General Clauses Act 2 of 1897 s 3 (9). The vendor in this case was the tenant of certain land under a lease made in 1888 in which it was stated that the land was leased waste *lagane* sardrakhti i.e. for the planting of a grove of trees or plantation. The lease was for seven years and after expiry of that period the lessor was to receive 1/4th of the produce of flowers fruits etc. of the land. Another condition was that if the lessor wanted to evict the lessee after the expiry of the seven years he would pay the latter the value of his sardrakhti. By a deed of sale made in 1914 the vendor sold his sardrakhti in the land i.e. the rights owned by him in the trees. The plaintiff sued for pre-emption in respect of this sale and the questions for decision were whether the subject of the sale came within the definition of (1) agricultural land in the Punjab Alienation of Land Act, s 3 read with the Punjab Alienation of Land Act 1900 s 3 (3) (6) as being a share in the profits of an estate or holding or (2) immovable property under the Punjab Pre-emption Act s 3. *Held* that the temporary rights which the vendor had in the produce of the trees under the lease did not constitute him owner of a share in the profits of the holding and that consequently the subject of the sale was not agricultural land within the meaning of s 3 of the Punjab Pre-emption Act. *Held* also that the temporary rights sold were not immovable property under the Punjab Pre-emption Act taking the definition as given in the General Clauses Act 1897 i.e. that it includes land benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and the plaintiff had therefore no *locus standi* to bring a suit for pre-emption. *Shepherd and Crown's Indian Transfer of Property Act 7th Edition page 14* referred to. **MUHAMMAD ISMAIL v. SHAMUS CD DIX** 1 L. R. 1 Lah. 22.

PUNJAB PRE-EMPTION ACT I OF 1913—

co 17

s. 15—

Which a Christian can be heir to the son of a convert to Islam—

See ACT XVI OF 1930

I L R 1 Lah 376

Owner of a small plot of land unassessed to revenue—Whether one of the owners of the estate Plaintiff claimed pre-emption in respect of a sale of a house in the village of *ad*. He based his claim on the plea of being one of the owners of the estate. Plaintiff was a *malik* *lah* and owned only a small plot of land of 8 *marla* unassessed to revenue and uncultivated except to a trifling extent and clearly destined to be a building site. Held that the plaintiff was not one of the owners of the estate within the meaning of s. 15 (c) thirdly of the Punjab Pre-emption Act and that his claim to pre-emption was consequently inadmissible. *Phallu v Mularab* (153 P R 1885) *Man Singh v Dip Singh* (96 P R 1893) *Sham Sunder v Sodhi Harbans Singh* (109 P R 1903) and *Varain Singh v Gopal Singh* (106 P R 1913) followed. *Lal Khan v Nand Ullah* (14 P R 1880) *Dasu v Jorala* (13 P R 1885) *Jarnir Singh v Pahmatullah* (7 P R 1896) distinguished. *Harjullu Mal v Nathu Ram* (51 P R 1907) disapproved. *JAWALA SINGH v TARASINGH* I L R 1 Lah. 503

PUNJAB RULING CHIEFS

See HUNSFORD STATUTE OF

I L R 39 Calc 711

PURCHASE

See BENAMI PURCHASE

See TITLE PROOF OF

I L R 45 Calc 909

by Husband—

See RESULTING TRUST

I L R 48 Calc 260

free of incumbrances—

See SALE FOR ARREARS OF REVENUE

I L R 39 Calc 353

PURCHASE MONEY

See LIMITATION ACT (IV OF 1908) SEC

I ARTS 97

I L R 37 Bom 538

See MORTGAGE I L R 44 Calc 542

See PATEABLE DISTRIBUTION

I L R 44 Calc 789

payment of—

See PRE-EMPTION I L R 35 All 583

refund of—

See SALE IN EXECUTION OF DECREE

I L R 37 Calc 67

suit to recover—

See CIVIL PROCEDURE CODE (1882) s 315

I L R 40 All 411

PURCHASE OF ARMS

See FORGERY I L R 43 Calc 421

PURCHASER

See LIMITATION ACT (IV OF 1908) s 27

I L R 58 Mad. 837

PURCHASER—could

See I Art 17A I L R 45 Bom 45

See OCCUPANCY HOLDING

I L R 42 Calc 745

in Court auction—

See SUBSTITUTION OF PROPERTY AND

SECURITY I L R 39 Mad 283

in puisne mortgagee's suit right

of—

See TRANSFER OF PROPERTY ACT (IV OF

189) s 67 I L R 40 Mad 77

liability of—

See SALE FOR ARREARS OF REVENUE

I L R 40 Calc 88

of a share—

See SALE FOR ARREARS OF REVENUE

I L R 43 Calc 48

of equity of redemption—

See MORTGAGE 14 C W N 576

rights of—

See PRE-EMPTION I L R 44 Calc 675

See SALE FOR ARREARS OF REVENUE

I L R 40 Calc 80

title of—

See CHAKRIDARI CHAKRAN LANDS

I L R 45 Calc 765

Widow claiming right of residence against purchaser for value from husband—

See HINDU LAW I L R 45 Bom 337

Sale by Revenue Courts for arrears of revenue—

See LIMITATION ACT (IV OF 1908) ART

17A I L R 45 Bom 45

PURCHASER FOR VALUE

See VENDOR AND PURCHASER

I L R 43 Calc 56

PURCHASER IN EXECUTION

See TRANSFER OF PROPERTY ACT (IV OF

1892) s 67 I L R 40 Mad 77

PURCHASER PENDENTE LITE

See MERE PROFITS

I L R 39 Calc 220

PURDANASHIN

See PURDANASHIN

PUTATIVE FATHER

right of to inherit his illegitimate son's property—

See HINDU LAW—INHERITANCE

I L R 41 Mad. 44

PUTNI

See PUTNI LEASE

See PUTNI REGULATION

See PUTNI TENURE

See SALE I L R 41 Calc 148

See TRANSFER OF PROPERTY ACT s 73

14 C W N 186

consideration for—

See ILLEGAL CESS I L R 45 Calc 259

PUTNI

purchase of—

See SALE FOR ARREARS OF RENT

I L R 44 Calc 715

Putni Regulation (Reg VIII of 1819) s 9—Agreement of putnidar with stranger for purchase by latter and reconveyance to form r—Legal r—Contract Act (IX of 1872) s 23 A contract entered into by a putnidar with a stranger stipulating that the latter would purchase the putni which had been advertised for sale under Reg VIII of 1819 and reconvey it to the putnidar receiving the amount of the purchase money with interest and a further sum in addition from him was invalid under the provisions of s 23 of the Contract Act as being in contravention of the provisions of s 9 of the Putni Regulation. **MOHAN LAL BABU v UDAI NARAIN BHADURI (1910)**

14 C W N 1031

Chowkidari chakran land—Presumption and transfer to zemindar—Right of putnidar to settlement—Conditions of settlement—Suit by putnidar to recover—Limitation—Limitation Act (XV of 1877) Sec II Arts 140 141—Putnidar is must register himself in zemindars shers before suing—Purchase of putni in benami by defaulter is void—Reg VIII of 1819 s 9 The effect of the transfer by the Collector to the zemindar of resumed chowkidari chakran lands is not to separate them from the parent estate and grant a new title to them in favour of the proprietor of the estate. A putnidar if the lands were included within his putni has the right to recover possession of the lands from the zemindar on condition of his agreeing to a fair and reasonable settlement with the landlord. The terms of the settlement of the resumed chowkidari chakran land with the putnidar would depend upon the conditions under which the putni was originally created. **Ha v Narain Moondar v Mulund Lal Mundal 3 C W N 315** relied on. A suit by the putnidar to recover possession of chowkidari chakran land resumed and transferred to the zemindar is governed by Art 142 or Art 144 of the Second Schedule of the Limitation Act. **Bhuvnagar Mukunda Deb v Bidhu Sundar Thakur 1 L P 35 Calc 356** see 12 C W N 459 followed. The absence of registration of the plaintiff's name in the zemindar's shers is no bar to such a suit. **Gossain Mungal Dass v Roy Dhunput Singh 25 W P 151** disapproved. **Cumdar Pershad Roy v Shuvendra Kumari Shaheba 1 L P 12 Calc 621** Jo; **Krishna Mookhopadhyay v Surjan nassa 1 L P 15 Calc 345** relied on. The purchase of the putni by the defaulting putnidar in the benami of another in contravention of s 9 of Reg VIII of 1819 is voidable only and not void. **Matangins Deb v Prasanna Moys Deb 3 C I J 93** followed. **HARAK CHAND BABU v CHANDU CHANDRA SINGHIA (1910)**

15 C W N 5

Putni taluk sale of for arrears of rent—Suit by purchaser for recovery of possession of lands within taluk brought within 12 years from date of purchase—Limitation—Applicability of Art 121—Limitation Act—Adverse possession prior to creation of putni effect of—Cause of action—Adverse possession if arrested by creation of subordinate tenure when proprietor out of possession—Doctrine of possession following title application of where plaintiff has to prove possession at a particular point of time—Ancient documents showing exercise of right to property—consideration of as presumptive evidence of possession—Sale under

PUTNI—contd

*** 159 Bengal Tenancy Act status of purchaser in—Encumbrance meaning and annulment of** The plaintiff who was the purchaser of a putni taluk at a sale held in 1899 in execution of a rent decree under the Bengal Tenancy Act brought suit against the defendants within twelve years from date of his purchase for declaration of his title to the lands held by them within the putni taluk and for recovery of possession thereof. There was ample evidence on the record that the adverse possession of the defendants and their predecessors commenced before the creation of the putni. Held that the suits were barred by limitation and Art 121 of the 2nd Schedule of the Limitation Act did not apply to them. That the plaintiff not having established that the possession of the defendants commenced after the creation of the putni or that the proprietor of the estate was in possession at the time when the putni was granted the interests acquired by the defendants could not be deemed to be an encumbrance within the meaning of Art 121 nor was it an encumbrance within the meaning of s 11 cl (1) of Reg VIII of 1819. That the cause of action did not arise on the date on which the plaintiff purchased the taluk at the sale held under the Bengal Tenancy Act. That the adverse possession contemplated in the decisions **Nagar Chandra v Rajendra Lal 1 L P 25 Calc 167** **Woomesh Chandra Coomra v Raj Narain Paj 10 W P 15 Khonto 3 or 4** **Datta v Lujoy Chandra 1 L P 19 Calc 187** and **Karim Khan v Broja Nath Datta 1 L R 2 Calc 944** is possession which commences after the creation of the putni tenure. These cases are founded on the principle laid down in s 11 of Reg VIII of 1819 which is that the purchaser of a putni taluk at a sale held under Reg VIII of 1819 takes the taluk in the state in which it was actually created and the judicial decisions above referred to lay down the doctrine that the purchaser takes the property not free merely of all encumbrances that may have accrued upon the tenure by act of the defaulting proprietor, his representatives or assignees but also free of the interest acquired by an adverse possessor who has been able to acquire such interest by the action of the defaulting proprietor. This doctrine is plainly limited in its application to cases where the adverse possession commenced after the creation of the putni. That in a case like the present in which the proprietor of the estate is out of possession he cannot merely by the device of the creation of a subordinate taluk arrest the effect of the adverse possession which has already commenced to run against him and such possession would be effective not only as against the subordinate tenure holder but also as against the superior proprietor. That the plaintiff before he could succeed must prove that the proprietor was in possession when the putni was created. That the doctrine that possession follows title has no application to a case like the present. That as laid down by the Judicial Committee in **Pargari Pam v Gobordhan Pam 20 W P 25 29** the Court may in the decision of the question of limitation if there is conflicting evidence on both sides presume that possession was with the party whose title has been established but it does not follow that when the plaintiff has to establish possession at a particular point of time he is entitled to call upon the Court to presume that because his title has been established possession must be presumed to have been with the holder of the title at the

PUTNI—contd

specified period of time. This contention is clearly opposed to the decision of the Judicial Committee in *Mohina Chandra v. Moha Chandra* 1 P 16 14 23 s c 1 L P 16 Cal 43. That the plaintiff having made his purchase at a sale held in execution of a rent decree under the Legal Tenancy Act under s 10 of the Act he made his purchase with power to annul the interest claimed as encumbrance in s 161 encumbrance as used in that section includes a statutory title acquired by a transferee or by a purchaser of the land of the defaulting tenant provided such sale of possession commenced after the tenure had been created. That even if he had succeeded in establishing that such adverse possession commenced after the creation of the putni title before he could succeed he would have to prove that under subs (1) of s 161 he had annulled the encumbrances by service of notice within one year from the date of the sale or the date on which he first had notice of the encumbrance and in the present case the plaintiff had failed to do so. Held (as to the contention that the grant of the putni tenure itself was evidence of possession) that the principle that ancient documents produced from proper custody and by which any right to property purports to have been exercised may rightly be treated as presumptive evidence of possession has no application to the circumstances of the present case. **HAKARAN LANDS v. BIPRODAS PAL CHODHURY** (1914) 19 C W N 11

Suit by purchaser to recover land from encumbrancer—Onus to prove that land was in putni in mindar's possession at date of putni. In the absence of anything to show that there was any change between the date of the quinquennial register for a period immediately preceding the permanent settlement and the permanent settlement the Court would be justified in holding that the area stated in the forme was the area permanently settled with the zemindar. Without considering the correctness of the principles laid down in *Ashikanda Woolerjee v. Biprodas Pal Choudhury* 19 C 1 N 12. Held that on the facts of the present case the onus was on the plaintiff (purchaser of a putni taluk at a rent sale) to prove that at the date of the creation of the putni the zemindar was in possession of the land sought to be recovered by annulment of defendant's alleged encumbrance. **KEDAR NATH RAI v. BIPRA DAS PAL CHODHURY** (1918) 23 C W N 182

In a suit for possession of lands within the zemindari by purchaser of putni at sale for arrears of rent onus of proof is on plaintiff to prove zemindar's possession prior to creation of putni. Possession of an estate however long cannot be adverse to the landlord and cannot be held to be an encumbrance. **MOYNOTHA NATH MITTAR v. ANATH BUNDHU PAL** 25 C W N 107

PUTNIDAR

See CHAKRIDARI CHAKRAN LAND 14 C W N 895

right of—

See CHAKRIDARI CHAKRAN LANDS 1 L R 44 Cal 841

Part of rent payable

by putnidar assigned for payment of revenue—Separate account opened by a co-sharer zemindar—

PUTNIDAR—contd

Suit by partition a signed rent and to order putnidar to pay plaintiff's share of same to plaintiff's account of maintenance—Transfer of Property Act (11 of 1882) s 37. Where a putnidar as part of the consideration for the use and occupation of the land undertook to pay the revenue payable by the zemindar direct in the Collectorate on account and to the credit of the landlord. Held that the revenue so paid by the putnidar was part of the rent paid to the landlord. The owners of a share in the zemindari having got a separate account opened in respect of their share under s 10 of Act XI of 1859 sued the putnidar and his co-sharers for an apportionment as between the co-sharer of the revenue payable by the putnidar and for an order directing the putnidar to make separate payment in the Collectorate to the account and credit of the plaintiffs of the amount due in respect of their share. Held that upon the principle underlying s 37 of the Transfer of Property Act and on the authority of *Sreenath Chunder v. Moha Chunder* 1 C L R 453 14 23 Cal 43 and *Pamkrishna I L R 5 Cal 902* and *Raj Narain Mitter v. Ekadasi Bag I L R 27 Cal 479* s c 4 C 11 N 104 the suit was maintainable and should be decreed the objection of the putnidars that the apportionment would impair the value or affect the character of their permanent lease being groundless and the objection that at each of the four lists they would have to write four challans instead of one being frivolous. **GOSTA GOPAL SHINHA v. GOSTA BHAYRA PRAMANTH** (1916) 21 C W N 214

PUTNI LEASE

See CHAKRIDARI (HAKARAN LANDS) 1 L R 41 Cal 685

See LANDLORD AND TENANT 1 L R 45 Cal 683

whether conveys underground right—

See MINERALS 5 Pat L J 563

Construction of—Covenant in contravention of the rule against perpetuities—Contingent covenant in a lease when operative. Where a lessor by a putni patta after leasing a mouzah exempted from its operation certain lands and covenanted that on certain contingencies happening the lessee should acquire a right there to as putnidar but no time was specified within which the contingency was to happen in order to vest the right in the putnidar. Held that such covenant was void as offending against the rule against perpetuities even as between the parties to the covenant. **Chandi Churn Barua v. Sidheswar Deb I L R 16 Cal 71** *Ramasami Pattar v. Chinan Assis I L R 24 Mad 419* and *Nabin Chandra Soot v. Nabab Ali Sarkar 5 C 11 N 343* referred to. **ANATH NATH MITTAR v. KUMAR KESHAB CHANDRA ROY** (1910) 14 C W N 601

Chota Nagpur Encumbered Estates Act (Bengal VI of 1876 as amended by Act V of 1954) s 17—Poles under s 19 of Act Pule 16—Putni lease executed by Deputy Commissioner as manager of Darabdhum Estate under the Act—Sanction of Commissioner—Objection that putni lease had not been submitted to Commissioner after he had sanctioned all the details—Sanction granted for lease to a firm and lease given to a Limit

PUTNI LEASE—contd

ed Company—Stipulation for payment of bonus—Payment after time fixed The grant of a *putni* lease under the Chota Nagpur Encumbered Estates Act (Bengal Act VI of 1876 as amended by Act V of 1884) s 17 and r 16 of the rules made under the Act need state the sanction of the Commissioner. In a suit to have a *putni* lease executed by the Deputy Commissioner as the manager under the Act of the Barabhum Estate on behalf of the proprietor the father of the plaintiff (appellant) declared void and inoperative as not having received a valid sanction. *Held* that where it has been affirmatively established that a transaction itself in all its essential particulars has obtained the sanction of the Commissioner and then it becomes requisite that the transaction be carried into effect by the preparation of an appropriate deed an objection merely on the ground that the document ultimately prepared has not been submitted for sanction cannot be sustained. In administrative and departmental action it must necessarily be the case that formal details may have to be entered upon in order to carry into effect and put into legal shape the arrangement to which the sanction was given. Where such a sanction was given for a *putni* lease to be granted to Robert Watson and Co a firm of individual men and the actual lease was executed in favour of Robert Watson and Co Limited the firm having been converted into a Limited Company. *Held* on the facts of the case that when the negotiators in the course of the correspondence mentioned Robert Watson and Co they did in fact mean and were perfectly understood to mean Robert Watson and Co Limited the fact of the incorporation of the Limited concern being well known and that therefore the misdescription did not under the ordinary principle applicable to such matters affect the validity of the sanction or of the *putni* lease. In this view it was unnecessary to decide as to the effect in law of the difference in the *persona* of the two descriptions. *Held* also that the sanction of the Commissioner in this case was not merely a sanction of a proposal to grant a *putni*. The proposal had been made it had been accepted a contract was accordingly completed on the subject and it was that contract so completed that was sanctioned. The *putni* lease stipulated for the payment of a *salami* or bonus and the letter granting the sanction contained the clause provided the amount be paid before the end of March 1890. Some delay occurred owing to an exchange of views being necessary as to the actual wording of the draft *putni* but the lease was finally settled by both parties and the *salami* was paid on 20th June 1890. *Held* that the lease would not afterwards have been open to a challenge to be made by the Deputy Commissioner himself or for the Commissioner's sanction to be withdrawn and a fortiori there was no ground for sustaining such a challenge when put forward long afterwards on behalf of the debtor or by whom the suit was brought. *I AM KANAI SINGH DEB DAR PASHANA v MATHEWSON* (1015)

I L R 40 Calc 1029

*I tms lease—Const uc t on of—Saranjami if a clause Government Revenue In a *putni* lease it was stipulated that the putidar would pay to the zemindar the rent besides Saranjami. In a suit for arrears of rent on the basis of the *putni* lease the question was whether Gov-*

PUTNI LEASE—contd

ernment revenue was payable by the zemindar or the *putnidar*. *Held* that evidence of conduct was not admissible for the construction of the *putni* contract and the Lower Courts were wrong in relying on the fact that for many years the Government revenue was paid by the *putnidar*. **BHACANI NATH POY v PURNA CHANDRA SARKAR** 25 C W N 308

PUTNI REGULATION (VIII of 1819)

See DEPOSIT IN COURT

I L R 41 Calc 1000

*Position of a purchaser at ale and r—Previous suit for rent by original talukdar dismissed on the ground that relation of landlord and tenant did not exist—Subsequent suit by purchaser of barred by res judicata—Purchaser is bound to annul encumbrance before suit—In cumberance adverse possession when—Limitation Although the position of a purchaser at a sale under Peg VIII of 1819 may not be precisely that of a purchaser at a sale for arrears of revenue yet he is not privy in estate to the defaulting proprietor and he does not derive his title from him as under s 11 of the Regulation he has acquired the property free of all encumbrances that might have been created upon it by the act of the defaulter his representatives or a signee and consequently a claim for rent by such a purchaser is not barred by res judicata by reason of the failure of a suit for rent by a previous proprietor on the ground that the relationship of landlord and tenant between the then plaintiff and the defendant was not established. *Tara Prasad v Parnants* was not established. *Tara Prasad v Parnants* 12 B R 283 and *Radha Gobind v Rakhaldas Singh* 12 B R 12 Calc 50 90 rehed *v Rakhaldas* 12 B R 12 Calc 50 90 rehed. On a purchaser at a sale under Peg VIII of 1819 need not take any step before the suit is brought to annul an encumbrance. The interest of an adverse possessor or is an encumbrance only when the adverse possession has continued for the statutory period. Adverse possession is arrested by the sale and limitation runs as against the purchaser from the date when the sale becomes final. *SATISH CHANDRA SENHA v MURJAMATI DEBI* 17 C W N 340 (1912)*

*Itmam and taluk tenures of permanent and heritable—Marfaldari receipts of raise presumption of non transferability—Two putni tenures were granted in Chittarong for an indefinite period described in the talukvats as an itmam and taluk respectively and there were no words of limitation or inheritance. The grantee transferred the tenures to a third person to whom rent receipts were granted. *marfaldari* in the names of the original grantees. *Held* that the term itmam as applied to a tenure in permanently settled parts of Chittarong primarily imports a permanent heritable and transferable tenure and it is well settled that the word taluk primarily imports permanency. A grant for an indefinite term ensures at least for the life time of the grantee. *JOSEPH CHANDRA ROY v MOHALL ALI CHOWDHURY* 25 C W N 85*

3—Stipulation in a mortgage deed for the delivery of ghee and goat a condition enforceable—Second clause of the deed which abrogates all previous restrictions on the mortgagee embodied in Regulation 3 of 1819 and executed in 1819

PUTNI REGULATION (VIII OF 1819)—*contd*s 3—*co id*

there was a stipulation at the end that the tenant should deliver annually one seer of ghee and one goat to the landlord *putnidar* *Held* that in view of the clause imposing the delivery of the goat and the ghee standing completely isolated from the terms relating to the rent proper and its mode of payment the goat and ghee were not part of the rent and as such were not recoverable being in the nature of an *abwab* and hence an illegal imposition *Sec 3* of the Putni Regulation did not restrict the application of the general law against *abwab* as embodied in *sec 3* of *leg 1* of 1812 *LAK TARA N TEWARI v BH KINEDA DASSEE* 26 C W N 644

■ 3, ■ 6—*Land Acquisition Act (1 of 1894)*—*On registration of putnidars a sale of zemindars' books*—*Effect of on putnidars' title to share of compensation*—*Effect of on emindar to a law proportionate abatement effect of on emindars' title to compensation*—*When the whole of the compensation money for land acquired under the Land Acquisition Act was awarded to the putnidars on the ground that as the zemindars had not allowed an abatement of rent on account of the land acquired, they were not entitled to a share of the compensation money and the zemindars' case was that as the putnidars did not get themselves registered in the books of the zemindars under the provisions of the Putni Regulation their title was not protected and they were not entitled to claim any portion of the compensation money* *Held* that the putnidars were entitled to the compensation money and the zemindars to no portion of it *Under s 11 of the Putni Regulation the landlord may demand a fee for the registration in his books of the name of the purchaser of a putni as also security from him but the omission to pay the fee and the security does not affect in any way the title of the purchaser whose rights are priored upon the transfer by the putnidar and are not in any way contingent for their validity upon the payment of the fee and security* *If the zemindars allow an abatement of rent to the putnidars the rent abated primarily represents their annual loss and they may reasonably claim out of the compensation money the capitalised value of that rent but if they do not allow such abatement they do not suffer any immediate loss by reason of the acquisition* *GURJAT SINGH v MOTI CHAND (1912)*

18 C W N 103

■ 8 11 15—*Sale of putni*—*Dur putnidars' interest if ipso facto cancelled*—*Possession taken and proclamation obtained effect of* *The purchaser at a putni sale under the provisions of Reg VIII of 1819 acquires the right to take possession immediately and one who has a tenure or a middle interest between the resident cultivator and the late putnidar cannot bar or in any way prejudice the purchaser's right* *Mahim Chander Aluzai Ier v Jotirmoy Ghose 4 C L J 4 L Watson v Collector of Jayshahi 13 Moo 1 A 160 Krishna Chunder Glunder Bircar Choudhury v Brindaban Chunder Day Choudhury L R 11 A 173 followed* *Madhu Sudhan Kundu v Rameshan Ganguly L W R 383 3 B L F 431 distinguished* *When the purchaser asserted her full right as such at the earliest possible occasion took possession and obtained a proclamation as required by s 15 of the Regulation and then instituted a suit for rent against the cultivating tenant* *Held*

PUTNI REGULATION (VIII OF 1819)—*contd*ss 11 15—*contd*

that she was entitled to a decree the interest of a *dur putnidar* who resisted the claim being considered as cancelled *KRISHNA PRONODA DASSEE v DWARKA NATH SEN (1913)* 17 C W N 1092

ss 4 10 14—

See LUTNY SALE I L R 47 Calc 337

ss 5 6—*Transferee of portion of putni if may claim recognition by emindar under Bengal Tenancy Act (VIII of 1885)* *ss 12 14—s 195 (c)* *A partial transferee of a putni taluk is not entitled to be recognised by the zemindar* *It is a form of transfer which under the terms of ss 5 and 6 of Reg VIII of 1819 the zemindar is not bound to recognise and under s 195 (c) of the Bengal Tenancy Act the transferee cannot claim recognition by reason of ss 12 and 17 of the latter Act* *AKHAI CHANDRA DAS v UMAPADO MISRI (1913)* I L R 30 All 187 18 C W N 629

s 2—*Publication of notices at the Collector's kutchery*—*Notices taken down and kept on the table for inspection of Muktears during office hours*—*Irregularity vitiating sale*—*Publication of list of putnis in arrears defaulters and arrears in zemindar's kutchery if sufficient*—*Publication in principal village*—*Sale in Collector's Court room if public sale when people prevented from coming in freely by chaprasis*—*Sale at an unusually early hour if bad* *Where it appeared that applications for sales of putnis under Reg VIII of 1819 and notices thereof used to be taken down from the notice board on the verandah of the Collectorate by the Muktears during office hours and placed on the Nazir's table and hung up again on the board at the close of the day* *Held* that there was no proper publication of the notices which were meant for the public and not for Muktears alone and it was an irregularity which vitiates the sale *The law contemplated their unobstructed presentation to the notice of the public* *Bejoy Chand Mahatap v Itulya Churan Bose I L R 13 Calc 353 and Sach's Nandan Dutt v Bejoy Chand Mahatap 11 C W N 179 referred to* *Where instead of similar notices a list of the defaulting mahals with the names of the defaulters and the amounts due was stuck up in the zemindar's sadar kutchery there was a substantial compliance with the law* *Where the notice required to be served in the mofussil was served in the kutchery of the dar putnidar of three only out of six mauzas covered by the putni* *this was good service when the dar putnidar's kutchery was in the principal village of the defaulting tenure* *The complaint that the public had not unobstructed access to the place of sale was made out when it appeared that though the sale was held in the Court room of the Collector and therefore in public kutchery the Collector's chaprasis who were placed at the wicket gate to keep order did not allow many persons to enter to prevent overcrowding* *A defaulter cannot impeach a sale as illegal merely on the ground that it took place earlier than usual* *he may however be permitted to show that he was misled to his prejudice by the deviation from the usual practice* *Effect of irregularities in sales discussed* *Maharaja of Burdwan v Tara Sundari Debi L P 10 I A 19 s c I L R 9 Calc 619 67 and Maharaja of Burdwan v Krishna Kamini Das I L R 14 I A*

PUTNI REGULATION (VIII OF 1819)—*contd*■ 8—*contd*

30 s c I L R 14 Cal 365 referred to **RANJIT SINGHA** ■ **JANENDRA CH SEN GUPTA** (1911.)

19 W N 963

■ 11—

See *INCUMBRANCE*

I L R 37 Cal 322

ss 11 15 17 cl (3) para 2 and cl (5) para 3—*Sale under Putni Regulation after mortgagee's decree on mortgage of putni and zamindar's decree for antecedent arrears—Right to surplus sale proceeds—Priority—First charge—Limitation* There is nothing in the Putni Regulation contrary to the principle which underlies s 65 of the Bengal Tenancy Act the rent payable by the putnidar to the zamindar being under ss 11 and 15 of the Regulation as under s 65 a first charge on the tenure. Where a putni tenure is sold under the Regulation for the realisation as the case may be of arrears due for the year immediately expired or for the current year the effect of such sale is not to reduce all former balances to personal debts of the putnidar. The charge is not destroyed but is transferred to the surplus sale proceeds. The sale in any case would not destroy the charge attaching to arrears in respect of which the zamindar has already obtained a decree prior to the sale for the second paragraph to the third clause of s 17 of the Regulation even if it be opposed to the provisions of s 65 of the Bengal Tenancy Act has no application to such a case for it cannot contemplate the institution of a fresh suit for recovery as a personal debt of antecedent balances in respect of which the zamindar had already obtained a decree. **Peary Mohan Mukerjee v Secraam Chandra Bose** G C W N 794 approved **Jagannath v Mohiuddin Mirza** I L R 37 Cal 747 not approved. Where before the putni was sold under the Regulation both the zamindar and the mortgagee of the tenure had recovered decrees the former for antecedent arrears and the latter on his mortgage. *Held* that though under s 73 of the Transfer of Property Act the latter had a charge in respect of the mortgage dues upon the surplus sale proceeds and this charge subsisted even after the decree the charge in favour of the zamindar in respect of arrears of rent would have preference before it as it was a first charge under s 65 of the Bengal Tenancy Act. The zamindar was entitled to seek his remedy by way of suit in the Civil Court without repeated recourse to the summary procedure laid down in the Regulation. **Brindaban Ch. Sircar v Brindaban Ch. Dey** L R 11 A 178 s c 13 B L R 403 referred to *Quare* Whether the limitation of two months provided by the fifth clause to s 17 of the Regulation applies to a suit by the mortgagee against the zamindar for a declaration of his right to appropriate in satisfaction of his own decree the surplus sale proceeds which the zamindar has taken out in execution of his decree for antecedent balances. **BASANTA KUMAR BOSE v KHULNA LOAN CO** (1914)

19 C W N 1001

■ 13—*Sale of putni—Suit by vendor for back rents not assigned—Putni if may be sold free of dar putni in execution of decree made—Deposit of rent by dar putnidar—Dar putnidar's lien priority of* The special lien which a subordinate tenure holder acquired under 13 of Reg VIII of 1819 by depositing the putni rents in arrears for which the

PUTNI REGULATION (VIII OF 1819)—*co id*■ 13—*contd*

putni has been advertised for sale by the zamindar under that Regulation is not affected by proceedings taken in respect of the putni under the Bengal Tenancy Act the Putni Regulation being a self contained Act specially excluded from the operation of Bengal Tenancy Act by s 193 of that Act. **FORBES** ■ **MAHARAJ BAHADUR SINGH** (1911.)

I L R 41 Cal 928

18 C W N 747

Deposit not voluntary to prevent putni sale—Suit to recover on the ground of intended sale being illegal if maintainable—Chota Nagpur Unencumbered Estates Act (IV of 1855) preamble ss 2 4 5 8 9 1 16 17 18 19 and 23—*The Act if applies to land outside Chota Nagpur—Intention of the Act* The rule which prevents a person from recovering back money which he has paid on a claim in legal proceedings to which he might have set up a defence but has failed to do so has no application where a deposit is made in order to stop a putni sale. The proceedings before the Collector at a putni sale are of an administrative rather than a properly judicial character. The zamindar who has the power of compelling a sale is to exercise this power through the instrumentality of the Collector himself who acts not magisterially but ministerially and who has in the true view of his functions no capacity to give effect to any enquiry he may make into title comparable to the capacity possessed by an ordinary judicial tribunal. The Chota Nagpur Unencumbered Estates Act is not a statute analogous to the Bankruptcy Act the controlling purpose of which is provision for creditors in a liquidation. Its primary intention is that of providing by a measure of local application for the relief of the burdens affecting the land within Chota Nagpur owned by a class of landholders there. The Act has therefore no application to immovable property outside Chota Nagpur. Any provision which affects it personally to enforce in jurisdictions outside it personal debts or liabilities are merely ancillary to the main purpose of the Act. **JYOTI PRASAD SINGH v KUMUD NATH CHATTERJEE** (1918)

22 C W N 1009

Putni Regulation (VIII of 1819) s 13 (4)—Dar putnidar put in possession for paying putni rent—Payment of further arrears when in possession—Payment if first charge on the putni—Bengal Tenancy Act (VIII of 1855) s 1, 1 (1) (b)—Mortgagee's prior right to surplus sale proceeds—Contract Act (IX of 1872) s 69 Where a dar putnidar having advanced certain arrears of rent due on a putni which was already subject to defendant's mortgage was placed in possession of the putni under paragraph 4 of cl 13 of Regulation VIII of 1819 and then the plaintiff as a signee of the dar putni paid the next three instalments of the putni rent but failing to pay the fourth instalment the putni was sold under the Regulation. *Held* that the plaintiff was not entitled to recover out of the surplus sale proceeds the instalments of the rent paid by him when he was in possession of the putni. That as regards the arrears paid by the dar putnidar assuming that the amount was a charge on the putni defendant's mortgage of prior date had priority over it. *Quare* Whether it was open to the dar putnidar to seek the relief provided by s 171 sub s (1) cl (3) of the Bengal Tenancy Act and if it was whether the remedy was available

POTNI REGULATION (VIII OF 1819)—contd

s 13—contd

able after election by him of the remedy under s 17 cl (4) of the Putni Regulation. *Held* further that the plaintiff could not claim on the basis of s 19 of the Contract Act. **PASUBAN BHADRA v TAX DOR KAZI (1911)** 1 C W N 404

s 14—*Irregular sale order of voidable or void*—Sale if may be voided collaterally—*Limita on Act (VI of 18)* Sch II Art 10 Where a puti has been sold under the Putni Regulation and no suit has been brought under s 14 of that Regulation to set aside that sale. *Held* that the sale cannot be impugned as invalid collaterally by way of defence in a suit brought by a purchaser of the putni for ejectment. Irregularity in the service of notices in such sale does not make the sale a nullity. Irregular sales under the Regulation are voidable and not void and they can only be avoided by the procedure laid down in the Regulation and within the time allowed for such suit by Art 12 Sch II of the Limitation Act. **PANONA CHOWDHURY v NABA KUMAR CHAKRA CHOWDHURY (1911)** 16 C W N 805

When there is a second sale pending suit to set aside first sale the purchaser can acquire a good title if first sale is finally set aside as the validity of the second sale is not dependent on the continuance of the first sale. **BEJOY CHAND MAHATAB v ASHUTOSH CHUTTERJEE** 25 C W N 42

s 17 cl (c)

See PUTNI TENURE

L L R 37 Calc 747

Antecedent balances of recoverable by resale of the tenure Under the provisions of s 17 cl (c) of the Putni Regulation arrears of rent for a period antecedent to the period to recover the rent of which the tenure had been sold must be regarded as personal debts recoverable under the ordinary procedure for the recovery of debts and not by resale of the tenure. **Jagannath v Molvuddin Mirza I L R 7 Calc 747** followed. **Peary Mohun Mukhopadhyay v Brastram Chandra Bose G C W N 794** dissented from. **KRISHN CHANDRA ACHARYA CHOWDHURY v KANULKA LOAN COMPANY LTD (1912)** 16 C W N 804

POTNI PENT

See DEPOSIT IN COURT

I L R 41 Calc 1000

POTNI SALE

suit to set aside—

S 8 LIMITATION ACT 1877 s 8

14 C W N 128

Regulation VIII of 1819—Suit to set aside putni sale—Second sale pending suit if it may stand in case first sale set aside Where pending proceedings under the Regulation VIII of 1819 to set aside the sale of a Putni Tanah a second sale under the Regulation took place owing to default in payment of rent. *Held* that if the first sale be set aside as invalid the second sale cannot stand. **BEJOY CHAND MAHATAB v BRITUNJOY GHOSH (1910)** I L R 47 Calc 782

Sale for arrears not due—Suit to set aside sale—Day how to be reckoned

POTNI SALE—contd

in a Suit mentioning mortals and dates in Bengali style—*Payment to stop sale* Where and by whom the nature of sale in the Collector's latari form and effect of—Non publication of notice in manner prescribed effect of—Putni sale and revenue sale difference of—Purchase by stranger at putni sale effect of—Accessories in a suit to set aside putni sale—*Caveat in a suit to set aside sale*—Type of Court decision of an considering finding of fact of trial Judge who had witnesses before him—Conditional acceptance of arrears of putni rent of deposit—Putni Regulation (VIII of 1819) ss 8 10 14 The sale of a putni can be held only if the balance claimed by the remainder in account of the rent of the putni remains unpaid up to the day fixed for the sale of the tenure and if a sale is held after a valid payment of the rent due it must be deemed to be a sale with out jurisdiction. **Shuroop Chunder Bloomfield v Perab Chunder Singh 7 W P 218** and **Pansora Choudhury v Naba Kumar Singha 16 C W N 805** followed. **Bainath Saha v Sural Prasad B L R F B 1 10 W R F B 66** **Harkood Singh v Bunsidhur Singh I L R 3 Calc 86** **Lalla Sen Das v Simpson I L R 3 Calc 833** **I L R 1 151** **Mohamed Jan v Ganguli Hun Singh I L R 38 Calc 537** **L 1 38** **I A 80** **Haji Bihari Lal v Durlal Chandra Kar I L R 1 39 Calc 981** **L P 39 I A 177** and **Jarakhari Lal v Gosain Lal Bhaya Gayral I L R 37 Calc 107** referred to. When a Regulation mentions Bengali months and dates throughout the Legislature must have intended that a day should be reckoned in the manner prevalent in Bengal that is from sunrise to sunrise. The fact that there was no balance due may be urged as a ground in support of a suit for reversal of a putni sale. A putnidar cannot stop the sale by a deposit in the Collectorate at the moment of sale. Payment to stop a putni sale may however be made into Court either by a subordinate talukdar under s 13 of the Putni Regulation or by a putnidar who has applied for a summary investigation under s 14 cl (1) of that Regulation. **Kristo Mohun Datta v Afiaobeddeen Mahomed 15 W R 560** referred to. The notice of sale required by the Putni Regulation to be stuck up at a conspicuous part of the Collector's khatir must be a self contained notice which comprises not only a specification of the arrears and a notification that the sale will be held on a particular date if the amount claimed be not paid before that date and also a statement of the lots proposed to be sold in the order in which the sale will be held. S 8 of the Putni Regulation must be read with s 10. **Rajaram Mitra v Ananta Lal Mondul I L R 90 Calc 703** **Bejoy Chand Mahatab v Atulya Charan Bose I L R 39 Calc 963** and **Hariharanath Das v Payam Kanta Lall 15 Ind Cas 537** followed. The requirements of the Putni Regulation in respect of the notice mentioned in ss 8 and 10 of that Regulation must be strictly complied with and a defective notice under s 8 is a fatal objection to the validity of the sale. **Maharani of Burdwan v Krishna Kamini Das I L R 14 Calc 365** **L P 14 I 1 50** **Anulla Khan Baladur v Hareharan Mo comdar I L R 20 Calc 96** **L P 19 I A 191** **Ahsanulla Khan Baladur v Harri Charan Mo comdar I L R 17 Calc 43** **Pojanatain Mitra v Ananta Lal Mondul I L R 19 Calc 703** **Hurro Doyal Poy Choudhry v Mohamed Ga v Choudhry I L R 1**

PUTNI SALE—concl'd

19 Calc 699 and *Maharaja of Burdwan v Tara sundari Debi* 1 L R 9 Calc 619 L R 10 I A 19 referred to. A sale under the Putni Regulation stands on an entirely different basis from a sale for arrears of revenue inasmuch as s 14 of the Regulation does not restrict the right of suit to narrow and specified grounds and the validity of the sale may be successfully challenged on proof that the conditions prescribed by the Regulation have not been fulfilled. A purchase even by a stranger to a putni sale may be set aside on the ground that the provisions of the Regulation were not complied with. The purchaser is only entitled to be indemnified against all loss at the charge of the *emindar* or other person at whose instance the sale may have been made such loss being ordinarily measured by costs of litigation and interest on purchase money. *Mobaruck Ali v Ameer Ali* 21 W P 252 *Boylanta Nath Sing v Mahatab Chand Bahadur* 9 B L R 37 17 W R 447 and *Bejoy Chand Mahatab v Amrita Lal Mukerjee* 1 I R 27 Calc 508 referred to. S 14 of the Putni Regulation contemplates that the purchaser is to be made a party. If the purchaser has purchased on behalf of another or on behalf of himself and others he must be deemed to represent all such persons. Where the issue involves a simple question of fact to be decided chiefly if not solely on oral evidence a Court of Appeal should be slow to set aside the finding of the trial Judge who had the witnesses before him. *Bombay Cotton Manufacturing Co v Motilal Shital* 1 L R 39 Bom 336 L P 42 I A 110 and *Dominton Trust Co v New York Life Insurance Co* [1919] 1 A C 254 followed. The acceptance of arrears of a putni rent with a qualification that if the sale did take place the money would be returned does not indicate that the acceptance was postponed to await the event of sale or otherwise and such a sum paid and accepted cannot be regarded as a deposit. *BEJOY KRISHNA MOOKERJEE v LAKSHMI NARAIN JIU* (1910) 1 L R 47 Calc 337

PUTNI TALUK

See LANDLORD AND TENANT

1 L R 41 Calc 683

sale of—

See CHOTA NAGPUR ENCUMBERED ESTATES ACT APPLICATION OF

1 L R 46 Calc 1

See LIMITATION 1 L R 46 Calc 670

whether expression in a lease implies fixity of Rent—

See LANDLORD AND TENANT

24 C W N 874

Sale for arrears of rent
—Regulation VIII of 1819—Suit to set aside a prior putni sale—Appeal—Position of purchaser. An auction purchaser in a putni sale pending litigation to set aside a prior putni sale of the same property brought a suit on the prior sale being set aside against the *zemindar* for refund of the purchase money and rent paid. Held that he was the putniholder so far as the *emindar* was concerned. The cancellation of the prior sale did not affect the subsequent putni sale. *Prasanna Choudhary v Sonamul Choudhary* nos 13 C I J 301 referred to. *Bejoy Chand Mahatab v Mohana Mohan Choudhary* 1 C B N 785 dissenting from

PUTNI TALUK—cont'd

BIJOY CHAND MAHTAB v ASHUTOSH CHUCKERBUTTY (1920) 1 L R 48 Calc 454

PUTNI TALUK REGULATION (VIII OF 1819)

See PUTNI SALE

See PUTNI TALUK

s 14 sale under—

See LIMITATION 1 L R 46 Calc 670

PUTNI TENURE

purchaser of—

See INCUMBRANCE 1 L R 43 Calc 558

1 **Incumbrance—**
Customary right to cut and appropriate trees whether an incumbrance—Putni Regulation (VIII of 1819) s 11—Right of an auction purchaser at a sale held under the Putni Regulation to avoid such incumbrance—Bona fide engagement made by the defaulting proprietor with resident and hereditary cultivators effect of A customary right to cut and appropriate trees is an incumbrance within the meaning of s 11 of Regulation VIII of 1819. A purchaser of a putni taluk at a sale held under Regulation VIII of 1819 is not entitled to hold the property free from a customary right or a right recognised by usage which has grown up during the subsistence of the putni and under which occupancy raiwats are entitled to appropriate and convert to their own use such trees as they have the right to cut down inasmuch as he is not entitled to cancel a bona fide engagement made by the defaulting proprietor with the resident and hereditary cultivators. *Pradyot Kumar Tagore v Gopi Krishna Mandal* (1910) 1 L R 37 Calc 322

2 **Putni Regulation**
(VIII of 1819) s 17, cl (c)—Arrears of rent—Arrears previous to the current year for which the sale took place—Personal Debt—Bengal Tenancy Act (VIII of 1885) s 65—First Charge. Under the Putni Regulation VIII of 1819 s 17 cl (c) where the arrears of rent claimed are for balance due for periods prior to the current year for which the arrears are due when the sale is held in the middle of the year or prior to the year preceding if the sale be held at the commencement of the following year these balances must be treated as personal debts recoverable under the ordinary procedure for recovery of debts and not as rents recoverable under the provisions of the Tenancy law and that in such a case the provisions of s 65 of the Bengal Tenancy Act would not have any application. *Pearry Mohan Mukhopadhyay v Sreeram Chandra Bose* 6 C W N 791 commented on and distinguished. *Jaganmuth v Monimuddin Mirza* (1910) 1 L R 37 Calc 747

3 **Successor rent**
decrees—Sale in execution of last decree—Zemindar if has a charge on surplus sale proceeds for arrears of previous decrees—Putni Regulation (VIII of 1819) ss 3 (3) 17 (3)—Bengal Tenancy Act (VIII of 1885) ss 65 165 195—(c)—Transfer of Property Act (IV of 1932) s 3 100—Nature of charge for arrears of rent Per N P CHATTERJEE J (Smother J contra)—Not only can a putni tenure be sold under the Bengal Tenancy Act but decrees for rent for earlier periods can be forced against the surplus sale proceeds of a putni tenure when sold in execution of a decree for rent under the provisions of the Bengal Tenancy Act. Per

PUTNI TENURE—c 13

SMITH, J.—Under s 7 cl (a) of the Putni Regulation the zemindar has the right to sell the putni answerable for any arrears of his rent but only subject to the limitation specified in s 17 cl 3 of the Regulation unless he has the zemindar should have failed to avail himself of the process which the Regulation provides appears of a period before the current year or the year immediately expired become mere personal debts and his charge in respect of such arrears is time barred. The zemindar has therefore no claim for the amounts covered by two previous decrees for rent upon the surplus proceeds of a sale in execution of a later decree for rent. The words "public auction" in s 3 cl (3) of the Regulation apply to be taken to apply to any public auction and not limited to mean an auction under the Regulation if there can be any public auction of a putni either than a public auction under the Regulation. **PER A. R. CHATTERJEE, J.**—The provisions of s 17 cl (3) of the Regulation are that the former balances beyond those of the current year (or of that immediately expired if the sale be at the commencement of the following year) will be mere personal debts of the putni and apply only when the putni is sold under the Putni Regulation. The words "sale by public auction" in s 3 cl (3) of the Regulation refers to the summary sale under the Putni Regulation which alone is dealt with by it. The provisions of that section or of s 17 have nothing to do with a sale held under the general law. Rent is a first charge under the Putni Regulation as well as under the Bengal Tenancy Act and there is no conflict between the two so far as the question whether rent constitutes a first charge is concerned. The Regulation provides for a summary sale only and in so far as such a sale is concerned the provisions of the Bengal Tenancy Act cannot affect such sales or the provisions relating to the distribution of the sale proceeds as laid down in the Regulation. With regard to sales under the general law there is no inconsistency between the provisions of the Bengal Tenancy Act and the Putni Regulation because the latter has nothing to do with such sales and the Bengal Tenancy Act supplements the provisions of the Regulation in matters not dealt with by it. If the zemindar has a first charge for rent under the Bengal Tenancy Act and the Regulation although such charge in respect of antecedent balances may not having regard to the provisions of s 17 of the Regulation be enforced against the surplus sale proceeds when the putni is sold in a summary way under the Regulation there is no reason why the zemindar should lose such charge under a decree for rent when the putni is sold under the Bengal Tenancy Act. The tenure itself having been sold in execution of a rent decree the charge was transferred to the surplus sale proceeds on the principle embodied in s 73 of the Transfer of Property which is a principle of justice equity and good conscience. The charge which the landlord has in respect of his rent is not one created by law under s 100 of the Transfer of Property Act. Such charge is not an encumbrance within the meaning of s 161 of the Bengal Tenancy Act. **SATYA SHANKAR GHOSAL v. MONOMOHAN GUHA (1917)** 22 C W N 131

PUTNIDAR

See POOLBUNDI CHARGES

I L N 41 Calc 130

PUTNIDAR—o 11

relinquishment by—

See LANDLORD AND TENANT

I L R 41 Calc 693

sue by—

See CHAI KHAPI CHAKRAN JANDS

I L R 46 Calc 173

PATNIDARS AND DAR PATNIDARS

rights of—

See CHAI KHAPI CHAKRAN JANDS

I L R 37 Calc 47

PUTRA POUTRADIK—

Wang of in Chota Nagpur—It is a rule that in a Chota Nagpur man's estate the words putra poutradik in their ordinary acceptance must be taken to include female as well as male heirs where by law the estate would descend to such heirs. But by local custom can mean male heirs only. **IN RE BROJOKISHORE DAS v. MAHARAJA KUMAR JAGAT MOHUN NATH SAHI DEO**

5 Pat L J 265

QABULIAT

See KABILIAT

See LANDLORD AND TENANT

I L R 35 All 505

QADI

See MAJIS

I L N 43 Calc 467

QUALITY MARK

See TRADE NAME INFRINGEMENT OF

I L N 41 Bom 49

QUARRIES

See LAND ACQUISITION ACT (I OF 1894)

I L R 38 Bom 37

right of grantee to—

See INAM

I L R 40 Mad 268

QUESTION OF FACT

See CUSTOM OR USAGE

I L N 45 Calc 285

QUESTION OF LAW

See CUSTOM

I L R 45 Calc 285

QUESTIONS OF LAW AND FACT

See CIVIL PROCEDURE CODE ss 100 AND 110

See SPECIAL OR SECOND APPEAL

I L P 46 Calc 189

QUINQUENNIAL REGISTER

See INAM

22 C W N 182

R**RAFA TANKIDARS**

In the Khurdah Estate the Rafa Tankidars are occupancy raiyats and not tenure holders HARAYAN PATNAIK : RAGHUNATH PATNAIK 11 Pat L J 373

RAILWAY

See RAILWAY COMPANY

See RAILWAYS ACT

Liability of Railway Administration—

See LOSS OF GOODS

I L R 44 Calc 16

See SHAWLS MEANING OF

I L R 39 Calc 1029

Risk Note—

See RAILWAY COMPANY

See CONTRACT

I L R 40 All 418

I L R 43 Bom 769

RAILWAY COMPANY

See CARRIERS I L R 39 Calc 311

See CARRIER LIABILITY OF

I L R 33 Mad 120

See CONTRACT 15 C W N 981

I L P 39 All 418

See CONTRACT ACT 1871 ss 237 AND 237

I L R 43 All 621

ss 151 and 152

I L R 39 Bom 191

See CONTRIBUTORY NEGLIGENCE

I L R 34 Bom 427

I L R 41 Calc 308

See EVIDENCE ACT s 103

I L R 43 Bom 709

See NEGLIGENCE I L R 48 Calc 757

Liability of—

See RAILWAYS ACT (1A OF 1890) s 7.

I L R 34 All 656

I L R 37 All 463

See REMAND I L R 42 Calc 888

Loss or damage to goods—

1 ——— Risk Note B—Company absolved from liability in all cases except negligence or dishonesty of its servants—Onus Where goods were consigned to a Railway Company for carriage the contract being embodied in a risk note Form H under which in consideration of the Railway Company accepting a lower freight the consignor absolved the Railway Company from all liability for loss or damage to the goods subject however to the proviso that the Company would be liable for loss due to wilful negligence on the part of their servants or due to thefts by its servants or agents Held that the onus lay on the person seeking to charge the Railway Company with damages for loss of goods to show that the case came within the proviso SHEORAMUT PAM v THE BENGAL NORTH WESTERN RAILWAY CO (1912) 10 C W N 766

2

Risk Note H—

Consignment under Risk note—Loss of portion

RAILWAY COMPANY—contd

of consignment—Onus of proving cause of loss—Railways Act (1A of 1890) s 72 Where a number of tins containing oil was consigned to the defendant railway company under risk note Form H and the tins were delivered to the consignee but the contents of some of the tins were missing Held that the person who said that the case fell within the exceptions mentioned in the risk note Form H had to prove his assertion SHEORAMUT PAM v Bengal North Western Railway Company 16 C W N 766 referred to EAST INDIAN RAILWAY CO v NILKANTA ROY (1913)

I L R 41 Calc 56

3

Contract Act (IX of 1872) ss 151 and 152—Liability of Railway Companies for loss damage or destruction of goods entrusted to them for carriage—Evidence necessary to exonerate Railway Company when the true cause of the loss etc cannot be ascertained—Provision of appliances to put out fires H sued the B B & C I Railway Company for the value of certain bales of cotton entrusted to the railway company for carriage and accidentally burnt while being so carried Held that the railway company merely by getting the Court to believe that the wagon on which the goods entrusted to it had been loaded had been so loaded with ordinary care had not done all that was needed to absolve itself but that in the absence of a definite known cause the railway company had to satisfy the Court that in the management of its engines and in the whole course of drawing the wagon to the place where it caught fire the railway company observed in all respects the same degree of care and prudence which an ordinary man conveying his own valuable goods might have been expected to take under the same circumstance When anyone has entrusted goods to a railway company for carriage and the goods are lost damaged or destroyed while in the possession of the company and under the control of the railway company is the fact of the loss damage or destruction is enough to cast upon the company the burden of proving that that loss was not due to any negligence on its part The standard of negligence is given in ss 151 and 152 of the Indian Contract Act but no general rule universally applicable can be laid down as a rule of law defining the amount and quality of the proof in every case which will discharge the railway company LALCHAND RAMCHAND v G I P Railway Co 11 L R 37 Bom 1 is an authority for the proposition that a decree ought not to be given against a railway company sued as bailee for loss damage or destruction of goods bailed to it if the moment it admits that it is unable to assign the *vera causa* of the loss The company as bailee is primarily liable for the loss but it may exonerate itself in two ways It may while ignorant of the cause of the fire show if it can that that cause could not possibly be attributable to itself and in other words it was altogether external and beyond the railway company's control Second the bailee while ignorant of the *vera causa* might point to the fact that he had taken such precautions against risk had dealt with the goods entrusted to him with such care that whatever the cause might be and although attributable to his own act yet it must be presumed to have been of such an unrecalled or such an unpreventable kind that he ought not to be held

RAILWAY COMPANY—contd

re possible for it. But such a defence could only be logically (if ever logically) established by the virtual exclusion of all causes of an ordinary kind attributable to the bailee or his servants or machinery. **RIGHT HETRY & COMPANY v. M. R. & C. I. RAILWAY COMPANY (1914)**

I. L. R. 80 Bom. 191

4 ————— **Negligence—Common carrier—**
*Verdict—Railway Company of Mayfrs & Co. liable for liability by contract—Statutory limits imposed on such contract—Duty of care apart from contract and excluded by it if arises—Contract from agent or person held out as such—Agent not carrying to acquaint himself with terms print & on ticket—Principal is bound by terms—Jury—Fact & degree of—Legal consequences follow therefrom. Apart from statute a carrier is liable in Canada as in England for injury arising from negligence in execution of his contract to carry unless he has effectively stipulated that he shall be free from such liability. Under a *24 of the Canada Railways Act railway companies are put under a general obligation to carry and deliver with the due care and diligence and any one aggrieved by a breach of this duty is to have a right of action from which the companies are not to be relieved by any notice condition or declaration if the damage arises from negligence or omission. S. 310 of the Act provides that no contract restricting liability for carriage is to be valid unless it is of a kind approved by the Railway Board which is empowered to determine the extent to which such liability may be impaired restricted or limited and generally to prescribe by regulation the terms and conditions under which any traffic may be carried. Held that where under s. 340 and other sections which deal with special tariffs forms of stipulation limiting liability have been approved by the Board and the conditions for making them binding have been duly complied with the companies are enabled in such cases to contract for complete freedom from liability for negligence. If a passenger has entered a train on a mere invitation or permission from a railway company without more and he receives injury in an accident caused by the negligence of its servants the company is liable for damages for breach of a general duty to exercise care. Such a breach can be regarded as one either of an implied contract or of a duty imposed by the general law and in the latter case is in form a tort. But in either view this general duty may be subject to statutory restrictions or superseded by a specific contract which may either enlarge diminish or exclude it. If the law authorises it such a contract cannot be pronounced to be unreasonable by a Court of Justice. The specific contract with its incidents either expressed or attached by law becomes in such a case the only measure of the duties between the parties. If the contract is one which deprives the passenger of the benefit of a duty of care which he is *prima facie* entitled to expect that the company has accepted the latter must discharge the burden of proving that the passenger assented to the special terms imposed. This he may be shown to have done either in person or through the agency of another. Such agency will be held to have been established when he is shown to have authorised antecedently or by way of ratification the making of the contract under circumstances in which he must be taken to have left everything*

RAILWAY COMPANY—contd

to his agent. In such a case it is sufficient to prove that he has been content to accept the risk of allowing terms to be made without taking the trouble to learn what was being agreed to. The company may infer his intention from his conduct. If he stands by under such circumstances that it will naturally conclude that he has left the negotiation to the person who is acting for him and intends that the latter should arrange the terms on which he is to be conveyed he will be precluded by so doing from afterwards alleging want of authority to make any such terms as the law allows. If the person acting on his behalf has himself not taken the trouble to read the terms of the contract proposed by the company in the ticket or pass offered and yet knew that there was something written or printed on it which might contain conditions it is not the company that will suffer by the agent's want of care. The agent will in the absence of something misleading done by the company be bound and the principal will be bound through him. The company owes the passenger no duty which the contract is expressed on the face of it to exclude and if he has appropriated that contract by travelling under it he cannot afterwards reprobate it by claiming a right inconsistent with it. **GRAND TRUNK RAILWAY COMPANY OF CANADA v. ALBERT NELSON ROBINSON (1915)**

19 O W N 605

5 ————— **Liability of Railway Companies for damage to goods entrusted to them for carriage—Onus of proof of negligence—Railway Act (IX of 1890) ss. 72 and 73—Contract Act (IX of 1872) ss. 151, 152 and 153—Carriers Act (III of 1865) s. 9—Responsibility of Railway Company for negligence in preventing damage from fire after discovery of the fire. On the 3rd of March 1909 the respondent plaintiffs consigned 90 bales of cotton to the defendants at Malkapur for delivery to the 1st plaintiffs at Bombay. These 90 bales along with 19 others belonging to a different consignor were loaded upon a waggon at Malkapur Station by the defendants and the waggon was then closed and sent on to a siding till the next day. On the 4th of March 1909 at 1.50 P.M. the waggon was attached to a train being placed next to the engine. On the arrival of the train at Varanagam Station at 3.40 P.M. the said bales of cotton were found to be on fire. The waggon containing them was immediately detached and placed on a siding the doors were opened 37 bales were extracted and the engine driver having unsuccessfully tried to put out the fire with water from his boiler took the rest of the train on to Bhusaval station 8 miles distant. There not being appliances at Varanagam for extinguishing fire the remaining 72 bales continued to burn in the waggon till completely consumed. While the bales were being burnt communications passed between the Varanagam and Bhusaval Station Masters as to the sending from Bhusaval of appliances to put out the fire. At 4.10 the Station Master at Varanagam telegraphed to the Station Master at Bhusaval to send a fire pipe to put out the fire as it was burning very badly. This message was received at Bhusaval at 4.50 P.M. During the day the Station Master at Varanagam sent several practice messages asking for assistance from Bhusaval and also sent a further telegram which**

RAILWAY COMPANY—*contd*

was received at Bhusaval about 30 R N. Fire pump not sent yet half the bales burnt strong wind blowing fire in great force arrange sharp. The Station Master at Bhusaval did not send any assistance whatever. He made inquiries as to how far water was from the fire and on receiving the information that the nearest water was in a well some 200 yards from the fire and some 25 feet from the surface came to the conclusion that the appliances at Bhusaval Station would be ineffectual. In fact the nearest well was some 200 yards from the fire but only some 53 feet from the nearest point on a siding to which the wagon containing the bales could have been brought. After the fire the defendants notified the plaintiffs that the 90 bales had been burnt but afterwards offered to give delivery to the plaintiffs of 37 bales slightly damaged but the plaintiffs refused to accept delivery of the bales and subsequently they were sold by the defendants for the sum of Rs 3210. The plaintiffs sued the defendants to recover the value of the 90 bales. No cause of the fire could be shown and no definite act of negligence on the part of the servants of the defendants or other default on their part prior to the discovery of the fire was proved. *Held* that the responsibility of the defendants for the loss of destruction or deterioration of goods delivered to them to be carried by them as provided by s 72 of the Railways Act 1 of 1890 that of a bailor under ss 151 152 and 162 of the Contract Act and that s 6 of the Railways Act did not extend the principles contained in s 9 of the Carriers Act 1865 to suits against Railway Companies and did not increase the onus of proof laid on the defendants under s 101 of the Contract Act namely to take as much care of the goods bailed to them as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk quality and value as the thing bailed but that in the absence of special contract the defendants were not responsible for the loss destruction and deterioration of the goods if they had taken that amount of care. *Held* further that the defendants had exonerated themselves *quoad* the outbreak of the fire. *Held* however that the obligation on the defendants included not only the duty of taking all reasonable precautions to obviate risks but the duty of taking all proper measures for the protection of the goods when such as had actually occurred and that the defendants' servants had been guilty of default the Station Master at Bhusaval in not having sent appliances to extinguish the fire when requested by the Station Master at Varanasi and the Station Master at Varanasi in having misled the Station Master at Bhusaval as to the distance of water from the fire and that the defendants had not taken the care a reasonable man would take to give his goods. *Held* accordingly that the defendants were liable to the plaintiffs to the extent of the damage which they might have prevented on the discovery of the fire. **INDIAN AND PAKISTAN C I I I RAILWAY COMPANY (1911) I L R 37 Bom 1**

6 ——— Carriage of goods—East Indian Railway.—The tender note used by the East Indian Railway by which the Company take liability only for loss of or complete package due to the wilful negligence of its staff is not opposed to public policy. **KALI DAS MITTAL v. EAST INDIAN RAILWAY COMPANY 21 C W N 315**

RAILWAY COMPANY—*contd*

7 ——— Liability of in respect of goods consigned for carriage and delivery—Obligation to grant shortage certificate. A Railway Company is under no liability to reweigh goods consigned to them for carriage and delivery and give a certificate of shortage if the consignor all goes loss in the transit. **JOGANATH MAPPAI v. EAST INDIAN RAILWAY CO (1918) 22 C W N 802**

8 ——— Risk Note B—Contract—Delivery of goods to Railway Company—Risk Note Form B—Goods lost in transit—Admission of loss by Railway Company—Mere admission not sufficient to entitle Railway Company to protection of risk note—Definite proof of loss required. The plaintiff consigned certain bags of rice to Dumtara from Dabarpore under Risk Note Form B. The consignment being short delivered the plaintiff sued the defendant Railway Companies for the value of the missing bags. The second defendant Railway Company admitted the loss but sought to escape liability under the Risk Note. The trial Judge on the admission of the defendant Company and without recording any evidence regarding the loss of goods dismissed the plaintiff's suit. The plaintiff having applied to the High Court. *Held* remanding the case for retrial that it was necessary for the defendant Company to prove that the goods were lost a mere admission in their own favour being insufficient. **GHYLSHAI v. THE E I RAILWAY COMPANIES (1912) I L R 45 Bom 1201**

9 ——— Duties of as carriers—Goods allowed by consignee to remain on railway premises for an unreasonable time—Company not liable for loss or damage—Demurrage. The consignee of goods sent by rail is bound to take delivery thereof within a reasonable time. If by his own neglect he omits to do so he cannot hold the railway company liable for any loss or damage which may accrue. Different considerations would arise if there were any evidence to show an agreement on the part of the railway company to act as warehousemen but the mere fact of the company charging demurrage would not necessarily give rise to such an implication. **Chapman v. Great Western Railway Company 6 Q B D 248 referred to BERAL AND NORTH WESTERN RAILWAY v. MEL CHAND I L R 42 All 655**

10 ——— Death of passenger—Duty to have been carried by negligence—Suit for damages by representative of deceased—Verdict of jury of Company—Leave—Fatal Accidents Act (1855). An action against a Railway Company for damages on account of the death of a passenger alleged to have been caused by the negligence of the Company's servants is not an action ex contractu but is an action based on tort and on the provisions of the Indian Fatal Accidents Act 1855. Such an action therefore cannot be brought at the place where the deceased person's ticket was taken. There is no general obligation upon a Railway Company to carry passengers who have taken tickets safely. **Asaf v. The Great Western Railway Company 4 Q B 440 and the East Indian Railway Company v. Ramesh Chandra Mukherji 11 F 25 Cal 401 referred to BRIJAM SARANI TIKKOO v. THE BOMBAY BARODA AND CENTRAL INDIA RAILWAY (1919) I L R 41 All 433**

RAILWAY COMPANY—contd

11 ——— Public Street—Power in Cross Land Acquisition Act (I of 1894)—Indian Railways Act (IX of 1890) s 7. The Indian Railways Act 1890 s 7 as amended by s 1 of Act IX of 1894 provides that subject in the case of immovable property not belonging to the railway administration to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies a railway administration may for the purpose of constructing a railway (inter alia) construct across any streets such lines of railway as the railway administration think proper the powers conferred by the section are made subject to the control of the Governor General in Council. The respondents constructed lines of railway across a street vested by statute in the appellant Municipal Corporation without obtaining their consent and without taking proceedings under the Land Acquisition Act 1894. Held that the construction of the railway lines across the street was not an acquisition of immovable property within the meaning of s 7 of the Indian Railways Act 1890 and that the respondents had power under that section as amended to lay the lines without obtaining the consent of the appellant corporation. *BOMBAY CORPORATION v GREAT INDIAN PENINSULA RAILWAY CO* L R 43 I A 310

12 ——— Carriage of goods partly over railway line and partly by river—Local booking form of railway receipt—Freight for the whole journey—Privy of contract—Loss of goods while in the custody of the Steamship Company—Negligence of the Steamship Company—Carrier's Act (III of 1865) ss 8 and 9—Common carrier liability of owner—Definition of common carrier in the Carrier's Act (III of 1865)—*ERISE v ACT (I of 1879) s 106* On or about the 11th November 1910 343 chests of tea belonging to the plaintiffs were delivered by the plaintiffs to the Railway Company (1st defendant) at the latter's station at Bordub Road (Assam) for the purpose of transport to Chittagong in consideration of one single and entire reward paid by the plaintiffs to the Railway Company. In the ordinary course of business such goods were carried by the Railway Company over its own line from Assam to Chittagong without recourse to any other Companies or system of transport. Owing to a breakdown however of a section of the line known as the hill section in June 1910 arrangements were made between the Railway Company and the Steamship Company (2nd defendant) by which the Railway Company was to carry such goods over its own line to Gauhati and there hand over the goods to the Steamship Company to be carried by the latter (for a fixed reward to be paid by the Railway Company to the Steamship Company) by the river to Chandpur and there have the goods handed back to itself for the purpose of transport over its own line of railway to Chittagong. The railway receipt given to the plaintiffs was in the form of the usual Local Booking receipt (which in normal times would be given for the all land transport from Bordub Road to Chittagong) except that at the top thereof a note was made in writing. Booked as per sender's request for shipment via Gauhati and Chandpur. It also appeared that a notice was given by the Railway Company to its customers in the Railway Company's goods

RAILWAY COMPANY—contd

tariff stating the breakdown on the hill section and adding all goods traffic to and from stations in Upper Assam north of Mupa must be routed via Gauhati. Under this arrangement the plaintiffs' goods were carried by the Railway Company from Bordub Road to Gauhati and put on board the Steamship Company's flat Caucery at the latter place. On the 21st December 1910 while the said goods were lying at Gauhati on the said flat a fire broke out on the said flat at 15 or 6.30 in the evening and 96 of the plaintiffs' chests of tea were destroyed. In a suit by the plaintiffs which proceeded against the Steamship Company (the suit against the Railway Company having been dismissed by consent) for damages for the loss of 96 chests of tea so destroyed—Held that there was no contract to carry safely from Gauhati to Chandpur between the plaintiffs (owners of the goods) and the Steamship Company as a common carrier. *Muschamp v Lancaster and Preston Railway Co* 8 M & W 421. *Southorn v South Staffs Railway Co* 8 Ex 341. *Pristol and Exeter Railway Co v Collins* 7 H L C 194. *Wilby v West Cornwall Railway Co* 2 H & N 703 referred to. *Semble* that in the absence of any privy of contract the plaintiffs as owners of the goods cannot (apart from the Carrier's Act (III of 1865)) recover against the Steamship Company as an insurer of goods by reason only that it was a common carrier. *Breithorn v Wood* 3 Brod & P 54. *Poz v Skipton* 8 Ad & El 963. *Marshall v York Newcastle Railway Co* 11 C B 655. *Austin v Great Western Railway Co* L R 2 Q B 440 referred to. Held also that under the arrangement above described the Steamship Company was engaged in the business of a common carrier within the definition of the term in the Carrier's Act (III of 1865) and that although there was no privy of contract between the plaintiffs and the Steamship Company the latter as a common carrier was liable to the plaintiffs as owner of the goods by virtue of ss 8 and 9 of the Carrier's Act (III of 1865) for loss arising from its negligence unless it was able to exonerate itself from responsibility for such loss. *Choitum U v R S & Co* 1 L R 94. *Calc 786 R S N Co v Choitum U* 1 L R 96. *Calc 328 Hays & Elsey & Co v B D & Co* 1 Railway Co 1 L P 9. *Bom 191* referred to. Held further in the circumstances of the case that (apart from any rule of law as to common carriers) the Steamship Company was liable to the plaintiffs in tort by reason of the fact that the plaintiffs had affirmatively established that the loss was caused by the negligence of the Steamship Company. *Follies v Mid Dist Railway Co* L P 5 C P D 157. *Hooper v L & N Railway Co* 50 L J Q B 103 followed. *Kelly v Metropolitan Railway Co* (1895) 1 Q B 915. *Metz v Great Eastern Railway Co* (1895) 2 Q B 337 referred to. Where on a question of negligence the plaintiffs have adduced evidence sufficient to call upon the defendant to reply and the defendant thereupon being under the burden of laying the material facts before the Court has refrained from doing so the onus of proving negligence is discharged by the plaintiffs. *Llin v Janas* 14 L J Ex 201 followed. *Durorianath v P S & Co* 27 C L J 615 referred to. *DEKHARI TEA CO LD v ASSAM RAILWAY CO LD* (1910)

I L R 47 Calc. 6

RAILWAY PASSENGER

See RAILWAY COMPANY

I L P 41 ALL 488

Fraud—Travelling

without a ticket but not with intent to defraud—
Course open to Railway Administration in such
case—Power to forcibly eject passenger—Assault

—Railway —Rolling stock —Railways Act
(IX of 1890) ss 3 (4) (10) 68 69 113 120 122—
Railways Act (IV of 1879) ss 31 and 32—Enhance-

ment of sentence on hearing of Reference The main
and primary purpose of ss 68 and 69 of the
Railways Act (IX of 1890) is to prevent persons

from travelling in fraud of the Company without
payment of the fare and the obligation to show
their tickets when required is subsidiary only

to such purpose Travelling without a ticket in
the absence of intent to defraud, is not an offence
In such a case the only course open to the Rail-

way Administration is that provided in s 113
There is no provision in the Act for ejecting
passengers except in certain circumstances such

as are specified in s 120 S 122 does not apply
to passengers travelling in a railway carriage
the term railway in s 3 (4) excludes a

carriage Where a person travelled without a
ticket not with intent to defraud but because
he arrived as the train was about to start and

was therefore unable to purchase one and when
asked for it by the travelling ticket checkers
offered to pay the fare and excess charge on grant

of a receipt but refused to leave the compart-
ment at the next station and purchase a ticket
he was directed to do by the ticket checkers

Held that the ticket checkers had no lawful
authority to remove him thereupon forcibly
from the carriage and to beat him with their

fists and that they were guilty of an offence under
s 323 of the Penal Code *Pratib Day v B B*
d O I Railway Co I L R I Bom 52 distin-

guished *Butler v Manchester Sheffield and*
Lincolnshire Railway Company 21 Q B D 207
referred to The Court cannot entertain an

application for enhancement on the hearing of
a reference under s 438 of the Code Such appli-
cations ought to be made in the usual way and

are not ordinarily entertained on behalf of private
parties *MOHAMMED HOSAIN v BARLEY (1916)*
I L R 44 Calc 279

RAILWAY PREMISES

right to enter upon—

See PENAL CODE (ACT XLV OF 1860)
s 168 I L R 35 ALL 138

RAILWAY RECEIPT

See CONTRACT ACT (IX OF 1872) ss 4
58 61 AND 103

I L R 38 Bom 255

See RAILWAYS ACT (IX OF 1890) s 2
I L R 39 Bom 485

endorsement of—

See CONTRACT ACT 1872 s 103
I L R 40 Bom 630

not a delivery order—

See CONTRACT ACT (IX OF 1872) s 47
I L R 40 Bom 517

possession of—

See OFFICE I L R 46 Calc 820

production of—

See DISHONESTLY RECEIVING STOLEN
PROPERTY I L R 40 Calc 890

RAILWAY RECEIPT—contd

—Title—Endorsee—Interest in the goods—Action

for damages A railway receipt is a mercantile
document of title and the endorsee of the receipt
has sufficient interest in the goods covered by it

to maintain an action against the Railway Com-
pany for damages in respect of the goods covered
by the receipt *Amerchand & Co v Ramdas*

Vithaldas I L R 38 Bom 255 followed *DOLAT*
RAM DWARKADAS v B, B & C I RAILWAY COM-
PANY (1914) I L R 38 Bom 859

—Mercantile document

of title—pledge of—Local custom—Charge—Holder

thereof—Provincial Insolvency Act (III of 1907)

s 16 cl (3) A railway receipt is a mercantile

document of title to goods and lawful possession

as pledge of such receipt enables the holder by

virtue of local custom to get possession of the

goods from the carrier and the insolvents right

to get possession under s 16 cl (3) of the Pro-

vincial Insolvency Act (III of 1907) ceases with

the pledge *Amerchand & Co v Ramdas 15*
Bom L R 390 followed *FAKEERAPPA v THE*
P&N (1913) I L R 38 Mad 664

RAILWAY RULE

See RAILWAYS ACT (IX OF 1890) s 1
I L R 39 Bom 485

RAILWAY ACT (IX OF 1890)

ss 3 63 69 113 120 122—
See RAILWAY PASSENGER
I L R 44 Calc 279

ss 3 and 121—Indian Railway Board

Act (IV of 1905) rr 241 242 and 231—Station-

master deputing signaller to collect tickets and

excess fare—Asault on signaller by passenger

Under rr 244 249 and 231 framed under Railway

Board Act (IV of 1905) a Stationmaster has power

to depute a signaller subordinate to him to collect

tickets and excess fares from passengers alighting

at the station and a signaller so deputed is a

Railway servant employed by a Railway ad-

ministration within the meaning of s 3 cl (1)

of the Indian Railways Act (IX of 1890) An

assault by a passenger on such signaller rightly

demanding excess fare is an offence under s 1

of the Indian Railways Act *BRIZNANKA v*
EMPEROR (1920) I L R 34 Mad 345

ss 6 (6) 77 140—
See LOSS OF GOODS
I L R 44 Calc 16

ss 6 (6) 77 140—
Railway adminis-

tered by Government—Said by consignee for price

of goods consigned and misl d by railway—Notice

to Traffic Manager and to Collector for Secretary

RAILWAY ACT (IX OF 1890)—*contd*— s 7 (6) 77 140—*contd*

Indian Peninsula Railway v Chandra Das I L R 23 All 55° Janaki Doss v The Bengal Nagpur Railway Company 10 C W N 356 Perannan Chetti v South Indian Railway Company I L R 27 Mad 137 and Vadiar Chand Saha v Hood I L R 35 Cal 191 considered Per D CHATTERJEE J Semble In the absence of evidence showing that the Agent of a railway administered by Government is the Manager or that the Traffic Manager is not the Manager and regard being had to the rule printed and published in the Fare and Time Table of the Railway that references regarding delay in transit to or loss of goods parcels luggage or other articles or claims for compensation and refunds should be addressed to the Traffic Manager notice to the Traffic Manager may be considered sufficient under s 140 of the Act. In a suit by consignors of goods which were not alleged to have been lost but were found to have gone astray after they were delivered to the Railway for recovery of their price with compensation the defendant did not plead or prove any loss and on the other hand alleged that the goods had not been delivered at all nor was there evidence when the goods were to be delivered. *Held per CORHAM* that neither Art 30 nor Art 31 applied and (*Per D CHATTERJEE J*) that the suit was governed by Art 110 of the 1st Schedule to the Limitation Act. *Mohan Singh Chauhan v Conder I L R 7 Bom 478 and Dannull v British India Steam Navigation Company I L R 10 Cal 477 referred to RADHA SHAM BASAK v THE SECRETARY OF STATE FOR INDIA (1916) 20 C W N 790*

— s 7—

RAILWAY COMPANY

*City of Bombay Municipal Act (Bom Act III of 1888) s 394—Use by Railway Company of its premises for storing timber—License from the Municipal Commissioner for the use not necessary The Agent of the M I P Railway Company having been charged in the Presidency Magistrate's Court at the instance of the Bombay Municipality under s 394 (1) (d) of the City of Bombay Municipal Act (Bom Act III of 1888) with having used the Company's premises for storing timber without a license granted by the Municipal Commissioner the Presidency Magistrate recorded evidence and referred the following question under s 432 of the Criminal Procedure Code (Act V of 1898)—Do the statutory powers given to the Railway Company (s 7 of the Indian Railways Act IX of 1890) preclude the necessity of obtaining a license from the Municipal Commissioner to use premises in such a manner as is necessary for the convenient making altering repairing and using the Railway? *Held* that no such license was necessary s 7 (1) of the Indian Railways Act (IX of 1890) authorizes the Railway Administration to do all acts necessary for the convenient making maintaining altering repairing and using the Railway notwithstanding anything in any other enactment for the time being in force. The storing of timber was necessary for the convenient making etc of the Railway line Under s 7 sub s 2 of the Indian Railways Act (IX of 1890) the Governor General in Council and not the Municipal Commissioner has the control of*

RAILWAY ACT (IX OF 1890)—*contd*— s 7—*contd*

the Railway Administration in the exercise of its powers under sub s 1 MUNICIPAL COMMISSIONER OF BOMBAY v G I P RAILWAY COMPANY (1909) I L R 34 Bom 252

*City of Bombay Municipal Act 1888 s 289—Laying Railway lines by Railway Administration across public street vested in Municipality—Land Acquisition Act (I of 1894) provisions of inapplicable S 7 of the Indian Railways Act 1890 (as amended by Act IX of 1890) enacts (1) Subject to the provisions of this Act and in the case of immovable property not belonging to the Railway administration to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies a Railway administration may for the purpose of constructing a railway notwithstanding anything in any other enactment for the time being in force make or construct in upon across under or over any lands or any streets lines of railway as the Railway administration thinks proper (2) The exercise of the powers conferred on a Railway administration by sub s (1) shall be subject to the control of the Governor General in Council The respondents constructed Railway lines across a street vested in and under the control of the appellants by virtue of the provisions of the City of Bombay Municipal Act 1888 In a suit by the appellants for a declaration that the respondents were not legally entitled to lay lines of railway across such street without either obtaining their permission or acquiring the street under the provisions of the Land Acquisition Act 1894 *Held* (affirming the decision of the High Court on appeal dismissing the suit) that the taking the railway on the level across the street was not acquisition of immovable property within the meaning of s 7 of the Indian Railways Act 1890 as amended. The provisions of the Land Acquisition Act were not so expressed as to cut down the power conferred by that section on the respondents to carry a line of railway across a street subject to the control of their powers by the Governor General and that Act was inapplicable to such a case MUNICIPAL CORPORATION OF CITY OF BOMBAY v G I P RAILWAY COMPANY (1916)*

L N 43 I A 300

I L R 41 Bom 281

AFFIRMING

I L R 38 Bom 565

Level-crossing—Closing an old level crossing and opening a new one—Diverting a road—Powers of a Railway Company Plaintiff owned a bungalow on the west side of the defendant's Railway close to a station. To go over to the east side there was a level-crossing near the plaintiff's bungalow. The Railway Company owing to the necessity of increasing sidings near the station closed the level-crossing and opened a new one at a distance of few yards from the plaintiff's bungalow. This diversion of the road caused much inconvenience to the plaintiff as he had to go a longer distance if he wished to cross the Railway and on the way there was a dip which made it impossible for the plaintiff to get at the new level-crossing during the monsoon. The plaintiff therefore brought a suit against the Railway Company claiming a mandatory injunction directing the Company

RAILWAY ACT (IX OF 1890)—contd**s 7—contd**

to have the old gateway at the level crossing re-opened and he relied on s 7 of the Indian Railways Act 1890. *Held* dismissing the suit that the Railway Company were well within their powers in closing the old level crossing and they had fulfilled all the requirements which the law imposed on them to provide another level crossing. A Railway Company has under Statute very wide powers in order to carry on its business for public purposes and it has got to consider not only the convenience of individual owners of properties bordering near the line but it has also got to consider the necessity for affording facilities to take the public who wish to travel on the Railway and send their goods by the Railway and it cannot possibly consider separately the interest of each individual who happens to live in the neighbourhood of the Railway line. **HARILAL LALLUBHAI B B & C I RAILWAY COY (1919)** I L R 44 Bom 705

ss 41 and 42—Railway Administration—Powers—Compartment reserved for the use of Europeans and Anglo Indians only—Civil Court—Jurisdiction Under s 41 of the Indian Railways Act 1890 a Civil Court has no jurisdiction to try the question whether a Railway administration can reserve accommodation for Europeans and Anglo Indians on a Railway train. Section 42 of the Act deals not only with goods traffic but also with passenger traffic. Opinions expressed in *Empress v Brydson Lal* (1920) 42 All 327 dissented from **VISHNUPATH GANESH G I P RAILWAY COMPANY (1921)** I L R 45 Bom 1324

s 47—

See s 72 I L R 39 Bom 485

General rules published in Gazette of India—Adoption by a Railway Company—Sanction—Publication The general rules framed by the Governor General in Council and published in the *Gazette of India* by notification dated the 3rd July 1900, do not become operative as the rules of any individual Railway Company merely upon their adoption by the Company. It must be shown that the particular Railway Company made rules and that those rules have received the sanction of the Governor General in Council and have been published in the manner prescribed by the Act. **HARI LAL SINGH & THE BENGAL NAUFLR RAILWAY CO (1910)** 15 C W N 195

Rules made by a Railway Company what are—Sanction of Government—Publication—General rules framed by Government Rules adopted by a Railway Company though not originally prepared by it would satisfy the requirements of s 47 of the Railways Act if they were subsequently sanctioned by the Governor General in Council and published in the *Gazette of India*. **Hors Lal Singh & The Bengal Nagpur Railway Co 13 C L J 15 15 C N 195** referred to **BENGAL NAUFLR RAILWAY CO & RAHPRADAT GONESHAM DAS (1912)** 11 C W N 360

Rules made by Railway Company validity of—Sanction of Government and publication Upon the finding of the Small Cause Court that the rules of the East Indian Railway Company in question regarding

RAILWAY ACT (IX OF 1890)—contd**s 47—contd**

the recovery of demurrage charges from consignees of goods despatched by the Railway were made sanctioned and published as prescribed by s 47 of the Railways Act. *Held* that there was no case for the exercise of the Court's power of revision with reference to the Small Cause Court's decision dismissing the suit for refund of demurrage charges paid. **SENAJ MULL NAGAR MULL & THE EAST INDIAN RAILWAY CO (1912)** I L R 38 Calc 939 16 C W N 339

ss 47, 51 and 72—let No IV of 1872 (Indian Contract Act) section 149—Liability of Railway Company for goods accepted by a servant of the Company for conveyance—Grant of receipt on behalf of the Company essential to accrual of liability Where goods are tendered to the appropriate official of a Railway Company for despatch to a particular destination and are accepted by him the liability of the Company in respect of such goods accrues from the time when the goods are so accepted and is not dependent upon the granting or withholding of a receipt for the same on behalf of the Company by the official who has accepted the goods. **Janna Mal & The Secretary of State for India I L R 33 All 367** distinguished and doubted **BOHAN PAL MUNNA LAL & THE EAST INDIAN RAILWAY COMPANY** I L R 44 AU 218

s 56—

See LIMITATION ACT 1908 art 31 and 31 I L R 44 Mad 823

ss 68 69—

See RAILWAY PASSENGER I L R 44 Calc 279

s 72—

See CONTRACT I L R 9 All 413 I L R 43 Bom 169

s 72—

See RAILWAY I L R 41 Calc 576 I L R 37 Bom 1 16 C W N 766 I L R 45 Bom 1291

Full note Form F—Shortage in content of consignments suit for damages for loss—Exception in regard to loss of whole consignment or package if applies Where several tins of ghee consigned for carriage by the defendant Railway Company upon special terms as to rates and liability contained in a note Form F were found on arrival to have been cut open and there was a shortage in their contents. *Held* that the loss was covered by the risk note and the Company was not liable—the exception with regard to loss of a whole consignment or one or more packages out of a consignment not being applicable to the present case where all the packages arrived but with a deficiency in the contents of some of them. **EAST INDIAN RAILWAY CO & RAHPRADAT GONESHAM DAS (1912)** 11 C W N 59

Full note Form F—Signed in order to be drawn for The provisions of s 72 cl () requiring risk notes to be signed

RAILWAY ACT (IX OF 1890) contd

s 72-contd

by or on behalf of the person sending or delivering goods to a Railway Administration should be exactly carried out. Where the person who delivered the goods signed not his own name but the name of the owner of the goods, there was not a sufficient compliance with the requirements of s. 72 (1) (a). *HOLWOOD J.*—The person who signs the risk note must write his own name either by his own hand or by the hand of an agent who must be disclosed and have authority. *MARA BARSHA BANGKORAT v SECRETARY OF STATE FOR INDIA* (1915) III C W N 635

Liability of Railway Administration for loss of goods delivered for carriage is the same as that of bailee—Indian Contract Act (1st Pt of 1872) s 151—Loss of goods delivered for carriage by act of God—Onus on Railway Administration to prove circumstances exonerating liability—Negligence co-operating with act of God. The plaintiff sued for the recovery of the value of goods made over to the Eastern Bengal Railway Administration but not delivered at the destination. The defendant pleaded in substance that the goods were destroyed while in course of transmission by an act of God, namely a severe cyclone. *Held* that under sub s (1) of s 72 of the Indian Railways Act 1890 the responsibility of a Railway Administration for the loss or destruction of goods delivered to the Administration to be carried by Railway is subject to the other provisions of the Act that of a bailee under the Indian Contract Act. That the liability of the defendant must be measured solely by the test formulated in ss 151 and 152 of the Indian Contract Act. That when goods have not been delivered to the consignee at the place of destination the plaintiff need not prove how the loss occurred, the burden lies upon the bailee to prove the existence of circumstances which exonerate him from liability for the loss. That the defendant having discharged this burden the plaintiff's claim failed. That there is no foundation for the contention that a Railway Administration when it accepts goods for transmission is in the position of insurers as common carriers. That even if there was negligence on the part of the Railway Administration if the act of God was the proximate cause the defendant Railway would not be liable. *SUBBIA RAO v LAL CHOWDHURI v SECRETARY OF STATE* (1916) 21 C W N 1125

Risk Note Form

B framed under—Whether a consignee of goods cover by this Risk Note can make the Railway Administration liable for the loss thereof—Whether ss 151 152 and 161 of the Indian Contract Act (IX of 1872) will apply in such a case—S 76 of the Indian Railways Act whether it governs s 72 and the contract in the Risk Note—Proof of negligence onus on whom lies. Where goods were consigned to a Railway Company for carriage at a reduced rate of freight and the orders executed a Risk Note in Form B and several bars forming part of the consignment were missing and could not be delivered to the consignee. *Held* that in a suit for compensation for the missing bars the defendant Railway Company would not be liable if the plaintiff (consignee) failed to prove that the loss was due to the wilful neglect of the Railway Administration or to theft by or to the

RAILWAY ACT (IX OF 1890)—contd

s 72—contd

wilful neglect of its servants. *Held* also that such a case would be guided by the terms of the special contract embodied in the Indian Railways Form B and not by ss 151 152 and 161 of the Indian Contract Act or the other provisions of the Indian Railways Act. *EAST INDIAN RAILWAY CO v KANAK BEHARI HATDER* (1918) 22 C W N 622

Risk note—Consignment of goods—Loss deterioration or damage resulting from—Liability of Railway Company—Insurers—Bailees—Competency of Company to contract for less liability than as bailee. A consignee sent a bale of gunny bags through the defendant Railway Company. The risk note provided that the company should not be responsible for any loss destruction or deterioration of or damage to the consignment from any cause whatever except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the wilful neglect of a Railway Administration or to theft by or to the wilful neglect of its servants etc. The bale was damaged by the dropping of a package of acid by the negligent act of the Company's servant. On a claim against the Company for damages the latter pleaded that they were not liable on the ground *inter alia* that there was no loss of the article consigned within the meaning of the risk note. *Held* that the plaintiff could recover only if the bale of gunnics was lost that is entirely deprived of value. The distinction between loss and destruction deterioration and damage pointed out. It cannot be said that there is no loss if the outer cover which encloses a parcel is delivered whatever may happen to the contents. *Last Indian Railway Company v Lakshmi Pooj (1911) I L J 41 Cal 56 B B & C I Railway Company v Amalal Bevilal Inl Ry Cia 48 and 530 of 1914 Madras High Court (unreported)* dissented from. *Per DESHAIGRI AYAR J.*—The term loss would include cases where the article consigned is lost to the consignor as such article or has lost its identity as such. *Isfer & Co v Beldell* (1896) I Q B 13 and *Herrn v The London and South Western Railway Company* (1855) 10 Exch 793 referred to. Under the Indian Law a Railway Company has not the liabilities of an insurer but only those of a bailee and under s 72 of the Indian Railways Act can enter into an agreement limiting its responsibility provided it is in a form approved by the Governor General in Council. *Sheikh Mahamad Rautier v The British India Steam Navigation Co* (1909) I L R 37 Mad 90 (F B) commented on. Persons who undertake to do certain things and who employ servants to do those things must be held responsible for the carelessness or negligence of those servants in the course of their employment. *Joseph R d v Craig* (1919) I Ch 1 referred to. *MADRAS AND SOUTHERN MAHARATTA RAILWAY COMPANY v SUBBA RAO* (1910)

I L R 43 Mad 617

s 72 made under s 47

s 72 (1) d (f)—Rule not valid—Delivery of goods to be carried by Railway Administration—Grant of railway receipt not essential to complete delivery. The plaintiffs brought certain goods to the railway premises and handed a consignment

RAILWAY ACT (IX OF 1890)—*contd*s 72—*contd*

note to the clerk of the railway company. No receipt was given as the goods were not weighed and loaded. In the meanwhile a fire broke out on the premises and destroyed the goods. The plaintiffs having sued the railway company for the loss of goods the lower Court held that the company was not liable for the loss in absence of a railway receipt as provided for in r 2 framed under s 47 sub s (1) cl (f) of the Indian Railways Act (IX of 1890). On plaintiffs' application under Extraordinary Jurisdiction *Held* that the commencement of the liability of the company for goods delivered to be carried under s 72 was in no way dependent upon the fact of a receipt having been granted but must be determined on evidence each independently of r 2 under s 47 sub s (1) cl (f) of the Indian Railways Act (IX of 1890). *Held* also that inasmuch as r 2 sought to define and by defining changed what would otherwise be the meaning of s 72 of the Act the rule was bad. *Per HEATON J*

A delivery to be carried by railway (within the meaning of s 72 of the Indian Railways Act 1890) means something more than a mere depositing of goods on the railway premises: it means some sort of acceptance by the railway: a taking as well as a giving. When that taking occurs is a matter which depends on the course of business and the facts of each particular case but it certainly may be completed before a railway receipt is granted. *Per SHAH J*. The delivery contemplated by s 72 is an actual delivery and marks the beginning of the company's responsibility. That delivery would no doubt involve not merely the bringing of the goods on the railway premises but acceptance thereof by the company for the purpose of carrying the same by railway. Such acceptance may be expressed or implied in a variety of ways by the usual course of business and may be quite independent of any receipt being granted by the company. Of course it will depend upon the circumstances of each case and the usual course of business of the Railway administration as to whether the goods can be said to be delivered to be carried by railway under s 72 of the Act. *RAMCHANDRA NATHA v G I P RAILWAY COMPANY* (1915)

I L R 39 Bom 485

Risk Note II—Where a consignment of goods handed over to the Railway for carriage on risk note II were short delivered by 6 complete packages *Held* that though the effect of the evidence was not definitely to establish the suggested fact of robbery from a running train yet the theory of wilful neglect by the Railway servants had been sufficiently excluded. *B B & C I P RAILWAYS v DAYARAM BECHARADS* (1921)

I L R 46 Bom 11

s. 72 77—Duty of Railway Company as a bailee under the Indian Contract Act (IX of 1872)—Delivery of goods to person entitled but without production of delivery of railway receipt—Subsequent pledge of railway receipt—Suit by pledgee—Notice of claim whether necessary—Damage caused by the liability of a Railway Company under the Indian Railways Act in respect of goods consigned for carriage is at an end when the goods are delivered to a person rightfully entitled to them even though he is not the consignee and even if the delivery is not made against the rail

RAILWAY ACT (IX OF 1890)—*contd*ss 72 77—*contd*

way receipt. After delivery of the goods to the rightful person the railway receipt ceases to be a symbol of goods and ceases to be negotiable. Hence an innocent endorsee for value of the railway receipt after delivery to such a person has no cause of action for damages against the Railway Company. A Railway Company is not under any duty to the public to insist upon the return of the railway receipt. *Held* further that delivery of goods by the Railway Company without getting in the railway receipt was not the proximate cause of the loss to the endorsee. *Barber v Meyerstein & E & Ir App 317* followed. *Held* also that the suit was barred for want of notice under s 77 of Indian Railways Act which applies to claims for compensation arising not only from non delivery or accidental loss or destruction or deterioration of goods but also from wilful delivery to a person not entitled to them. The Indian Common Carriers Act III of 1885 and the Indian Railways Act are not in *pari materia* with the English Carriers Act of 1830 as to when notice of loss is necessary. Hence decisions under the English Act are not applicable to India. *M & S M Ry Co Ltd v HARIDOSS BAKMALIDOSS* (1918)

I L R 41 Mad. 871

Risk Note B—A case of a wrong label being attached to goods en route and getting delivered at wrong destination after travelling on lines of various Railway administrations and getting damaged in so doing. All Companies were sued but notice under s 77 only given to one. The action failed on account of want of notice and one line being held not liable for damage due on another. *SHANKAR BALKRISHNA v S I RAILWAY* (1921)

I L R 48 Bom. 176

s. 75—

See REMAND

I L R 42 Cal 833

See SHAWLES

MEANING OF

I L R 80 Cal 1099

Goods referred to in s 75 consigned on a risk note—Railway Company not liable for loss. Where a person chooses to send goods referred to in s 75 of the Indian Railways Act on a risk note. Form instead of declaring them and paying the extra percentage demandable under the terms of the section he cannot hold the Railway Company by which such goods are sent responsible for the loss thereof. *NARAYAN DAS v THE EAST INDIAN RAILWAY COMPANY* (1912)

I L R 31 All 658

Articles of special value lost in transit—Liability of Railway Company for the loss thereof. The plaintiff who was a passenger on the defendant railway booked three packages from Howrah to Kharagpur. One of them contained silver and silk articles of the description mentioned in the second schedule to the Indian Railways Act as articles which must be declared. But the plaintiff did not do so. The package was lost and the plaintiff brought this suit for damages. *Held* that s 75 of Act IX of 1890 is one of general applicability to all classes of goods and inasmuch as the plaintiff did not declare the contents of his trunk that was lost in transit the Railway administration was freed from all liability for the loss thereof both as regards scheduled and non-scheduled articles contained therein. *INDIAN RAILWAY CO v N K RAY* (1913)

I L R 37 All 463

RAILWAY ACT (IX OF 1890)—*contd*s 75—*contd*

Interpretation of schedule—Lace held on an interpretation of the second schedule to the Indian Railways Act, 1890 that the word lace as therein used includes both machine made and hand made lace and is not confined to the latter *Sarat Chandra Bose v Secretary of State for India* 1 L P 39 Cal 10 2 dissented from *SUDASHAN MAHARAJ NAYDAM v EAST INDIAN RAILWAY COMPANY* 1 L R 42 All 76

Value and true value in s 75 of the Indian Railways Act meaning of—*Value* means intrinsic or market value—*Value* in some cases may mean special value to the owner—*Loss* means the value of property lost and nothing more—*Loss* does not include remote and consequential damage—*Loss* must be estimated by the same measure of damages in cases under s 75 and in cases to which s 70 not applicable—*Object of s 75 of the Indian Railways Act*—S 75 bar to an action for amount exceeding one hundred rupees for loss and consequences unless a declaration is made. On the 10th September 1916 the plaintiff delivered to the defendant Railway Company at the Victoria Terminus Station Bombay a parcel containing twenty four account books consigned to the plaintiff's firm at Nagpur. After the arrival of the parcel at Nagpur it was mis-delivered, on the 19th September by a mistake of the defendants' parcel clerk to the Superintendent of the Central Jail Nagpur. The mistake was discovered when the plaintiff's agent came to ask for delivery on the 21st September. Inquiries were made of the Jail Superintendent and it was ascertained that the books had been destroyed by him thinking that they were the papers consigned to him from Khandwa for destruction. After some correspondence between the parties the plaintiff sued the defendants stating that the account books which contained the record of all the dealings and transactions of the plaintiff's firm were lost to him by reason of the negligence of the defendants. The plaintiff estimated his loss at Rs 7,000 and claimed that sum of such other sum as might seem just to the Court as damages. The defendants in their written statement repudiated the claim on the ground that the parcel containing the account books came under the head of writings, an excepted article under s 75 of the Indian Railways Act 1890 and that the contents which exceeded in value one hundred rupees had not been declared and insured at the time of delivery of the parcel to the railway administration as required by the aforesaid section. By consent the suit was placed on board for the trial of the preliminary issue whether the defendants are protected from liability to the plaintiff under a 75 of the Indian Railways Act 1890. The trial Judge decided that the defendants were not protected from liability under the section inasmuch as the value of the account books which must be taken to mean intrinsic value was admittedly less than Rs 100 and that the loss which occurred after delivery to the wrong person was not a loss within the meaning of the section. *Held* reversing the decision of the trial Judge by SCOTT G J—(i) that s 75 of the Indian Railways Act 1890 was intended to apply to articles of special value declared by the Legislature in the Second Schedule or which may be added to the schedule by Noti-

RAILWAY ACT (IX OF 1890)—*contd*s 75—*contd*

fication of the Governor General in Council in the Gazette of India and that such articles must be free from any preluam affections on the part of the owner that is to say articles which could be valued by any sufficiently trained expert quite apart from the feelings of the owner (ii) that the damages recoverable against the Railway Company was the value of the property lost and nothing more (iii) that although a 70 did not directly protect the Railway Company since the goods were not of the value of a hundred rupees it would be entirely inconsistent with the Act to hold that if the goods had been of a value exceeding a hundred rupees the true value would be the limit of the defendants liability yet since the goods were of a value less than a hundred rupees the plaintiff might sue for any remote and consequential damage which he might allege to have suffered from the loss (iv) that the loss for which the Railway Company were liable must be estimated by the same measure of damages both in cases under s 75 and in cases to which s 75 was not applicable and that the most which the plaintiff could claim successfully having regard to the evidence was Rs 70 the value of the articles a sum for which he had not sued and could not sue in the High Court under cl 12 of the Letters Patent *Held* by MACLEOD J—(1) that the protection afforded by s 70 of the Indian Railways Act 1890 lasted as long as the Railway Company were liable as carriers and their liability would continue after the goods had arrived at their destination for such reasonable time as would be required for the consignee to come to take delivery (2) that the mere fact that the plaintiff was claiming more than Rs 100 for the loss of an undeclared excepted article barred him under s 75 of the Act from asserting that its value was under Rs 100 and the question what was the value of the goods did not arise (3) that the object of s 75 of the Indian Railways Act was to protect a Railway Company from liability for the loss destruction or deterioration of parcels entrusted to them for carriage containing articles of special value exceeding Rs 100 unless they have notice of the contents so that (a) they could demand a percentage on the value declared by way of compensation for increased risk and (b) they could take extra precautions for the safe carriage of such parcels the whole object of the section would be defeated if the consignee could claim consequential damages for the loss of an excepted article without insuring it on the ground that its market value was under Rs 100 (4) that value in s 70 of the Act did not necessarily mean market value in some cases articles might have a special value to the owner beyond the market value and if the owner wished to recover this value he must declare and insure the goods the liability of the Company in the event of the loss being limited to the true values by s 70 (5) of the Act *Mullen v Brasch* 10 Q B D 119 116 *Grosch v The London and North Western Railway Company* 2 Car & K 789 *Riley v Horne* 5 Bing 217 219 referred to *Hearn v London and South Western Railway Company* 10 Ex 793 distinguished. *U P RAILWAY CO v PANCHABRA JAGAT NATH* (1918) 1 L R 43 Bom. 386

ss. 75 and 80—*Suit for compensation for loss of through-booked goods—Short delivery—*

RAILWAY ACT (IX OF 1890)—*contd*s 75—*concld*

Uninsured goods Held that where goods are booked for conveyance over more than one railway system the owner can only claim compensation for loss against a railway company other than the company with which they were booked if it is shown that the loss occurred on the system of the company sued. Held also that if goods the insurance of which is obligatory are packed uninsured with other goods the insurance of which is not obligatory, no compensation is obtainable for the loss of either class of goods. *Pandit Uday Jadhav v S M Railway Company I L R 11 Bom 527* followed. **GREAT INDIAN PENINSULA RAILWAY v SHAM MANOHAR (1911)** I L R 34 All 422

s 77—

See s 72 I L R 41 Mad 871

See Loss of Goods

I L R 44 Cal 16

Suit against Railway

Company—Notice—Limitation—Limitation Act (I of 1908) Sch I Art 31—Waiver of notice Certain goods were despatched on the 26th of March 1908 from Bombay to Gazipur. The goods were lost in transit while in possession of the Great Indian Peninsula Railway Company. The consignee made a claim against the East Indian Railway Company as the result of which he was offered a certain sum as compensation by the assistant traffic manager of that company who stated that he did so with the authority of the deputy traffic manager of the Great Indian Peninsula Railway Company. There was however no proof that any such authority had been given and the offer was refused. On the 9th August 1909 the consignee brought a suit against the Great Indian Peninsula Railway Company of damages for the loss of his goods but did not give the notice required by s 77 of the Indian Railways Act 1890. He claimed that certain conditions printed on the back of the railway receipt relieved him of the necessity of giving notice under s 77. Held that this was not so nor did the action of the assistant traffic manager of the East Indian Railway Company amount to a waiver of notice. The suit was also barred by limitation under Art 31 of the first Schedule to the Indian Limitation Act 1908. **GREAT INDIAN PENINSULA RAILWAY COMPANY v CAMPAT I AL (1911)** I L R 33 All 544

Notice of claim to Goods Superintendent if sufficient—Irregular sale of lost goods if consigned to—Damage Held that the notice of claim for loss of goods despatched by rail given in this case to the Goods Superintendent did not comply with the requirements of ss 77 and 140 of the Railways Act. *Quare* Whether a failure to observe the provisions prescribed in the Railways Act with regard to sales of articles of which no delivery has been taken would make the sale an act of conversion by the railway. *Janki Das v The Bengal Nagpur Railway Co (1912)* 16 C W N 358

Notice of claim to Goods Superintendent if sufficient—Notice of Goods Superintendent to make provisions by consignee Where the plaintiff who were consignees of some bags of mustard seed claimed that the bags offered by the defendant com-

RAILWAY ACT (IX OF 1890)—*contd*s 77—*contd*

pany were his and the trying Court found that the bags despatched by the plaintiff were lost or missing. Held that in the circumstances the plaintiff was bound to serve notice under s 77 of the Indian Railways Act upon the Agent of the defendant company. A notice given to the Goods Superintendent which there was no evidence to show ever reached the Agent was not sufficient. *Woods v Vicer Ali Bepari 13 C W N 21* distinguished and doubted. *Janki Das v The Bengal Nagpur Railway Company 16 C W N 358* East Indian Railway Co v Bhabu Madho Lal 17 C W N 1134 approved. The company cannot be bound by any admission or statement by the Goods Superintendent such as is implied in a promise made before the suit to pay a liquidated sum to the plaintiff for the value of the missing bags. *PADMA KISHORE v THE EAST INDIAN RAILWAY CO (1913)*

19 C W N 62

Notice to Manager

Agent Eastern Bengal Railway Manager thereof—Notice to Traffic Manager not sufficient. The Agent of the Eastern Bengal Railway is the Manager within the meaning of the Railways Act and the notice required by s 77 must be given to the Agent. Service of notice on the Traffic Manager is not sufficient. *KALA CHAND SUKHA v SECRETARY OF STATE (1917)*

21 C W N 52

ss 77 and 140—

See Loss of Goods.

I L R 44 Cal 13

20 C W N 790

Goods delivered in

damaged condition—Notice of claim—Service on Traffic Manager if sufficient—Suit for damages—Maintainability Serving a notice of claim in respect of goods delivered by a Railway Company in a damaged condition on the Divisional Traffic Manager of the Company is in the absence of authority given by the Agent of the Company to the Divisional Traffic Manager not a sufficient compliance with the provisions of s 140 of the Railways Act. *Madha Chand Saha v Vicer Ali Bepari 13 C W N 21* explained and distinguished. *EAST INDIAN RAILWAY COMPANY v MADHO LAL (1913)* 17 C W N 1134

Notice on Claim

Superintendent of notice on Agent—Suit for compensation for loss of goods consigned—Limitation—Limitation Act (I of 1908) Sch I Art 31 In the absence of evidence to prove that the Claims Superintendent was authorized by the Agent to receive notices on his behalf. Held that a notice of claim served on the former was not served in compliance with the provisions of s 140 of the Railways Act. The law requires that the notice should be on the Agent and whether a particular officer is authorized by the Agent to receive such notice on his behalf is a question of fact that must be decided on the evidence. *Woods v Vicer Ali Bepari 13 C W N 21* distinguished. *Janki Das v The Bengal Nagpur Railway Co 16 C W N 358* The *Padma Lal Railway Co v Madho Lal 17 C W N 1134* and *Padma Kishore v The East Indian Railway Co 19 C W N 62* referred to. Where the

RAILWAY ACT (IX OF 1890)—*contd*— s 7 and 140—*contd*

conignor sued a Railway Company for compensation for loss of goods alleging the same to have been due to the wilful negligence of or theft by its servants. *Held (scilicet)* that the suit was governed by Art 30 of the 1st Schedule to the Limitation Act. *EMERSON & CO v RAM ACHAR* (1915) 20 C W N 696

— s 80—

See s 75 I L R 31 ALL 422

— s 80 and Chapter VII—*Meaning of the word loss explained includes loss by misdelivery—Indian Contract Act IX of 1872 sections 151 152 and 161—Claim for compensation for loss of through-booked traffic—Which Railway responsible. Held by the Full Bench (Abdul Raouf J assenting) that the word loss in Chapter VII of the Indian Railways Act includes loss to the owner of goods made over to a railway administration which have been misdelivered and so have been lost to the person entitled thereto and section 80 makes the railway administration on whose line the loss occurred equally liable with the railway administration to which the goods were delivered by the consignors. *The Madras and Southern Mahratta Railway Company v Haridas* (I L R 11 Mad 81) *The Madras and Southern Mahratta Railway Company v Maitoo & Co* (I L R 43 Mad 617) and *The Great Indian Peninsula Railway Company v Jomlandra Jugannath* (I L R 4 Bom 358 407) followed. *Chandra Mal v Debnath & Co* (I L R 19 Cal 137) overruled. *Miller v Brasch and Company* (L R 10 Q P D 144) distinguished. *HILL, SAWYERS AND COMPANY v SECRETARY OF STATE* I L R 2 Lab 133*

— s 101—

See GENERAL CLAUSES ACT 189 No 2 supra I Pat L J 373

General Pr JJ (c)

100—*Breach of the rules—Endangering the safety of persons—Disregard of the rules by the station master—Fouling the line for which line clear is given—Driver of the approaching train disregarding danger signals and rushing into the derailed wagon on the line—Liability of the station master. The accused a station master received an up goods train on the third line in his station yard. He then ordered the driver of the goods train to detach his engine and shunt 9 wagons which was standing on the loop line to a dead end siding in order to make room for the down mail. At that time the next station on the other side asked the accused for line clear in order to pass an up passenger train which the accused gave. Once the 9 wagons were shunted from the loop to the main line and while they were being taken from the main line to the dead end siding one of the wagons got derailed at the points where the siding joined the main line. At this time the distant and home danger signals were up against the up passenger train. Still the driver of that train disregarded both signals and dashed into the derailed wagon causing some injury to two of the passengers and the guard. The station master was tried under s 101 of the Indian Railways Act (IX of 1890) for breach of rr 99 (c) and 100 of the General Rules. The trying Magis*

RAILWAY ACT (IX OF 1890)—*contd*— s 101—*contd*

trate acquitted the accused on the ground that it was the act of the driver of the up passenger train that was immediately responsible for the collision. The Government having appealed. *Held* setting aside the order of acquittal—that the disregard by the accused of r 100 enhanced the danger to passengers and it was the risk thus entailed which rendered the rule breaker liable to punishment. *Held* also that as regards the punishment the gravity of the offence should be estimated not by the actual ultimate consequence but by the risk involved for the rule breaker might be punished even though no accident occurred. *EMERSON & RANCHADRA HARI* (1913)

I L R 37 Bom 685

— ss 108 121 128 131 132—

See TORT I L R 43 Bom 103

— s 109—*Power of Railway administration to reserve accommodation—Legality of reservation in favour of a particular class of passengers. Held on a construction of s 109 of the Indian Railways Act 1890 that the section was wide enough to authorize a railway administration to reserve accommodation for any particular class of passenger by the name of the class. A person entering a carriage so reserved might be required to leave it and if he refused might be prosecuted under the provisions of the section. Ss 42 and 43 of the Act have no application to the case of the reservation of a particular passenger carriage for the use of any particular class of the travelling public. *EMERSON & BIRJIBASI LAL**

I L R 42 All 327

— s 113—

See RAILWAY PASSENGER

I L R 44 Cal 279

enquiry as to liability of accused to pay excess charge and fare in case of accused pleading that he had not travelled by the train as alleged. The Petitioner was prosecuted for an offence under s 113 of the Railways Act and he pleaded in defence that he had not travelled by the train as alleged. The Magistrate without any enquiry disposed of the case by issuing distress warrant for the amount of penalty imposed. *Held (in setting aside the order)*—That the Magistrate should pass orders in accordance with law after taking evidence on the question whether the accused was liable to pay and how much was payable. *STATION MASTER RAMAIAH v HABUL SIEKH* 24 C W N 195

— s 120—

See NUISANCE

I L R 48 Cal 1042

See RAILWAY PASSENGER

I L R 44 Cal 279

In a Railway shed reserved for the delivery of fish the Railway authorities prohibited the retail sale of fish. The Petitioners were convicted under cl (b) of s 120 of the Act for having sold to quantities not allowed. *Held* that in view of the fact that the retail sale of fish made the shed offensive in many ways the Act complained of was a nuisance within the section. *DEOKISHA v KING EMERSON* 25 C W N 603

RAILWAY ACT (IX OF 1890)—*concl'd*

s 121—

See s 3 I L R 43 Mad 348

See TORT I L R 43 Bom. 103

s 122—

See RAILWAY PASSENGER

I L R 44 Calc 279

Unlawful entry upon Railway and refusal to leave—Essence of offence
 Unlawful entry constitutes the basis of the offence under both clauses of s 122 of the Railways Act. If the entry was lawful refusal to leave on being desired to do so would not make the original entry unlawful nor would it make a person guilty under cl (2) which is but an aggravated form of the offence under cl (1). **KUMUD KANTA CHAKRABORTI v KING EMPEROR (1917)**
 22 C W N 575

s 125—

Cattle left in charge of keepers allowed to stray on a railway line—Liability of owner
 The owner of cattle which have been allowed to stray upon a railway in consequence of the negligence of the person actually in charge of them on the owner's behalf is not liable to punishment under s 125 (1) of the Railways Act 1890. **Queen Empress v Andi I L R 18 Mad 238** followed. **EMPEROR v GUR PRASAD GIR (1911)**
 I L R 34 All 91

s 126 (a) 130—Minor offender

Magistrate—Jurisdiction to try a minor committing an offence punishable under s 130 read with s 126 (a) of the Indian Railways Act 1890
 can be tried by a Magistrate he is not exclusively triable by a Court of Session. **EMPEROR v DHONDYA DUDHYA (1919)**
 I L R 43 Bom 888

s 128—

See TORT I L R 43 Bom 103

s 131—

See TORT I L R 43 Bom. 103

s 132—

See TORT I L R 43 Bom 103

s 140—

Notice of claim sent through post but not registered—Post Office Act (XI of 1866) Part III
 Notice of a claim of damages for short delivery sent through the post but not registered under Part III of the Indian Post Offices Act was not service in any of the modes provided by s 140 of the Railways Act. **Aadhar Chand v Wood I L R 35 Calc 194 s c 12 C W N 450** relied on **MARTIN & CO v FAKIR CHAND SARKI (1910)**
 14 C W N 888

Notice of suit upon whom to be served
 Under s 140 Indian Railways Act (IX of 1890) notice of suit against a Railway Company can only be served upon the Agent unless it can be shown by evidence that some other officer of the Company had authority to receive the notice. **BESHACKELLAM CHETTY v TRAFFIC MANAGER Nizam & GUARANTEED STATE RAILWAY (1913)**
 I L R 36 Mad 65

Sch III—

See SHAWLES I L R 39 Calc 1029

RAIYAT

See BENGAL TENANCY ACT

See CHOTA NAAGPUR TENANCY ACT 1903
 4 Pat L J 11

at fixed rent—If may grant permanent Lease—

See BENGAL TENANCY ACT 1883 s 11
 25 C W N 9

at fixed rates—

See BENGAL TENANCY ACT 1883
 1 Pat L J 67

purchase of interests of—

See LANDLORD AND TENANT
 I L R 43 Calc 164

“Kayami ryot—Meaning of—Occupancy ryot grant of lease for over nine years by—Transferee from ryot if may question its validity—Bengal Tenancy Act (VIII of 1885) ss 49 50—Under ryot: right if a ritable
 A lessor describing himself as a kayami ryot does not necessarily imply that he was a ryot at a fixed rent. Where it was found that the lessor did not thereby or otherwise represent himself as a ryot at a fixed rent and the lessee was not induced to take the lease by such representation and that in fact he was an occupancy ryot. Held that the lease which was for a term of more than nine years was invalid and neither the lessor nor a purchaser from him was stopped from challenging its validity. **Chand Charan Nath v Samia Bti s c 12 C W N 179 (1917)** followed. The heir of an under ryot has no heritable right to continue as such. **Arip Mondal v Ramratan Mondal I L R 31 Calc 757 s c 8 C W N 479 (F B) (1904)** referred to **NADIRAM CHANDRA SIKH SRIYATH CHAKRAVARTI**
 24 C W N 22

RAIYATI HOLDING—

Registered lease—Oral surrender—Bengal Tenancy Act (VIII of 1885) s 86 (1)—Evidence Act (I of 1872) s 92 proviso 4
 Even where the original lease is a registered one a raiyat can orally surrender his holding under s 86 of the Bengal Tenancy Act if it was not for a fixed period and if possession is given up. **Khanter Abdur Rahman v Ali Haf. I L R 23 Calc 558** and **Brayonath Sarma v Mahendrar Gohain s c 12 C W N 220** referred to **Sarat Chandra Saha v Nriyga Gopal Biswas 13 C L J 951** distinguished. **PORAY MATIA v INDIRA SEVI (1919)**
 I L R 47 Calc 109

RAJINAMA AND KABULIYAT

See BOMBAY LAND REVENUE CODE (B of 1879)

I L R 41 Bom. 170

I L R 45 Bom. 893

See REGISTRATION ACT (XII of 1908) s 17 I L R 41 Bom. 510

Registration—Provisions—Revenue Code (Bombay Act I of 1879) s 15
 Rajinamas and kabuliya governed by the Bombay Land Revenue Code (Bombay Act I of 1879) are not compulsorily registrable; cannot in themselves be documents of transfer; but they are fairly conclusive evidence that a transfer has in fact been made. **VARADARAJAN v NAAGVA (1918)**
 I L R 42 Bom 339

RAJPUT FAMILY

See HINDU LAW—SUCCESSION
I L R 48 Calc 997

RAPE.

See PENAL CODE ACT (XIV of 1860),
ss 82 AND 83 I L R 37 ALL 187

RASH OR NEGLIGENT ACT

See PENAL CODE ACT (XIV of 1860)
s. 336 I L R 42 Bom 396

RATE CIRCULAR

Issued by shipowners—

See CONTRACT I L R 41 Calc 670

RATEABLE DISTRIBUTION

See CIVIL PROCEDURE CODE 188.—
ss 276 293 I L R 37 Bom 138
ss 281 293 14 C W N 396

See CIVIL PROCEDURE CODE 1903—
ss 2 47 5 Pat L J 415
ss 4 73 O XXI R 35

I L R 36 Bom 156
ss 4 73 104 I L R 39 Mad 570

s 64 I L R 43 ALL 399

See EXECUTION OF DECREE.

I L R 47 Calc 515
I L R 44 Calc 1072

See LIMITATION ACT (IV of 1908) CH I
ARTS 62 120 I L R 39 Mad 62

See RECEIVER 15 C W N 925

order for—

See CIVIL PROCEDURE CODE (ACT V OF
1908) ss 47 73 101

I L R 39 Mad 570

Application for not considered to be application for execution—Attachment before judgment is not application for execution—Decree holder—No right to rateable distribution unless he has applied for execution Only a decree holder who has applied for execution can claim a right to rateable distribution Such a right is not conferred upon a plaintiff who has merely obtained an attachment before judgment and has not applied for execution under a 230 Civil Procedure Code *Amara Veerayya v Annamala Chetty Pichayya* I L R 31 Mad 502 overruled An attachment before judgment is in no sense an application for execution A mere application for rateable distribution which does not comply the requirements of s 235 in form or substance cannot be considered to be an application for execution within the scope of s 235 Civil Procedure Code *Sewdatt Poy v Sree Canto Maity* I L R 33 Calc 633 distinguished *Pallony Shapurji Mistry v Edward Vaughan Jordan* I L R 1 Bom 400 followed *ABUNACHELLAN CHETTIAR v HAJI SHEKH MEERA ROWTHAR* (1910) I L R 34 Mad 25

RATEABLE DISTRIBUTION—contd

of Civil Procedure (Act V of 1908) is far wider than that of s 295 of the old Code (Act XIV of 1899) yet the effect of the enactment in s 310A of the old Code which is reproduced in O XXI r 89 of the new Code remains unaltered *HARAI SAHA v FAIZLUR RAHMAN* (1913)

I L R 40 Calc 619

Practice and Procedure—Decree—Civil Procedure Code (Act V of 1908) ss 47 73—Civil Procedure Code (Act V of 1882) s 295—Appeal An order refusing rateable distribution made under s 73 of the Code of Civil Procedure (Act V of 1908) between two rival decree holders which does not affect or interest the judgment debtor is an order in execution proceedings but is not a decree as all the conditions enumerated in 47 of that Code are not present and consequently is not appealable *Jagadish Chandra Shaha v Arispanath Shaha* I L R 36 Calc 130 followed *Sorabji Coomary v Kala Raghunath* I L R 36 Bom 156 distinguished It is essential for the application of 73 of the Code of Civil Procedure that the decree should have been passed against the same judgment debtor *BALMER LAWRIE & Co v JUDU NATH BANERJEE* (1914) I L R 42 Calc 1

Rival decree holders

—Right of one to impeach another's decree only in suit and not in execution—Civil Procedure Code (Act V of 1908) s 73 applicability of—O XXI r 82 enquiry under Where several decree holders against the same judgment debtor apply for satisfaction of their decrees out of the same fund any one of them is entitled to show that his rival's decree is a fraudulent or sham one but it is not open for him to do so in execution proceedings *Sudindra v Budan* I L R 9 Mad 80 followed S 73 Civil Procedure Code is applicable only if an application for execution of the decree in the prescribed form had already been made before the receipt of the assets and the fund out of which rateable distribution is asked for is one realised in execution Where holders of decree of several courts apply for satisfaction of their decrees out of a fund in the custody of a court the proper order governing their respective titles or priorities is O XXI r 52 Civil Procedure Code and they are entitled to share it rateably as in the case of administration of the estate of a deceased person or of an insolvent as attachment does not under the present law give any priority to the first attaching creditor but only prevent alienation. *Sobool Chander Law v Purnell Lal Mitter* I L R 15 Calc 702 209 followed The shares due to holders of decrees of other courts than the one which has the custody of the fund are to be distributed only according to the orders of the courts *KATUN SARIHA v HAJEE MAHOMED BADSHA SAHIB* (1913) I L R 33 Mad 221

Civil Procedure Code (Act V of 1908) s 73 O XXI r 65—Policy underlying the section—Receipt of purchase money by agent effect of The policy which underlies s 73 of the Code of Civil Procedure obviously is to fix the point of time when the entire body of persons entitled to claim rateable distribution should be finally ascertained that point of time is the moment when the entire purchase money has been paid by the purchasers It is immaterial from this point of view whether the purchase money has been actually paid into the Treasury

RATEABLE DISTRIBUTION—concl'd

or into the hands of a person employed by the Court to hold the sale. When a sale has been held by a Court in execution under O XVI r 65 receipt of purchase money by the agent is for the purposes of s 73 equivalent to receipt of assets by the Court. *Gulam Hossein v Fatima Begum* 16 C W N 391 *Maharaja of Burdwan v Apurba Krishna Roy* 14 C L J 50 distinguished. *Huddersfield Banking Company Ltd v Henry Fister & Son Ltd* (1895) 2 Ch 273 *Wentworth v Bullen* 9 B C 840 *Crossley v Mills* 1 C M & P 298 *Gray v Haig* 20 Bear 219 referred to. *GALSTAIN v WOOLIES CHANDRA BONAPPEE* (1916) 1 L R 44 Cal 789

Civil Procedure Code
(Act V of 1908) ss 63 73 application under—
Said by Munsif—Application to Subordinate Judge for attachment of sale proceeds and rateable distribution. Where in consequence of proceedings taken by a creditor the Munsif sold the judgment debtor's properties and where another creditor applied to the Subordinate Judge after the said sale to attach the sale proceeds deposited in the Munsif's Court and to distribute the same rateably and the latter refused the application. Held that in the events which had happened neither s 63 nor s 73 of the Civil Procedure Code applied. Held also that the Subordinate Judge could not direct the Munsif to transmit the proceeds to his Court but should move the District Judge to have the proceeds transferred. If this procedure were adopted full effect would be given to the intention of the Legislature. The Subordinate Judge would in essence adopt the sale held by the Munsif and the sale proceeds would then be rateably distributed in accordance with the provisions of the Code. *Bylani Nath Saha v Rajendra Narain Rai* 1 L R 12 Cal 333 *Patel Narayan Morari v Haridas Navalm* 1 L R 19 Bom 453 referred to. *NILEKANTA RAU v GOSTO BEHARI CRATTERJEE* (1917) 1 L R 46 Cal 64

RATEABLE VALUE

See ASSESSMENT 1 L R 42 Bom 692

RATES AND TAXES

Arrear of—Consolidated rate—Charge—Calcutta Municipal Act (Beng III of 1899) ss 223 2 S—Terror of consolidated rate whether a first charge on the land and building is a part of which it has accrued due—Charge and mortgage distinction between—*Transfer of Property Act* (II of 1908) ss 55 58 100—*Bengal Tenancy Act* (VIII of 1886) s 171—Constructive notice—Bond filed purchaser for value without notice. S 39 of the Calcutta Municipal Act is not controlled by s 223 thereof and make the consolidated rate as it accrues due from time to time a first charge on the premises (subject only to arrears of land revenue). A mortgage does whereas a charge does not involve a transfer of an interest in specific immovable property. *Narayanan v Venkataramana* 1 L R 25 Mad 229 *Tancred v D'Almeida* 13 C 23 Q B D 439 *Darlington v Hall* 1 Q B D 317 referred to. But a charge cannot be enforced against the property in the hands of a bona fide purchaser for value without notice. *Kulka Lal v Gura* 1 M L R 13 41 25 referred to. The plea of purchaser for value without notice is a single

RATES AND TAXES—concl'd

defence the onus of proving which is on the defendant. *Attorney General v Diphosphated Guano Co* 11 Ch D 397 *Wiles v Spooner* (1911) 2 K B 473, followed. Where property with such a charge is foreclosed, by the mortgagee constructive notice cannot be imputed to him to the same extent as to a purchaser at a private sale. *Radha Madhab v Kalgatara* 17 C L J 209 *Brahma v Bhola Das* 19 C L J 350 referred to. Still he should ascertain the true state of affairs before he becomes full owner thereof. Although a purchaser without notice from a person who had notice is protected (vide *Harewood v Forth* (1695) Fench & Prec Ch 51) here purchaser from such a mortgagee cannot claim the protection as before they acquire title they might by enquiry from the municipal authorities ascertain the precise period for which the rates were in arrears. *AKHOY KUNAR BANERJEE v CORPORATION OF CALCUTTA* (1914) 1 L R 49 Cal 625

RATIFICATION

See CONTRACT ACT 18, ss 196 200

See MADRAS IRRIGATION CESS ACT (VII of 1865) s 1 1 L R 53 Mad 897

See TRADING WITH THE ENEMY
1 L R 42 Cal 1094

— of order—

See HABEAS CORPUS
1 L R 39 Cal 164

RATING OF PROPERTY

See ADEN SETTLEMENT REGULATION (VIII of 1900) s 13
1 L R 40 Bom 448

RAYATI LEASE

See LANDLORD AND TENANT
1 L R 38 Cal 423

REASONABLE NOTICE

See SCHOOL MASTER
1 L R 44 Cal 917

RE-ASSESSMENT OF PREMISES

See ACQUISITION
1 L R 37 Cal 833

RECEIPT

See REGISTRATION ACT (XVI of 1908) s 17 (2) (i) 1 L R 34 All 603

See STAMP ACT (II of 1909)
ss 2 (23) 6^a 63
1 L R 33 All 290

s 65
1 L R 34 All 193

— for goods shipped—

See CONTRACT 1 L R 41 Cal 870

— exceeding Rs 20—

See STA R DUTY 1 L R 37 Cal 631

— by one servant from another—

See STAMP DUTY 1 L R 37 Cal 631

— of purchase money—Registration—

See REGISTRATION ACT 1908 s 14
1 L R 1 Lab 25

RECEIPT—contd

—acknowledging acceptance of share
—admissibility of to prove partition if un
registered—

See REGISTRATION ACT 1908 ss 1st AND
49 I L R 44 Bom 881

—*Enf. encc.—Partition—Waiver*
—*Enf. encc.—Partition Act (III of 1861) s 17*
(n)—*Mortgage bond—Receipt showing simple sale & i*
charge—Evidence Act (I of 1862) s 9 Are eight
which purports to show that simple and not com
pound interest was to be charged (though the
mortgage bond contained provision for the pay
ment of compound interest) is admissible in
evidence. Such a receipt operates as a full acquit
tance for the money paid and requires no registra
tion. *Jivan Lal B. v. Bata Mol I L R 311*
108 followed. *KAILASH CHANDRA NATH v. SURESH*
CHENNAI (1914) I L R 42 Cal 548

—*Stamp Duty—Money*
received by servant of a firm and handed over to
fellow servant—Consideration—Acknowledgement of
receipt by fellow-servant of a sum larger than P. 90
of limit to stamp duty—Stamp Act (II of 1899)
s 2 (3) Sch I Art 53 Where a sum exceeding
Rs 100 was received by an assistant in a mercan
tile firm from the cashier of the firm as advance
made on the firm's behalf and to be expended
on the firm's behalf and previous to disburse
ment of the sum in question a pay order was
made out by the Accounts Department of the
firm and was sent to the cashier who had paid the
sum to the assistant and the assistant at the
same time acknowledged receipt by signing
his name or initials on the pay order. *Held*
that the acknowledgment did not require a receipt
stamp by reason of the assistant's signature on
the pay order. *Attorney General v. Carlton Bank*
(1892) 2 Q B 158 distinguished In re BURN
& Co (1910) I L R 37 Cal 634

RECEIVER

See BUSTEE LAND

I L R 38 Cal 714

See CIVIL PROCEDURE CODE 1908—

s 47

3 Pat L J 513

s 60 (1) I L R 40 Mad 302

O XL

O XLIII R 1

I L R 45 Bom 99

See COMMON MANAGER

I L R 43 Cal 936

See CRIMINAL PROCEDURE CODE—

s 145

3 Pat L J 147

See FRAUDULENT PREFERENCE

I L R 45 Cal 640

See GRATWALL TENURE

I L R 39 Cal 1010

See INSOLVENCY I L R 37 Cal 418

14 C W N 586

I L R 42 Cal 289

I L R 41 All 200 274

See LEASE I L R 45 Cal 940

See LIMITATION ACT (XV of 1877) s 19

I L R 32 All 51

See OFFICIAL RECEIVER.

RECEIVER—contd

See PROVINCIAL INSOLVENCY ACT 1907—
s 69

s 10

II Pat L J 235

ss 16 22

I L R 39 All 204

s 36

2 Pat L J 101

See SALE

18 E W N 394

—application against the legal re
presentatives of—

See CIVIL PROCEDURE CODE (ACT V OF
1908) O XL R 4

I L R 39 Mad 584

—appointment of—

See CIVIL PROCEDURE CODE (ACT V OF
1908) O XL R 1

14 C W N 248 252

—appeal against appointment of—

See CIVIL PROCEDURE CODE 1908 O
XLIII R 1

I L R 42 All 227

—attachment of moneys in hand of—

See EXECUTION OF DECREE

1 Pat L J 449

—assets in the hands of—

See SOLICITOR'S LIEN FOR COSTS

I L R 34 Bom 484

—death of—

See CIVIL PROCEDURE CODE (ACT V OF
1908) O XL R 4

I L R 39 Mad 584

—joint trial of—

See MISJOINDER I L R 46 Cal 741

—in insolvency—

See VENDOR I L R 42 Cal 225

—misappropriation by—

See CIVIL PROCEDURE CODE (ACT V OF
1908) O XL R 4

I L R 39 Mad 584

—Order granting leave to sue Receiver
for negligence—No appeal lies—

See CIVIL PROCEDURE CODE (ACT V OF
1908) O XLIII R 1

I L R 45 Bom 99

—pendente lite—

See RELIGIOUS TRUST

I L R 40 Cal 251

—powers of—

See PROVINCIAL INSOLVENCY ACT (III OF
1907) s 18

I L R 39 All 633

—report of—

See PROVINCIAL INSOLVENCY ACT (II
OF 1901) s 43

I L R 37 All 429

—sufficiently grounds for appointment

of—

See CIVIL PROCEDURE CODE 1908 O
XL R 1

I L R 43 All 311

—vesting of property in on adjudica
tion—

See PROVINCIAL INSOLVENCY ACT 1907
s 16

I L R 42 All 433

RECEIVER—*contd*

Bhag property—Gift by Mahomedan widow for spiritual benefit of her husband—

See WASTE I L R 44 Bom 727

Suit against—Whether notice necessary—

See CIVIL PROCEDURE CODE 1908 ss 2 80 I L R 44 Bom 895

Suit against without leave of Court—

See HIGH COURT JURISDICTION OF I L R 44 Bom 903

1 — Directions to receiver if appealable—Civil Procedure Code (Act V of 1908) O XL = 1, cl (1) (d) and O XLIII r 1 (s) Where both the parties have agreed to the appointment of a Receiver of the properties in dispute and the Court has in appointing the Receiver given him certain directions as to the disposal of the income Held that an appeal lies from those directions by virtue of O XLIII r 1 (s) of the Code of Civil Procedure MURTHY ANAND DAS = RAM PERKASH DAS (1909) 14 C W N 183

2 — Execution sale of property in hands of—Illegality—Civil Procedure Code (Act XIV of 1882) ss 244 248—Non service of notice on judgment-debtor if ground for setting aside the sale—Confirmation of sale effect of Where the Receiver appointed by the Court was directed to take possession of moveable properties and of the rents and profits of the immovable properties and was further authorised to get in and collect all debts and claims due to the estate Held that he must be taken to have been appointed Receiver in respect of the whole estate and had authority to apply for an order absolute on a decree nisi for foreclosure A sale of the foreclosure decrees while the estate was in the possession of the Receiver in execution of a decree for money without leave of the Court previously obtained was illegal and liable to be avoided, and punishment by the procedure for contempt was not the only remedy against such unauthorised sales The provisions of s 248 are not mandatory A sale held without issue of notice under s 248 Civil Procedure Code (Act XIV of 1882) is therefore not a nullity but such an omission is a serious irregularity sufficient to vacate the sale upon an application made by the judgment debtor under s 244 of the Code MALLARJUN V LATHARI 5 C W N 10 s c I L R 25 Bom 337 L R 27 I A 216, Parashram V Balmukund I L R 32 Bom 572 Prava V Sudramappa I L R 21 Bom 434 433 Jogendra Chandra V Sham Das I L R 36 Cal 643 s c 9 C L J 271 Such an irregularity is a ground for setting aside the sale even after it has been confirmed Ashutosh V Behari Lal 11 C W N 1011 s c I L R 35 Cal 61 referred to A purchaser of property at an execution sale is not protected when grounds for setting aside the sale under s 244 or 311 are established merely because he is a stranger Janulhari Lal V Gostain Lal 13 C W N 716 referred to LITTA ASHTON = MADHABMOY DAS (1910) 14 C W N 560

3 — Possession of property by Receiver without succession certificate—Succession Certificate Act (VII of 1882) ss 4 8 cl (c)—Succession (Property Protection) Act (XI of 1881)—Success on Act (V of 1865) s 190—Hindu Wills Act (XXI of 1850)—Probate and Administration Act (of 1850)—Indian Securities Act (XIII of

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1886) ss 3 sub s (2) 6 sub-s (1) cl (f) The position of a Receiver appointed by a Court is analogous to that of a curator appointed under Act XIX of 1841 who is a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage Babar v Narsappa I L R 90 Bom 437 referred to The Receiver ordinarily is not the representative or agent of either party to a suit in the administration of the trust but the appointment is for the benefit of all parties and he holds the property for the benefit of those ultimately found to be the rightful owners Jagat Tarin Das V Nala Gopal Chak I L R 31 Cal 305 Corporation of Bacup V Smith 44 Ch D 393 Portman V Mill 3 Jurist 356 referred to In the absence of any provision in the Hindu Wills Act (XXI of 1850) and in the Probate and Administration Act V of 1881 that no right to the property of an intestate can be established unless administration had been previously granted by a competent Court the Receiver appointed by the Court is competent to take possession of the securities and moneys without a certificate under s 4 of the Succession Certificate Act but regard being had to the provisions of the Indian Securities Act 1886 s 3 sub s (2) s 6 sub s (1) cl (f) Act and s 8 cl (c) of the Succession Certificate Act (VII of 1889) a Succession Certificate would be needed if a suit was brought to establish a title to such funds by right of inheritance HARIJAN MURTHI V HARENDRA NATH MURTHI (1910) I L R 37 Cal 754

4 — Receiver if a necessary party to rent suit—Appointment of Receiver V Laws to rent suit—Appointment of Receiver V Laws to rent suit—Receiver how and—Civil Procedure Code (Act XIV of 1882) s 3—Receiver appointed by another Court if may be added as party by Court of its own motion Where during the pendency of a suit for rent under the Tenancy Act a Receiver was appointed in respect of the entire property of the defendants by another Court and the property for which the rent was claimed vested in him Held that the Receiver was a necessary party to the suit and if he was not added with the permission of the Court which appointed him the suit was liable to be dismissed The appointment of a Receiver does not of itself debar a creditor of the person over whose estate the Receiver has been appointed from suing for his claim provided that such suit does not in any way interfere with the possession or jurisdiction of the Court appointing the Receiver But where property in the hand of the Receiver is intended to be affected by the result of the litigation the Receiver is a proper and necessary party to such suit by way of addition to and not in substitution for the parties primarily responsible Miller V Farnham 11 C L J 10 Cal 1014 Ashton V Madhob Moysa 11 C L J 659 Hem Churder V Frankiss I L R 10 Cal 60, Jogendra Nath V Indernath I L R 96 Cal 197 s c 3 C W N 50 Jagan Kora V Sham Shrivendra 10 C L J 93 Jagat Tarin V Nala Gopal I L R 31 Cal 305 s c 5 C L J 90 referred to Where the plaintiff's request to add the Receiver as a party with leave of the Court appointing him all such they had notice of such appointments Held that the Court was not bound nor was it competent to it to add a Receiver as a party of its own motion under s 3 Civil Procedure Code as the leave of the Court

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appointing the Receiver was essential. But as the point raised was of some novelty and as a fresh suit by the plaintiffs might be barred by limitation the High Court allowed the plaintiffs an opportunity of continuing the suit by taking steps to make the Receiver a party upon their paying all costs. *JOJISDRA NATH CHOWDHURY v BARFA DAS MIA* (1910) 14 C W N 653

5 ———— **Title—Receiver accretions to property of vendee in—Accretion title to prevail against all persons not claiming under prior title—But a title tenant under a *facto* proprietor of acquired vacant rights—Non-occupancy tenant is entitled to possession of accretions—Criminal Procedure Code (Act V of 1895) ss 145 146—Receiver appointed under s 146 rights of As a general rule a Receiver takes no title in property acquired by the person formerly in possession. But a Receiver is entitled to any accretion to the property vested in him upon general principles and the policy of the law by which a proprietor acquires a title to accretions to his property. Where a Receiver has been appointed under s 146 of the Criminal Procedure Code in respect of any property in dispute the Receiver is entitled unless some special circumstance is established not only to the subject matter of the proceedings under s 145 Criminal Procedure Code but also to the accreted land and gives good title to a tenant under him. Such title will prevail against a trespasser but not against person who establishes a title to the accreted land acquired prior to the vesting of the lands in the Receiver. *Atal Chandra v Lakhai Dairai* 10 C L J 65 referred to *MADHU v SARAB AI* (1910)**

[14 C W N 681]

6 ———— **Mortgage suit—Sale appointment after—Receiver if may be appointed of property in hand of common manager—Criminal Procedure Code (Act V of 1895) O 2 L 1 sub r (1)—Bengal Tenancy Act (VIII of 1885) s 9a. A mortgage suit does not necessarily terminate with the sale and a Receiver may be appointed after the sale pending application to set it aside. *Wills v Loff* 38 Ch D 197 distinguished. A Receiver may very well be appointed under O 40 r 1 sub r (2) Civil Procedure Code in respect of property in the hands of a common manager appointed under s 9a of the Bengal Tenancy Act. *MADANESWAR SINGH v MAHAMAYA PRO AD SINGH* (1911) 15 C W N 672**

7 ———— **Suit against—Leave of Court if condition precedent to suit—Stay of proceedings. Where a suit has been instituted against a Receiver without previously obtaining the leave of the Court which appointed him it is open to the Court to stay proceedings for a reasonable time so as to enable the plaintiff to apply for leave to proceed with the suit. The consent of the Court which appointed the Receiver is not a condition precedent to the right to bring an action against the Receiver. *Pranmatta Nath Gangooly v Khetra Nath Banerjee* 1 L R 32 Cal 270 sc 9 C W N 217 dissented from. Where property in the hands of a receiver is intended to be affected by the result of the litigation the Receiver is a proper and necessary party to such a suit. *Jojisdra Nath Chowdhry v Sarfaraz MIA* 14 C W N 653 followed. *Muller v Ram Ranjan Chuckerbutty* 1 L R 10 Cal 1014. *Chartered Bank v Hurish Chunder Deogy* 5 C W**

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N. N. and Kumar Suttia Suttia Choshal v Rani Gop Moni Debi 5 C W N 27 distinguished. *BANKU BEHARI DEB v HARENDRA NATH MUKERJEE* (1910) 15 C W N 64

8 ———— **Application to execute decree against—Application for rateable distribution—Property sold at the instance of another creditor with leave—Leave if still necessary—Leave if may be obtained after application preferred—Civil Procedure Code (Act XIV of 1882) s 277 order under if leave—Civil Procedure Code (Act V of 1905) s 3. The fact that leave had already been granted to the execution creditor at whose instance property in the hands of a Receiver was sold does not dispense with the necessity of other execution creditors obtaining such leave to prosecute their applications under s 73 of the Civil Procedure Code for rateable distribution of the assets for the funds are held by the Court for the benefit of the Receiver who would be entitled as a matter of right to take out any surplus left after satisfying the creditors who have obtained such leave and apply it for the purpose of the litigation in which he was appointed. Courts have been generally reluctant to allow execution to proceed against properties in the hands of the Receiver until leave has expressly been granted for this purpose. A prohibitory order under s 272 of Act XIV of 1882 on the Receiver cannot be construed as leave granted to the decree holder to proceed against properties in his hand. In the circumstances of the case the High Court held that the application should not have been dismissed because no such leave had been obtained but that an opportunity should be given to the petitioner even at this late stage to obtain the requisite leave. *Banku Behari Dey v Harendra Nath Mukerjee* 15 C W N 61 followed. *Pranmatta Nath Gangooly v Khetra Nath Banerjee* 1 L R 32 Cal 270 sc 9 C W N 217 dissented from. *SARAT CHANDRA BANERJEE v APURBA KRISHNA FOY* (1911) 15 C W N 626**

9 ———— **Interference with Receiver appointed by the Court—An agreement which would interfere with the work of a Receiver appointed by a Court should not be enforced as being opposed to public policy. *Fazlur RAHMAN v AWATH BANDHU PAL* (1911)**

16 C W N 114

10 ———— **Mortgage suit—Receiver if may be appointed in after appointment of Receiver in partition suit among mortgagors—Foreclosure suit Receiver if and when may be appointed in. The appointment of a Receiver in a partition suit amongst the mortgagors is no bar to the appointment of a Receiver in a subsequent suit by the mortgagee on his mortgage as any possible conflict between the two Receivers where the same Receiver has not been appointed in both suits may easily be avoided. A mortgagee who has obtained a preliminary decree for foreclosure cannot at that stage ask for a Receiver of the property under mortgage since he has no title to the profits until at least he obtains an order absolute for foreclosure and is then kept out of possession by the action of the judgment debtors. *KHUSURAT KOER v SARODA CHARAN GUHA* (1911) 16 C W N 126**

11 ———— **Ghatwali tenure—Income from if may be attached—Receiver if may be appointed for Ghatwali lands—Rents and profits not due at**

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the date of appointment The rents and profits of a Ghatwali tenure may be attached in execution of a decree in the life time of the Ghatwal though the estate itself cannot be attached *Austoor Koomaree v Benode Ram* 4 W R Ms 5 *Surajmal v Kristo Pershad* 10 O W & cclx *Ujjoy Kumari v Hari Ram* 1 L R 28 Cal 48° *Raj Keshore v Bunsidas*, 1 L R 23 Cal 873 considered Where the lower Court in execution of a decree against the Ghatwal attached the Chatwali estate, placed it under a Receiver and directed the tenants not to pay rents to any body other than the Receiver Held that although the order of attachment of the estate was erroneous the appointment of a Receiver was sanctioned by authority *Quare* Whether a Receiver may be appointed to collect rents and profits that have not accrued at the date of appointment *Kesobati Koeri v Mohan Chandra Mandal* (1912)

I L R 39 Cal 1010
16 C W N 802

12 ——— Insolvency—Jatra or Pilgrim business profits from—Priest office of—Provincial Insolvency Act (III of 1907) ss 2 (1) (g) 18 20 (c) 40 (1) 41 47—Business—Trade Where pending an appeal to the High Court by a creditor in insolvency against a conditional order of discharge in favour of the insolvent who was a *panda* or priest attached to the temple of Jagannath at Puri an application was made for the appointment of a receiver in respect of the business of the insolvent which consisted in receiving pilgrims housing them feeding them looking after their comfort and accompanying them to the temple of Jagannath in return for a fee from the said pilgrims in the nature of a voluntary payment the object of the creditor being not to stop the business but to carry it on so that the insolvent priest may be constantly attended by the receiver who may take possession of all his earnings Held that what the priest did for the pilgrims could not appropriately be described as business within the meaning of cl (c) of s 20 of the Provincial Insolvency Act and that the exercise of his calling by the insolvent under the circumstances stated could not be deemed a trade within the meaning of sub s (1) of s 40 of the Provincial Insolvency Act *Held* also that ordinarily the business of the insolvent might be carried on by the receiver not with a view to profit but only in so far as might be necessary for the beneficial winding up of the same *Ex parte Emmanuel* 17 Ch D 35 followed The difference between a receiver and a manager explained *In re Manchester and Midford Railway Co* 14 Ch D 616 *North Steam Ship Co v Wharfedale* (1912) 4 C 251 *In re East Hotel* (1912) 1 Ch 31° *Boehm v Goodall* (1911) 1 Ch 155 and *In re Newbiggin Colliery Ltd* (1911) 1 Ch 469 referred to *AVANAD MAHANT v CANTSH MAHESWAR* (1917)

I L R 40 Cal 678

13 ——— Powers of Civil Court when Receiver in possession under s 146 (2) Criminal Procedure Code—(Act I of 1898)—Conditional appointment—Form of Receiver's appointment of the appointment of a receiver by a Civil Court under O XL r 1 of the Code of Civil Procedure does not operate as a discharge of the receiver of the same properties already appointed by a Magistrate under s 146 (2) of the Code of Criminal

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Procedure As a general rule when there is a receiver in possession appointed by the Magistrate and application is made to the Civil Court to exercise its powers under O XL r 1 of the Code of Civil Procedure the Civil Court should make a conditional order of appointment and inform the Magistrate so that the latter may have an opportunity of withdrawing his attachment Unless there is good reason to the contrary the Civil Court should as a matter of judicial discretion appoint as its receiver the person already appointed by the Magistrate *Parbat un nara v Abdul A* 1 L R 23 Ill 215 distinguished *BIDYAPRASAD NARAY SINGH v ANURAG SINGH* (1913) I L R 40 Cal 862

14. ——— Discretion of Court—Interference by higher Court—Appointment of party to cause appointment of person residing outside jurisdiction and at a distance—Lawson—Guardians and Wards Act (VIII of 1890) s 17 sub (1) The selection and appointment of a particular person as a Receiver is a matter of judicial discretion to be determined by the Court according to the circumstances of the case and the exercise of this like other matters of judicial discretion will rarely be interfered with by an appellate tribunal To induce the Appellate Court to interfere it is necessary to show some overwhelming objection in point of propriety or some fatal objection in principle to the person named It is a settled rule that one of the parties to a cause shall not be appointed Receiver without the consent of the other party unless a very special case is made Residence beyond jurisdiction is not by itself a fatal objection but when a non resident is appointed Receiver there must be adequate guarantees that he will be subject to the effective control of the Court Residence at a great distance from the property which is to be subject to his management and control while not regarded as an absolute disqualification for the office is an important circumstance to be taken into consideration Where amongst two rival claimants for appointment as guardian of a minor a property the set aside on the ground of irregularities and the District Judge was asked to reconsider the matter and the District Judge pending trial appointed the same individual Receiver under sub s (1) of s 12 of the Guardians and Wards Act although he was a resident outside the Judge's jurisdiction and no security was taken from him *Held* in revision that the appointment was bad and should be set aside *KALI ANAND v HANMAN SINGH* (1913)

17 C W N 874

15 ——— Pending proceeding for appointment of Common Manager—1 April Tenancy Act (VIII of 1915) s 33 100—Fiduciary appointment—Selection of Receiver High Court—will interfere with—Civil Procedure Code—(Act I of 1908) O XL r 1 The fact that an application for the appointment of a Common Manager of the property in suit is pending before the District Judge does not preclude the District Judge from whom the suit is referred to appointing a Receiver in a private case *The Fafur Motrag and Agency Co v Elna Khatun* 16 C W N 997 followed Where it was common ground that no one was in effective possession of the property and in a position to collect the rents and pay the Government revenue

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the Court could hardly go wrong in appointing a Receiver. The trying Court's selection of a Receiver will not be set aside in appeal except in an extreme case & unless there be some overwhelming objection in point of propriety or else in some fatal objection in principle. *Cooler v Cooler* 11 D & G J. d. 536 followed. *JIBANES & KHATUN v MAJIDUNNE SA KHATUN* (1913) 17 C W N 581

10 ——— Suit by present against former Receivers—Whether maintainable. A suit was instituted by the present receivers of an estate against the former receivers (before the accounts of the latter have been passed by the Court) for the recovery of a certain sum which the plaintiffs alleged the defendants had failed to realise on behalf of the estate. Held that no such suit was maintainable. *A. B. DUTT & SHAMAL DHOKE DUTT* (1913) 1 L R 41 Cal 92

17 ——— Partition suit—Defendant in sole occupation though plaintiff not altogether excluded—Court if may appoint a Receiver and when—Party to a suit when may be appointed. The Court has jurisdiction to appoint a Receiver until the hearing of a partition action or until further orders even though there is no exclusive occupation by any party and the Court will not hesitate to do so whenever it is just and convenient. The case for the appointment of a Receiver is much stronger if a party to the partition action is in sole occupation. In such a case any other party may obtain a Receiver either of his share of the rents and profits or of the whole estate. The Court may also allow the party in exclusive occupation to elect to pay to the others an occupation rent or the Court may require security from the co-owner in exclusive occupation to account for their share of the rents to the other co-owners. Held that in the circumstances of the present case the second of the four alternative courses for appointment of a Receiver of the whole estate was the proper one to adopt. One of the parties to a litigation should not ordinarily be appointed a Receiver except in very exceptional circumstances. In the special circumstances of this case the defendant in possession was appointed Receiver of the whole estate subject to conditions. *SURNASANNA ROY v USENDRA NARAIN POY* (1913) 18 C W N 533

18 ——— Property in possession of defendant—If may be taken over—Object of appointment. Where the plaintiff sued to recover property in the possession of his adoptive mother and the suit was resisted *inter alia* on the ground that the defendant was entitled to retain possession of the estate for her life. Held that O XL r 1 (2) which clearly refers to a case of removal of property from the possession or custody of a person other than the parties to the suit was no bar to the appointment of a Receiver on the application of plaintiff when it was established that the estate was being grossly mismanaged by the defendant. The effect of the appointment of a Receiver would not be to prejudice the case in any way as the only object and effect of so doing would be to maintain the estate in its present condition during the pendency of the suit. *SATYA NARAIN SINGH & KESHARATI KUMAR* (1913) 318 C W N 537

19 ——— Suit by—Suit by one against the other if maintainable—Objection to suit when may be

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taken—Contempt of Court. A Receiver is an officer of the Court and the possession by him is the possession of the Court and to bring a suit so as to interfere with the possession of the Court without the leave of the Court is a contempt of Court. But if a party is guilty of contempt of Court the proper way for the Receiver to act is to bring it immediately to the notice of the Court so that proper steps may be taken against the party guilty of contempt and in a proper case the Court would grant a party leave to proceed with the suit. But it is not proper for the Receiver to wait till the day of hearing and put this objection forward as a ground for dismissing the suit. Where by consent in a partition suit two of the parties were made Receivers of different portions of the property with full powers under s 303 of Act XIV of 1882. Held that each of the Receivers had power to bring and defend suits and a suit by one against the other without leave specially obtained from Court did not amount to such a grave and serious contempt of Court by the plaintiff as to merit dismissal. *Pramathanath v Khetranath* 1 L P 32 Cal 270 & 9 C W N 247 referred to. *SATYA KRISHNA BANNERJEE & SATYA BHUPAL BANNERJEE* (1913) 18 C W N 546

20 ——— Partition—Code of Civil Procedure (Act V of 1908) O XL r 1 cl (3)—Indian Trustees Act (XXV of 1886) s 8 (2) 32. In a partition suit in which a receiver is authorised to sell properties including the share of an infant as declared in the decree the Court may direct the receiver to convey the properties. Under O XL r 1 cl (d) of the Code of Civil Procedure (Act V of 1908) the Court may confer on a receiver all such powers for the realization of properties and the execution of documents as the owner has. *BAIR ALI & HATIZ ALI* (1913) 19 C W N 817

21 ——— Suit by for possession of immovable property. The plaintiffs were the receivers of the estate of one G who died leaving two widows A and V. On the 8th August 1906 one of the co-widows (V) brought a suit for a declaration that she was entitled to a half share in the estate of G and prayed that the properties might be partitioned and her share allotted to her. In this suit the plaintiffs were appointed receivers with all the powers provided under O XL r 1 cl (d) of the Civil Procedure Code. It was further ordered that the receivers should have power to bring and defend suits in their own name and also should have power to use the names of the plaintiff and the defendant. The plaintiffs instituted the present suit to recover possession of a certain immovable property and for a declaration that a lease dated 16th September 1906 purporting to have been executed by A by virtue of which the defendant claimed to be a permanent tenant was void and inoperative. Subsequent to the institution of the present suit an order was made in the suit in which the plaintiffs were appointed receivers that the plaintiffs as receivers be at liberty to continue the present suit. It appeared that proceedings under the Lunacy Act were instituted in November 1906 and in these proceedings the District Judge on the 24th September 1907 held that V was of unsound mind and incapable of managing her affairs. Held that ordinarily a suit to recover possession of property can only be brought by

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or if the writ has been issued to direct the Receiver through the Court which appointed him not to take any steps in compliance with the writ of appointment. In the latter case O XL, r 5 (3) does not apply and so security need be taken under sub cl (3) (c) MULCHAND SINGH : TARNI PRASAD
4 Pat L J 642

32 Dismissal of suit—Validity of Code of Civil Procedure (Act V of 1908) O XL r 1 (a)
A suit against several defendants in which a Receiver had been appointed was dismissed after a compromise with defendant No 1 had been effected. Two of the other defendants objected to the discharge of the Receiver who had been appointed to the estate of defendant No 1 and an order was passed continuing the appointment. In point of fact however a fresh Receiver was appointed. Held that the order appointing a fresh Receiver was without jurisdiction. The power conferred on the Court by O XL r 1 (a) to appoint a Receiver of any property whether before or after the decree refers only to the appointment of a Receiver in respect of the property in regard to which litigation is pending i.e. as long as the suit remains *lis pendens* the function of the Receiver will continue until he is discharged by the Court. Although the dismissal of a suit may in some cases mean the discharge of the Receiver still the Court has jurisdiction over the Receiver who is an officer of the Court and the Court may require him to furnish accounts to allow parties to examine accounts and to deal with all matters connected with the management of the Receiver CHANDRASHANKAR PRASAD NARAIN SINGH : BISHESWAR PRATAP NARAIN BARI
5 Pat L J 513

33 Liability to account
A Receiver is not liable to account for any period other than that for which he is appointed. An appeal does not lie from an order directing submission of accounts SAMHATTA SINGH : BHAGWARI SINGH
5 Pat L J 97

34. Whether appointment of Receiver stays execution An order appointing a Receiver does not stay execution of the decrees against the debtor so as to disentitle the decree holder for execution, the decree in any manner provided by the Civil Procedure Code even when appointed with consent of decree holder. Where a party seeks a particular relief and the matter is settled by a consent decree not giving that relief it must be presumed that such relief was refused and claimant is stopped for subsequently claiming that relief. MANABADIKHIAJI BIR RAMESHWAR SINGH BHADUR : HITENDRA SINGH
6 Pat L J 203

35 General principle summary
appointment of The Code of Civil Procedure does not confer an unlimited power on the Court to appoint a Receiver. It is an Equitable Relief and should only be granted on equitable grounds. The first essential condition precedent by that the applicant must show that he has an interest in the property affected and a simple contract creditor has no such interest unless he can show he has a right to be paid out of the particular property concerned. JASBANSINGH PATEL CHAND LAL CHAUDHARI : KUMAR KALIKATAND SINGH
6 Pat L J 365

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36 Dismissal of objection to appointment of Appeal—Code of Civil Procedure (Act V of 1908) s 115 and O XL r 1 An order dismissing an objection to the appointment of a Receiver of property of which the objector is in possession falls within O XL r 1 of the Code of Civil Procedure 1908 and is appealable. AGABEO : MUSSAMAT SUNDARI
3 Pat L J 573

36 (a) Court's discretion to appoint
Under O 40 r 1 of the Civil Procedure Code the Court has been given precisely the same discretion in questions of appointment of a receiver that the Courts in England have. The condition in the old Code that to justify such appointment in any case it should be found necessary to preserve property from waste and alienation having been removed there has been a substantial widening of the Court's discretion. Where therefore in a suit for partition of joint family property it was proved that a co owner admittedly entitled to a half share in a considerable portion of the properties in suit was being kept out of possession by the co owner with the result that all supplies were cut off from his branch of the family. Held that although no case of waste was lit has been established against the co owner in possession the case was eminently a proper one for the appointment of a receiver. PUNJI LAM AND OTHERS : SALIGRAM
14 Q W N 243

37 Appointment of by one Court whether can be restrained by another Court
Held that one subordinate Court has no power to restrain the action of another subordinate Court with co-ordinate powers. Therefore when a Subordinate Judge had appointed a Receiver it was held that it was not competent for another Subordinate Judge to restrain the Receiver from taking possession of a part of the property in respect of which the Receiver had been appointed. CHANDRURY KEDARVATH THAKUR : MAHMOOD ALI KHAN
6 Pat L J 288

38 Possession of receiver in mortgage suit for whose benefit—Receiver
if can be appointed at the instance of mortgagee not entitled to possession. Possession of a receiver in a mortgage suit is *prima facie* for the benefit of the party who has obtained the appointment. PEKHY v TODD 26 L J (Eng) 503 followed. A second mortgagee in whose presence the order for appointment of a receiver in a mortgage suit by the first mortgagee is made is not entitled to avoid the consequences of the order of appointment because he has obtained a decree in his mortgage and has purchased the equity of redemption in execution of that decree. Whether a mortgagee is or is not entitled to possession he may invite the Court to appoint a receiver if the demands of justice require that the mortgagor should be deprived of possession. JAGGIRI Venkai v Jagajagopala Suryawar Bahadur v K. Basai Fedis (1916) 42 Ind 111 v 111. Harkett v Greene 3 Ir Ch Rep 20. Health railway v Eastern Mortgage Agency Co 13 C I J 493 and Eastern Mortgage and Agency Co v Fairbairn 1 C W 16 referred to. PAMEL WAR SINGH v CHUNNI LAL SHANA (1919) 1 L R. 47 Cal. 413

39 Suit against—Sanction of Court for institution of the suit—Is it of persons as a person—Effect of—In effect on whether admitted

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Sanction subsequently obtained—Illegality whether cured Where a suit is instituted against a Receiver appointed by a Court without obtaining the previous sanction of that Court the omission to obtain such sanction does not affect the jurisdiction of the Court in which the suit is laid but is an illegality which can be effectively cured by the plaintiff obtaining the sanction during the course of the litigation *Banku Behari Dey v. Harendra Nath Mukerjee* (1910) 15 C N 151 and *Jagat Tarini Das v. Nala Gopal Chak* (1907) 1 L R 34 Calc 305 followed *AMRUTTI v. MANANTRAMAN* (1920)

I L R 43 Mad. 793

40 ———— *Rent decree obtained by after conditional order of discharge made by Court but not carried out and before the decree embodying order of discharge was signed by the Judge—Receiver if bound to disclose to Court order of discharge in such circumstances—Devolution of interest pending suit—No application for substitution—Decree passed in favour of original party if bad* In a rent suit instituted by the receiver of an estate as such a decree was obtained after an order discharging the receiver on certain conditions had been made by the Court. It appeared however that on the date the rent decree was made the order of discharge had not been in fact carried out nor was the decree embodying the said order signed by the Judge who passed it. The receiver was in possession as before and he was subsequently continued as such by the order of the Appellate Court. *Held* that it was not established that the receiver was in fact and law discharged on the date of the rent decree nor was it proved that there was fraud such as would entitle the plaintiff to maintain a suit to have the decree set aside. That it was not shown that there was in fact and in law such a discharge as it was incumbent upon the receiver to disclose before the Court. That assuming that the receiver was discharged before the decree was passed there was only a devolution pending the suit and the decree made in favour of the receiver would not on that account be a bad decree but would ensure for the benefit of the party on whom the interest devolved such party not having applied for the carriage of the proceedings. *BEHN BHAB BOSE v. MA K S BANERJEE*

28 C W N 361

41 ———— *Teshildar appointed by The owners of an estate brought a suit for account against a Teshildar of their estate who had been appointed by a Receiver who had been in charge of the estate under an order of Court but had since been discharged* *Held* that a suit was not maintainable. Such a suit can be sustained only on proof of fiduciary relation between the parties. But the Receiver is not a representative of the owner, he is an officer of the Court. Hence an officer appointed by the Receiver does not stand in the same position as an officer appointed by the owner. Although a Receiver has been discharged it is still open to the party entitled to surcharge him in his accounts and obtain relief against him and a suit may be maintained against the Receiver if it is established that he has monies belonging to the estate still in his hands notwithstanding his discharge. *HASINAR MOOKERJEE v. JAHARUDDIN MANDAL*

28 C W N 993

RECEIVING STOLEN PROPERTYSee *AUTREFOIS ACQUIT*

I L R 45 Calc 727

RECIPROCAL PROMISESSee *CIVIL PROCEDURE CODE* (Act I of 1908) O V L III n II

I L R 38 Mad 959

RECISSION OF CONTRACTSee *LITIGATION ACT* (17 of 1868) s 11 I Art 93

I L R 37 Bom 158

RECITALSee *EVIDENCE* I L R 35 All 194See *DEED*See *HINDU LAW—ALIENATION*

I L R 44 Calc 186

See *LEASE*

I L R 42 Bom 103

RECOGNITIONSee *HINDU LAW—MARRIAGE*

I L R 38 Calc 700

RE CONSTRUCTIONSee *BUILDING* I L R 38 Calc 84See *DISTRICT MUNICIPAL ACT* (Dcn III of 1901) ss 3 (7) 96

I L R 35 Bom 412

RECONVERSIONSee *MAROMEDAN LAW—BIGAMY*

I L R 39 Calc 409

RE CONVEYANCE]See *REGISTRATION ACT* (1877) s 17

14 C W N 703

I L R 38 Bom 703

RECORD

——— alteration of ———

See *SARAD CONSTRUCTION OF*

I L R 8 Bom 639

——— procedure when lost ———

See *JUDGMENT* I L R 39 Mad 498

——— unnecessary printing of ———

See *COSTS* L R 46 I A 299

I L R 47 Calc 415

——— *Special Tribunal—Calcutta Improvement Act (Beng V of 1911) s 71 cl (c)—Land Acquisition Act (I of 1894) s 53—Practice* The power to call for records is a power which is undoubtedly inherent in the Judge of a Land Acquisition Court and consequently in the Special Tribunal constituted under the Calcutta Improvement Act. *Gopal Coomary Dassee v. Paja Sundar Narayan Deo* 4 C L R 36 followed. *NARESH CHANDRA BOSE v. HIRA LAL BOSE* (1915) I L R 43 Calc 239

RECORDED PROPRIETORSSee *ASSESSORS OF REVENUE*

I L R 47 Calc. 331

RECORDED TENANTSee *LANDLORD AND TENANT*

I L R 39 Calc 903

RECORD OF RIGHTSSee *MUNICIPAL TENANT ACT* (VIII of 1906), ss 103B and 104H.

I L R 46 Calc. 99

RECORD OF RIGHTS—*contd*

See **BENGAL TENANCY ACT** s 102
 s 103 14 C W N 812
 s 111 1 Pat L J 479
 1 Pat L J 73
 See **BOMBAY LAND REVENUE CODE**
 1879 = 135 I L R 45 Bom 1839

See **COURT FEES ACT, 1870—**
 s 7 4 Pat L J 302
 s 17 4 Pat L J 299

See **CRIMINAL PROCEDURE CODE (ACT V of 1898)** = 195 (1) (c)
 I L R 39 Bom 310

See **ENHANCEMENT OF RENTS**
 R Pat L J 124

See **LIMITATION** 23 C J W N 883

correctness of—

See **BENGAL TENANCY ACT—**
 ss 5 103B I L R 45 Calc 805
 s 105 14 C W N 897
 s 106 14 C W N 884

See **CENTRAL PROVINCES LAND REVENUE ACT—**
 s 78 14 C W N 686

erroneous entries—

See **BENGAL TENANCY ACT** s 106
 14 C W N 897

See **LANDLORD AND TENANT**
 I L R 37 Calc 30

effect of—

S **ENHANCEMENT OF RENT**
 2 Pat L J 124
 See **ROAD CESS ACT 1880** s 20
 1 Pat L J 521

entry in—

See **COURT FEES** I L R 44 Calc 352

presumption as to correctness of entries in—

See **BOMBAY LAND REVENUE CODE 1879**
 s 135 I L R 44 Bom 214

suit for alteration of—

See **BENGAL TENANCY ACT 1885** s 111A
 1 Pat L J 73
 See **SANAL PARGANAS SETTLEMENT REGULATION 1872** = 11 24 25
 6 Pat L J 373

Presumption of correctness of—Finding of lower Appellate Court as to whether presumption rebutted not liable to be disturbed in second appeal. In the record of rights the defendants were stated to be settled raiyats with liability to have their rents assessed. In a suit by the landlord for rent on declaration of title the first Court found that the suit was barred by limitation and adverse possession from an assertion of the defendant's right during the publication of the record of rights. The lower Appellate Court reversed this finding and held that the presumption as to the correctness of the record was not rebutted. *Held* that the lower Appellate Court was entitled on the question of

RECORD OF RIGHTS—*contd*

fact to hold that the mere fact that this adverse claim had been made was not sufficient to show that the entry in the finally published record was wrong and this finding was not liable to be challenged in second appeal. **GOUR CHANDRA CHUCKERBURY v. BIRENDRO KISHORE MANIYA** (1917) { 22 C W N 449

Non agricultural lands—Bengal Tenancy Act (VIII of 1885) s 105. S 105 of the Bengal Tenancy Act has no application to non agricultural lands situated in a *mofus* in municipality. **BIRNADAS PAL CHOWDHURY v. ALAM OSTAGAR** (1918) I L R 46 Calc 441

Entry in showing land khud'asht—Suit for declaration of right of possession claiming land as khud'asht—Onus on defence to show that land not such. The plaintiff instituted a suit for declaration of his right to possession of lands which they claimed as *khud'asht*. The record of rights showed that the lands were *khud'asht*. *Held* that the onus was on the defendant to show that the entry was wrong. **GANGADHAR PRASAD SINGH v. SHEO NAYDAN PRASAD SINGH** (1918) 23 C W N 394

Suit for declaration that entry in is erroneous—Limitation. A was the sole owner of certain plots of land. His brother in law B had the lands recorded as being held in joint tenancy by himself and A. A took no step to have the erroneous entry corrected and B made no attempt to derive material benefit from it. B instituted a suit in the Small Cause Court claiming to participate in the profits of the land. *Held* that a suit by A within six years of the receipt of the summons in the Small Cause Court suit for a declaration that A was the sole owner of the land was within time. **MOULVI ALAUDDIN v. BIRI SABUTCHISIA** 1 Pat L J 557

Suit for alteration in second of two records of rights—Limitation Act (IX of 1908) Sch. I Art. 10—Bengal Tenancy Act (VIII of 1885) s 106 and 111 A. Where there are two consecutive finally published records of rights it is competent to a party aggrieved by the second record of rights to ask for a declaration in respect of that second record of rights without displacing any prejudicial entries in the first record of rights. A person who has acquired a title by adverse possession is not bound to sue for a declaration that he has acquired such title. In the record of rights finally published in 1889 the defendants were shown as being in possession of land some of which the plaintiff had purchased from the *lakhrajdar* and to some of which he had acquired prescriptive title which was perfected in 1897. The plaintiff however remained in possession but did not sue for a declaration of his title. In the record of rights finally published in 1906 the defendants were again shown as being in possession of the land. On the 11th January 1907 the plaintiff instituted the present suit for a declaration that the entry in the record of rights of 1906 was incorrect. It was pleaded that the suit so far as it concerned the land purchased from the *lakhrajdar* not having been brought within six years of the publication of the record of rights of 1889 and so far as it concerned the remainder of the land not having been brought within six years of 1897 was barred by limitation.

RECORD OF RIGHTS—contd

tion. *Held* that the suit was within time. **SHEKH LATAYAT HOSAIN v KUMAR GANGAKAND SINGH**
8 Pat L J 361

Effect of entry in An
 entry in a record of right has the same effect as between landlords of neighbouring estates as between landlord and tenant and must be presumed correct until the contrary is proved. A survey is an indispensable necessity for a preparation of a record of right under s 101 of the Bengal Tenancy Act. **MUSAMMAT BIBI WAKILAW v DEONANDAN PRASAD**
5 Pat L J 681

Settlement of rent
 —Bengal Tenancy Act (VIII of 1885) ss 105 106 113 A rectification of the record of rights under s 106 of the Bengal Tenancy Act as regards the existing cannot be said to be a settlement of rent so as to preclude a suit under s 113 of the Act ss 105 and 105A of the Act contemplate settlement of rent and not s 106. **MANINDRA CHANDRA NANDIA v UPENDRA CHANDRA HAZRA**
(19 0) 1 L R. 47 Calc 1006

RECORDING OFFICER

See KHOTI SETTLEMENT ACT (BOM ACT I OF 1880) - 21
1 L R. 43 Bom 469

RECOUPMENT

See LAND ACQUISITION

1 L R 47 Calc 500
1 L R 44 Calc 219

Powers under Calcutta Improvement Act (Bom V of 1911) ss 2 36 37 39 41 42 (a) 49 (1) 69 71(b) 78 81 89 123 Sch cl 13—Beltment—Effect—Lands Clauses Consolidation Act 1816 (8 & 9 Vict ss 18) ss 63 68—Land Acquisition Act (I of 1894) ss 6 9 23 (1) (4) 24 (6) 48—House and Town Planning Act 1909 (9 Edw VII c 44) s 58 (3)—Calcutta Municipal Act (Bom 111 of 1899) s 37 (2)—Bombay City Improvement Act (Bom IV of 1898) ss 25 29—Reference to Full Bench when incompetent. **PER CUBIAM (CHATTERJEA J dissenting)—The Calcutta Improvement Act does authorise the Board of Trustees to acquire land compulsorily for purposes of recoupment i.e. by selling or otherwise dealing with the land under s 81 or by abandoning the land in consideration of the payment of sum under s 78. **Trustees for the Improvement of Calcutta v Chandra Kanta Ghosh** **1 L R 44 Calc 219** overruled in so far as it decides to the contrary. **PER CHATTERJEA J**—The Act does not authorise compulsory acquisition of land for the purpose of recoupment. The lands are not to be included in the scheme originally for the purpose of thereafter making profits but if they are properly included in the scheme and subsequently found not to be required the Board have the power to dispose of such lands. The question referred to the Full Bench did arise. (**CHATTERJEA J contra**) **Prosenno Coomar Paul Cloudhry v Keylash Chandra Paul Cloudhry** **B L R (F B) 703** distinguished. The preamble does not control the enacting provisions of the Act. In s 40 (a) of Beng Act V of 1911 affected means affected in any way and not merely injuriously affected. **The Metropolitan Board of Works v Owen McCarthy** **L R 11 H L 443** explained. The words by the execution of the scheme used in s 42 (a)**

RECOUPMENT—contd

simply mean through or owing to the execution of the scheme. **Hammersmith and City Railway Co v Brand** **1 R 4 H L 171** distinguished. S 78 does not apply only to land which was originally required for the execution of the scheme but was subsequently found to be unnecessary. **PER TRAYNOV J**—The area fixed and sanctioned as the area comprised in the scheme corresponds with the lands delineated on the plans in England. **MANI LALL SINGH v TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA (1917)**
1 L R 45 Calc 343

RECRUITMENT

See EMIGRATION **1 L R 37 Calc 27**
 See UNLAWFUL RECRUITMENT

RECTIFICATION

of decree—

See MISTAKE **1 L R 43 Calc 217**

of mortgage deed—

See SPECIFIC RELIEF ACT s 31
110 C W N 36

of Instrument—

See SPECIFIC RELIEF ACT 1877 s 31 34

of Registrar—

COMPANIES ACT 1882
 ss 58 AND 147 **1 L R 40 Bom 134**

See COMPANIES ACT (VII OF 1913)—

s 38 **1 L R 41 Bom 76**

See REGISTER RECTIFICATION OF

—Entry in the revenue register—Misunderstanding of an order—Over sight—Natural Justice—Land Revenue Code (Bom Act V of 1879) ss 109 107 Where an entry in the revenue register was due to a misunderstanding of a certain order. *Held* that the cause of the error being of the same nature as oversight falling within the description of errors in s 109 of the Land Revenue Code (Bom Act V of 1879) the rectification of the register so as to bring it in accord with the order after hearing both parties was not contrary to natural justice. It was a case in which the revenue officer concerned was authorised under s 197 of the said Code to dispense with any judicial or quasi-judicial inquiry. **WASUDEN MAHESWAN v GOVIND MAHADEV (1911)**
1 L R 111 Bom 315

RECURRING CHARGE

See MAINTENANCE ALLOWANCE

1 L R 38 Calc 113

REDEMPTION

See BENGAL REGULATION NO XV OF 1793 **1 L R. 34 ALL 261**

See CIVIL PROCEDURE CODE 1882—

s 13 AND 43

1 L R 33 ALL 302

s 13

1 L R 111 ALL 215

See CIVIL PROCEDURE CODE 1908—

ss 11 AND 47 **1 L R 42 Bom. 246**

s 47 & XXI R. 2

1 L R 43 Bom. 240

s 140 O XXXIV R. 8.

1 L R 34 ALL 339

REDEMPTION—*contd*

O XXI R 53 4 Pat L J 336

D XXIV

See EQUITY OF REDEMPTION

See LIMITATION ACT (XV of 1877) Sch

II, ART 143 I L R 66 All 195

ART 134 I L R 36 Bom 146

See LIMITATION ACT 1905—

ss b 7 AND ART 144

I L R 43 Bom 487

Sch I ARTS 140 141

I L R 40 Bom 239

ARTS 181, 182 I L R 43 Bom 689

See MORTGAGE

See MORTGAGOR AND MORTGAGEE

See PRACTICE

I L R 35 Bom 507

See REDEMPTION SUIT

See REGISTRATION ACT (XVI of 1908)

s 17 I L R 41 Bom 510

See TRANSFER OF PROPERTY ACT 1882—

s 60 I L R 43 All 95 and 638

I L R 45 Bom 117

ss 83 84 I L R 39 All 719

ss 91 to 96

— clog on—

See TRANSFER OF PROPERTY ACT (IV of 1882) s 60

I L R 45 Bom 117

— decree for—

See CIVIL PROCEDURE CODE (1908) O

XXIV R 8 I L R 39 All 396

— extension of time for—

See CIVIL PROCEDURE CODE 1903—

O I R 10 O XXIV R 1

I L R 45 Bom 1009

O XXIV R 9

I L R 35 All 116

— in the Punjab—

See REDEMPTION OF MORTGAGES (PUNJAB)

ACT 1913 I L R 2 Lah 234

— mortgagee allowed interest and liable

to account for mesne profits—

See DEKKHAN AGRICULTURISTS ACT 1879

s 15 I L R 44 Bom 372

— mortgagor's right to redeem when

property purchased by mortgagee at Court sale

and later repurchased—

See LIMITATION ACT 1903 ART 134

I L R 44 Bom 348

— parties in possession claiming inde-

pendently—

See CIVIL PROCEDURE CODE 1903 O

XXIV R 1 I L R 44 Bom 693

— transfer by mortgagee effect of—

See LIMITATION ACT 1903 ARTS 134 AND

143 I L R 43 Bom 614

— right to—

See TRANSFER OF PROPERTY ACT (IV of 1882) s. 91

I L R 39 All 531

See MORTGAGE I L R 39 Calc 823

REDEMPTION—*contd*

— suit for—

See CIVIL PROCEDURE CODE ACT 1903—

ss 3 97, O XXVI R 11 12 (?)

I L R 38 Bom 392

s 11 EXPT I L R 35 Bom 50.

ss 11 47 I L R 39 Bom. 41

s 47 O XXI R 100 101

I L R 40 Mad. 984

See COMMISSIONER

I L R 41 Bom 719

See COMPROMISE I L R 42 Calc 801

See DECREE I L R 34 Bom 280

See DEKKHAN AGRICULTURISTS RELIEF

ACT (XVII of 1879)—

I L R 35 Bom 994

I L R 40 Bom 493

ss 2 (?) 104 I L R 33 Bom 18

ss 3 (a) 12 I L R 40 Bom 653

s 10(a) I L R 35 Bom 231

s 13 I L R 39 Bom 537

ss 13 15D 16 I L R 39 Bom 73

See MADRAS CIVIL COURTS ACT (III of 1873) s 12 13

I L R 39 Mad. 447

14 C W N 1002

See Mortgage

I L R 47 Calc 377

I L R 48 Calc 22

I L R 39 All 493

I L R 43 Bom 334

See MORTGAGOR AND MORTGAGEE

I L R 43 Bom 337

See REGULATION (XVII of 1866) s 4

I L R 40 All 237

See TRANSFER OF PROPERTY ACT (I)—

ss 60 67 93 I L R 39 Mad 310

ss 60 AND 91 I L R 39 Mad. 986

Civil Procedure Code (1877) s 53—Decree for redemption reversed on appeal—Restitution—Jurisdiction of Court to which application for restitution is made to award mesne profits which are not given by Appeal s meane profits which are not given by Appeal s Court decree—Suit to redeem A mortgagor and for redemption of a usufructuary mortgage and obtained a decree from the Subordinate Judge under which on payment of the sum decreed to the mortgagee he was put in possession of the mortgaged property but the mortgagee appealed to the High Court which increased the amount payable on redemption by a sum which the mortgagor failed to pay and the mortgagee thereupon applied to the Subordinate Judge for possession and for mesne profits for the period during which he had been out of possession Held (upholding the decisions of the Courts in India) that the Subordinate Judge had power under s 53 of the Code of Civil procedure 1877 to award mesne profits although they had not been expressly given by the decree of the High Court. If the decree was wrong the parties aggrieved had their remedy either by appeal to the High Court or by an application for revision. The proceedings taken under the decree of the Subordinate Judge culminating in the sale at which the mortgagee purported to purchase the equity of redemption were valid and the appellant an

REDEMPTION—contd

assignee of the rights of the mortgagor was held not entitled to redeem. **PARBHU DAYAL v MAHJUB AHMAD (1915)** I L R 33 All 163

Suit for—Limitation

The plaintiffs were *Mitakshara* sons. At a sale in execution of a decree upon four mortgages against their father the mortgagee defendants in the present suit bought the property now in suit. The plaintiffs were not parties to the suits upon the mortgages. Several years after the auction sale they instituted the present suit for an account and to redeem. *Held* that the first step necessary for redemption is a declaration that the sale should be set aside that the period of limitation to set aside a sale is one year and that therefore the suits were barred by Art 12 of the Limitation Act 1908. *Query* Whether a *Mitakshara* son can sue to redeem even though he has been deliberately and with notice omitted from a suit upon a mortgage made by his father. **BHOLA JHA v LALA KALI PRASAD**

I Pat L J 180

Payment of balance whether amounts to—Transfer of Property Act (IV of 1882) ss 60 62 and 95—Code of Civil Procedure (Act V of 1908) § XXXIV r 5 Where there have been payments in part satisfaction of a mortgage the payment of the balance due is as much a redemption as the payment of the whole sum due in a case in which there has been no previous part payment. Redemption is effected by the releasing of the security and where the security is extinguished the property is redeemed by the act which extinguished it. § 95 of the Transfer of Property Act 1882 is not limited in its scope to cases in which delivery of possession of the property itself is rendered possible by the fact that the mortgage was an usufructuary mortgage. The section is also applicable to case of simple mortgage where the property not being in the possession of the mortgagee cannot be transferred to the party releasing the security. **MUSAMMAT HIRA KUNER v PALMU SINGH**

3 Pat L J 490

REDEMPTION DECREE

See MORTGAGE I L P 43 Bom 703

REDEMPTION OF MORTGAGES (PUNJAB) ACT 1913

§ 12—Mortgage redeemed on payment of amount fixed by Collector and possession given to mortgagor—*Suit by mortgagee for restoration* The defendant mortgagors applied under Punjab Act II of 1913 to the Collector for redemption of their land and an order was passed in their favour that possession should be given on payment of Rs 1003 0 0. Possession passed accordingly. The plaintiff mortgagee thereupon instituted the present suit for restoration of possession on the ground that a far larger sum was due under the mortgage. The first Court found that Rs 1057 6 0 was due to plaintiffs and that they were entitled to retain possession until they were given the full amount. This decision was upheld by the lower Appellate Court. The defendants appealed to the High Court. *Held* that the provisions of § 12 of the Redemption of Mortgages (Punjab) Act are sufficiently wide to allow a Civil Court to right any wrong done by the Collector in the summary proceedings and if necessary to

REDEMPTION OF MORTGAGES (PUNJAB)**ACT 1913—contd****§ 12—contd**

restore possession of the land and that the decision of the lower Courts was consequently correct. **Balwant Pat v Gheru (85 P R 1917)** distinguished. **Lot Chand v Ha ar Khan (98 P R 1917)** not followed. **HAZAM DIN v DAULAT RAM** I L R 2 Lah 234

REDUCTION OF RENT

See BENGAL TENANCY

I L R 48 Calc 473

RE ENTRY

right of—

See LESSOR AND LESSEE

I L R 38 Mad. 445

REFERENCE

See BOOKS OF REFERENCE

See COSTS

I L R 45 Bom 1286

See JURISDICTION

I L R 48 Calc 766

See PRACTICE

I L R 42 Calc 819

See ARBITRATION

to determine tenure of land—

See BOHBAIY REVENUE JURISDICTION ACT (X of 1846) § 12

I L R 45 Bom 463

Jury trials—Power of Judge to refer the case of an accused as to whom he agrees with the verdict—Legality of procedure—Criminal Procedure Code (Act V of 1898) § 307 (2)—Confessions of co accused—Corroboration—Sufficiency of circumstances raising a mere suspicion § 307 (2) of the Criminal Procedure Code contemplates a reference only in the case of those accused as to whom the Judge declines to accept the verdict of the jury. When he agrees with them in respect of any particular accused he ought to acquit or convict and sentence the latter as the case may be. Confessions of the co accused can be taken into consideration but the Court requires corroboration before acting on them. **EMPEROR v BABAR ALI GAZI (1914)**

I L R 42 Calc 789

REFERENCE BY COLLECTOR OF RANGOON

See APPEAL TO PRIVY COUNCIL

I L R 40 Calc 21

REFERENCE TO ARBITRATION

See ARBITRATION

by some of the disputing parties—

See ARBITRATION I L R 37 Calc 63

Subsequent suit—No application to stay—

See ARBITRATION

I L R 47 Calc 752

REFERENCE TO FULL BENCH

See RECOGNITION

I L R 45 Calc 343

REFERENCE TO HIGH COURT

See ACQUITTAL

I L R 44 Calc 703

See CRIMINAL PROCEDURE CODE (ACT V of 1898) § 435 438

I L R 41 Bom. 47

REFERENCE TO HIGH COURT—contd

See CRIMINAL TRESPASS

I L R 41 Calc 662

See VERDICT OF JURY

I L R 41 Calc 621

REFORMATORY SCHOOLS ACT (VIII OF 1897)

s 31—*Youthful offender*—Punish-
ment—Powers of Courts dealing with youthful
offenders s 31 of Act VIII of 1897 read with the
definition of 'youthful offender' enables practi-
cally any Court in the case of an offender under
fifteen to deliver him to his parents with or without
sureties for his future good behaviour *EMPEROR*
v *ABDUL AZIZ* (1916) I L P 39 All 141

REFUND

See BOMBAY DISTRICT MUNICIPALITIES
Act (Bom Act III of 1901) s 2 pro
(b) AND s 65 cl 4

I L R 45 Bom 64

See BOMBAY CITY IMPROVEMENT
TRUST ACT (Bom IV of 1898), s
48 (11)

I L R 42 Bom 54

See UNDUE INFLUENCE

I L R 42 Calc 286

REFUND OF COURT FEE

Appeal over valuation
of—*Partial decree*—*Memorandum of appeal over*
valuation of—Court fee paid in excess by inadvert-
ence—*Practice* The appellant's agent having by
inadvertence over paid court fee on the memoran-
dum of appeal the High Court directed the
Taxing Officer to issue the necessary certificate
to enable the appellant to obtain a refund of the
excess court fee from the Revenue authorities
In the matter of *Grant 14 W R 47* referred to
HARINAR GURU v ANANDA MAHANTY (1912)
I L R 40 Calc 365

REFUND OF PURCHASE-MONEY

suit for—

See EXECUTION OF DECREE

I L R 36 All 529

See SALE IN EXECUTION OF DECREE

I L R 37 Calc 67

REFUSAL BY JUDGE

effect of—

See CROSS EXAMINATION

I L R 41 Calc 299

REFUSAL TO GRANT TIME

See ATTACHMENT I L R 40 Calc 105

REGISTER OF BIRTHS

admissibility of as evidence—

See HINDU LAW—MINOR

I L R 38 Mad 186

REGISTER OF DEATHS

Public document—
Evidence—*Certified copy of entry in the Register*
admissibility of—Bengal Police Manual 1911
v *124—Evidence Act (I of 1872) ss 35 74 and 114*
A register of deaths kept by police officers at
thanas under the rules made by the Local Govern-

REGISTER OF DEATHS—contd

ment, is a 'public document' within the meaning
of s 74 of the Evidence Act Under the provi-
sions of s 114 of that Act the Court is entitled
to presume that an entry made in such register
was properly made and a certified copy of such
entry is admissible in evidence *Ramalinga*
Reddy v Kotayya I L R 41 Mad 26 referred to
TAMLUDDIN SARKAR v TAZU (1918)
I L R 46 Calc 150

REGISTER RECTIFICATION OF

See COMPANY I L R 47 Calc 901

COMPANIES ACT 1862 ss 68 AND 147

I L R 40 Bom 134

See COMPANIES ACT 1913—

s 38

I L R 41 Bom 76

See RECTIFICATION

**REGISTERED AND UNREGISTERED DOCU-
MENTS**

See REGISTRATION ACT (XVI of 1908)
s 50 I L R 30 All 91

REGISTERED BOND

See LIMITATION ACT (IX of 1908)
SOL I ARTS 116 AND 60 s 19

I L R 38 Bom 177

REGISTERED COMPANY

See COMPANY

See LIQUIDATOR I L R 43 Calc 586

REGISTERED LEASE

See LIMITATION ACT (IX of 1908) SOL I,
ARTS 110 116 I L R 37 Bom 656

See RAJYATI HOLDING
I L R 47 Calc 129

REGISTRATION

See DESIGN

I L R 45 Calc 806

See CIVIL PROCEDURE CODE 1908—

O XIII s 3 I L R 38 All 75

See COMPROMISE 3 Pat L J 43

See COMPANIES ACT ss 28 43 61
I L R 38 Bom 557

See DESIGN I L R 45 Calc 606

See EVIDENCE ACT (I of 1872) s 10
I L R 38 All 1

See LAND REGISTRATION ACT (BENGAL
ACT VII of 1876)

See MORTGAGE I L R 37 Calc 589
I L R 48 Calc 1 & 509

See OUDH ESTATES ACT 1869
I L R 42 All 422

I L R 33 All 344

See PROVIDENT INSURANCE

I L R 42 Calc 300

See RECEIPT I L R 42 Calc 546

See REGISTRATION ACT (III of 1877)

See REGISTRATION ACT XVI of 1908

See SPECIFIC PERFORMANCE

14 C W N 65

REGISTRATION—*contd*

See TRANSFER OF PROPERTY ACT 1857—

s. 55 I L R 37 Cal 313

s. 55 I L R 37 Cal 313

s. 55 I L R 37 Cal 313

s. 55 I L R 37 Cal 313

s. 55 I L R 37 Cal 313

s. 55 I L R 37 Cal 313

See TRUSTS ACT 1850

I L R 37 Cal 313

See TRANSFER OF PROPERTY ACT 1857

I L R 37 Cal 313

Fraud of mortgagor unknown to
mortgagee—

See CIVIL PROCEDURE CODE 1908 s. 109

I L R 42 All 176

Lessee on a monthly rent—

See REGISTRATION ACT 1908 s. 17

I L R 37 Cal 313

Presentation by agent not duly

authorised—

See REGISTRATION ACT 1908 s. 32

I L R 37 Cal 313

Fraudulent by mortgagor—

See CIVIL PROCEDURE CODE 1908 s.

109 I L R 42 All 176

effect of—

See TRADE MARK I L R 37 Cal 204

if notice by it self—

See NOTICE 25 C W N 49

whether Court can go into the

question of validity of the document—

See REGISTRATION ACT 1908 s. 77

I L R 2 Lah 202

of receipt for purchase money—

See REGISTRATION ACT 1908 s. 17

I L R 1 Lah 25

of transfer of shares—

See COMPANY I L R 38 All 365

presentation by agent—

See REGISTRATION ACT 1877 ss. 32 and

33 I L R 42 All 487

See REGISTRATION ACT 1908

I L R 3 Lah 5

Oral sale followed by Registered

sale with notice—

See SALE I L R 44 Bom 586

of permanent lease granted by

occupancy riyat—

See BENGAL TENANCY ACT 1835 s. 85

25 C W N 4

suit to compel—

See REGISTRATION ACT (XVI OF 1908)—

ss. 30 and 77 I L R 38 All 315

ss. 73 and 74 I L R 34 All 165

validity of—

See REGISTRATION ACT 1877 s. 28

14 C W N 532

REGISTRATION—*contd*

want of—

See CONSTRUCTION OF DOCUMENT

I L R 37 Mad 460

Registration Act (III of 1857) s. 17 cl (n)—Errors ment on a mortgage bond of payment made in satisfaction of a previous mortgage debt—Civil Procedure Code (Act XIV of 1857) s. 43—Payment by a subsequent mortgagee under s. 74 of the Transfer of Property Act (IV of 1852) effect of The endorsements on a mortgage bond of payments made in satisfaction of a mortgage which payments did not purport to extinguish the mortgage are covered by cl (n) of s. 17 of the Registration Act and as such do not require registration *Jivan Ali Beg v. Daya Mal I L R 9 All 108* and *Uppalalanti Kunhi Kuttu Ali Haji v. Kuranam Mithal Kottapath Abdul Pakuman I L R 19 Mad 284* followed *HARI NARAYAN BANERJEE v. KUSUM KUMARI DAS (1910)* I L R 37 Cal 588

Document—Variation of Terms—Registration Act (XVI of 1908) s. 17 (d) A document which varies the amount to rent to be paid under an existing lease registered as required by s. 17 (d) of the Indian Registration Act as to the incidents of such payments namely the date of payment and consequences of default of payment requires registration *Durga Prasad Singh v. Rajendra Narayan Bagchi I L R 37 Cal 293* approved so far as it determines that a document embodying an agreement for reduction of rent under a previously existing lease registered as required by s. 17 (d) of the Registration Act requires registration *LALIT MOHAN GHOSH v. GOPALI CRICK COAL COMPANY LD (1911)* I L R 39 Cal 282

Gift—Consent of donor to registration of deed of gift of immovable property not essential to validity of gift Held that it is not essential to the validity of a gift of immovable property that registration of the deed by which such gift is effected should be either at the instance of or with the consent of the donor *Pamamiritha Ayyan v. Gopala Ayyan I L R 19 Mad 433* dissented from *PARBATI v. BALI NATH PATHAK (1912)* I L R 35 All 3

Instrument reserving at life estate to the maker not a will—Instrument creating interest in adoptive mother—Value of the interest in excess of Rs 100—Registration Any instrument which confers or reserves a life estate to the maker is not a will A deed of adoption by which an interest is reserved to the wife of the adopter in immovable property which she otherwise would not have possessed and could not have possessed when such interest exceeds in value Rs 100 requires registration *PIRSAB VALAD KASINSAB v. GURAPPA BANAPPA (1913)* I L R 38 Bom 227

Family settlement—Distribution of family property carried out by means of mutation proceedings—Hindu law—Joint Hindu family—Representative capacity of father The members of a Hindu family one of whom was a minor entered into a compromise concerning the partition of certain property in the course of mutation proceedings and the partition agreed to was carried into effect by these proceedings Held that inasmuch as the minor was represented by his father and there was no evidence of fraud or

REGISTRATION—contd

collusion the compromise was binding on him *Held* also that the compromise did not require registration *Kokla v Piar Lal I L R 35 All 592* referred to *DATA SHANKAR v HUK LAL (1914) I L R 37 All 105*

Unregistered deed of relinquishment of real and personal estate for a joint consideration—Oral evidence of an agreement preceding the written document—Whether admissible in evidence—Indian Evidence Act I of 1872 s 91 The plaintiff appellant sued defendant respondent the widow of Basanta deceased as next heir for possession of the property left by the deceased on the grounds that she had forfeited her rights to a life estate owing to her uncharity. The defendant contended *inter alia* that the plaintiff had waived his claim to succeed to the property left by Basanta and in support of this plea put forward a document by which the plaintiff gave up all his rights in Basanta's property real and personal on the condition that defendant paid a sum of Rs 1000 to a *goushala*. The execution of this document was admitted but not its contents *Held* that the document was inadmissible in evidence for want of registration notwithstanding that its execution had been admitted *Satyra Chunder v Dhunpal Singh I L R 24 Cal 20* and *Chedimbaram Chetty v Karunalyanlanganpu Tater 3 Mal H C R 349* distinguished *Held* also that s 91 of the Evidence Act rendered inadmissible oral evidence to prove that there was an oral agreement of relinquishment preceding the written document *Held* further that as the consideration could not be apportioned between the real and personal estate relinquished by the deed the latter could not be admitted into evidence even in respect of the personal estate *Bevan Felman v Ganesh Das 49 P 1916* followed. *Muhammad Baksh v Mussammat Amir Begum 23 P R 1918* and *Sri Parupali v Sri Raja Velraaya 17 Indian Cases 563 573 574* distinguished *BISHENAR LAL v MESSAMMAT BHURI I L R 1 Lah 438*

Constructive notice—Agreement between plaintiff and the defendant's vendor by which the latter restricted the ordinary user of his property—Agreement not a covenant running with land—Agreement if indexed in the register in relation to defendant's property would be notice—Injunction The plaintiff had entered into an agreement with defendant's vendor by which the latter agreed to a restriction of ordinary user of his property. This document was registered in relation to the strength of it the plaintiff sued to obtain certain reliefs by way of injunction against the defendant. Both the lower Courts decreed the plaintiff's claim on the ground that the document was registered and therefore the defendant must be presumed to have had notice of it *Held* that the agreement not being a covenant running with the land but being merely a restrictive covenant by which the defendant's vendor restricted the ordinary user of his property it could not be said that defendant had constructive notice unless the document was indexed in the register in relation to defendant's property *Per HAZARD 1—*

Registration does not necessarily give notice to anybody of anything. But if a registered document is so indexed that an inquirer anxious to ascertain whether there are documents relating to a property which he proposes to buy can find from the index documents relating to that

REGISTRATION—contd

property then it will be held that he has notice of those documents because if he made the enquiry which as a prudent man he ought to make then they would come to his notice" *GORDHANDAS VITHALDAS v MOHARLAL MAYEK LAL (1920) I L R 45 Bom 10*

REGISTRATION ACT (VIII OF 1871)

Lease executed before reserving a yearly rent if required registration

See TRANSFER OF PROPERTY ACT
23 C W N 611

REGISTRATION ACT (III OF 1877)

See REGISTRATION

See VENDOR AND PURCHASER
I L R 41 Bom 300

effect of—

See GIFT I L R 40 Mad 204

s 3—

See HABULIYAT I L R 39 Cal 1018

ss 3 I (d) 49—

See SPECIFIC PERFORMANCE
14 C W N 65

ss 3 17—

See CIVIL PROCEDURE CODE 1889 s 315
I L R 33 Mad. 102

ss 3 and 34—Document creating right to benefit to arise out of land compulsorily registrable—Evidence such document not admissible in if unregistered—For person under an document only First defendant obtained possession of certain lands under an unregistered instrument which gave him the right to apportion future rents (over Rs 100 in value) towards an antecedent debt due to him *Held* that the instrument created a right to benefits to arise out of land and was compulsorily registrable under s 17 Indian Registration Act *Venkaj Babaji Nayk v Shidramappa Balapa Desai I L R 19 Bom 663* followed. *Misra Lal v Mohar Hukm I L R 13 Cal 262* distinguished *Banahdar v Sant Lal I L R 10 All 133* distinguished. Such a document if not registered cannot be admitted in evidence. Where defendant's possession arose only out of such an unregistered document he cannot otherwise prove that he was no a trespasser *MANGALASWAMI v SUBBIA PILLAI (1910) I L R 34 Mad. 64*

ss 3 17 40—Contract to sell—Agreement to lease—Evidence Act s 91 An agreement to execute a sub lease and to get it registered at a future date is a lease within s 3 of the Indian Registration Act III of 1877 and is compulsorily registrable under cl (d) of s 17 such an agreement to grant a lease which requires registration affects movable property and cannot be received in evidence in a suit for specific performance of such agreement. It is immaterial whether possession has passed or not in accordance with the agreement s 49 of the Registration Act indicates that a document should not be received in evidence even where the transaction sought to be proved does not amount to a transfer of interest in immovable property but has only created an obligation to transfer the property *NARAYAN CHETTY v MUTHIAH SERRAI (1910) I L R 35 Mad. 60*

REGISTRATION ACT (III OF 1877)—*contd*

Deed of gift in favour of a married minor girl presented for registration by her father without authority from executant—Registration of valid—*Deed void* Two deeds of gift executed by A in favour of his niece A who was a minor and married to his adopted son were presented for registration by A's father and registered. Held that upon A's marriage her father ceased to be her natural guardian and never having been appointed her legal guardian was not her assignee or representative within the meaning of sec 3 of the Registration Act 1877 nor was he within the meaning of sec 34 of the Act the representative agent or agent duly authorized on behalf of A. The registration of the deeds was therefore illegal invalid and void with the consequence that the deeds themselves were void and unenforceable. *AMBA (alias) PADMA VATHI v. SREINIVASA KANATHI*
23 C W N (P C) 369

— s 17—

See s 3 I L R 35 Mad 64
I L R 35 Mad 63

See CIVIL PROCEDURE CODE 1859 s 30
I L R 33 Mad 102

See LIMITATION ACT 1677 Sch II Arts
132 144 I L R 35 Bom 433

See TRANSFER OF PROPERTY ACT s 6
123 I L R 34 Bom 287

Registration—Adoption—Authority to adopt—Whether document a will A Hindu about three weeks before his death executed a document which was headed by a statement that it was a will in favour of the executant's wife by it the executant after stating that he had long been seriously ill and had no issue said I have consented to your adopting a son at your pleasure and conducting the management of the estate in the best manner. None of my heirs shall have cause to raise disputes touching this matter. This will has been executed by my consent. The document was not registered. After the executant's death his widow adopted a son to him. Held that the document was merely an authority to adopt and not a will and was therefore required to be registered by the last provision in s 17 of the Indian Registration Act 1877 [Judgment of the High Court affirmed] *BREEMA DEO v. BEHARI DEO* (1921)
I L R 44 Mad (P C) 733

— cl (a) (b) and (h)—Registration Act (XVI of 1908) s 17 except (c)—Registered conveyance—Simultaneous unregistered document to convey—An ordinary agreement to sell—Exemption from registration. The plaintiff and the defendant agreed that plaintiff should nominally sell the property in suit out and out to the defendant and thereafter attorn to him for an amount of rent which would represent reasonable interest. A conveyance to this effect was executed and duly registered. Contemporaneously the defendant executed an agreement to the plaintiff to re-convey the property for the same consideration namely Rs 1400 when called upon to do so. This agreement was not registered. The plaintiff having brought a suit against the defendant for the specific performance of the unregistered agreement to re-convey the lower Courts dismissed the suit on the ground that the agreement was compulsorily registrable under s 17 cl (a) and (b) of the

REGISTRATION ACT (III OF 1877)—*contd*— cl (a) (b) and (h)—*contd*

Registration Act (III of 1877). On second appeal by the plaintiff. Held reversing the decree, that the agreement did not require registration. Separated entirely from the defendant's registered conveyance plaintiff's unregistered document was nothing more than an ordinary agreement to sell and such agreements were expressly exempted from the operation of s 17 cl (a) and (b) of the Registration Act (III of 1877) by cl (h) and of s 17 of the Registration Act (XVI of 1908) by exception (c). Having regard to the form of the document as a whole it was no more than an ordinary agreement to re-convey. *SAYAD MIZ GAZI v. MIYA ALI* (1914) I L R 38 Bom 703

— cl (b) (c)—

See TRANSFER OF PROPERTY ACT (IV OF 1899) s 54 I L R 37 Bom 53

— cl (b) and (d)—Lease of palmryra juice—Whether lease of immovable property. Where a document stated that the lessee had taken for lease for two years the palmryra trees in a certain garden and that he would not cut the leaves of any of the trees on which he climbed except those whose leaves had to be cut. Held that it was not a lease of immovable property and that the interest conveyed by it was not for the purposes of the Registration Act an interest in immovable property. *Sukry Kurdeppa v. Goondakull Nagredda* 6 Mad H O 41 and *Seent Cheltiar v. Santhanathan Cheltiar* I L R 20 Mad 53 explained and distinguished *NATESA v. TANGAVELU* (1914)
I L R 38 Mad 883

— cl (d)—

proviso—Lease not reserving a yearly rent not within the exemption. The proviso to s 17 (d) of the Registration Act will apply only in the case of leases which reserve an annual rent. A lease for a term of 3 years which reserves no annual rent but only provides for the payment of a lump sum is compulsorily registrable even when such lump sum is less than the aggregate of three annual instalments of Rs 50. *VINKA TASAM CHETTY v. SUPPA PILLAI* (1909)
I L R 33 Mad 216

Reservation of annual rent not necessary to bring the document within proviso to cl (d) of s 17. In order to exempt a lease from registration under the proviso to cl (d) of s 17 of the registration Act it is not necessary that an annual rent should be reserved. The proviso simply means that if an annual rent is reserved it should not exceed fifty rupees. *KATASANI CHETTI v. SUPPA PILLAI* (1910)
I L R 34 Mad 90

— cl (d) (h)—

See LEASE I L R 37 Calc 808
Amalgamation of must be registered when lease intended to be granted a lease in perpetuity—Agreement to lease which contemplated execution of patta and kabul yat but never theless intended passing title upon delivery of possession if a document merely creating a right to obtain a subsequent document. Where a document described the land intended to be demised and set out the boundaries thereof and proceeded to say that according to your prayer I grant this amal namah to you for erecting houses after reclaiming

REGISTRATION—contd

collusion, the compromise was binding on him. *Held* also that the compromise did not require registration. *Kalka v Puri Lal I L R 35 All 502* referred to *DAYA SHANKAR v HUR LAL (1914) I L R 37 All 105*

Unregistered deed of relinquishment of real and personal estate for a joint consideration—Oral evidence of an agreement preceding the written document—Whether admissible in evidence—Indian Evidence Act, I of 1872 s 91 The plaintiff appellant sued defendant respondent the widow of Basanta deceased as next heir for possession of the property left by the deceased on the grounds that she had forfeited her rights to a life estate owing to her unchastity. The defendant contended *inter alia* that the plaintiff had waived his claim to succeed to the property left by Basanta and in support of this plea put forward a document by which the plaintiff gave up all his rights in Basanta's property real and personal, on the condition that defendant paid a sum of Rs 1000 to a *gorshala*. The execution of this document was admitted but not its contents. *Held* that the document was inadmissible in evidence for want of registration notwithstanding that its execution had been admitted. *Satyesh Chunder v Dhunpal Singh I L R 24 Cal 20* and *Chedambaraam Chetty v Karunayamlanga pulu Taver 3 Mal H C R 352* distinguished. *Held* also that s 91 of the Evidence Act rendered inadmissible oral evidence to prove that there was an oral agreement of relinquishment preceding the written document. *Held* further that as the consideration could not be apportioned between the real and personal estate relinquished by the deed the latter could not be admitted into evidence even in respect of the personal estate. *Bevan Peltan v Ganesh Das 49 P 1916* followed. *Muhammad Bahah v Mussammam Amir Begum 23 P R 1918* and *Sri Pasupati v Sri Raja Velsa vuya 17 Indian Cases 563 573 574* distinguished. *Bishneswar Lal v Mussammam Bivri I L R 1 Lah 436*

Constructive notice—Agreement between plaintiff and the defendant's vendor by which the latter restricted the ordinary user of his property—Agreement not a covenant running with land—Agreement if indexed in the register in relation to defendant's property would be notice—Injunction The plaintiff had entered into an agreement with defendant's vendor by which the latter agreed to a restriction of ordinary user of his property. This document was registered and on the strength of it the plaintiff sued to obtain certain reliefs by way of injunction against the defendant. Both the lower Courts decreed the plaintiff's claim on the ground that the document was registered and therefore the defendant must be presumed to have had notice of it. *Held* that the agreement not being a covenant running with the land but being merely a restrictive covenant by which the defendant's vendor restricted the ordinary user of his property it could not be said that defendant had constructive notice unless the document was indexed in the register in relation to defendant's property. *Per HEATON J*—“Registration does not necessarily give notice to anybody of anything. But if a registered document is so indexed that an inquirer anxious to ascertain whether there are documents relating to a property which he proposes to buy can find from the index documents relating to that

REGISTRATION—contd

property, then it will be held that he has notice of those documents because if he made the enquiry which as a prudent man he ought to make then they would come to his notice.” *GORDHANDAS VITHALDAS v MOHANLAL MAYEK LAL (1920) I L R 45 Bom 140*

REGISTRATION ACT (VIII OF 1871)

—Lease executed before resorting to yearly rent II required registration

See TRANSFER OF PROPERTY ACT
23 C W N 631

REGISTRATION ACT (III OF 1877)

See REGISTRATION
See VENDOR AND PURCHASER
I L R 41 Bom 200

—effect of—
See CIST I L R 40 Mad 204

—s 3—
See HABITLIYAT I L R 100 Cal 1018

—ss 1 (d) 49—
See SPECIFIC PERFORMANCE
14 C W N 65

—ss 3 17—
See CIVIL PROCEDURE CODE 1859 s 370
I L R 33 Mad 109

—ss 3 and 34—Document creating right to benefits to arise out of land compulsorily registrable
—Evidence such document not admissible in if unregistered—Possession under such document only First defendant obtained possession of certain lands under an unregistered instrument which gave him the right to apportion future rents (over Rs 100 in value) towards an antecedent debt due to him. *Held* that the instrument created a right to benefits to arise out of land and was compulsorily registrable under s 17 of the Registration Act. *Venkye Babayyasaik v Shrinamapa Balapa Desai I L R 19 Bom 663* followed. *Misri Lal v Mo har Hussain I L R 13 Cal 26* distinguished. *Banshidhar v Sint Lal I L R 10 All 133* distinguished. Such a document if not registered cannot be admitted in evidence. Where defendant's possession arose only out of such an unregistered document he cannot otherwise prove that he was not a trespasser. *MANOJASWAMI v SUBBIA PILLAI (1910) I L R 34 Mad 64*

—ss 3 17 40—Contract to sell—Agreement to lease—Evidence Act s 91 An agreement to execute a sub lease and to get it registered at a future date is a lease within s 3 of the Indian Registration Act III of 1877 and is compulsorily registrable under cl (d) of s 17. Such an agreement to grant a lease which requires registration affects movable property and cannot be received in evidence in a suit for specific performance of such agreement. It is immaterial whether possession has passed or not in accordance with the agreement. S 49 of the Registration Act indicates that a document should not be received in evidence even where the transaction sought to be proved does not amount to a transfer of interest in immovable property but has only created an obligation to transfer the property. *NARA YAN CHETTY v NUTHAR SERAI (1910) I L R 35 Mad 100*

REGISTRATION ACT (III OF 1877)—*contd*

Deed of gift in favour of a married minor girl presented for registration by latter's father without authority from executant—Registration if valid—Deeds void Two deeds of gift executed by K in favour of his niece A who was a minor and married to his adopted son were presented for registration by A's father and registered. Held that upon A's marriage her father ceased to be her natural guardian and never having been appointed her legal guardian was not her assignee or representative within the meaning of sec 3 of the Registration Act 1877. Nor was he within the meaning of sec 34 of the Act the representative assign or agent duly authorized on behalf of A. The registration of the deeds was therefore illegal invalid and void with the consequence that the deeds themselves were void and unenforceable. AMBA (alias PADMA VATHI) v SRIKRISHNA KANATHI.

26 C W N (P C) 369

— s 17—

See s 3 I L R 34 Mad 64

I L R 35 Mad. 63

See CIVIL PROCEDURE CODE 1862 s 35

I L R 33 Mad 102

See LIMITATION ACT 1877 SCH II ARTS

132 144 I L R 35 Bom 433

See TRANSFER OF PROPERTY ACT s 5

123 I L R 34 Bom 287

Registration—Adop-

tion—Authority to adopt—Whether document a will A Hindu about three weeks before his death executed a document which was headed by a statement that it was a will in favour of the executant's wife by it the executant after stating that he had long been seriously ill and had no issue said I have consented to your adopting a son at your pleasure and conducting the management of the estate in the best manner. None of my heirs shall have cause to raise disputes touching this matter. This will has been executed by my consent. The document was not registered. After the executant's death his widow adopted a son to him. Held that the document was merely an authority to adopt and not a will and was therefore required to be registered by the last provision in s 17 of the Indian Registration Act 1877. [Judgment of the High Court affirmed.] BREEMA DEO v BHARBI DEO (1921)

I L R 44 Mad (P C) 733

— cl (a) (b) and (h)—Registration Act (XVI of 1908) s 17 except (v)—Registered conveyance—Simultaneous unregistered document to reconvey—An ordinary agent in self—Exemption from registration The plaintiff and the defendant agreed that plaintiff should nominally sell the property in suit out and out to the defendant and thereafter attorn to him for an amount of rent which would represent reasonable interest. A conveyance to this effect was executed and duly registered. Contemporaneously the defendant executed an agreement to the plaintiff to reconvey the property for the same consideration namely Rs 1491 when called upon to do so. This agreement was not registered. The plaintiff having brought a suit against the defendant for the specific performance of the unregistered agreement to reconvey, the lower Courts dismissed the suit on the ground that the agreement was compulsorily registrable under s 17 cl (a) and (b) of the

REGISTRATION ACT (III OF 1877)—*contd*— cl (a) (b) and (h)—*contd*

Registration Act (III of 1877). On second appeal by the plaintiff. Held reversing the decree that the agreement did not require registration. Separated entirely from the defendant's registered conveyance plaintiff's unregistered document was nothing more than an ordinary agreement to sell and such agreements were expressly exempted from the operation of s 17 cl (a) and (b) of the Registration Act (III of 1877) by cl (h) and of s 17 of the Registration Act (XVI of 1908) by exception (v). Having regard to the form of the document as a whole it was no more than an ordinary agreement to reconvey. SAYAD MIR GAZI v MIYA ALI (1914) I L R 38 Bom 703

— cl (b) (c)—

See TRANSFER OF PROPERTY ACT (IV OF 1887) s 54 I L R 37 Bom 50

— cl (b) and (d)—Lease of palmyra

juice—Whether lease of immovable property Where a document stated that the lessee had taken for lease for two years the palmyra trees in a certain garden and that he would not cut the leaves of any of the trees on which he climbed except those whose leaves had to be cut. Held that it was not a lease of immovable property and that the interest conveyed by it was not for the purposes of the Registration Act an interest in immovable property. SURIY KURDEPPA v GOONDAKULI NAGREDDI 6 Mad H O 71 and SEENI CHETIAI v SANHANATHI CHETIAI I L R 20 Mad 88 explained and distinguished NATESA v TANGAVELU (1914)

I L R 38 Mad 883

— cl (d)—

proviso—Lease not reserving a yearly rent not within the exemption The proviso to s 17 (d) of the Registration Act will apply only in the case of leases which reserve an annual rent. A lease for a term of 3 years which reserves no annual rent but only provides for the payment of a lump sum is compulsorily registrable even when such lump sum is less than the aggregate of three annual instalments of Rs 50. TANGA TARA CHETTI v SURPA PILLAI (1909)

I L R 33 Mad 218

Reservation of annual rent not necessary to bring the document within proviso to cl (d) of s 17 In order to exempt a lease from registration under the proviso to cl (d) of s 17 of the registration Act it is not necessary that an annual rent should be reserved. The proviso simply means that if an annual rent is reserved it should not exceed fifty rupees. KATASANI CHETTI v SUTPA PILLAI (1910)

I L R 34 Mad 111

— cl (d) (h)—

See LEASE I L R 37 Cal 808

Amalnamah if must be registered when lease intended to be granted a lease in perpetuity—Agreement to lease which contemplated execution of patta and kabuliyat but neverthless intended passing title upon delivery of possession if a document merely creating a right to obtain a subsequent document Where a document described the land intended to be demised and set out the boundaries thereof and proceeded to say that according to your prayer I grant this amalnamah to you for erecting houses after reclaiming

REGISTRATION ACT (II OF 1877)—*contd*— c s (d) (h)—*contd*

the said homestead you will dwell thereon on payment of rent Rs 16 10 gds from year to year to our Sarkar you will abide the survey and settlement within a month on executing a *Lahyali* you will take a *patta* which I shall grant. Held that the document was plainly an agreement to lease and the lease being apparently a lease in perpetuity the document was compulsorily registrable. *Syed Sufdar Pe a v Amad Ali I L R 7 Cal 702* followed. *Duani v Nath v Lodu Suddar I L R 33 Cal 542* distinguished. That it was not a document merely creating a right to obtain a subsequent document within cl (h) of s 17 of the Registration Act as the parties intended that as soon as possession was taken under the document the title of the grantee would commence and it was not contended that the title of the grantee did not yet commence by reason of his failure to tender a *kabulyat* to the landlord and obtain from him a *patta*. *Varayanan Chetty v Muthiah Srinivas I L R 35 Mad 63* *Champakalakita Mitra v Dagar Chandra Pal 15 C W N 536* referred to. *ELAM v HOKUM (1913)*, ¶ 18 C W N 38

— c s (d) (h) (i)—*Agreement to grant permanent lease of property not subject of suit embodied in petition of compromise—Agreement part of consideration of compromise—Decree passed on petition—Specific performance suit for—Admissibility of petition and decree to prove agreement—Petition of agreement for lease Per MOOKERJEE J—Although an agreement in writing which does not operate as a present demise but is only an agreement for a lease is (having regard to the extended significance of the term lease as defined in s 3 of the Registration Act) required to be registered if the term exceeds one year and the exemptions provided in c s (h) and (i) to s 17 do not apply to leases or agreements for leases s 40 of the Act does not preclude its being received as evidence of any transaction not affecting such property. Such a document can therefore be proved by the plaintiff in a suit for specific performance of the agreement to grant the lease. *Kondur v Gottumukhala 17 Mad L J 218* *Satyendra Nath Bose v Anil Chandra Ghosh 14 C W N 66* *Sarat Chandra Ghose v Shyamchand Singh I L R 39 Cal 663* relied on. *Hurnan v Jamselji I L R 9 Bom 63* and *Purnanand Das v Dharsey I L R 10 Bom 101* not followed. Where in a suit for recovery of property A the parties entered into a compromise and in a petition to the Court recited the fact *inter alia* that plaintiff had agreed to grant a permanent lease of property B to the defendant on certain terms and the Court recorded the compromise in full and made a decree in these terms. The suit be decreed in terms of the compromise filed by both parties in a suit for specific enforcement of the agreement embodied in the compromise petition. Held per MOOKERJEE J—That the agreement for lease embodied in the petition was admissible in evidence to prove the contract to grant the lease. Per BRADCHOFF J—That the petition simply amounted to a statement to Court that the parties had come to certain terms accompanied by a prayer for a decree on those terms. It in itself was not an agreement to lease. That the promise to grant a lease of property B was part of the consideration for the agreement arrived at concerning property A and the Court in its decree was bound to record the*

REGISTRATION ACT (II OF 1877)—*contd*— c s (d) (h) (i)—*contd*

whole of the terms of the compromise and the decree though it was final only so far as it related to the subject matter of the suit was admissible in evidence to prove the promise to grant a lease of property B. Documents referred to in c s (e) to (n) of s 17 of the Registration Act are excepted from the provisions of c s (b) and (c) and not from those of c s (a) and (d) because those documents come within the description of documents in c s (b) and (c) and not within the description of documents in c s (a) and (d). *HEMANTA KUMAR DEB v MIDYANUR ZEMINDARI CO (1914)*

19 C W N 47

— c s (e)—*Stamp Act (II of 1899)*
Sch I Art 22—Trusts Act (II of 1899) s 6—

Composition deed—Compounding of debts due—Transfer of immovable property—Registration not necessary. With the consent of creditors to the extent of Rs 122,000 out of the total number of creditors claiming Rs 1,61,800 of the family firm represented by one B the latter executed a deed making over all the specified assets of the family to certain nominated trustees. The creditors coming in (by a particular day) under the deed agreed that after all the goods and the properties had been made over to the trustees no other claim whatever with regard to the amounts due to them should remain outstanding against B and the minor members of the family but the whole claim should be understood to be written off against them and B and the minors were to make use of the deed as a release passed on their behalf. The deed also provided that the trustees were to manage the properties for the benefit of the creditors interested and the monies realized from time to time were to be distributed among such creditors in proportion to their claims. The properties comprised in the deed movable as well as immovable were transferred to the trustees in due course. The deed was unregistered. Subsequently in a suit brought by the trustees to recover possession of a house comprised in the deed a question having arisen whether the deed was a composition deed. Held that the definition of the term composition deed as given in Art 22 Sch I of the Stamp Act (II of 1899) meant the same thing as the term composition deed in s 17 of the Registration Act (III of 1877) that the term so defined covered three classes of instruments (i) an assignment for the benefit of creditors (ii) an agreement whereby payment of a composition or dividend was secured to the creditors and (iii) an indenture entered for the purpose of working the debtor's business for the benefit of his creditors that the inclusion of the term composition deed in s 17 of the Registration Act (III of 1877) showed that it was intended to apply to a transfer of immovable property and not to a mere agreement to take fractional payment of money in settlement of claims that the test of a composition deed was that there ought to be a compounding of debts due and that such a deed fell under cl (e) of s 17 of the Registration Act (III of 1877) and did not require registration under that Act nor under the provisions of s 5 of the Trusts Act (II of 1889). Held accordingly that the deed in question was a composition deed within the meaning of s 17 cl (e) of the Registration Act (III of 1877) and did not require registration. *CHANDRASHANKAR v Bai MAHAJI (1914)* I L R 33 Bom 576

REGISTRATION ACT (II OF 1877)—*contd*

Agreement to hand over land in consideration of supply of funds for litigation—

See CHAMPERTY I L R 1 Lah 124

cl. (1)—

See PEX JUDICATA

I L R 36 Mad 46

CL. (1)—Document whether Will or an authority to adopt—Registration compulsory of latter The operative part of a document which the writer called a Will stated that having owing to severe illness had serious misgivings and not having been blessed with an heir apparent the writer had consented to his wife adopting a son at her pleasure and conducting the management of the estate in the best manner *Held*—That the document was not a Will but only a power to adopt and as such ought to have been registered as being an authority to adopt a son not conferred by a Will within the meaning of sec. 17 (1) of the Registration Act of 1877 *ANANDA BRAMA DEO v KUNJA BEHARI* 26 C W N 374

cl. (n)—

See MORTGAGE I L R 37 Calc 589

See RECEIPT I L R 42 Calc 546

Mortgage—Agreement

In relinquish portion of principal and all interest—Acknowledgment—Registration *Held* that an agreement executed by a mortgagee after the date of the mortgage whereby he relinquished a certain part of the principal and all interests past and future on the mortgage in lieu of certain services rendered by the mortgagor to the mortgagee was a document which required registration to make it admissible in evidence and it could not be said to be an acknowledgment of payment within the meaning of the exception contained in a. 17 cl. (n) of the Indian Registration Act 1877 *GOBARDHAN SANKI v JADUNATH RAY* (1913) I L R 35 All 202

ss 17 and 49—

See MORTGAGE I L R 48 Calc 509

ss 17 and 49—

See MORTGAGE I L R 48 Calc 1

See OUDH ESTATES ACT (I of 1869)

I L R 35 All 344

See TRANSFER OF PROPERTY ACT 1882

s 54 I L R 37 Bom 53

Document compulsorily

registrable—Registration by mistake in a wrong book—Mistake not to affect parties—Document duly registered—Endorsement releasing mortgaged property for consideration in cash—Registration A release whereby a father transferred all his rights of ownership in his immovable and moveable property in favour of his son was registered not in Book No 1 but in Book No 4 that is to say not in the Book kept for the registration of documents compulsorily registrable under s 17 of the Registration Act (III of 1877) *Held* that the release must be considered as having been duly registered The father's property was capable of identification and the error of the registrar in registering the document in Book No 4 should not be allowed to affect the parties prejudicially *Sorabji Edalji v Ishwardas Jag*

REGISTRATION ACT (II OF 1877)—*contd*

ss 17 and 49—*contd*

pirandas (1897) F J S followed An endorsement made by a mortgagee (on the back of the mortgage deed) releasing the mortgaged property in consideration of a cash payment of Rs 100 is a document which requires registration, and not being registered was not admissible in evidence either of the redemption of the property or of the real nature of the original transaction between the parties *PARASHRAMPATI v RAMA* (1909)

I L R 34 Bom 202

Registration—Compromise not embodied in the decree containing a contract for pre-empt on The parties to a suit filed a compromise which in addition to settling forth the rights of the parties as to the property in suit went on to provide that if either party sold his share of the property the other party should have a right to pre-empt The decree based on this compromise was silent as to the right of pre-emption *Held* that the compromise required registration, and not being registered could not be used to support a suit for the pre-emption. *KASHI KUNJI v SUMER KUNJI* (1910)

I L R 33 All 206

Evidence—Petition of compromise unregistered and not embodied in any decree of Court *Held* that a petition containing the terms of a compromise between parties to a Revenue Court suit which had been filed in the Court but was unregistered and had not been acted upon or embodied in the Revenue Court's decree could not in a subsequent civil suit be used as evidence of the terms of such compromise the property purporting to be dealt with thereby being above the value of Rs 100 *Sadar ud-din Ahmad v Chajju I I R 31 All 13 and Kashi Kunji v Sumer Kunji I L R 32 All 206 followed*

BHAGWAN SARAI v HAN CHARY (1911)

I L R 33 All 475

Petition to Revenue Court in mutation proceedings—Compromise—Family settlement A separated Hindu created two usufructuary mortgages on portions of his estate and then died leaving a widow and a daughter The widow held possession for her life time and created a third usufructuary mortgage She died Her daughter laid claim to the estate and applied for entry of her name in the revenue records M one of the reversioners contested her application urging that her father was joint with him and not separate The parties came to terms orally The daughter agreed to give up her claim M in return agreed to take the estate to pay off the mortgages and to pay a certain sum to the daughter They two then filed a joint petition in which it was stated that the parties had come to terms This statement in the petition was followed by another on behalf of the daughter that as she had given up her claim to the estate she had no objection to mutation of names being made in favour of M The Revenue Court's order was that mutation was to be made according to that compromise M to secure to the daughter the payment of the money which he had promised to pay executing bonds in favour of her sister a Hindu Janji 1911 never paid the money due thereon on the contrary he managed to get the loan in cash and kept them Some time afterwards the daughter sued to recover possession of the property

REGISTRATION ACT (II OF 1877)—*contd.*ss 17 and 49—*contd.*

Held that in the circumstances the plaintiff was entitled to a decree conditioned on her paying the amount due on the mortgages *JAGRANT v BISHESHAP DUBE (1916)*

I L R 35 All 366

Agreement between

first and second mortgagees of the same property in share equally money realised from their mortgages—*Suit* by one of them to recover money retained by the other—*Agreement* also affecting the mortgage property The appellants were the first mortgagees of certain immovable property and the respondents held a second mortgage of the same property and they came to an agreement

that both parties should as regards rights, stand in the same position without claiming prior or subsequent rights and divide and appropriate in equal halves as per terms mentioned herein whatever amounts may be realized on the date of realization. The agreement was found to be made for valuable consideration. The appellants having realized part of the estate the respondents sued them in order to obtain their share of the proceeds to which they claimed to be entitled by virtue of the agreement. An objection was raised by the appellants that the agreement required registration and not being registered could not be used as evidence. *Held* on the construction of the agreement that if the whole effect of the agreement was to provide merely that the realized money was to be divided in equal shares there was nothing to require it to be registered and if on the other hand there were two distinct provisions the one relating to rights of property and the other with regard to the division of the money realized, then as the proceedings in the suit related merely to the question of the realized money the agreement need not be registered for the purpose of being given in evidence in this suit although it might require registration in a suit relating to the regulation of the rights against the estate itself. *VIRAVAN CHETTI v SUBRAMANIAN CHETTI (1920)*

I L R 43 Mad (P C) 660

Deed of authority to adopt executed in Niam's Dominions by a domiciled subject of that State necessity for registration of—Adoption on such authority—Right of adopted son in succession to his adoptive mother's father's properties situated in British India—Tenants in common—Adverse possession by the fear of one for more than twelve years—Art 144 of the Limitation Act (XV of 1877) The Indian Registration Act (III of 1877) does not apply to authorities to adopt executed in Native States by domiciled subjects of those States such documents are valid and are admissible in evidence in British India without registration. A person adopted in pursuance of such an authority acquires the status of an adopted son capable of inheriting the separate properties of his adoptive mother's father situated in British India. If on the death of A a Hindu who held an estate on behalf of himself and other tenants in common the estate is held exclusively by his widow or daughter as his heir claiming it as his separate property adversely to the other tenants in common for more than twelve years the rights of the latter to recover the estate as tenants in common are barred under Art 144 Limitation Act. Art 127 does not apply on the death of the widow or daughter the estate will

REGISTRATION ACT (II OF 1877)—*contd.*ss 17 and 49—*contd.*

descend to the heirs of A as his separate property *VENKATAPPAYYA v VENKATA PANGA POW (1920)*
I L R 43 Mad 233

ss 17 and 49 and 50—

See NOTICE

25 C W N 49

ss 17 and 87—

See WAQFAMA

I L R 43 All 609

Deed appointing mut waf's of waf's need not be registered. Personal interest of registering officer disentitles him to register and if he in good faith does so overlooking his own interest it is adopted in procedure which is condoned by s 57 of the Registration Act. *MEHAMMAD PUSTAM ALI KHAN v MATUJI MATH TAQ HCSARY (1913)*
25 C W N 193

s 21—*Registration—How far a description of property comprised in a deed may invalidate registration.* Where one of several villages comprised in a registered mortgage deed was described as being in a wrong tappa the description being notwithstanding this error sufficient for identification, it was held that the misdescription was not sufficient to invalidate the mortgage as regards the village in question. *Ben Madho Singh v Jagat Singh (10 All L J 33 referred to)* *PARSOTAM DAS v PATESRI PARTAB NARAY SINGH (1913)*
I L R 35 All 250

s 28—

See MORTGAGE

I L R 48 Cal 1

Jurisdiction of registering officer—Registration—Validity—Property actually within jurisdiction included in conveyance—Vendor found not to have title in it—Fraud not found. Where the title to the only item of property sold by a Kolala which would give the Sub Registrar jurisdiction to register it was disputed and ultimately found not to have been in the vendor. *Held* that this alone in the absence of fraud on the part of the vendor or the vendee or collusion between them would not render the registration of the Kolala by the Sub Registrar invalid when the property did in fact exist within his jurisdiction. *Bay Nath Tewari v Shro Sahoy Bhogul (18 Cal 556 distinguished)* *Brojo Gopal MUKERJEE v ABHILASH CHUNDRA BISWAS (1910)*
14 C W N 532

ss 28, 30 (b) 49—

Property comprised in mortgage non existence of—Onus of proof—Effect of registration by officer not having jurisdiction—Mortgagee's title of—Amendment of Schedule to mortgage deed—Property substituted not belonging to mortgagor—Fictitious entry in Schedule to get deed registered in Calcutta—Concurrent findings of fact as to mistake in entries in Schedule—No effect as to mistake in entries in Schedule. The plaintiff's (appellant) claim was based on a mortgage decree (lants) claim was based on a mortgage decree passed in a suit brought in the High Court at Calcutta on its Original Side to enforce a mortgage executed in the plaintiff's favour. The mortgage (respondents) were the mortgagor (who did not appear) and two other persons who disputed the mortgagee's title. These defendants (who had not been parties to the suit on the mortgage) alleged that the mortgage deed had not been legally registered because no portion of the property mortgaged was situated in Calcutta.

REGISTRATION ACT (II OF 1877)—*contd*— ss 28, 30 (b) 49—*concl'd*

where the deed had been registered, and the decree had therefore been made by a Court which had no jurisdiction to entertain a suit on the mortgage and the plaintiff had no title to maintain the suit. The only portion of the property in the mortgage deed alleged in the suit on the mortgage to be situate in Calcutta was parcel No 28 in the Schedule and was described as 25 Gura Das Street but the property so described was found to be non-existent, the wrong description being said to be due to a mistake though no evidence of it was given. The Court directed an amendment and the description was altered to 25 Ashutosh Dey's Lane which was in Calcutta and was comprised within the same boundaries as the given in parcel 28 of the Schedule to the mortgage deed. In the present suit no evidence was given either by the mortgagor or the mortgagee to show that there had been any mistake in the description of the property but it was proved by the defendants that the property contained within the boundaries given in parcel 28 was property which did not belong and never had belonged to the mortgagor. Both the Courts below like the High Court in the suit on the mortgage found without any evidence that there had been a mistake in the entry of parcel 28 and held that part of the property being in Calcutta the deed had been properly registered there and that the decree in the mortgage suit had been rightly made and with jurisdiction. *Held* (reversing those decisions) that it was open to the defendants (not having been parties to the mortgage suit) to contest the validity of the decree and for the same reason the direction of the High Court that the entry in the Schedule should be amended did not affect them and that under the circumstances of the case the onus was on the plaintiff to show that the entry in that parcel was not a fictitious entry which onus he had not discharged. And their Lordships on the conduct of that parties and the evidence in the case held that the parcel was in fact a fictitious entry and represented no property that the mortgagor possessed or intended to mortgage or that the mortgagee intended to form part of his security. Such an entry intentionally made use of by the parties for the purpose of obtaining registration in a district where no part of the property actually charged and intended to be charged in fact existed was a fraud on the Registration law and no registration obtained by means thereof was valid. No such fictitious entry inserted to give a colourable appearance to the deed of relating to property in Calcutta when in reality such was not the case could bring the deed within the limited jurisdiction of the Court. The High Court therefore had no jurisdiction to make the decree and the deed not having been registered in accordance with the Registration Act (III of 1877) the mortgagee had no title to maintain the suit. The principle of concurrent findings of fact does not apply to a case of no evidence according to well known principles of law a decision that there is no evidence to support a finding being a question of law. Where therefore the Subordinate Judge found that the erroneous entry in the Schedule had been made by mistake and the High Court accepted that finding but there was no evidence to show that there was in fact any mistake in the matter. *Held* that the finding was one which could be set

REGISTRATION ACT (II OF 1877)—*contd*— ss 28 30 (b) 49—*concl'd*

aside by the Judicial Committee on appeal with out departing from their practice of not interfering with concurrent findings of fact. **HARENDRA LAL ROY CHOWDHURI v HARIPASI DEBI** (1914)

I L R 41 Calc 972

— ss 32—*Registration—Presentation*
Where the executants of a document which it is desired to register are present acquiescing in the handing over of the document to the Registrar for registration, the fact that the physical act of handing the document to the Registrar is performed by a person who is not authorised to present the document for registration will not render the presentation invalid. **NATH MAL v ABDUL WAHID KHAN** (1912)

I L R 34 All. 355

— ss 33 and 33—

Registration—Presentation of power of attorney for registration—Executant ill and unable to go to registration office—Executant treated as presenter—Mortgage duly registered under power so presented and authenticated. In a suit on a mortgage executed on the 30th of August 1895 a question arose whether the mortgage had been duly registered. It appeared from an endorsement by the Sub Registrar on the power of attorney under which it purported to be registered that it was brought to him on the 4th of November 1895 for registration and authentication by a servant of the executant of the power who said that the executant was ill and unable to come himself and asked that the power of attorney might be registered on the spot. As that would have been illegal the Sub Registrar on the 6th of November went to the residence of the executant and was satisfied that he was ill and unable without risk and serious inconvenience to attend at the registration office and he read the contents of the power of attorney to the executant who thereupon admitted the execution and completion of the power and asked that after registration the document should be given to the person named as the attorney in it and thereupon the Sub Registrar registered it. *Held* that the presentation by the servant on the 4th of November was inoperative and that the executant himself was the real presenter and was so treated by the Sub Registrar on the 6th of November. **Jambu Prasad v Muhammad Aftab Ali Khan** I L R 37 All 49 L P 40 I A 22 distinguished. The person named as attorney in the power presented on the 2nd of January 1896 now sued upon the mortgage of which he had obtained registration under the power of attorney. *Held* that the power was duly registered and authenticated in accordance with ss 32 and 33 of the Registration Act (III of 1877) and the subsequent registration of the mortgage under it by the attorney named in it was a valid registration. **BHARAT KANT v HAMID ALI KHAN** I L R 42 All 487

25 C W N 73

Registration—Evidence—Presumption of validity of registration—Presumption rebutted by evidence showing document to have been presented by an unauthorised person. Although when the validity of the registration of a document is in question after the lapse of a considerable period of time it is to be presumed that the registration was carried out according to

REGISTRATION ACT (II OF 1877)—*contd*ss 32 and 33—*concl'd*

law yet when there exists evidence which discloses a fatal defect in procedure as for instance that the person who presented the document for registration was not legally authorized to do so the registration must be held to be invalid. Such a defect as presentation by an unauthorized person cannot be cured by subsequent admission of execution on the part of the executants. *Mohammad Ewaz v Brij Lal* I L R 41 A 166 and *Majid un nissa v Abdul Rahim* I L R 23 All 233 referred to *Wilash Begam v Faal Husain Khan* 9 All L J 143, and *Ram Chandra Das v Farzand Ali Khan* I L R 31 All 253 distinguished. *JAMBU PRASAD v MUHAMMAD AFTAB ALI KHAN* (1912) I L R 34 All 331

Registration of document by person holding power of attorney. Necessity of strict compliance with the section of the statute established. *JYANDRA NATH PAL v THE SECRETARY OF STATE FOR INDIA*

25 C W N 73

ss 32 to 35—Presentation of documents for registration—Registration of document is presented by an unauthorized person not valid—Jurisdiction of Registering Officer to register document—Admission of execution by executant of deed effect of on registration—Prevention of fraud object of ss 32 to 35—Duty of Courts not to allow defect of provisions of Act ss 32 and 33 of the Registration Act (III of 1877) relating to the presentation of documents for registration are imperative and their provisions must be strictly followed and where it was proved that agents who presented deeds of mortgage for registration had not been duly authorized in the manner prescribed by the Act to present them the deeds were held not to be validly registered so as (under s 49) to affect immoveable property or to be received in evidence of any transactions affecting such property or under s 59 of the Transfer of Property Act (IV of 1882) to be effective as mortgages. A Registrar or Sub Registrar has no jurisdiction to register a document unless he is moved to do so by a person who has executed or claims under it or by the representative or a sign of such person or by an agent of such person representative or assign duly authorized by a power of attorney executed and authenticated in the manner prescribed by s 33 of the Act. Executants of a deed who attend a Registering Officer to admit execution of it cannot be treated for the purposes of s 32 of the Act as presenting the deed for registration. They would no doubt be assenting to the registration but that would not be sufficient to give the Registering Officer jurisdiction. One object of ss 32 to 35 Registration Act III of 1877 was to make it difficult for persons to commit frauds by means of registration under the Act and it is the duty of the Courts in India not to allow the imperative provisions of the Act to be defeated. *Jehri Prasad v Baijnath* I L R 23 All 707 and the principle laid down in *Mujib un nissa v Abdul Rahim* I L R 23 All 233 L R 28 I A 16 followed. *JAMBU PRASAD v MUHAMMAD AFTAB ALI KHAN* (1914) I L R 37 All 49

ss 32 60 75—Registration—Presentation on—Endorsement of registering officer—Presumption—Evidence—Evidence Act (I of 1872) s 114

REGISTRATION ACT (II OF 1877)—*contd*ss 32, 60 75—*concl'd*

A document was presented to a Sub Registrar or registration by a *karnada* of the person in whose favour it was executed. It was received for registration. Simultaneously with the presentation an application was made to summon the executants. They failed to appear and the Sub Registrar considering that execution was not admitted refused to register the document. The matter came up before the District Registrar by means of an application under s 73 of the Partition Act and the presence of the executants having been secured the District Registrar ordered that the document should be registered. The document was apparently then sent by the Registrar to the Sub Registrar by whom it was registered. Held that in the absence of evidence to the contrary it must be presumed that the *karnada* who presented the document was duly authorized in that behalf and further that even if the Registrar had in fact sent the document direct to the Sub Registrar instead of returning it to the person who had presented it for registration this act alone was not sufficient to invalidate the registration. *Mohammad Ewaz v Brij Lal*, L P 41 A 167 referred to *Mujib un nissa v Abdul Rahim* I L R 23 All 33 and *Jehri Prasad v Baijnath* I L R 23 All 707 distinguished. *RAM CHANDRA DAS v FARZAND ALI KHAN* (1912) I L R 34 All 333

s 33—Registration—Presentation of document by agent holding a power of attorney—Authentication of power. A document was presented for registration by the agent of a *parda nashin* lady acting under a power of attorney authorizing him generally to present documents for registration on behalf of his principal. The power of attorney was not executed in the presence of the Sub Registrar but the Sub Registrar had gone to the house of the executant questioned her and satisfied himself that the power of attorney had been voluntarily executed and had endorsed the power of attorney with a statement that he had so satisfied himself. Held that the power of attorney was properly executed and authenticated within the meaning of s 33 of the Indian Registration Act 1877 and the document presented by the executant's agent was validly presented. *CHUTTAN LAL v SHAM PRASAD* (1919) I L R 32 All 19

s 34—

See s 3

26 C W N 369

s 40—

See s 3

I L R 35 Mac 63

s 49—

See s 17

See s 23

I L R 41 Calc. 972

See MORTGAGE

I L R 43 Calc 1

See SPECIFIC PERFORMANCE

14 C W N 65

s 50—

See NOTICE

25 C W N 49

See SPECIFIC RELIEF ACT (I of 1877)

s 27

I L R 38 All 184

Registration—Mortgages—Priority between registered and unregistered deeds—Property which was the subject of two unregistered.

REGISTRATION ACT (II OF 1877)—*contd*§ 50—*concl'd*

mortgages of different dates was sold in execution of a decree on the latter of the two mortgages and purchased by the decree holder who afterwards sold it by an unregistered deed to Bal Kishan who in turn sold it by a registered deed without making any mention of the prior unregistered mortgage. *Held* that after such sale no suit would lie on the prior unregistered mortgage. *Sobhag chand Gulabchand v Bhaichand I L R 6 Bom 193 Baldeo Prasad v Baldeo All Weekly Notes 1901 112 and Pam Lal v Thakur Bachcha Singh 10 A L J 114 referred to ISHRI PRASAD v Gopi NATH (1912) I L R 111 All 631*

Registered document relating to land effect of as against unregistered document—Notice of title created by prior unregistered document effect of on holder of registered document—Burden of proof as to such notice—Possession of person other than vendor if sufficient notice to put purchaser on enquiry—Effect of purchase with such notice S 50 of the Indian Registration Act has no application when the person who claims title under the subsequent registered document has notice of the title created by the prior unregistered document. The burden lies upon the person who alleges such knowledge or notice to aver it in his pleadings and to establish it. If a person purchases and takes a conveyance of an estate which he knows to be in the occupation of a person other than the vendor he is bound by all the equities which the person in such possession may have in the land. *MAGOO BRAHMA v HAKKRISHNA DAS (1913) 18 C W N 657*

§ 60—

See s 32 I L R 111 All 253

See EVIDENCE ACT (I OF 1872) § 70
I L R 38 All 1

§ 73—

See s 32 I L R 34 All 253

§ 77—

Suit for direction to register documents—Scope of enquiry—Issues—Execution—Compliance with requirements of law—Effect and binding nature of the documents In a suit for a decree directing the registration of certain documents the enquiry in Court is to be directed to two points only namely (a) whether the documents had been executed and (b) whether certain requirements of the law as to presentation for registration in due time to the proper office and in the manner generally prescribed by the Registration Act had been complied with by the person presenting the documents for registration. *Raj Lakhs Ghosh v Debendra Chandra Moymdar I L R 24 Calc 668 Balambal Ammal v Aruna Chela Chetti I L R 13 Mad 255 Kanishka Lal v Sardar Singh I L R 12 All 284* The defendant in such a suit may possibly have good reasons why he should not be bound by the documents but the law does not allow him to advance such reasons in a suit under s 77 of the Indian Registration Act. *W W BROCKE v RAJAH SHAHEB MOHAN BIKRAM SHAH (1909) 14 C W N 12*

Suit for registration of a document—Limitation—Order striking off a case for compulsory registration of a document—Review—Final order refusing to register—Period of thirty days when to run from Where the plaintiff applied

REGISTRATION ACT (II OF 1877)—*concl'd*§ 77—*concl'd*

to the Registrar for compulsory registration of a deed of sale and the case was struck off but on the plaintiff's application for review the case was restored and the Registrar after taking evidence on both sides made his final order refusing to register the deed and the plaintiff instituted a suit in the Civil Court under s 77 of the Registration Act within 30 days from the date of this order. *Held* that the final order of the Registrar made after the restoration of the case was the order of refusal in respect of which the plaintiff was entitled to institute a suit in the Civil Court and the plaintiff's suit was not barred by limitation. *SHEIKH SAJED v SARADA PORSAD CHAUDHURY (1913) 17 C W N 585*

Suit for registration of document—Limitation—Last day a holiday—Suit filed on re opening of Court—Stare decisis—General Clauses Act (X of 1887) § 77—General Clauses Act (I of 1897) § 10—Limitation Act (XV of 1877) § 5 Where a Registrar having refused to order the registration of a document on the 29th November the plaintiff instituted a suit for the registration of the document under s 77 Registration Act of 1877 on the 2nd January following the Court being closed on the 20th of December and the following days until it re opened on the 2nd January. *Held* that in view of previous decisions of the Court and of the Legislative sanction impliedly accorded to the rule there laid down by the General Clauses Acts of 1887 and 1897 the suit should be held to have been properly instituted. *Mayer v Harding L R 2 Q B 410 referred to Hossein Ally v Donella, I L R 5 Calc 906 Shoshoo Bhawan v Gobinda Chandra I L R 18 Calc 231 Peary Mohun v Ananda Charan I L R 18 Calc 631 commented on Per D CHATTERJEE J—S 5 of the Limitation Act has no application to suits under s 77 of the Registration Act. AHAD BAKSH MOJLA v SHEIKH BAHAR ALI (1912) 16 C W N 721*

§ 87—

See s 17 25 C W N 123

See WAQFAMA I L R 42 All 609

REGISTRATION ACT (XVI OF 1908)

See REGISTRATION

See CORRESPONDING SECTION OF PROVISIONAL ACT 1877 WHICH IS PRACTICALLY IDENTICAL BUT NOTE FOLLOWING DIFFERENCES—

Act III of 1877

Act XVI of 1908

2

93

3

1 (Definition of Signature and Signed omitted)

4

3 and 4 (Proviso to s. 3 added)

9

9 (Slight difference in wording)

17(b)

17 (2) (ix) [(x) (xi) are new]

22

23 (2)

23

23 and 24

24

22(1) and 24 A new

25

25

26

Omitted.

REGISTRATION ACT (XVI OF 1908)—*contd**Act III of 1877**Act XVI of 1908*

58 (or a copy of a 58 (' or a copy sent to the certificate under the Registering Officer under Land Improvement s 89) Act 1871 sent to the Registrar ')

52(d) ' within the mean Omitted
ing of the Indian
Penal Code

53 Subordinate Magis Magistrate of the
trate of the first second class
class

53 Paragraphs 3 and 4 Omitted

54 A Registrar shall but Omitted

a sub registrar shall
not be deemed a court
within the meaning of
ss. 435 and 436 of the
Criminal Procedure
Code s 90

59 Amplified owing to
enactments later than
1877

52 ' British Burma Lower Burma

*Mortgage bond—Interpolation by mortgagor—Adding another item belonging to mortgagor for convenience of registration—Registration Fraud on registration law—Document, whether properly executed attested and registered A document mortgaging only one item of property was duly executed and attested and another item of his property was interpolated by the mortgagor with the knowledge and consent of the mortgagee in the presence of the same attesting witnesses The mortgagor registered the deed in the Sub Registrar's office within whose jurisdiction the latter item was situated It appeared that the object of adding the second item was not so much to give an additional security to the mortgagee as to enable the mortgagor to get the document registered near the place where he was living and thus prevent delay in registering the deed Held that there had been no fraud on the registration law and that the document was duly executed attested and registered with regard to both items of property *Harendra Lal Roy Chowdhury v Haridas Deb* (1914) I L R 41 Cal 972 (P C) distinguished *KUNJI SANKARAN NAMBIAR v NARAYANAN PERUMPU* (1920) I L R 42 Mad 405*

s 2 (7)—

See KABILYAT I L R 39 Cal 1016

■ ■ ■ 17 49—Admissibility of an unregistered lease—Lease and agreement to lease—Indian Registration Act (XVI of 1908) secs 2 3 17 49—Agreement followed by possession effect of—Doctrine of part performance if applicable—Statute of Frauds—Transfer of Property Act (IV of 1882) s 107—Suit for specific performance—Estoppel against a statute if available An agreement to lease intended to operate as a present demise is a lease within the meaning of cl (d) of sec 17 of the Registration Act 1908 and as such is inadmissible in evidence in a suit for specific performance of its terms under sec 49 of the Act if it is not registered even though the tenant is in possession under the said agreement Cases of part performance under sec 4 of the Statute of Frauds have no application to those arising under sec 49 of the Registration Act 1908 as the positions under the two Acts are

REGISTRATION ACT (XVI OF 1908)—*contd*

ss 2 3 17, 49—*contd*

quite different *SANJIB CHANDRA SANYAL v SANTOSH K. LAMBI* 20 C W N 399

■ 2 and 17—Lease—Agreement to lease—Instrument not registered—Admissibility of instrument in evidence—Suit by leasee to eject leasee—Leasee setting up counter-claim for specific performance of agreement to lease or for damages for its breach by lessor An agreement to lease which does not operate as an immediate demise of the property does not fall within the definition of lease contained in s 2 of the Registration Act (XVI of 1908) and is admissible in evidence without registration. The question whether an agreement to lease operates as an immediate demise should be determined on the facts of each case *Hemanta Kumari Deb v Midnapur Zamindari Company* (1920) I L R 47 Cal 485 (P C) s c L R 46 I A 240 (1) followed, *Narayanan Chetty v Muthiah Serrao* (1912) I L R 35 Mad 63 (F B), not followed. *SWAMINATHA MUDALIAR v RAMASWAMI MUDALIAR* (1921) I L R 44 Mad 399

Bainapatra if it is an agreement to lease and whether requires registration when it does not effect a present demise An unregistered bainapatra for grant of a putni lease acknowledged receipt of part of the consideration money and contained a promise to grant a putni lease again (with effect) from the date of the bainapatra and to exchange pattah and kabulyat before the 30th Aghran Held—That the bainapatra did not effect a present demise and should be regarded as an agreement creating a right to obtain a putni lease on the performance of certain conditions on or before the 30th Aghran The document was not an agreement to lease and therefore did not require registration and so was admissible in evidence *Kanti Hemanta Kumari Deb v The Midnapur Zamindari Co Ltd* 4 C W N 177 (P C) (1919) and *Panchanan Bose v Chandu Charan Mitter* I L R 37 Cal 803 s c 14 C W N 974 (1910) referred to *Per Curiam* On the whole we come to the conclusion that the document in question does not effect a present demise and should be regarded as an agreement creating in the Plaintiff a right to obtain in putni lease on performance of certain conditions on or before the 30th Aghran 1318 *HARI NATH BANDOPADHYAYA v PRONOTHO NATH ROY CHAUDHURI* 25 C W N 550

ss 17 49—

See AGREEMENT TO LEASE I L R 47 Cal 485

■ 17—

See s 17

See CIVIL PROCEDURE CODE (1808) O XXIII R 3 I L R 38 All 75

See COMPROMISE 3 Pat L J 43 & 255 I L R 42 Cal 861

See HINDU LAW—PARTITION I L R 48 Cal 1059

See HINDU LAW—WIDOW I L R 38 Bom 224

See MORTGAGE I L R 43 Mad 809

See REGISTRATION

—Agreement to retransfer—Agreement to re transfer property sold on repayment of price

REGISTRATION ACT (XVI OF 1908)—contd

with interest if must be registered. Where contemporaneously with a registered deed of sale a document was executed whereby the transferee agreed to retransfer the property to the transferor upon payment by the latter of the sale price with interest within a specified period. *Held* that the document was not a reconveyance and did not require registration. **DWARAK NATH SEN v KESSORY LALL GOSWAMI (1910)**

14 C W N 703

—Memorandum of arrangement between lessor and lessee—*if must be stamped and registered*. A document dated the 8th March 1885 which did not demise any property and was neither a lease nor an agreement to lease but was and purported to be a memorandum of an arrangement which had been made with the grantees by the agent of the lessors on their behalf and under which the grantees had taken possession with effect from 12th April 1884 was admissible in evidence although neither stamped nor registered. **KATAYANI DEBI v PORT CANNING AND LAND IMPROVEMENT CO (1914)** 10 C W N 56

—*Rajinama and Kabulyat—Mortgage of lands in an Inam village—Mortgagor passing a Rajinama in favour of a third person—Kabulyat by the person to the Inamdar—Transfer of Khata in Inamdar's books—Extinction of the equity of redemption*. One A holder of lands in an Inam village mortgaged the lands with one P (father of defendants Nos 2 and 3) in 1871. In 1875 A passed a Rajinama in favour of one J and gave notice to the Inamdar to transfer his khata in the Inamdar's books to the name of J. J on the same day passed a Kabulyat to the Inamdar agreeing to pay assessment due to Government. J in turn had the khata transferred to one B who in 1878 executed a Rajinama in favour of defendant No 2. In 1913 plaintiffs as the heirs of A sued to redeem the property. The defendants Nos 2 and 3 contended that they had become owners of the lands. The Subordinate Judge dismissed the suit holding that A transferred his interest in the lands by the Rajinama in 1875 and therefore the plaintiffs had no interest in the lands as owners. The Assistant Judge in appeal reversed the decree and allowed redemption on the ground that the Rajinama by A could not be proved in Court as it required registration. On appeal to the High Court. *Held* that the plaintiffs' suit to redeem must fail as the Rajinamas and Kabulyats although not registered were good evidence of the transfer having taken place since they were documents between the occupants and his superior holder and not documents between the transferor and the transferee they recited the transfer which had taken place presumably for consideration but they themselves did not purport to operate as transferring any interest to another. *Held* further that even assuming that they fell within the terms of s 17 of the Indian Registration Act 1908 as operating to extinguish an interest in immovable property it was not shown that they required registration the interest extinguished by them being of a value less than Rs 100. *Held* also that at the time these transactions took place from 1875 to 1878 it was not necessary according to the law that there should be any document evidencing the transfer but payment of price and delivery of possession completed the transaction. **INAM VALAD IBRAHIM v BHAIU APPAJI (1917)** I L R 41 Bom 510

REGISTRATION ACT (XVI OF 1908)—contd

—Agreement by reversioners to forego right to sue for declaration respecting an alienation by the Hindu widow—*Held* that an agreement by which the reversioners to certain property in the possession of a Hindu widow agreed not to enforce their rights to sue for a declaration that a gift of such property made by the widow was not binding upon them was not a document which was compulsorily registrable under s 17 of the Indian Registration Act 1908. **BIHVA v GUMAN SINGH (1918)**

I L R 40 All 384

—Sub s (1) (b)—
See COMPROMISE

3 Pat L J 43

—sub s (1) (d)—Lease of land *dar salme mate*—Lease exceeding one year—Registration compulsory. It was provided by a lease as follows: We have taken these three fields for cultivation from you yearly (*dar salme mate*) on condition that we are to pay the assessment. We shall go on paying the assessment to Government so long as you give us the fields for cultivation. If we say anything false or unfair or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit we will restore possession of the fields to you as soon as you ask us to do so. *Held* on a construction of the lease that the words *dar salme mate* (year to year) taken in connection with the total absence of any date for the expiry of the tenancy suggested that the parties contemplated that the lease should operate for a period exceeding one year and that therefore it was compulsorily registrable under the provisions of s 17, sub s 1 (d) of the Indian Registration Act (XVI of 1908). **DHURADHAI v BHULDAS v MOHANLAL MAGANLAL (1917)** I L R 41 Bom 458

—Lease on a monthly rent—tenant liable to ejectment on a default in payment of rent—whether compulsorily registrable. The plaintiff sued for Rs 18 on account of the rent of a hut and for its possession under a lease entered in his book which was to the effect that plaintiff had let a hut to the defendant who was to pay 8 annas per mensem by way of rent and in the event of a default in payment of the rent the tenant was liable to be ejected. The question before the High Court was whether the lease could be regarded as a lease for a term exceeding one year and therefore required registration. *Held* that section 17 of the Registration Act being a disabling section must be strictly construed and that unless a document is clearly brought within the purview of that section its non registration is no bar to its being admitted in evidence. *Held* further that the lease was not one for a period exceeding one year within the meaning of section 17 (1) (d). **ATTRA v MANOJ SINGH (1917)** I L R 2 Lah 300

See BENGAL TENANCY ACT 1885 ss 147A and 29

4 Pat. L J 667

See HINDU LAW—WIDOW

I L R. 23 Bom. 225

—sub-s 1 (b) and (c)—Sale-deed—Receipt for consideration of sale—Proof of payment—Alivande—Single Bench rulings as precedents. *Held* following **Ram Chand v Chaita Singh** 13 P L R 1910 that a receipt for the

REGISTRATION ACT (XVI OF 1908)—*contd.*subs s 1 (b) and (c)—*concl'd*

balance of purchase money on an oral sale of land said to have taken place previously is not a sale deed but is registrable under s 17 (c) of the Registration Act as a receipt. *Held* also that although an unregistered receipt is not admissible in evidence the payment may be proved *alunde*. *Held* further that Single Bench rulings of this Court if not dissented from or overruled are as much binding upon the Subordinate Courts of the Province as the decisions of Division Benches. *SHER KHAN v MUZAFFAR KHAN*

I L R 1 Lah 25

See COMPROMISE

3 Pat L J 255

— sub s (2) (v)—COMPROMISE—*Adjustment of decree—Civil Procedure Code (V of 1908) Order XXI r 2—Whether exempted from registration* A compromise made after decree affecting any immovable property of the value of over Rs 100 and embodied in a petition presented under O XXI r 2 Civil Procedure Code which has been recorded by the Court is exempt from registration. *Hemanta Kumari Devi v Midnapur Zamindari Company (1919) 46 I A 240* followed. *Chelamanna v Rama Rao (1913) I L R 36 Mad 46* and *Raja Venkatappa Nayanam Varu v Raja Thimma Nayanam Varu (1914) 27 M L J 656* overruled. *POORVANATH AYEISA v KUNDON CHOKEN (1920) I L R 43 Mad (FB) 688*

See REGISTRATION ACT 1877 s 17

I L R 38 Bom 703

— sub s 2 (xi)—Mortgage—*Receipt for mortgage money—Registration* A receipt for money due upon a mortgage was given in the following terms—The bond is returned No money remains due. *Held* on suit for recovery of the mortgage debt that the receipt did not require to be registered and that the words no money remains due did not purport to extinguish the mortgage. *PIARI LAL v MAKHAN*

I L R 34 All 528

— ss 17 and 49—

See AGREEMENT TO LEASE

I L R 47 Cal 485

See HINDU LAW—JOINT FAMILY PROPERTY

26 C W N 201

See TRANSFER OF PROPERTY ACT 1882

s 4 I L R 44 Mad 55

—Registration—*Petitions to*

Revenue Courts in Mutation Proceedings—Compromise—Family Settlement A separate Hindu created two usufructuary mortgages on portions of his estate and then died leaving a widow and a daughter. The widow held possession for her life time and created a third usufructuary mortgage. She died. Her daughter laid claim to the estate and applied for entry of her name in the revenue records. *M* one of the reversioners contested her application urging that her father was joint with him and not separate. The parties came to terms orally. The daughter agreed to give up her claim. *M* in return agreed to take the estate to pay off the mortgages and to pay a certain sum to the daughter. They two then filed a joint petition in which it was stated that the parties had come to terms. This statement in the petition was followed by another on behalf of the daughter that as she had given

REGISTRATION ACT (XVI OF 1908)—*contd.*ss 17 and 49—*cont'd*

up her claim to the estate she had no objection to mutation of names being made in favour of *M*. The Revenue Court's order was that mutation was to be made according to that compromise. *M* to secure to the daughter of payment of the money which he had promised to pay executed two bonds in favour of her sister's husband but he never had the money due thereon on the contrary he managed to get the bonds back and kept them. Some time afterwards the daughter sued to recover possession of the property in dispute. *Held* that in the circumstances the plaintiff was entitled to a decree conditioned on her paying the amount due on the mortgages. *JAGANNI v BISHESHAR DUBE I L R 38 All 868*

Act No IV of 1880

(Transfer of Property Act) s 9—*Registration—Petition to Court in mutation proceedings—Compromise—Family settlement* The parties to certain mutation proceedings were six nephews of the deceased owner three being sons of one brother two of another and one of a third. In the course of the mutation proceedings the parties came to an agreement amongst themselves as to the partition not only of the zamindari property but of certain house property owned by the proposer and also as to the payment of his debts. As to the house property the agreement was put into writing and registered and the parties took possession of the house property in accordance therewith. Some of them also paid certain of the debts due from the deceased in accordance with the agreement. As regards the zamindari property the parties filed in court a petition in which they recited that they had arrived at a settlement of the matters in dispute between them and what that settlement was and they prayed that mutation might be ordered in accordance therewith. The settlement was based on the supposition that according to the custom of the tribe to which the parties belonged the nephews were entitled to the property *per stripes*. Subsequently however the three sons of one brother of the proposer brought a suit claiming one half of the property as against the other three. The suit was dismissed by the trial court but on appeal the lower appellate court remanded the case for trial on the merits holding that the compromise filed in the mutation proceedings was invalid for want of registration. *Held* by KANEHAIYA LAL, J. (Pigott J. *dubitante*) that in the circumstances of the case the petition filed in the mutation proceedings was not a document which required registration. But in any case the petition might be treated together with the registered agreement as to the house property and with the fact that some of the debts of the deceased had been paid apparently in pursuance of an agreement between the parties as evidence of an antecedent family settlement of disputed claims which if fairly arrived at without fraud or concealment would be binding on the parties and could not be re-opened especially if it had been acted upon. *BALDEO SINGH v UDAL SINGH I L R 33 All 1*

—The parties to a suit filed a compromise which in addition to settling forth the rights of the parties to the property in suit went on to provide that if either party sold his share the other would have the right to preempt. The decree based on the compromise

REGISTRATION ACT (XVI OF 1908)—*contd*ss. 17 and 49—*contd*

was silent on the point. *Held* that the compromise required registration and therefore could not be void. **KANAK KUMBI v SUMER KUMBI.**

I L R 32 All 206

Partition—Unregistered receipt acknowledging acceptance of shares Plaintiff claimed to be entitled to certain property alleging that the same was allotted to his share on a partition between himself and his brothers. For the purpose of proving the alleged partition plaintiff relied on unregistered receipts signed by his brothers in which they acknowledged having accepted certain portions of the family property. *Held* that the receipts required registration and were therefore inadmissible as evidence. **NIL KANTH BHENJI v HANMANT EKANTH** (19 0)

I L R 44 Bom 881

Document compulsorily registrable—Assignment of decree for sale of immovable property *Held* that a deed of assignment of a final decree for the sale of mortgaged property under O XXXIV r 5 of the Code of Civil Procedure 1908 is not a document which is compulsorily registrable under the provisions of s 17 (b) of the Indian Registration Act 1908. **Gopal Narayan v Trimbal Sadashit** I L R 1 Bom 267 and **Mufasaddi Lal v Muhammad Hanif** 10 All L J 267 distinguished. **Abdul Majid v Muhammad Fazlullah** I L R 13 All 59 and **Bairi Nath Lohia v Binoyendra Nath Palit** 6 C W N 5 followed. **MUMTAZ AHMAD v SRI PAM** (1913)

I L R 35 All 524

Lease—Agreement to lease—Property demised in process of construction—Demise from a future date—Document evidencing demise from a future date need not be registered—Offer and acceptance—Specific performance—Optional clause for removal inserted in a letter of acceptance—Optional clause not binding on the lessor unless accepted by him—Power of an estate manager to bind the owner In December 1914 the Presidency Post Master was looking for premises for a new Post Office for the Maid branch and gave the defendant who was then erecting a building particulars as to the nature and extent of the accommodation required. On 1st February 1915 the defendant wrote a letter to the Presidency Post Master saying that he shall let on a lease for ten years a portion of the building at Rs 175 a month the defendant making necessary arrangements for the Post Office and keeping the premises ready for occupation by the 1st of April 1916. On the 13th February 1915 the Presidency Post Master replied that he accepted the proposal adding that the Post Master General had desired him to insert an optional clause i.e. giving the Post Office the option to renew the lease for another five years. Nothing was said by the defendant with regard to this optional clause but on the 16th February 1915 the defendant's estate manager merely wrote to the Presidency Post Master that he was making the necessary arrangements. On 1st April 1916 the Presidency Post Master went into occupation of the defendant's premises though the necessary arrangements were not completed till the following month. The Presidency Post Master paid rent at the rate of Rs 175 a month but no steps were taken towards getting a proper lease executed until September

REGISTRATION ACT (XVI OF 1908)—*contd*ss 17 and 49—*contd*

1917 when the Presidency Post Master was given notice to quit. Thereupon the Secretary of State for India sued the defendant for specific performance of the agreement of February 1915 by calling upon the defendant to execute a proper lease such lease to contain the optional clause for renewal of the lease. The defendant contended *inter alia* that there was no concluded agreement between the parties that he had not accorded his assent to the optional clause to renew the lease and that if his letter of 1st February 1915 and the reply thereto be held to constitute an offer and acceptance of the proposal the same were inadmissible in evidence for want of registration. The trial Court decreed the plaintiff's suit. The defendant appealed—*Held* (1) that the defendant's letter of the 1st February 1915 and the reply of the Presidency Post Master constituted an offer and acceptance of the proposal and specific performance of that agreement should be decreed (2) that the said letter and reply were admissible in evidence though unregistered as they did not constitute a present demise (3) that the optional clause in the reply of the Presidency Post Master was a counter offer to the defendant and as the same was not accepted by that defendant the plaintiff was not entitled to have the clause inserted in the lease (4) that the estate manager of the defendant had no power to accept the counter offer nor was his letter of the 16th February 1915 an acceptance of such counter offer. **Hemenia Kumari Devi v Midnapur Zamindari Company** (1919) L R 46 I A 240, referred to. **SIR MAHOMED YOUSUF v THE SECRETARY OF STATE FOR INDIA** (1920) I L R 45 Bom 8

ss 17 50—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 41 Bom 550

ss 17 80—

See LAND REVENUE CODE (BOM ACT V OF 1879) s 74 I L R 41 Bom 170

Registration—Transfer of Property Act (IV of 1882) s 107—Crown Grants Act (XV of 1893) ss 2 and 3—Lease—Lease of Government land by commissioners of a notified area The commissioners of a notified area let certain plots of land which were the property of the Government and had been handed over to them for administrative purposes. The leases ran in the name of the Secretary of State for India and provided that the lessees were to remain in possession for 30 years so long as they fulfilled certain conditions and the lessor had a right of re-entry only on breach of certain conditions. *Held* that such leases were compulsorily registrable and could not be considered as falling within the view of s 90 (d) of the Indian Registration Act 1908 nor were they excluded from s 107 of the Transfer of Property Act by the operation of the Crown Grants Act 1893. **Dost Muhammad Khan v The Bank of Upper India** 3 All L J 122 628 referred to. **MUKSHI LAL v THE NOTIFIED AREA OF BAROUT** (1914) I L R 28 All 176

s 23—

See MORTGAGE 18 C W N 55

s 23—

See REGISTRATION LAW—FRANKS
I L R 43 All 55

REGISTRATION ACT (XVI OF 1908)—*contd*s 28—*contd*

Registration in district where small portion of property situated—Transfer or not entitled to such property—Whether registration is valid Where there is any fraud or collusion between the parties for the purpose of giving jurisdiction to a particular Sub Registrar to register a document by including property which does not exist this is sufficient to invalidate the registration but registration is not invalid if the property described exists merely because it transpires that the transferor though acting in a perfectly bona fide manner has ceased to have an interest in that property Where property which formed the subject matter of a document registered in Benares was stated partly in Benares and partly elsewhere and it transpired that the transferor had no title to the property situated in Benares *Held* that the registration was valid **MUSAMMAT RAM DAT V RAM CHANDARPALI DEBI**

4 Pat L J 433

Place of registration—

Sale deed—Deed fraudulently registered in a district where none of the property in respect of which it might have been operative was situated In order to prevent certain persons interested in the bulk of the property which purported to be sold and which was in the district of Pilibhit becoming aware of the existence of a sale deed the vendor included in the deed a small piece of property situated in the city of Bareilly which in fact did not belong to him and had the sale deed registered in Bareilly *Held* that this transaction was merely a fraudulent evasion of the Registration law and that the sale deed conveyed no title to the purchasers in respect of any of the property comprised in it **Harendra Lal Roy Chowdhuri v Harida Deb I L R 41 Cal 872 Jagannath v Ram Nath 12 All L J 913 Bansraj Singh v Rajbans Bhanthi 12 All L J 918 and Purna Chandra Bakshi v Nabin Chandra Gangapadhyaya 8 C W A 362** referred to **MANGALI LAL V ABID YAR KHAN (1917)**

I L R 39 All 523

Place of registration—

Security bond—Bond fraudulently registered in a district where none of the property in respect of which it might have been operative was situated In a bond hypothecating as security for the due fulfilment of the terms of a mortgage certain immovable property a small piece of land was inserted which did not belong to the obligor and was mentioned only for the purpose of getting the security bond registered in a particular registration subdivision *Held* that registration so effected was a fraud on the Registration law and the bond must be treated as unregistered **Mangali Lal v Abid Yar Khan I L R 39 All 523** followed **Harendra Lal Roy Chowdhuri v Haridas Deb I L R 41 Cal 972** referred to **RAM LAL V TAMEER BANO (1919)**

Registration—Mort-

gage registered in a particular place by virtue of inclusion therein of property to which the mortgagor had no title—Fraud or collusion not proved Where property is admitted to be in existence and has been included in a mortgage deed but is shown not to have been the property of the mortgagor the mere fact that the document has been registered in the district to which that property belongs is not sufficient in the absence of evidence of

REGISTRATION ACT (XVI OF 1908)—*contd*s 28—*contd*

fraud or collusion between the mortgagor and the mortgagee to invalidate the registration when that property is the only property hypothecated within the registration district **Brojogopal Mukerjee v Abhilash Chandra Bera 14 C W N 559** followed **Harendra Lal Roy Chowdhuri v Haridas Deb I L R 41 Cal 792** distinguished **PAHLADI LAL V MUSAMMAT LABITI (1918)**

I L R 41 All 22

ss 31 32 52 57—Registration—Presentation—Presentation by a person not an authorized agent of the executant—Procedure—Invalid presentation not a mere question of procedure Where a document is presented for registration by a person not duly authorized to present it according to the law applicable to registration of documents such presentation is altogether invalid and its subsequent registration made upon the admission of the executant before an officer who had no jurisdiction to accept the document for registration is likewise invalid **Mujib un nissa v Abdur Rahim I L R 23 All 233** followed **KHALIL UD DIN AHMAD V BANKEE BIBI (1912)**

I L R 35 All 34

s 32—

Presentation—Pre-

sentation by a servant of the mortgagor in the presence of the mortgagor Where a mortgage deed was handed over to the sub registrar for the purpose of registration by a person other than the mortgagor but the mortgagor was present assenting to the registration of the document with full knowledge of what was being done in the office of the sub registrar *Held* that the presentation was a valid presentation within the meaning of s 32 of the Registration Act **Nath Mal v Abdul Wahid Khan I L R 34 All 355** followed **Mujib un nissa v Abdur Rahim I L R 23 All 233** distinguished **Jambu Prasad v Altab Ali Khan I L R 34 All 331** not followed **KANTA KISAN V HARNAM CHAND (1912)**

I L R 35 All 2

Registration—Pre-

sentation—Physical delivery of document by person not authorized to present it but executant present and assenting whilst registration was going on Where it is shown that prior to the registration of the document by the duly authorized official a person competent to present before that official for registration was present before that official assenting to the registration the requirements of the Registration Act are sufficiently complied with **Mujib un nissa v Abdur Rahim I L R 23 All 233** and **Kanta Kishan v Har Narain I L R 35 All 72** referred to **ATMA RAM V UGRA SEN (1912)**

I L R 35 All 134

ss 32 33 71 73 75 77 88—Mortgage deed—Registration—Presentation—Authority to present document for registration on behalf of executant—Distinction between presentation under part VI and under part XII of the Act A mortgage deed was executed on the 20th of November 1911 Before however the deed could be registered the mortgagor fell ill On the 3rd of February 1912 the mortgagee executed in favour of a pleader a power of attorney of the kind referred to in s 32 of the Indian Registration Act 1908 This was duly authenticated by the sub registrar and the document was presented for registration by the appointee on the 6th of February 1912

REGISTRATION ACT (XVI OF 1908)—*contd***ss 32, 33 71, 73 75, 87 89—*concl'd***

On the 8th of February the mortgagee died. The mortgagor failed to appear before the sub registrar and admit execution and the sub registrar refused to register the deed. An application was next presented to the Registrar under s. 73 of the Act by the widow of the mortgagee in the capacity of the guardian of the mortgagee's two minor sons and on the 23rd of June, 1911, the Registrar made an order under s. 75 (1) of the Act directing that the mortgage deed should be registered. Meanwhile the estate of the minors had been taken under the superintendence of the Court of Wards and the Collector as Manager on behalf of the Court of Wards on the 23rd of July 1912 sent the mortgage deed by a messenger to the sub registrar with a copy of the Registrar's order mentioned above and an official letter requesting that the document might be registered which was accordingly done. On suit having been brought on the mortgage some of the defendants raised an objection that the mortgage deed in suit was not validly registered. *Held* that the document was properly registered. No valid objection could be sustained as to its presentation, either on the 6th of February 1912 when it was presented by the pleader acting under his power of attorney given by the mortgagee or on the 23rd of July 1912 when it was sent by the Collector to the sub registrar. The Collector was not bound to present the document in person and that being so it was immaterial what means he took to bring it before the sub registrar. That officer was perfectly justified in presuming the authenticity of the Collector's official letter and in taking action accordingly. **COLLECTOR OF MORADABAD v MAQ. BUL-UL RAHMAN** (1918) **I L R 40 All 434**

ss 32, 35 49 and 60—Presentment of document for registration by a person not properly authorized: 1—Limitation—Declaratory suit in respect of a gift of land and houses—Indian Limitation Act IX of 1908 articles 100 and 105 On 14th June 1904 the widow of A K executed a gift by which she gave 2 498 bighas and 10 biswas of land and a house belonging to her deceased husband to H N one of her 2 daughters. On the 30th January 1905 A B plaintiff the other daughter executed a deed of release in which she consented to the gift and gave up her rights to the property gifted. Notwithstanding this she brought the present suit for a declaration that the gift should not affect her reversionary rights. The first Court gave her a decree as regards both the land and the house. The Lower Appellate Court upheld the decree in regard to the land but held that the suit was barred by time as regards the house. Both parties appealed to the High Court. It was contended by the plaintiff that though the deed of release was a registered one it was inadmissible in evidence owing to defects in registration as the person presenting it on behalf of the plaintiff had no power of attorney. *Held* following **Jambu Prasad v Muhammad Aftab Ali** [**I L R 37 All 49 (P C)**] that sections 32 and 33 of the Registration Act relating to the presentation of documents for registration are imperative and their provisions must be strictly followed and therefore if the Agent who presented deed for registration had not been duly authorized in the manner prescribed by the Act the deed would not be validly registered so as (under sec

REGISTRATION ACT (XVI OF 1908)—*contd***ss 32, 35 49 and 60—*concl'd***

tion 49) to affect immovable property or to be received in evidence of any transactions affecting such property. One object of sections 32 to 33 of the Registration Act is to make it difficult for persons to commit fraud by means of registration under the Act, and it is the duty of the Courts not to allow the imperative provisions of the Act to be defeated. *Held* further that the presumption is that the owner of a house is owner of the site also and therefore article 125 of the Limitation Act applies to this suit in regard to the house (included in the gift) as well as to the land. **Dev Raj v Shiv Ram** (70 P R 1914) distinguished. **Soman Singh v Ullam Chand** [**I L R 1 Lahore 69**] referred to. **Pulla Ram v Sher Singh** (5 Indian Cases 849) followed. **MUSSANMAT AMIR BROWN v MUST HUSSAIN BIBI** **L R 2 Lah 5**

s 35—Registration of deed of gift—Death of donor—Execution admitted by donee—Registration of proper The donee under a deed of gift is an assign of the executant within the meaning of s. 35 of the Registration Act and may when the donor is dead admit the execution of the deed before the Registering Officer. **AKHNOY CHANDRA MAJHI v MANMATHA NATH CHATTERJEE** (1916) **20 C W N 1345**

ss 30 73 77—Registration—Refusal of Sub Registrar to register—Appeal to Registrar—Refusal to register based on inability to procure attendance of executants—Suit to compel registration A sale deed was presented for registration but the executants did not appear before the Sub-Registrar who after four months from the date of execution reported the fact to the Registrar and was directed by the latter not to register it. Registration was accordingly refused. An appeal against that order to the Registrar was dismissed. It appeared that the summonses by the Sub-Registrar to the executants had been returned unserved. The vendees brought a suit for registration of the document. *Held* that the suit was maintainable the refusal by the Sub Registrar to register not being based upon denial of execution. **Lucia Aarain Khetry v Sat Course Pyne** [**I L R 16 Cal 189**] distinguished. **KHADEM HUSAIN v BHARAT SINGH** (1912) **I L R 34 All 315**

s 41 (2)—Enquiry before a Sub Registrar regarding a disputed will—Deposition of witnesses admissibility of under s 33 of the Evidence Act The depositions of witnesses (since deceased) examined at an enquiry held by a Sub-Registrar under s. 41 (2) of the Indian Registration Act regarding the genuineness of a will at which the opposing parties had opportunity of cross examination are admissible in evidence under s. 33 of the Evidence Act in a subsequent suit raising the same question between the same parties. It is not necessary that the first proceeding referred in s. 33 of the Evidence Act should be a judicial proceeding. **LAKSHMANNA v VARDHANANNA** (1918) **I L R 42 Mad. 103**

s 47—

See AGRA TENANCY ACT (II OF 1901)
s 97 **I L R 37 All 59**

Time from which registered document operates—Date of execution and not

REGISTRATION ACT (XVI OF 1908)—*contd*

47—concl'd

date of registration The plaintiff purchased a certain property. The vendor on receipt of consideration executed a deed of sale in his favour but thereafter he executed a second conveyance in respect of the same property in favour of a third person who had no notice of the plaintiff's purchase and had the latter document registered first and put the second purchaser in possession.

RAJANI NATH DAS v. OFAJUDDI VALLA (1916)

22 0 W N 318

8 49—

See 2 2

See § 17

26 C W N 399

Registration—Evidence

of title—Petition of compromise in a mutation case and order thereon Held that a petition of compromise filed in a mutation case before a Court of Revenue and the order of the Court thereon can neither effect nor prove a conveyance of the immovable property to which the mutation proceedings may relate *Pranal Anni v Jalshmi Anni* I L R 22 Mad 503 *Paghvans Mani Singh v Mahabir Singh* I L P 23 All 78 *Kashi Kanti v Sumer Kanti* I L P 32 All 206 *Biraj Mohini Dasse v Kedari Nath Karmakar* I L R 35 Cal 1010 *Muthayya v Venkataratnam* I L R 25 Mad 553 and *Sadar ud din Ahmad v Chayya* I L R 31 All 13 referred to *Rustoo Ali Khan v Gauria* (1911) I L W 331 All 229

Mortgage by deposit of

title deeds—Agreement to mortgage—Document containing agreement to mortgage registration of if necessary—Admissibility of document for any purpose Where the plaintiff who had executed a mortgage by deposit of title deeds executed a promissory note to the defendant and agreed that the latter should pay off the mortgage and recover the title deeds from the mortgagee and retain them himself as additional security and the terms of the agreement were embodied in two documents which were not registered Held that the documents required to be registered and were inadmissible in evidence in respect of any of the terms contained therein under s 49 of the Registration Act (XVI of 1908) Moore v Culverhouse 27 Beav 639 54 E P 254 and Nere v Pennel 2 H & M 170 followed Kedarnath v Shamlall Khettry 11 B L R 405 disapproved. SWAMI CHETTY v ETHIRAJULU NAIDU (1918) 1 L R 40 Mad 547

8 50—

See SPECIFIC RELIEF ACT 1877 s 27

I L R 38 All 184

See TRANSFER OF PROPERTY ACT 1882 s 54

I L R 41 Bom 550

Registered and un

registered documents—Priority—Effect on rights of prior unregistered mortgagee of sale in execution of a decree on a subsequent registered mortgage. When property is sold in execution of a decree on a subsequent registered mortgage taking priority over a prior unregistered mortgage such sale does not have the effect of invalidating the prior mortgage or of extinguishing altogether the rights of the mortgagee thereunder but his debt would still be recoverable from the surplus if any left after the satisfaction of the registered mortgage. **DHAN TAL SINGH v. BUDH SINGH (1913)**

REGISTRATION ACT (XVI OF 1908)—*contd.*

• 52—

See p 31

Y L H 35 ALL 34

■ 21—25—

See § 32

U L R 40 ADL 424

ss 72, 76 and 77—

See § 77

24 C W N 604

Refusal of Registrar

to direct Sub Registrar to register a document where a refusal to register it—Limitation.—Thirty days in s 77—Time from which to be computed A document was presented for registration to the Sub Registrar on the last day of the four months allowed for presentation but the Sub Registrar declined to receive it owing to pressure of other work At the suggestion of the Sub Registrar it was presented the next day with an application to the Registrar to execute the delay in presentation On the refusal of the Registrar to excuse the delay the Sub Registrar refused to register the document From this order an appeal was filed before the Registrar and it was dismissed The present suit was filed within thirty days of the dismissal of the appeal under s 77 of the Indian Registration Act but more than thirty days after the order refusing to extend time Held (i) that the order of the Registrar on appeal refusing to direct the Sub-Registrar to register the document was a refusal to register within ss 77 76 and 72 (i) of the Act and (ii) that the suit was filed in time as the thirty days allowed for filing by s 77 must be counted from the date of the order on appeal and not from the date of the order refusing to extend time There is no distinction between a refusal to accept a document intended for registration and a refusal to register it

Anandarama Nayanaiah v Pawalingam Anandarama Nayanaiah v Pawalingam Anandarama Nayanaiah

10 Mad L J 104 and Sivarama Pillai Karakar
v Krishnayyar 26 Mad L J 397 followed *Kannamma v Iyyathamma* 1 L R 7 Mad 535 distinguished *Gangava v Sayaya* 1 L R 21 Bom 699 *Balambal Ammal v Arunachala Chetti* 1 L R 18 Mad 255 and *Vetramma v Abhishekam* 1 L R 18 Mad 99 not followed. GANADASA
SANDASIVA (1916). 1 L R 40 Mad 759

74 77—Registration—dis

to register—Inquiry ordered but application dismissed on account of parties failing to attend—Sui to compel registration A Sub Registrar refused to register a document presented to him and on the application of one of the parties, the Registrar directed an inquiry under s 74 of the Indian Registration Act 1908 On the date fixed for the inquiry however the parties failed to appear and the Registrar accordingly dismissed the application Held that this amounted to a refusal to register within the meaning of s 77 of the Act and a suit to compel registration would lie
I L R 13 Cal 264 followed Udit Upadhyay Imam Band Bibi I L R 24 All 400 distinguished.
ABDUL HAKIM KHAN v CHANDAN (1911)
I L R 34 All 185

— 37 —

See p. 72

759

See 8 73 (U of 18-2) 1991

See EVIDENCE
165

(U or 18-)

REGISTRATION ACT (XVI OF 1908)—*contd*s 77—*contd*See LIMITATION I L R 47 Calc 300
I L R 38 Mad 291

Period of 30 days provided by s 77 Registration Act (XVI of 1908) if can be extended on ground of prosecution of proceedings in good faith in Court not having jurisdiction A suit for the registration of a mortgage bond for Rs 1 000 was filed in the Court of the Munsif being valued at Rs 500 and on the Court holding it to be undervalued the plaint was amended and the suit was valued at Rs 1 000 whereupon the plaint was returned as being beyond the pecuniary limit of the jurisdiction of the Court. It was then filed in the Court of the Subordinate Judge and was dismissed as barred by limitation. *Held* that under s 29 (1) (b) of the Limitation Act nothing in that enactment affects or alters any period of limitation specially prescribed for any suit, appeal or application by any special or local law and inasmuch as ss 71 to 77 of the Registration Act lay down a complete procedure where registration is refused and as s 77 limits the period within which a suit is to be brought to 30 days, the said period cannot be extended under s 14 of the Limitation Act on the ground of prosecution of proceedings in good faith in a Court not having jurisdiction in the matter. **KHAGENDRA NARAYAN ROY BARMAN v BARMAN BARMAN** 24 C W N 20

Held that s 14 of the Limitation Act cannot be applied to compute the period of limitation prescribed by s 77 of the Registration Act for a suit to enforce the Registration of a document. **KALINUDDIN MOLLAH v SANIBUDDIN MOLLAH** 24 C W N 4

Whether Court can enter into the question of the validity of the document—Punjab Alienation of Land Act XIII of 1900 s 17—New charge on old security—whether a new mortgage *Held* that in a suit for the registration of a document under s 77 of the Registration Act the District Judge is not entitled to enquire into anything more than whether the ostensible executant signed and delivered to the other party the document which he produced for registration and he cannot enter into any question regarding its validity. **Nawab v Arjan Das** (13 P R 1904) followed. *Held* further that where a mortgage has been effected before the 8th June 1901 and a further advance is made after that date on the old security the further advance is not a new mortgage provided that no changes are made in the terms of the original transaction. **Shadi Lal's Punjab Alienation of Land Act s 41 and Financial Commissioner's Standing Order No 1 dated 2nd September 1914** referred to. **REHAL DAS v MUSSAMMAT JANAK**

I L R 2 Lah 202

s 77 72 76—*Suit for registration of document registration whereof refused on the ground of non payment of penalty in due time* Refusal by a Sub Registrar to register a document on the ground of failure to pay penalty in due time is an order refusing registration under s 72 of the Registration Act and is appealable to the Registrar and on the dismissal of such appeal a suit lies under s 77 for the registration of the document. **UNESH CHANDRA GHOSH v NISTARINI BASU**

33 C W N 304

REGISTRATION ACT (XVI OF 1908)—*concl'd*

s 82 83—

Permission of registration officer a necessary preliminary to a prosecution *Held* that the permission referred to in s 83 of the Indian Registration Act 1908 is a necessary condition precedent to the prosecution of any person for an offence mentioned in s 82 of the Act. **King Emperor v Juran** 27 Indian Cases 208 referred to. **EMPEROR v HUSAIN KHAN** (1916) I L R 38 All 354

Offence under s 82—Prosecution by a private person—Permission under s 83 whether necessary Permission under s 83 of the Registration Act (XVI of 1908) is not a preliminary requisite for the institution by a private person of proceedings for an offence under s 82 of the Act. **Gopinath v Kuldip Singh** I L R 11 Calc 566 and **Queen Empress v Vishnulinga** I L R 11 Mad 500 referred to. **RA NADATHI** (1917) I L R 40 Mad 880

s 83—

See CRIMINAL PROCEDURE CODE

s 213 I L R 38 Bom 114

s 413 I L R 39 All 292

ss 87 and 88—

See s 31 I L R 35 All 34

See s 32 I L R 40 All 434

s 90—

See s 17 I L R 36 All 178

See BOMBAY LAND REVENUE CODE

I L R 41 Bom 170

I L R 45 Bom 898

See RAJINAMA and KASULIYAT

I L R 42 Bom 359

cl (1) (d)—*Consultation—Rule of ejusdem generis—Lease of lands by Government—Document executed by lessee but not registered whether admissible in evidence—Prohibition in lease against erection of buildings—Power of Government to impose conditions—Crown Grants Act (XV of 1895) ss 2 and 3—Power whether affected by Malabar Compensation for Tenants Improvements Act (I of 1900) s 19* A lease of lands made by Government was evidenced by an unregistered document executed by the lessee it contained an undertaking by the lessee not to erect buildings on the land the latter however built on the lands contrary to the agreement. In a suit by the Secretary of State to eject the lessee. *Held* that the document did not require registration as it fell under s 90 cl (1) (d) of the Registration Act and was admissible in evidence. The expression 'other document etc' in s 90 Registration Act should not be construed *ejusdem generis* with *sanads* and *nam* title deeds in the previous part of the section but even if so construed a lease is of the same character as a *sanad* and the words 'grants or assignments of interest' in the same section are comprehensive enough to include a lease. Under ss 2 and 3 of the Crown Grants Act the Government has power to impose restrictions in a lease made by it—a power which is not effected by the provisions of the Malabar Compensation for Tenants Improvements Act. **Manshi Lal v The Notified Area of Farant** (1914) I L R 36 All 176 dissented from. **MOOSA KUTTI v THE SECRETARY OF STATE** (1920)

I L R 43 Mad

REGISTRATION LAW FRAUD ON

See REGISTRATION ACT 1908 s 28

Sale deed—Including a cent of land to enable a Sub Registrar to register—Item of land real and owned by vendor—No intention to pass title to vendee—Registration whether and The inclusion of an item of property belonging to the vendor in a sale deed without any intention of passing title in it and purely for the purpose of making the deed available for registration in a particular place is a fraud upon the registration law, and such sale deed must be deemed not to have been properly registered NARA SIMHA RAO v PAPUNNA (1920)

I L R 43 Mad 436

REGISTRATION OF DOCUMENTS

Agreement to lease—Creation of future rights—Absence of actual demise—Compromise Decree—Matters outside suit—Civil Procedure Code (XIV of 1882) s 375—Registration Act (XVI of 1908), s 2 (7) s 17, sub s 1 (b) (d) sub s 2 (11) s 49 A petition setting out the terms of an agreement in compromise of a suit stated as one of the terms that the plaintiff agreed that if she succeeded in another suit which she had brought to recover certain land other than that to which the compromised suit related she would grant to the defendants a lease of that land upon specified terms The petition was recited in full in the decree made in the compromised suit under s 375 of the Code of Civil Procedure 1882 The present suit was brought for specific performance of the agreement Held (1) that as the agreement did not affect an actual demise of the land or operate as a lease it was not an agreement to lease within s 2 (7) of the Indian Registration Act 1908 so as to be required by s 17 sub s 1 (d) to be registered (2) that s 17 sub s 2 (11) which provides that s 17 sub s 1 (b) and (c) are not to apply to a decree of a Court extends to the whole of a decree not merely that part which is operative as a decree (3) that consequently s 49 of the Act did not preclude the decree from being given as evidence of the agreement Panchanan Bose v Chandrar Charan Misra I L R 37 Cal 808 Pranal Annee v Lakshmi Annee L R 26 I A 101 applied HEMANTA KUMARI DEBI v MIDNAPUR ZAMINDARY COMPANY (1919) L R 46 I A 240

REGISTRATION OFFICER

See REGISTRATION ACT (XVI of 1908)
ss 82 83 I L R 38 All 354

REGISTRATION OF NAME

See JHARADAR

I L R 48 Cal 1078

REGISTRY OF VESSELS

See COASTING VESSELS ACT ss 4 7 13
I L R 38 Bom 111

RE GRANT OF LAND

See BOMBAY LAND REVENUE CODE (BOM ACT V of 1879 AS AMENDED BY BOM ACT VI of 1901) s 56

I L R 37 Bom 693

REGULATIONS

See BENGAL REGULATIONS

See BOMBAY REGULATIONS

See MADRAS REGULATIONS

REGULATIONS—contd

1778—I—

See CONSTRUCTION OF DOCUMENT
I L R 38 All 570

1793—I—

ss 2 and 8—

See MINERAL RIGHTS 5 Pat L J 171
s 8 cl (4)—

See CHATKIDARI CHAKRA LANDS
I L R 42 Cal 710

1793—II—

See ESTATE PARTITION ACT 189 s 11
1 Pat L J 491

1793—VIII—

s 41—

See CHOWKIDARI ACT 1870
15 C W N 300

ss 52 54—

See ILLEGAL CESS I L R 45 Cal 259

ss 54, 55—

See ASWAB I L R 40 Cal 868

1793—XIX—

s 2—

See MINERAL RIGHT 5 Pat L J 273

ss 22 to 25—

See LAHNERAJ LANDS
I L R 45 Cal 574

1793—XXXVI—

See HINDU LAW—WILL
1 Pat L J 16

1793—XXXVII—

s 15—

See JAIGIR I L R 42 Cal 305

1799—V—

s 5—Order if can be made when no regular suit has been brought by the claimants When no regular suit has been brought by the persons who claim the property dealt with by the Court an order under s 5 of Reg V of 1899 is ultra vires BALIA KOZA v BANDRAI SING (1914) 20 C W N 523

1800—VIII—

See PARTITION I L R 47 Cal 354
Regulation VIII of 1800

1800 Mulk papers or returns filed by claimants under the provisions of Reg VIII of 1800 para 3 although not of the same evidentiary value as the Registers themselves inasmuch as they require proof of origin and authentication are nevertheless good evidence of title if they contain statements made at a time when there was no dispute and against the proprietary interest of the maker KALI SANKAR SAHAI v MAHARAJA PRATAP LAL NATH SAHI DEO (1911) 16 C W N 683

1801—I—

Independent talook what so—ss 8 and 14—Time within which report is to be applied for—Actual produce in what was held that s 3 refers to the produce of what date held that the proprietors of Talook Halamti which was

REGULATIONS—*contd.*1801—I—*contd.*

established by a decree of the Sadder Dewan/Adulst of 1803 to be an independent talook having duly applied for the separation of the talook in accordance with the provisions of Reg I of 1801 within a year from the passing of the Act had not been wanting in diligence in seeking the relief to which they were clearly entitled and that the delay of over 100 years that had occurred was due either to the opposition of the zemindar or the action of the Revenue authorities and that the objections of the zemindar in their present suit to the separation being effected by the Revenue authorities were purely vexatious and designed to prolong litigation. The actual produce on which the assessment of revenue under s 8 of Reg I of 1801 was to be based was the actual produce at the time when proceedings were instituted for the separation of the talook. *HEMANTA KUMARI DEBI v JAGA DINDRA NATH POT* (1918) 23 C W N 149

1802—XXV—

See IMPARTIBLE ESTATE.

I L R 36 Mad 325

See UNSETTLED PALAYAM

I L R 41 Mad 749

See MADRAS REGULATION

Impartible estate proof of—Sanad granted under Madras Reg XVI of 1802 in common form of alters succession—Impartibility proof of—Ray estate whether—Question of fact—Concurrent findings—Appeal to Privy Council—Practice. The zamindari of Nadavole was the subject of a sanad in common form under Reg (Mad) XXV of 1802. Held that it must be held to be partible and descendible according to the ordinary rules of inheritance of the Hindu Law unless the sanad could operate as a confirmation of a previously existing estate which from its nature or by virtue of some special family custom was impartible and descendible to a single heir. Whether or not at or prior to the date of the sanad the grantee of the sanad had an estate in the nature of a Paj and so descendible to a single heir was a question of fact to be determined on the evidence. Where on such a question there were concurrent findings of the Courts in India the practice of the Privy Council was not to disturb the finding unless they were satisfied that it was not justified by the evidence. The principles applicable in determining the questions of impartibility in cases of this description are affirmed. *VENKATARAMAYYA APPA ROW v PARTHASARATHY APPA ROW* (1913) 17 C W N 1221

1803—XXXI—

s 6—

See CONSTRUCTION OF DOCUMENT

I L R 38 All 230

1805—XII—

s 33—

See CHAUKIDARI CHAKRAN LANDS

I L R 42 Calc 710

1805—XIII—

s 41—

See CHAUKIDARI CHAKRAN LANDS

I L R 42 Calc 710

REGULATIONS—*contd.*

1806—XVII—

See CONSTRUCTION OF DOCUMENT

I L R 38 All 571

See MORTGAGE

I L R 38 All 9

s 8—*Mortgage by way of conditional sale—Suit for redemption—Plea of foreclosure under the Regulation—Procedure—Evidence.* In the case of mortgage to which Reg XVII of 1806 applied before it can be held that the right of redemption is barred it must be proved that the requirement of the Regulation have been strictly complied with that is to say that the mortgagee had served upon the mortgagor a notice under the seal and official signature of the District Judge warning him that the mortgage would be finally foreclosed in the event of his failure to redeem within the period of one year. *Badal Ram v Taj Ali* (1877) A L J 17 followed. *RAM BARAN RAI v HAJI SEWAK DUBE* (1918) I L R 40 All 381

1810—XIX—

See MAHOMEDAN LAW—WAKF

I L R 46 Calc 14

1812—V—

s 3—

See ILLEGAL CESS

I L R 45 Calc 251

1814—XXIX—

See GHATWALI TENURES

1 Pat L J 191

See PARTITION

I L R 47 Calc 354

1818—III—

See LABEL

I L R 37 Calc 761

1819—II—

Resumption of land within permanently settled mahal—Nature of onus of proof on person with whom such land settled or dispute as to whether land settled was within ambit of the zemindari. Where certain lands within a permanently settled mahal were resumed under Reg II of 1819 and settled along with other Government khas mahal lands with a person other than the zemindar the onus of proving that lands within the ambit of the zemindari were part of such resumed land as against the zemindar did not lie on the person who claimed it as such in the sense that on his failure to discharge it the lands must be taken to remain and be vested in the zemindar. *SURJA KANTA ACHARYA v SARAT CHANDRA ROY CHOWDHURY* (1914) 18 C W N 1281

1819—VIII—

See PARTIAL SALE

I L R 47 Calc 732

s 8 9 15 (2)—

See SALE FOR ARREARS OF RENT

I L R 44 Calc 715

s 14—

See LIMITATION ACT 1877 s 8

14 C W N 128

1822—VII—

See PEX EMPTION

I L R 33 All 166

s 1 proceedings under Reg VII 1822 read IX of 1825

REGULATIONS—contd

1822—VII—concld

Settlement proceedings under Reg VII of 1822 read with Reg IX of 1835—Rayats land held by Settlement Officer to belong to defendants and not to plaintiffs's holding—Decision of award—Plaintiffs's suit to recover—Limitation—Limitation Act (XV of 1877) Sch II, Arts 14 & 46—Tenant if may sue to recover from person with whom land settled by landlord and by whom he has been dispossessed Where a Collector in settling land under Reg VII of 1822 decided that a certain area of land did not form part of the plaintiff's holding as alleged by them but was part of the defendant's holding Held that the decision of the Collector was not an award within the meaning of Art 46 of Sch II of the Limitation Act of 1877 Held further that an order by which land belonging to the plaintiffs was given by the Collector to others without any warrant of law need not be set aside by the plaintiffs and Art 14 of Sch II of the Limitation Act does not apply to a suit by the plaintiffs to recover the land It was not intended by the provisions of Reg VII of 1822 that the Collector should decide disputes as to title between rayats in which the zemindars or sadar malguars had no assessment which could in no way affect the interest and S 14 of the Regulation does not apply to a case in which rival tenants claim not only a tenancy of the same nature but the same land under the same nature of tenancy The decision in *Binad Lal Pakrashi v Kalu Pramank* 1 L R 20 Cal 709 was never intended to be applied to a tenant seeking to recover his own holding *RAJANI KANT MUKERJI v RAM DULAL DAS* (1911)

17 C W N 55

s 3—

Okur land—Present holder's right to re settlement—Revenue authorities when may settle with stranger—Strict compliance with the law necessary Where there was no report by the Revenue authorities that the settlement of chur land with the proprietor of a permanently settled estate contiguous to it who was the last holder of the chur would endanger the public tranquility or otherwise be seriously detrimental Held that the settlement of the chur with a third party was not in compliance with s 3 of Reg VII of 1822 and must be set aside Strict compliance with the provisions of the Regulation was necessary to justify the deprival of the present holder's right to settlement of the chur with him *RAGHU NATH BANGA v KARUNANIDHAN SINGHA* (1918)

III W N 261

Chur mahal accreted to a permanently settled estate temporary settlement of under Regulation is valid—Reg II of 1819—Reg XI of 1825—Act IX of 1847—Act XXXI of 1858—Reg VIII of 1798—Resumption of chur on ground of Sudder Malguar's misconduct attacked as ultra vires—Decision of Revenue authorities if renewable by Civil Courts—Civil Courts jurisdiction The provisions of s 3 of Reg VII of 1822 are applicable to chur lands which have accreted to an estate in which the owner has a permanent proprietary interest The applicability of the provisions of the Regulation is not restricted to the matters referred to in the second paragraph of s 2 of Act XXXI of 1858 Where upon a report of the Revenue authorities bearing on the conduct of the Sudder Malguzar with whom on behalf of the proprietors of a permanently

REGULATIONS—contd

s 3—concld

settled estate a chur mahal had been settled, the Local Government in exercise of powers conferred by s 3 of Reg VII of 1822 directed that the mahal be held khas for a term of 12 years and the order of the Local Government was questioned as ultra vires on the ground that the charges made against the Sudder Malguzar were without justification Held that if there were materials for the Revenue authorities to go upon it was not open to the Civil Court to see whether they were sufficient to justify them in reporting to the Government under the proviso to the section the proviso having conferred exclusive jurisdiction in the matter on the Revenue authorities What the Civil Court has to be satisfied with is that the requirements of the law had been complied with and that the Revenue authorities had materials upon which it made the recommendation to the Government There is nothing to show that steps cannot be taken under s 3 of the Regulation unless the report of the Revenue authorities is made in the course of proceeding under Reg VII of 1822 and the present order was not bad because it was made in the course of settlement proceedings under Chap X of the Bengal Tenancy Act *BADHA KANTA AICH v SECRETARY OF STATE FOR INDIA* (1918) 23 C W N 285

237 9—*Pent enhancement of—Settlement officer powers of—Jamabandi* Where a settlement was carried out under Reg VII of 1822 Held that the Settlement Regulation did not authorise the settlement of fair rents All that the Settlement Officer was entitled to do was to record the existing rent *ISHUB CHANDRA SARKAR v TROYLUKHYA NATH SINGHA* (1913) 117 C W N 865

s 10—

See BENGAL LAND REVENUE SALES ACT 1839 s 37 5 Pat L J 79

1825—XI—

See BENGAL ALLUVION AND DELUVION REGULATION 5 Pat L J 1 & 639
See FISHERY I L R 42 Cal 459

Whether the section applies to the bed of a private river S 4 of Reg XI of 1825 is not limited in its application to a river the bed of which is the property of the Crown *PURI DASS v KANBU BHERRA* 1 Pat L J 536

Damodar is a navigable river—Non navigable river flowing through or by the side of permanently settled estate churs forming an of reasonable and assessable with revenue—Riparian owner's right to the middle of the stream—Exclusive right of fishery as evidence of title in the soil of the river bed The test in this country as to whether a river is navigable is whether it allows of the passage of boats at all times of the year The river Damodar was not a navigable river at the date of the Permanent Settlement At the date of the Permanent Settlement the bed of the river Damodar in so far as it flowed through the chakla or zemindary of Burdwan formed a portion of the estate permanently settled with the predecessor of the zemindar of Burdwan Although an exclusive right of fishery does not of itself pass the right to the soil in the bed of the river the terms of the grant in this case being unknown or uncertain the fact that the grantee had a several right of

REGULATIONS—*contd*1875—XI—*contd*

fish in the river was held to support his claim to the soil in its bed. Churs forming in non navigable rivers flowing through permanently settled states and forming parts thereof are not resumable under Reg. XI of 1875. Therefore an be a further as men o Government revenue there must be a gain from the public domain. The right to the soil of a river flowing within the states of different proprietors belongs to the riparian owners *ad medium filum aquæ*. Where property is bounded by a road or a river the boundary even if given as the road or the river is the middle of the road or river in the case of a river. Therefore a permanently settled estate on the bank of a non navigable river included half the bed of the river and churs forming on this portion are not resumable with revenue under Reg. XI of 1875. The assessment of the Government revenue on the riparian moulzas having been imposed not only on the moulzas but on the adjoining half of the river bed also. SECRETARY OF STATE FOR INDIA v. DEJOY CHAND MAHATAP (1915)

22 C W N 572

1827—II—

s 21—Caste question—Civil Court Jurisdiction—Suit to be declared *Ujya of Hiremath and to restrain defendant from so styling himself*. The plaintiff sued to obtain a declaration that he was entitled to the fees and privileges appertaining to the Hiremath and Kamalapur by reason of his title to be called the Ayya of that Hiremath and to obtain a perpetual injunction to restrain the defendant from using the name of Ayya of Hiremath. The plaintiff's complaint was that the defendant had assumed a name to which the plaintiff had the exclusive right and that that assumption would enable as it had enabled the defendant to attract to himself a large number of the plaintiff's followers and thereby appropriate to himself fees which would otherwise have been paid to the plaintiff. Held that it was a claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy certain privileges and honors at the hands of the members of the caste in virtue of that office. It was a caste question not cognizable by a Civil Court. Held also that the fact that there had been no allegation of any specific damage by reason of the assumption by the defendant of the name of Ayya of Hiremath and also the admission that after all the result of the assumption of that name would be merely to enable some of the followers of the plaintiff to go over to the defendant showed that what the parties had been fighting for was merely a question of dignity under the cover of a religious office. If the Court were to interfere in such cases it would be merely assisting one party at the expense of the other and compelling the caste or the sect to follow one spiritual leader in preference to another. GADIGYIA v. BASATA (1910)

I L R 34 Bom 455

1832—VII—

s 9—

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s 9—Duty of Settlement Officer under the Regulation—Entry as to fair rent payable by tenant if has the effect of enhancing rent. A Settlement Officer under Reg VII of 1882 does not settle rent but records rates of rent existing in the village and the effect of an entry by the Settlement Officer as to the fair rent payable by the cultivator has not the effect of enhancement of his rent so as to entitle the landlord to claim rent at that rate. JAGADINDRA NATH RAY v. MOHENDRA NATH MOZUMDAR (1914)

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ss 141—Municipal Board—Powers of Board in respect of erection of buildings—Suit against Municipal Board—Jurisdiction. One Kifayatullah served the Municipal Board of Ajmere with notice of his intention to rebuild a certain wall. He received no reply to his notice within a month and thereafter commenced to build. The Municipal Board then required him to stop the building and submit a fresh application. The applicant stopped the building but did not present a fresh application and some months later sued the Board for damages on account of the stoppage of the building. The Board failed to prove that the notice first given by Kifayatullah was not in accordance with law. Held that in the circumstances the original notice must be considered as a good notice under s 85 of the Ajmere Regulation I of 1877 and that s 140 of the Regulation if it applied at all did not oust the jurisdiction of the Civil Court to try the suit for damages. MUNICIPAL BOARD OF AJMERE v. KIFAYAT ULLAH (1915)

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ART 55 I L R 38 All 56

conditional—

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of some of joint judgment debtors—

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I L R 39 Mad 548

recitals in—

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I L R 41 Bom 300

Partition—Undivided brothers—Instruments whereby co owners divide property in severalty—Release—Stamp Instruments whereby co owners of any property divide or agree to divide it in severalty are instruments of partition. One of three undivided brothers agreed to take from the eldest brother the manager of the family as his share in the family property moveable and immoveable a certain cash and bonds for debts due to the family and passed to the eldest brother a document in the form of a release. Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money. A question having arisen as to whether for the purpose of stamp duty the said two documents were to be treated as releases or instruments of partition. *Held* that the documents were instruments of partition. *In re COVIND PANDURANG KAMAT* (1910) I L R 35 Bom 75

RELEVANCY

of previous decision—

See CUSTOM (RELIGIOUS INSTITUTION)

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RELIEF

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Power for Court to grant when order would be nugatory—

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whether limited by pleadings—

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Claim for two reliefs—
Right to one proved and to the other not proved—
Right of plaintiff to a decree for the relief proved
Where the plaintiffs claimed a decree for possession of a tank from which they had been dispossessed and a declaration that they had a permanent and heritable right in the tank and it was found that they were entitled to possession but were not entitled to a permanent and heritable right therein. *Held* that they were entitled to a decree for possession as it was not a case of a plaintiff claiming one relief and being given relief of a wholly different kind. It was a case of a plaintiff claiming two reliefs—one of which he was entitled to and the other he had failed to prove himself entitled to. *DEHU GHUVA v SRIMATI BARANIDRA DEBI* 2 Pat L J 15

RELIEF—contd

RELIGIOUS BEQUEST
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RELIGIOUS CEREMONY

Right to perform religious ceremonies if may be enforced—Agreement to share profits of religious services suit if lies to enforce Parties who require religious ceremonies to be performed for their benefit are at liberty to choose the priest by whom they shall be performed and no declaration can be given that any person is exclusively entitled to officiate at ceremonies at a particular place Where the plaintiffs claimed under an agreement executed by the ancestors of the plaintiffs and defendants that whoever amongst them might perform ceremonies on a particular occasion on the banks of the river Punpun at Gaya he should bring whatever he might earn thereby into a common fund to be enjoyed by all the members of the family. *Held* that such agreement cannot be obligatory on the successors of the parties for all time in spite of the wishes of the members who might desire to terminate it and a suit does not lie to enforce the claim. *Dino Nath v Protap Chandra I L R 37 Cal 30 4 C W N 79 and Beema v Kotha Kotha 17 Mad L J 493 distinguished DWARKA MISRA v RANPRATAP MI SHA* (1911) 18 C W N 347

RELIGIOUS ENDOWMENT

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 40 Mad 212

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requirements for completion of a valid gift—

See HINDU LAW (RELIGIOUS ENDOWMENT) I L R 43 All 503

Religious Endowments Act (XX of 1863) ss 7 & 10—Suit brought by surviving member of a Committee whether maintainable A suit brought by a surviving member or members of a Committee appointed under the Religious Endowments Act (XX of 1863) is maintainable. *Santilata v Manjanna Chetty I L R 31 Mad 1* distinguished from *Pichay NANDAN PAMAYASA DAS v BHIMTI BIRAK MUKERJEE* (1911) I L R 39 Cal 334

Failure of the line of trustees—Right of heirs of founders of the institution to create a new line of trustees. *Held* by the Full Bench (SRIVATARA AYYANGAR J dissenting) that it is competent to an heir of the founder of

RELIGIOUS ENDOWMENT—con d

a brine in whom the trusteeship has vested owing to the failure of the line of the original trustee to create a new line of trustee. *See* *Srinivasa Ayyangar J.* In the absence of any such power in the deed of trust the Court alone has the power to appoint a trustee such a power of nomination is equivalent to an alienation of the office of trustee which is illegal. *CATTANAGAR v. SUBBIA MATA* (1917) **I L R 40 Mad 612**

Mutt—Head of Mutt—
Trustee of temple—Appointment of successor—
Compromise to avoid prosecution—Invalidity—
Code of Civil Procedure (XXI of 1908) 539
By the usage of a mutt the pandara sannidhi or head had power to appoint his successors or and was trustee of the endowments of certain dependent temples. In 1894 the pandara sannidhi appointed the appellant as chinna pattam or junior head with a right to succeed as head. This appointment was not made *bona fide* in the interests of the mutt but under a compromise whereby he had avoided a threatened prosecution for forgery of a will purporting to be that of his predecessor and appointing him as successor. The appellant having succeeded as pandara sannidhi suits were instituted in 1905 to remove him from being trustee of the mutt properties and of the temple properties. *Held* that the appellant's appointment as head of the mutt was invalid and that consequently he never became trustee of the temples but that on the finding which was not challenged on appeal that there was no evidence that the head of the mutt was a trustee of the mutt properties, the suit to remove him from being trustee of the mutt could not be maintained under s 539 of the Code of Civil Procedure 1899. *Rama lingam Pillai v. Vythilingam Pillai* (1893) **I L R 20 I A 150 I L R 18 Mad 490 (P C)** followed and applied. *NATARAJA THIAMBARAN v. KAILASAM PILLAI* (1921) **I L R 44 Mad 283**

Removal of Mahant by
unauthorised persons—Suit for restoration—Whether irregularities in removal entitle plaintiff to succeed—
When the Mahant of an endowment had been removed from office on account of unfitness. *Held* he was not entitled to succeed in a suit for a declaration that the defendant had no right to remove him from office and for possession merely on the ground that the persons who removed him from office were incompetent to do so unless he could show that he was not unfit to continue in the office. *NIAMAT ALI v. YAD ALI SHAH* **6 Pat L J 408**

Mutt—Relation of
heads and managers of religious institutions to their property—Alienation by head of mutt—Trustees
Indian Limitation Act (IX of 1908) Sch 1 Acts 134 and 144
The endowments of a Hindu mutt are not conveyed in trust nor is the head of the mutt a trustee with regard to them save as to any specific property proved to be vested in the head for specific and definite object. Consequently Art 134 of Sch I of the Indian Limitation Act 1908 which contains the expressions above quoted does not apply where the head of a mutt has granted a permanent lease over a part of the mutt property not proved to be subject to a specific trust. The same rule applies to the endowments of Mahomedan religious institutions and to alienations made by the Sayyadanashun or Mutawali. *Ram Parkash Das v. Anand Das*

RELIGIOUS ENDOWMENT—contd

(1916) **I L R 43 Calc 70; (P C) L P 43 I A 73** explained. *Belari Lal v. Muhammad Muttaki* (1898) **I L R 20 All 482 (F B)** *Dattagiri v. Dattatraya* (1903) **I L R 27 Bom 363** *Nalmony Singh v. Jagabandhu Poy* (1896) **I L R 23 Calc 536** disapproved. Except for unavoidable necessity the head of a mutt cannot create any interest in the mutt property to ensure beyond his life. *See* however has not adverse possession under Art 144 of the schedule above named during the life of the head who granted the lease. If the lessee's possession is consented to by the succeeding head that consent can be referable only to a new tenancy created by him and there is no adverse possession until his death. [Judgment of the High Court reversed.] *VIDYA VARTHI v. BALUSAMI AYYAR* (1921) **I L R 44 Mad 831**

Shelbait's rights whether
trustees have power to convey life estate in—Adverse
possession acquisition of Shelbait's rights by—
Limitation Act (IX of 1908) s 10 Sch 1 Arts 1 & 134 and 144
The right to administer the trust property of a public religious endowment within the limits imposed by the trust and for that purpose the right to possession of the property as against those previously administering the trust or others claiming through them can be acquired by adverse possession and in a trust of this nature it is only where a claim is set up adverse to the rights of the deity to whose worship the property is dedicated that s 10 of the Limitation Act 1908 could have any application so as to deprive the defendant of the rights conferred by the remaining portions of the Act. The trustees of such an endowment have no power to convey even a life estate in the shelbait's rights attending the worship of an idol. Where the trustees purport to make such a conveyance the grantee is in adverse possession of the estate from the time when he assumes the duties of the office and takes over possession of the property. *NATHAN PUJARI v. RADHA BUNDE NAIK* **8 Pat L J 327**

Wagj—Constitution of
The dedication of property in trust to secure the permanent performance of certain religious ceremonies is not void for vagueness nor does the fact that the settlor retains the residue of the income for herself vitiate the trust. *SAYID ISMAIL ALI KHAN v. MUHAMMAD HAMID BEGUM* **6 Pat L J 218**

Code of Civil Procedure 1889 s 539—Sanction to sue under section—
Death of original defendant—Jurisdiction to order
scheme
A suit was instituted to remove a Paja from the management of a Hindu shrine on the ground of mismanagement. Permission to institute a suit under s 539 of the Code of Civil Procedure 1889 had been granted. Pending the hearing the Raja died. His widow was substituted for him and later a posthumous son was added as a defendant. The trial Judge found that the shrine was a public religious and charitable trust and held that the defendant family should be removed from being trustees and a scheme settled. Upon appeal the son's hereditary right to manage the shrine on attaining majority was conditionally declared and the case was remitted for the settlement of a scheme. *Held* that there was jurisdiction to order the settlement of a scheme although the application for permission

RELEASE

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 3

I L R 38 Mad 959

See LIQUIDATOR I L R 43 Cal 588

See MORTGAGE I L R 34 All 606

See REGISTRATION ACT 1873 s 17 49

I L R 34 Bom 202

See STAMP ACT (II OF 1899) SCH I ART 55

I L R 38 All 56

conditional—

See CONTRACT ACT (IX OF 1872) s 28

I L R 38 Bom 344

of some of joint judgment debtors—

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RELEVANCY

of previous decision—

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I L R 1 Lah 540

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Power for Court to grant when order would be nugatory—

See BENGAL TENANCY ACT 1886 s 60

6 Pat L J 658

whether limited by pleadings—

See CIVIL PROCEDURE CODE 1908 O XXXII R 7

6 Pat L J 190

Claim for two reliefs—Right to one proved and to the other not proved—Right of plaintiff to a decree for the relief proved. Where the plaintiff claimed a decree for possession of a tank from which they had been dispossessed and a declaration that they had a permanent and heritable right in the tank and it was found that they were entitled to possession but were not entitled to a permanent and heritable right therein. Held that they were entitled to a decree for possession.

RELIEF—contd

sion as it was not a case of a plaintiff claiming one relief and being given relief of a wholly different kind. It was a case of a plaintiff claiming two reliefs—one of which he was entitled to and the other he had failed to prove. He was entitled to DEHU GHUNYA v. SEEMATI BAPAHINRA DEHI 2 Pat L J 15

RELIGIOUS BEQUEST

See WILL

I L R 46 Cal 489

RELIGIOUS CEREMONY

Right to perform religious ceremonies if may be enforced—Agreement to share profits of religious services—suit if he is to enforce. Parties who require religious ceremonies to be performed for their benefit are at liberty to choose the priest by whom they shall be performed and no declaration can be given that any person is exclusively entitled to officiate at ceremonies at a particular place. Where the plaintiffs claimed under an agreement executed by the ancestors of the plaintiffs and defendants that whoever amongst them might perform ceremony on a particular occasion on the banks of the river Punpun at Gaya he should bring whatever he might earn thereby into a common fund to be enjoyed by all the members of the family. Held that such agreement cannot be obligatory on the successors of the parties for all time in spite of the wishes of the members who might desire to terminate it and a suit does not lie to enforce the claim. *Dino Nath v. Pratap Chandra* I L R 7 Cal 30 4 O W N 70 and *Bhena v. Kotha Kola* 17 Mad L J 493 distinguished. *DWARKA MISHRA v. RAMPRATAP MISHRA* (1911) 16 O W N 347

RELIGIOUS ENDOWMENT

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 93 I L R 40 Mad 212

See HINDU LAW (RELIGIOUS ENDOWMENT)

See LIMITATION ACT (IX OF 1908) s 18

SCH I ARTS 193 144

I L R 39 All 676

See PARTIES I L R 40 Cal 323

See RELIGIOUS ENDOWMENTS ACT

See RES JUDICATA I L R 37 Bom 694

requirements for completion of a valid gift—

See HINDU LAW (RELIGIOUS ENDOWMENT) I L R 43 All 503

Religious Endowments Act (XX of 1863) ss 7 & 8 and 10—S is brought by surviving member of a Committee whether maintainable. A suit brought by a surviving member or members of a Committee appointed under the Religious Endowments Act (XX of 1863) is maintainable. *Santilata v. Marjona* I L R 33 Mad 111 and *Shri R. Narayan Panamutja Das v. Bhikhi Ram* I L R 39 Cal 304. *MUKERJEE* (1911)

Failure of the first trustees—Gift of terra of founders of the institution to create a new line of trustees. Held by the Full Bench (SRIYASA AYYANGAR J. concurring) that it is competent to an heir of the founder of

RELIGIOUS ENDOWMENT—con d

a shrine in whom the trusteehip has vested owing to the failure of the line of the original trustee to create a new line of trustee. *Per SRIYUSA AYYANGAR J.* In the absence of any such power in the deed of trust the Court alone has the power to appoint a trustee such a power of nomination is equivalent to an alienation of the office of trustee which is illegal. *GATRAJGA SART v SDEVTI NATA (1917)* I L R 40 Mad 812

Mutt—Head of Mutt—Trustee of temples—Appointment of successor—Compromise to avoid pro-cution—Interventor—Code of Civil Procedure (XII of 1905) s 39
 Rythusa of a mutt the pandara sannidhi or head had power to appoint his successor and was trustee of the endowments of certain dependent temples. In 1834 the pandara sannidhi appointed the appellant as chunna pattam or junior head with a right to succeed as head. This appointment was not made bond fide in the interests of the mutt but under a compromise whereby he had avoided a threatened prosecution for forgery of a will purporting to be that of his predecessor and appointing him as successor. The appellant having succeeded as pandara sannidhi suits were instituted in 1905 to remove him from being trustee of the mutt properties and of the temple properties. *Held* that the appellant's appointment as head of the mutt was invalid and that consequently he never became trustee of the temples but that on the finding which was not challenged on appeal that there was no evidence that the head of the mutt was a trustee of the mutt properties, the suit to remove him from being trustee of the mutt could not be maintained under s 339 of the Code of Civil Procedure 1889. *Pama lingam Pillai v Vythilingam Pillai (1893) L P R 1 A 180 I L P 16 Mad 490 (P C)* followed and applied. *NATARAJA THIAMBIRAN v KATLASAM PILLAI (1921)* I L R 44 Mad. 283

Removal of Mahant by unauthorised persons—Suit for restoration—Whether irregularities in removal entitle plaintiff to succeed
 When the Mahant of an endowment had been removed from office on account of unfitness. *Held* he was not entitled to succeed in a suit for a declaration that the defendant had no right to remove him from office and for possession merely on the ground that the persons who removed him from office were incompetent to do so unless he could show that he was not unfit to continue in the office. *NIAMAT ALI v YAD ALI SHAH* 6 Pat L J 408

Mutt—Relation of heads and managers of religious institutions to their property—Alienation by head of mutt—Trusts—Indian Limitation Act (IX of 1905) Sch I Acts 131 and 144
 The endowments of a Hindu mutt are not conveyed in trust nor is the head of the mutt a trustee with regard to them save as to any specific property proved to be vested in the head for specific and definite object. Consequently Art 131 of Sch I of the Indian Limitation Act 1905 which contains the expressions above quoted does not apply where the head of a mutt has granted a permanent lease over a part of the mutt property not proved to be subject to a specific trust. The same rule applies to the endowments of Mohammedan religious institutions and to alienations made by the Sajjadana him or Mutawali. *Ram Parkash Das v Anand Das*

RELIGIOUS ENDOWMENT—contd

(1916) I L R 43 Cal 70, (P C) L R 43 I A 73 explained. *Behari Lal v Muhammad Mutlak (1898) I L P 90 All 482 (P B)* *Dattatraya v Dattatraya (1903) I L R 27 Bom 363* *Nil mony Singh v Jagabandhu Roy (1896) I L R 23 Cal 536* disapproved. Except for unavoidable necessity the head of a mutt cannot create any interest in the mutt property to ensure beyond his life. *See* however has not adverse possession under Art 144 of the schedule above named during the life of the head who granted the lease. If the lease as a possession is consented to by the succeeding head that consent can be referable only to a new tenancy created by him and there is no adverse possession until his death. [Judgment of the High Court reversed.] *VIDYA VAPUTHI v BALUSANI AYYAR (1921)* I L R 44 Mad 831

Shibani rights whether trustees have power to convey life estate in—Adverse possession acquisition of Shibani rights by—Limitation Act (IX of 1905) s 10 Sch 1 Arts 124 134 and 144
 The right to administer the trust property of a public religious endowment within the limits imposed by the trust and for that purpose the right to possession of the property as against the previously administering the trust or others claiming through them can be acquired by adverse possession and in a trust of this nature it is only where a claim is set up adverse to the rights of the deity to who worship the property is dedicated that s 10 of the Limitation Act 1905 could have any application so as to deprive the defendant of the rights conferred by the remaining portions of the Act. The trustees of such an endowment have no power to convey even a life estate in the shibani rights attending the worship of an idol. Where the trustees purport to make such a conveyance the grantee is in adverse possession of the estate from the time when he assumes the duties of the office and takes over possession of the property. *NATHU PUJARI v RADHA BINDE NATH* 6 Pat L J 327

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 The dedication of property in trust to secure the permanent performance of certain religious ceremonies is not void for vagueness nor does the fact that the settlor retains the residue of the income for herself vitiate the trust. *SAYID ISMAIL ALI KHAN v MUHAMMAD HAMIDI BEGUM* 6 Pat L J 218

Code of Civil Procedure 1889 s 339—Sanction to sue under section—Death of original defendant—Jurisdiction to order scheme
 A suit was instituted to remove a Raja from the management of a Hindu shrine on the ground of mismanagement. Permission to institute a suit under s 339 of the Code of Civil Procedure 1889 had been granted. Pending the hearing the Raja died his widow was substituted for him and later a posthumous son was added as a defendant. The trial Judge found that the shrine was a public religious and charitable trust and held that the defendant family should be removed from being trustees and a scheme settled. Upon appeal the son's hereditary right to manage the shrine on attaining majority was conditionally declared and the case was remitted for the settlement of a scheme. *Held* that there was jurisdiction to order the settlement of a scheme although the plaintiff had no title to the shrine. *See* also *Heaton for permission*

RELIGIOUS ENDOWMENT—*concl'd*

contemplated only the appointment of new trustee and although the original defendant had died after the suit was instituted Judgment of the Court of Judicial Commissioner affirmed **PAJA ANAND PAO & RAMDAS DADUPAM (1920)**

I L R 48 Calc 493

Shebat—Benami purchase of Debtor property—Invalidity—Removal of shebat A purchase of debtor property by its shebat benami and without disclosing that he is the real purchaser is invalid even when the sale is in execution proceedings and the shebat has paid the full market value. It is sufficient ground for removing a shebat from his office that in the exercise of his duties he has placed him self in a position in which the Court thinks that he can no longer faithfully discharge the obligations of the office. Judgment of the High Court affirmed **PEARL MOHAN MUKERJI & MANOHAR MUKERJI (1921)**

I L R 48 Calc 1019

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)

See CIVIL PROCEDURE CODE (ACT V OF 1908) ■ 92 AND 14

I L R 42 Mad 668

Change of village from one district to another for revenue purposes—Religious institution in the village—Power of original committee of the original district to control the institution—No power for the committee of the new district to appoint trustees The Religious Endowments Act (XX of 1863) contemplates the creation of division or district committees once for all soon after the passing of the Act to take the place of the Board of Revenue and the local agents referred to in Reg VII of 1817. It is only the committee that is originally appointed in that behalf or its successor that can exercise jurisdiction over a particular religious institution and any order of Government transferring a certain village in which a particular religious institution is situated from one district to another for purposes of revenue administration does not deprive the original temple committee of its powers over the institution (such as appointing trustees for the same) or enable the committee of the new district to which the village is transferred to exercise any power over the institution. **PANORPA & BHU MAPPA (1915)**

I L R 39 Mad 949

s 3—*Temple falling under—Power of Temple Committee to appoint additional trustees in good faith and in the interest of the temple—Onus of proving bad faith on person challenging the appointment* For the better management of a certain Hindu temple which had no settled scheme of management and which was governed by s 3 of the Religious Endowments Act (XX of 1863) a Temple Committee appointed two trustees in addition to the three then existing. Held (a) that the committee had power to appoint the additional trustees in virtue of their general power of superintendence over temples committed to their care as successors to the Board of Revenue who has such power under s 2 of Reg VII of 1817 (b) that this power must be exercised reasonably and in good faith in the interests of the temple (c) that the onus of proving that it did not exercise this power reasonably and in good faith

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*con d*

lay not on the committee but on the person challenging the appointment of additional trustees e.g., on the already existing trustee as in this case who sued to set aside the additional appointment and (d) that the power of appointing new trustees was not confined to filling up vacancies alone but extended to creating additional trustees. **Shol David Saiba & Hussein Saiba I L R 17 M 1 212** referred to **Venkatchalla Pillai & The Taluk Board Saidapet I L R 3 Mad 55** **Aslayatholsi Ammal & The Teluk Board of Mayavarar I L R 34 Mad 533** s c 90 **Mad L J 885** and **Canappa Ayyar & Sri Vedayya & Alasiraya Bhattar I L R 90 Mad 534** s c 10 **gushed THEVENEGADATHANAGAR & PONA THEVENAGAR (1914)**

I L R 38 Mad 116

Suit for scheme for a temple falling under s 3—Civil Procedure Code (Act V of 1908) s 92 jurisdiction of Courts to frame a scheme under—Temple Committee powers of Ever since 1842 when the Board of Revenue handed over the management of the temple of Srirangam to certain trustees one trustee was chosen hereditarily every year from a certain family in the locality called the *Sthalathari* and two other trustees were appointed till 1863 by the Board and later on by the Temple Committee formed under the Religious Endowments Act (XX of 1863). In several litigations connected with the temple the temple was treated as one falling under s 3 of Act XX of 1863. Held that the temple was one falling under s 3 and not under s 4 and was thus subject to the control of the Temple Committee. Though the Courts can not interfere with the statutory powers conferred upon the members of the Temple Committee so as to deprive them of their statutory functions yet the Court has jurisdiction to frame a scheme under s 92 Civil Procedure Code (Act V of 1908) in respect even of a temple subject to the control of the Temple Committee and introduce change in its administration which the committee is not legally competent to introduce and which are desirable and necessary to meet the altered circumstances of the time. Considering that the actual management of the temple must vest in the trustees subject to the statutory control of the committee their Lordships did it under the Court did a new body of people called a Board of Control over the trustees and hence abolished the same. In the result their Lordships framed a scheme for the temple providing among other things for (a) the appointment of the temple trustees for the better management of the temple (b) the tenure of office of the trustees appointed being only for five years (c) the preparation of annual budget and audit of temple accounts and (d) the appointment of a cashier under the trustees. **PER CURIAM**—The powers of the committee or any other statutory body do not become superseded by the occurrence of a vacancy among its members. Powers of a Temple Committee considered. **Saithaka & Manjanna Shetty I L R 34 Mad 1** **disented from English and Indian cases reviewed SITHARAMA CHETTI & SRI S. SUBRAMANIAM Iyer I L R 39 Mad 60** (1916)

■ 3 and 4—

See HINDU LAW (ENDOWMENTS)
I L R 43 Mad 665

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*cont.*

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*cont.*

s 5—*District Court if may appoint a trustee pending decision of Civil Court in all cases.* District Courts have no power upon a vacancy occurring in the office of the trustee of a religious endowment to appoint a trustee under s 5 of the Religious Endowments Act unless the endowed property has been actually transferred to the former trustee under s 4 of the Act by the Board of Revenue or Government. *Itani Panikkar v Irani Vambudripal* I L R 3 Mad 311 Jan 11 v *Pinn Vaidi Munda* I L R 3 Cal 3 relied on *Diurram Saikh v Asim Saikh* I L R Cal 61 *Sheorattan Annawar v Jam Porraj* I L R 13 All. *Muhammad Saifud Din v Irasmullah* I L R 13 All 101 distinguished. s 5 of the Act contemplates the temporary appointment of a manager by the Court pending the decision by a Civil Court of the title of any other applicant to the office. **MOURVET SHEOVANDAN CIR v DHETAS UPADHYA** (1910) 14 C W Y 1104

Order appointing the Collector to take charge of a Math—Person—Jurisdiction. The District Judge has jurisdiction to appoint a temporary manager of trust property under s 5 of Act No XX of 1863 only in the case where a vacancy has occurred in the office of the trustee to whom such property shall have been transferred under s 4 of the Act. An order purporting to be passed under s 5 of the Act without any inquiry as to whether foundation for the District Judge's jurisdiction exists is open to the revisional if not the appellate jurisdiction of the High Court. *Itani Panikkar v Irani Vambudripal* I L R 3 Mad 401 *Gopala Ayyar v Arunachalam Chetti* I L R 6 Mad 8 and *Mohun Sheonandan Gir v Dhanu Upadhyaya* 14 C W Y 1104 referred to. **BASDEO GIR v PRITAM GIR** I L R 43 All 50

Order appointing the Collector to take charge of a Math—Appeal. No appeal lies against an order made under s 5 of the Religious Endowments Act 1863. *Minakshi Vaidya v Subramanya Sastri* I L R 11 Mad 26 referred to. **PRITAM GIR v MAHANT BASDEO GIR** I L R 43 All 55

s 7—

See MAHOMEDAN LAW—WAKF

I L R 46 Cal 13

Suit for removal of trustees—Parties. Two out of three of the members constituting a committee appointed under s 7 of the Religious Endowments Act 1863 are not competent to maintain a suit for the removal of the person or persons acting as the trustees of the endowment. The Committee under this section is a Corporation having a legal entity. **Syed Muhammad Hasan v Kazi Nazim Muhammad** 1 Pat L J 437

ss 7 & 10—

See RELIGIOUS ENDOWMENT

I L R 39 Cal 304

ss 7 and 10—Constitution of Committee under—Validity of Acts done by incomplete committee. One of a committee of three members appointed under s 7 of Act XX of 1863 (Religious Endowments Act) died and the vacancy thus

ss 7 and 10—cont.

caused was not filled up in accordance with s 10 of the Act. The remaining two members purported to perform the functions of the committee. *Held* that the remaining two members cannot be said to be a committee at all and cannot perform any of the functions of the original committee. **PER ARNOLD WHITE C J**—**ss 7 and 10** of the Act are imperative or obligatory and not merely directory. The law governing corporate bodies with regard to the capacity of the members of the corporate bodies to act is not applicable to the case of the statutory body appointed under s 7 of the Religious Endowments Act. *The King v Billinger* 4 T F 310 and 100 Eng Rep 1315 distinguished. **PER ABDUR RAHIM J**—The intention of the Legislature is that a committee appointed under the Act shall not consist of less than the number originally appointed. *Anantha Narayana Iyengar v Kallalam Pillai* I L R 22 Mad 451 distinguished. **SANTHALVA v MANJANA SRETTY** (1910) I L R 34 Mad 1

BUT see s 3 I L R 39 Mad 700

s 10—Temple Committee Vacancy—District Judge—Court—Personas designata—Civil Procedure Code (Act V of 1908) s 115. An order made by a District Court under s 10 of the Religious Endowments Act is an order revisable by the High Court under s 115 Civil Procedure Code (Act V of 1908). *Meenakshi v Subramanya* I L R 11 Mad 46 distinguished. *Gopala Ayyar v Arunachalam Chetti* I L R 26 Mad 33 referred to. When a Temple Committee does not do its duty and arrange for an election the Court can make the appointment without reference to the committee or direct the remaining members of the committee to fill up a vacancy. The power of the committee in such a case being derived from the Court an appointment by election there after is bad. *Ramanuja Iyengar v Anantaraman Iyer* 6 Mad L J 1 dissented from. **VASUDEVA AYYAR v THE NEGAPATAM DEVASTHANAM COMMITTEE** (1913) I L R 38 Mad 594

Vacancy in Temple Committee—Jurisdiction of District Judge—Civil Procedure Code (Act V of 1908) s 115—Power of revision by the High Court—Duty of remaining members of the Committee—Failure to perform duty—Election held after expiration of the statutory time. The High Court has jurisdiction under s 115 of the Civil Procedure Code 1908 to revise an order of the District Judge made under s 10 of the Religious Endowments Act XX of 1863 on the occurrence of a vacancy in a Temple Committee declaring that an election by the remaining members of the Committee to fill up the vacancy was regularly held and that the appointment of the person was valid. No appeal lay under the Civil Procedure Code from such an order. In making the order the District Court was acting in a judicial capacity as a Court of law and not merely in an administrative capacity. The matter in which the order of the District Court was made was a case within the meaning of s 115 of the Civil Procedure Code 1908. A case includes an *ex parte* application such as that made in this matter. *Minakshi Ayyudu v Subramanya Sastri* I L R 11 Mad 26 L R 14 I A 160 distinguished. On the true construction of s 10 of Act XX of 1863 the power of the remaining mem

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—contd

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—contd

s 10—cont

bers of the Committee to fill up the vacancy must be exercised within three months from the date of the occurrence of the vacancy. The District Court had no jurisdiction after the expiration of the three months to direct the remaining members of the Committee to fill up the vacancy by election or to make an order purporting to validate the appointment of the person elected. If the Committee did not perform their duty by holding an election within three months to fill up the vacancy a subsequent election by the remaining members after the expiration of three months is invalid and this is so notwithstanding that such a conclusion would enable the remaining members of the Committee by their own default to practically disfranchise the electors and at the discretion of the Court possibly to procure the patronage for themselves. The only remedy for that is to alter the law if wrong by legislation. The Board can only declare the law. *BALAKRISHNA UDASAI v. YASUDEVA DASAR* (1917)

s 14—

I L R 40 Mad 783

See CIVIL PROCEDURE CODE 1908—
s 2 I L R 42 Bom 742
s 92 AND 14 I L R 42 Mad 668
See PARTIAL I L P 40 Cal 323

Procedure to 1 fol

forced by committee in the transaction of its business—
Suspension of a temple trustee by a Temple Committee—
Legality of procedure—Suit by trustee for damages for illegal suspension—Liability of individual members of the committee in damages—Notice of suspension was given to a temple trustee in accordance with the opinion of the majority of the members of the local Temple Committee of his report recommending suspension and in spite of the objection taken by one member that in the matter should be disposed of at a meeting. It held that a Temple Committee under the Religious Endowments Act resembles a corporation and that the ordinary way to transact its business is at a meeting. Assuming that it can do some of its business in circulation it cannot remove or suspend trustees in this manner. *Rex v. Taylor* (1891) 31 Q 11 R 71 Ex v. Sutton 10 Mal 149 Ex v. 1 Mal 483 484 and Fonnambala 1881 11. The procedure being ultra vires it is illegal suspension in that there were sufficient grounds for suspension. In this in this last members of a Temple Committee who are parties to an illegal suspension of this kind are liable in damages. *Tyagi Jagannath v. Secretary of State for India* (1917) 144 Ind 466 and *Ferguson v. Ashcroft* (1917) 144 Ind 466 and *Indian and English decided* for *YANKATA NARAYANA THEK* *PONNEMWAMI NADAR* (1917)

I L R 41

s 14 and 18—cont
jointly—If either of them are competent
sanction to sue is given to two persons
of the Religious Endowments Act one of
not sue alone. *Indra v. Par*
I L P 38 Cal
under s 14

s 14 and 18—contd

to the exercise of the right of suit. *Verla. v. In re I L R 10 Mad 98* referred to it has to be construed strictly without enlarging its scope. *Sayad Hussain Aliyan v. Collector of Kaira I L P 21 Bom 257* referred to S 11 of the Act commented on. *VENKATESHA MALIA v. PAMAYA HEDAGE* (1914)

I L R 40 Mad 117

persons under s 18 of the Act—Suit by them under s 14—Death of one of the plaintiffs after suit is left at effects abatement. A suit instituted under s 14 of the Religious Endowments Act by four persons with the leave of the Court under s 18 of the Act does not abate on the death of one of the plaintiffs. *Venkatesha Malia v. Pamaya Hedage I L R 38 Mad 1192* *Maddala Bagavanarayana v. Vadapalli Perumalla Charyulu 29 Mad L J 231* distinguished. *Chalvi Par v. Durpa Par I L J 3: 411 216* not approved. *Parasuraman Munjee v. Narayanan Vambodri I L R 40 Mad 110* referred to. *ALAGAPPA v. MUTHIAN* (1917)

I L R 41 Mad 237

s 18—

See CIVIL PROCEDURE CODE 188 s 622
I L R 33 Mad 412
See CIVIL PROCEDURE CODE (ACT I OF 1908) s 92 I L R 37 Mad 184
I L R 40 Mad 212

RELIGIOUS FOUNDATION

Limitation Act 15 of 1877 s 28 SIA 11 Arts 11 144—Temple trusteeship and property bar of suit for former involves bar of suit for latter. The dismissal of a suit to recover the office of trustee for a temple whereby the right to the trusteeship is lost involves the loss of the right to recover a portion of the endowment. *GOTTIPATI PILLAI v. DAKSHINAMURTI POOSARI* (1910)

I L R 38 Mad 87

RELIGIOUS INSTITUTIONS—

See CUSTOM (RELIGIOUS INSTITUTIONS)
I L R 1 Lah 511 549
See MAHOMEDA LAW—FIDUCIARY
I L R 35 Bom 305

transfer of—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) I L R 50 Mad 919

RELIGIOUS OFFICE

See HINDI LAW SECT 104
I L R 40 Mad 105

competency of women to hold—

See HINDI LAW—RELIGIOUS OFFICE
I L R 41 Mad 858
See MAHOMEDA LAW—FIDUCIARY
I L R 35 Bom 305

RELIGIOUS POET

See OBSCURE I

PROCE
S. HIGH

30 Cal 57

RELIGIOUS TRUST

See PUBLIC RELIGIOUS TRUST

See TRUST I L R 40 Calc 232

Deed of endowment—

Side at last—Appear me 1 of the new *shahab* in case of death—Appointment has to be made—Receiver *pendente lite* Trust is will not be allowed to fail for want of a trustee and consequently if the nominee dies before qualifying or afterwards the Court will appoint a trustee *In re Order of Ch D 21 Pe Ambler's Trust 59 L T N S 10 Gunson v Simpson L F 51 * 33 In re Smith's will's Trusts L F 11 L 51* referred to Where a *shahab* is dead and there is no provision in the deed of endowment about the mode in which the office is to be filled up the Court will not read into the deed of endowment a provision for appointment to the office of *shahab* which is not to be found therein It becomes incumbent upon the representatives of the founders to make an appointment to the office of *shahab* and upon failure to do so the Court has power to appoint a new trustee and will exercise this power whenever there is a failure of a suitable person to perform the trust either from original or supervenient disability to act *Sital Das Babaya v Jyotap Chandra Sarma 11 C L J* referred to The appointment of a fit and proper person to be a new trustee is not a matter of arbitrary discretion of the Court The appointment must be made subject to well known and defined rules *In re Tempest L F 1 Ch App 485* referred to Where a receiver appointed *pendente lite* was directed by the subordinate Judge to continue to manage the properties on the scheme laid down in the deed of endowment pending an agreement between the parties to appoint a *shahab* Held that the proper course to follow was either to dismiss the suit or if the parties so desired to appoint a *shahab* and place the properties in his hands This latter order could be properly made only after amendment of the prayer in the plaint *Raj Krishna Dey v Brij Bhanu Dey (1912)*

I L R 40 Calc 251

RELINQUISHMENT

See FAMILY SETTLEMENT

I L R 38 All 335

See HINDU LAW—WIDOW

I L R 47 Calc 466

See HINDU LAW—WIDOW

L R 46 I A 259

See LANDLORD AND TENANT

15 C W N 680

See MAHOMEDAN LAW—DOWER

I L R 47 Calc 537

See NORTH WESTERN PROVINCES RENT ACT (XII of 1881) I L R 37 All 444

See UNDER RAYATI HOLDING

I L R 42 Calc 751

by patnidar—

See LANDLORD AND TENANT

I L R 41 Calc 683

in favour of sentient person—

See HINDU LAW—WILL

I L R 37 Calc 128

of claim—

See CIVIL PROCEDURE CODE 1882 s 43

I L R 32 All 625

RELINQUISHMENT—contd

of portion of claim—

See CAUSE OF ACTION

I L R 40 Calc 640

to save litigation whether binding on Reversioners—

See FAMILY SETTLEMENT

of service I L R 38 All 335

See MASTER AND SERVANT

I L R 35 All 132

RELEVANCY OF EVIDENCE

See EVIDENCE ACT 1872 s 32

I L R 44 Bom 182

REMAINDERMAN

See ESTOPPEL I L R 44 Calc 145

REMAND

See AGRA TENANCY ACT (II of 1901)

ss 162 163 I L R 38 All 181

s. 193 I L R 40 All 652

s 202 I L R 38 All 533

See APPEAL I L R 37 Calc 428

15 C W N 830

See (BENGAL) CESS ACT

2 Pat L J 653

See CIVIL PROCEDURE CODE 1908

ss 100 108 109 O XLI r 23

I L R 33 All 391

s 100 O XLI r 23

I L R 43 All 577

s 109 I L R 42 All 174

I L R 38 All 150

O XLI r 1 2 Pat L J 398

O XXI r 23 I L R 34 All 612

O XLI r 23

r 23 O XLIII r 1 (4)

I L R 35 All 427

r 25 15 C W N 575

r 33 I L R 37 Bom 289

O XLIII r 1 I L R 42 All 200

See CRIMINAL PROCEDURE CODE ss 112

167 I L R 36 All 262

See LETTERS PATENT

2 Pat L J 663

See PENSIONS ACT (XXIII of 1871)

s 6 I L R 39 Bom 352

See SANCTION FOR PROSECUTION

I L R 44 Calc 816

See SECOND APPEAL 2 Pat L J 564

appeal from order of on finding of fact—

See CIVIL PROCEDURE CODE 1908 O

XLIII r 1 I L R 2 Lah 25

by Appellate Court—

See COSTS I L R 39 Mad 476

Order of whether appealable to Privy Court—

See PRIVY COUNCIL APPEAL TO

I L R 38 Mad 509

REMAND—concl'd

after remand the lower Appellate Court went into the whole case on the merits as directed — Held that the High Court had ample jurisdiction to make the order remanding the whole case for determination on the merits *Attorney General v Simpson [1901] 2 CA 671* referred to *SARADA SUNDARI DASSAYA v GANGAHARI SAHA (1918)*
I L R 46 Calc 738

11 ——— Appeal from—Remand order passed otherwise than under O XLI r 23 is not appealable *MOHENDRO NATH CHAKRAVARTI v RAMTARAN BANDOPADHYAYA (1919)*
20 C W N 1049

12 ——— Appellate Court Inherent powers of—Code of Civil Procedure (Act I of 1908) s 151 and O XLI, rr 23 and 25 Under its inherent powers an Appellate Court has jurisdiction to remand a case for retrial apart from the provisions of O XLI rr 23 and 25 of the Code of Civil Procedure 1908 but should exercise that power with the greatest caution *RAGHUNANDAN SINGH v JADUNANDAN SINGH*
3 Pat L J 253

13 ——— Inherent powers of court Under its inherent powers an appellate court may remand a case if it thinks that it is necessary for the ends of justice to do so even where the case does not come within the terms of O XLI rr 23 and 25 of the Code of Civil Procedure 1908 *BRJMOHAN PATHAK v DEOBHANJAN PATHAK*
5 Pat L J 146

RE MARRIAGE

See DIVORCE I L R 48 Calc 636

See GUARDIAN—HINDU WIDOW
I L R 38 Calc 862

See HINDU LAW—WIDOW

See HINDU WIDOWS RE MARRIAGE ACT (XV of 1856) s 2

——— custom of—

See HINDU LAW—SUCCESSION
I L R 48 Calc 300

REMEMBRANCER OF LEGAL AFFAIRS

——— Position of—

See CONTENT OF COURT
I L R 41 Calc 173

REMOTENESS

——— rule of—

See WILL I L R 46 Calc 465

REMOVAL NOTICE OF

See FIXTURE I L R 48 Calc 602

REMOVAL OF CASTE DISABILITIES ACT (XXI OF 1850)

See HINDU LAW—JOINT FAMILY
I L R 40 Calc 407

See MALABAR LAW
I L R 44 Mad 891

——— s 1—

See HINDU LAW—WIDOW
I L R 35 All 466

REMUNERATION

See ADMINISTRATOR PENDENTE LITE
I L R 41 Calc 11

RENEWAL

——— option of—

See LANDLORD AND TENANT—LEASE
I L R 40 Calc 1079

RENNELL'S MAP OF INLAND NAVIGATION

See NAVIGABLE RIVER
I L R 40 Calc 390

RENT

See AGRA TENANCY ACT (II of 1901)
ss 4 167 I L R 39 All 605

See BENGAL PENT RECOVERY ACT

See BOMBAY CITY MUNICIPAL ACT (Bov
Act III of 1888) ss 140 (c) 143 (1)
(g) AND 2 (d) I L R 43 Bom 281

See ESTATES LAND ACT (I of 1908) s 46
I L R 41 Mad 121

See LANDLORD AND TENANT

See LIMITATION ACT (IX of 1908)—
SCH I ART 110 I L R 36 Mad 438
ARTS 110 116 I L P 37 Bom 656

See RENT DECREE

See RENT SUIT FOR

See RENT IN KIND

See RENT RESERVED

See STAMP ACT (II of 1899) s 69 SCH I
ART 35 CL (a) SUB CL (iii)
I L R 39 Bom 434

See SUIT FOR RENT

See U P LAND REVENUE ACT (III of
1901) ss 56 83 I L R 39 All 286

——— abatement of—

See PATRI LEASE I L R 41 Calc 633

——— arrears of—

See MORTGAGE I L R 39 Calc 810

——— distraint for—

See MADRAS ESTATES LAND ACT (I of
1908) s 62 (2) I L R 38 Mad 1140

——— enhancement of—

See BOMBAY LAND REVENUE CODE 18 9
ss 83 216 I L R 44 Bom 566

See OUDH PEST ACT (XXVII of 1904)
s 3 (10) AND CH VILA
I L R 40 All 541

——— fixation of—

See AGRA TENANCY ACT (II of 1901)
s 93 I L R 37 All 10

——— forfeiture for non payment of—

See LESSOR AND LESSEE
I L R 39 Mad 415

——— Khatim Inamdar right of after Intro-
duction of settlement—

See BOMBAY LAND REVENUE CODE 18 9
s 217 I L R 45 Bom 81

——— in kind—

See LANDLORD AND TENANT—FINANCE
MENT OF PEST I L R 37 Calc 610

RENT—contd

legal right to remission—

See **STATES LAND ACT (Mad Act I of 1904)** s 4 2nd 73 143

I L R 40 Mad 640

liability for—

See **LANDLORD AND TENANT**

I L R 34 All 601

See **SALE**

I L R 41 Calc 149

Mortgagor retaining property under a Rent Note—

See **CIVIL PROCEDURE CODE (Act I of 1908)** s 4th O XXXIV r 14

I L R 45 Bom 174

no estoppel by receipt of—

See **MADRAS ESTATES LAND ACT (Mad Act I of 1904)** s 3 I L R 37 Mad 1

non payment of—

See **MADRAS ESTATES LAND ACT (I of 1904)** s 153 I L R 39 Mad 60

partly in money partly in kind—

See **HABILIYAT CONSTRUCTION OF**

I L R 37 Calc 626

payment of, for sixty years—

See **MADRAS ESTATES LAND ACT (I of 1904)** s 13 CL (3)

I L R 39 Mad 84

permanent occupant—

See **OMBAY LAND REVENUE CODE 1870** s 210 I L R 28 Bom 996

permanency of—

See **LANDLORD AND TENANT**

I L R 37 Calc 30

payable in kind recovery of—

See **BENGAL TENANCY ACT 1885** s 40
25 C W N 714

receipt stating tenancy is at will—

value of—

See **LANDLORD AND TENANT**

24 C W N 1

relief against forfeiture for non-payment of—

See **LEASE** I L R 45 Bom 300

remission of—

See **CUSTOM** I L R 45 Calc 475

suit for—

See **AGRA TENANCY ACT (II of 1901)** s 34 I L R 35 All 512See **HOMESTEAD LAND**

I L R 42 Calc 638

See **JURISDICTION OF CIVIL COURT**

I L R 40 Calc 402

See **LESSOR AND LESSEE**

I L R 39 Mad 939

See **LIMITATION** I L R 38 Mad 101

I L R 48 Calc 85

suit for by a third party—

See **CONTRACT** I L R 41 Mad 458**RENT—contd**

suit for in Revenue Court—

See **MADRAS ESTATES LAND ACT (I of 1904)** I L R 39 Mad 33

suspension of—

See **LANDLORD AND TENANT**

I L R 46 Calc 956

War restrictions on—

See **POMBAY RENT (WAR RESTRICTIONS) ACT**See **CALCUTTA RENT ACT**

1 ——— **Rent for Ferry—Province of Small Caus Courts Act (I of 1887)** Sch II tr 5
Pent of a ferry suit for cognisable by a Small Cause Court To determine whether an amount payable under a contract is rent or not each case must be judged by its own circumstances. In a suit to recover sums due under a contract for the defendant plying boats in a private ferry *Held* that in the circumstances of the case the sum payable was in no sense a rent **PROHAR PATY v. DASHADHAR RAI (1910)** 14 C W N 994

2 ——— **Maintenance Grant—Baradarin Jagir Orissa—Landlord and Tenant—Grantor and Grantee—Kilayat estate in Orissa—Light tribute as rent—Assessment of rent by Settlement Officer—Finality of decision—Bengal Tenancy Act (I of 1885) ss 3 (5) 104 105—Bengal Tenancy Amendment Act (Ben III of 1903) s 9—Second Appeal—Findings of Fact—Inference of Law** In Orissa a proprietor of an estate governed by the law of primogeniture made a grant of certain villages at baradaran jagir khorposal nikar etc for the support of the younger brothers and other nearer relatives of the family it was not transferable but was subject to resumption on failure of direct heirs and the grantee had to pay to the grantor a proportionate share of the Government revenue *Held* that the amount payable by the grantee to the grantor under such conditions constituted rent within the meaning of s 3 (5) of the Bengal Tenancy Act 1885 and the grantees were tenants and not co-proprietors *Chunder Kant Chakraverty v. Mahomed Hossain & H P Act I 1* referred to Where a Settlement Officer made an assessment of rent under s 104 of the Bengal Tenancy Act (VIII of 1885) which was not appealed against under s 103 of the Act *Held* that the decision of the Settlement Officer was in view of s 107 of the Bengal Tenancy Act 1885 read with s 9 of Bengal Tenancy Amendment Act 1908 final Though the High Court in second appeal cannot interfere with findings of fact it can interfere with an inference of law drawn from the facts found **DWARAKA NATH BIDYADHAR v. DAMBART DHAP MAHAPATRA (1910)** I L R 38 Calc 278

3 ——— **Madrass Estates Land Act—(I of 1908) ss 3 (10) 19 and 189 A** Revenue Court has no jurisdiction to try a suit for rent of private lands as defined in s 3 (10) of the Madras Estates Land Act (I of 1908) such a suit must be brought in a Civil Court **PAJA APFA PAO BAHADUR v. NAAGANNA (1913)**

I L R 39 Mad 7

4 ——— **Evidence admissibility of—Previous decrees for rent—Admitted by a co-sharer if relevant on the question of rent—R v inter alia acta** Where a tenant holds lands under several landlords under one contract of tenancy and each co-sharer claims to collect rent pro

RENT—contd

tionately to his share a decree for rent obtained in a previous suit by one co sharer is relevant for the determination of the question of the rate of rent in a subsequent suit for rent by another co sharer who was joined as a *pro forma* defendant in the former suit *Ram Ranjan v Ram Varan* I L R 22 Cal 533 *Tepu Khan v Rajan Mohun Das* I L R 20 Cal 522 and *Abdul Ali v Raj Chandra Das* 10 C W N 1081 referred to *RAMADIN RAI v DEBUNWANTI KOER* (1912)

17 C W N 1016

5 ——— Oral evidence admissibility of—Evidence Act (I of 1872) s 92—Tenancy Leas Where a *labuliyat* was executed but was not registered and never came into operation oral evidence is admissible to prove the rent agreed upon by the parties A tenancy can be proved without proving the lease if there be any *Dan's Behary Christian v Raj Chandra Pal* 14 C W N 141 and *De Vedina v Polson Holt N P 47* referred to *AMEER ALI v YAKUB ALI KHAN* (1913) I L R 41 Cal 317

6 ——— Commutation of under Bengal Tenancy Act—(VIII of 1885) s 40 sub s (1) (3) (3) s 102 *Order for commutation of rent—Jurisdiction* Where under s 40 of the Bengal Tenancy Act an application by a tenant for commutation of rent was made to a Sub divisional Officer who transferred the same to a Settlement Officer who in his turn transferred it to an Assistant Settlement Officer who heard and decided the application on its merits *Held* that it was not competent for the Sub divisional Officer to transfer the application to the Settlement Officer *Held* further that it was incumbent on the Court to satisfy itself that an order made on an application under s 40 of the Bengal Tenancy Act was made with jurisdiction though it was not competent to examine the propriety of an order so made *Lalla Saligram Singh v Mohunt Ramgir* 3 C W N 311 *Kali Krishna Biswas v Pam Chandra Baidya* 21 C L J 487 19 C W N 893 followed. *JADU NATH MAITY v PRANERISHNA DAS* (1917)

I L R 45 Cal 769

7 ——— *Maurasi mokurari labuliyat*—Stipulation in for payment of rent partly in cash and partly in kind with statement of the money value of the portion payable in kind and declaring the total rent as the amount made up by the two—Rent is to be taken to be fixed in perpetuity at such amount In a *maurasi mokurari labuliyat* it was stipulated that the rent was payable partly in cash and partly in kind that the market value of the paddy was the amount stated in the *labuliyat* and the total rent was the amount obtained by the addition of the rent in cash and the money value of the rent in kind *Held* per *SANDERSON C J* and *MOOKERJEE J* (NEWBOULD J contra) that on a proper construction of the contract it must be held that the parties intended to fix the total rent which should be paid in the event of non delivery of paddy *ASHUTOSH MOHUN JADHYA v HARAT CHANDRA MUKERJEE* (1919)

23 C W N 1021

8 ——— Suit for by purchaser land lord—*Pls of payment to landlord a vendor—Notice of transfer before payment* In a suit for rent by the landlord the defence was that payment had been made to his vendor *Held* that if the defendant had in fact notice of the

RENT—contd

transfer before payment the plaintiff's suit must succeed but in the absence of a distinct finding on the point by the Lower Appellate Court the case should be remanded *MIDAPURU ZEMIN DARY CO LD v SYAMA CHARAN CHOWDHURY* (1918)

23 C W N 355

9 ——— *Kabuliyat—Construction of Rent payable partly in cash partly in kind—Value of paddy stated—Mourashi mokurari labuliyat—Jama abadharita and dharyya meaning of—Bengal Tenancy Act (VIII of 1885) s 68* Where a *maurashi mokurari labuliyat* in respect of 4 bighas recited *inter alia* the following—At the rent of Re 1 60 each and 7 aries of paddy, taking the cash and the price of paddy together assessing the total rent of Rs 16 6 8 gds and on payment of Rs 30 as the *salami* and covenant that I will maintain the boundaries and shall pay the cash rent fixed every year in Bhadra and Pous and the paddy in the month of Magh every year in one lot there shall be no increase or abate

ment in the *jama* *Held* per *CURRIAM* (NEWBOULD J dissenting) that looking at the evidence as a whole the parties did intend to fix the total rent which should be paid in the event of non delivery of paddy namely Rs 16 6 8 gds. *Duarka Nath Mukerjee v Durgendra Nath Ghosh* I L R 47 Cal 139 note followed. *Baneswar Mukerji v Umesh Chandra Chakrabarti* I L R 37 Cal 626 distinguished. Per *SANDERSON C J* When a *maurashi mokurari* lease mentions a certain sum of money as the *jama abadharita* which words may well be rendered as the fixed rent the meaning of the document seems to be very clear that the parties wanted to fix the value of the paddy that is the part of the rent which was payable in kind. Per *MOOKERJEE J* The latter words *abadharita* and *dharyya* (which latter is used in the present case) are derived from the same root and they have clearly the same signification Per *NEWBOULD J* The facts of this case seems to me to be indistinguishable from the facts of the case of *Baneswar Mukerji v Umesh Chandra Chakrabarti* I L R 37 Cal 626 When the value of the paddy varies the value of the cash may also be said to vary in comparison with the paddy The effect of variation is diminished by fixing as in this case the rent partly in cash and partly in kind The statement fixing the total rent at Rs 16 6 8 gds cannot be given any other meaning than a statement added to the document for the purpose of fixing the stamp duty and the registration fee *ASHUTOSH MUKERJEE v HARAT CHANDRA MUKERJEE* (1919)

I L R 47 Cal. 133

10 ——— *Dilavion—Abatement of rent on ground of dilavion—Onus of proof on landlord to prove amount recoverable on proof of dilavion tenant* When there is no express agreement to the contrary as soon as the fact of dilavion is established by the tenant in a suit for rent he is entitled to abatement and the burden is shifted to the landlord to prove the reduced amount of rent justly recoverable by him which can be done only by proof of the extent of the dilavion The finding of the Lower Court on evidence as to length of the unit of measurement cannot be assailed in second appeal *KRISHNA DAS LAW v ABDUL KARIM* 25 C W N 378

RENT DECREE

See EXECUTION OF DECREE.

I L R 28 Calc 288

I L R 40 Calc 623

— amendment of—

See PUNJAB TENANCY ACT 1869 s 10.

5 Pat L J 472

— Execution of—

See SALE I L R 43 Calc 293

See CHOTA NAGPUR TENANCY ACT 1904

s 211

5 Pat L J 468

— Whether acts as Res Judicata—

See CIVIL PROCEDURE CODE XVII

F 2

3 Pat L J 372

1 — Contribution suit—Contract Act (IX of 1872) s 69.—Suit for contribution of a sum payable by one judgment-debtor of joint debt.—Lawfully paid by one judgment-debtor to satisfy joint-debt.—Res judicata.—Plea of non-liability in contribution suit if barred in equity where defendant acquiesced in original claim. A decree was passed against several persons jointly in a rent suit and one of them paid the whole amount of the decree. This judgment-debtor subsequently brought a suit for contribution against some of his co-judgment debtors. The defendants pleaded that they were *teramdars* and not really liable for payment under the decree. *Held* that although the decree in the rent suit was not *res judicata* as between co-defendants the co-judgment-debtors should not be allowed to plead non-liability in the contribution suit. If they had such a plea they ought to have raised it in the rent suit. *Sura Parda v Jugutsi Parda* I L R 43 Mad 599 referred to. It is a recognised principle of equity that where two innocent persons one must suffer by the act of a third he by whose negligence it happened must be the sufferer. So even if the defendants were *teramdars* as they allowed their names to be used in the *kolala* and the *remindar* a *shereeta* and did not object when the *remindar* brought a suit against them they cannot be heard to complain if they are compelled to reimburse the plaintiff for what he had done for them. *Umesh Chandra v Khulna Loan Co* I L R 34 Calc 92 referred to. No hard and fast rule can be laid down barring the application of s 69 of the Indian Contract Act to the payment of a joint decree by one of the joint judgment debtors. *Put talah v Ganga Nath* I L R 8 Calc 113. *Mallura Nath v Kisto Kumar* I L R 4 Calc 269. *Mannindra Chunder v Jomaher Kumar* 9 C W N 670 discussed. But where the decree was for a share of the rent by a fractional proprietor and was executed against the plaintiff alone any interest other than that of the plaintiff was not imperilled and the plaintiff could not be said to have been interested in the payment of that part of the decree which was leviable from the defendants and could not recover the amount so paid by a suit for contribution under s 69 of the Indian Contract Act. But the payment by the plaintiff was lawful within the meaning of s 70 of the Indian Contract Act and he could recover on it under that section from the defendants who had been benefited by it. An interest in making the payment should be a criterion for deciding whether the payment was lawful within the meaning of s 70 of the Contract Act. *Chedi Lal v Bhagwan Dass* I L R 11

RENT DECREE—c d

All v Damodara Mudaliar v Secretary of State
I L R 18 Mad 45. Gordin v Durlar Sree Suray
Malu I L R 16 Bom 394. Smith v Dina Nall
I L R 12 Calc 113. Paulurto Nath v Uday Chard
2 C L J 311 313 discussed. AJODHIA SINGH
v JASBOO LAL (1910) 14 C W N 609

2 — Previous *ex parte* rent decree — Admissibility of as evidence of relationship between parties—Resumption of continuance thereof — Evidence Act (I of 1857) s 114 illus (d) & previous *ex parte* rent decree (between the same parties) is not merely an item of evidence but is conclusive as to the relationship between the parties at that time. Its value becomes more apparent since the terms of s 114 illus (d) of the Evidence Act permit the Court to make a presumption as to the continuance of the state of thing. *HIRANMOY KUMAR SAHA v PAMJAN ALI DEWAT* (1916) I L R 43 Calc 170

3 — Decree for ejectment for non-payment—Act VIII (II C) of 1869 s 50.—Decree for ejectment for non payment of arrears of rent—Period of 15 days if can be extended by executing Court after appeal dismissed. Under s 50 of Act VIII (P C) of 1869 the period of 15 days can only be extended by the Court of first instance at the time of drawing the decree or by the Appellate Court when disposing of the appeal from the decree. But cannot be subsequently extended by the Court executing the decree. *HUNAI SNEKH v SARAT CHANDRA DUTTA* (1917)

[21 C W N 749]

4 — Rent decrees obtained by putindar—Sale of putni under Reg VIII of 1819 after application for execution but before sale—Decree is to be executed as rent decree—Bengal Tenancy Act (VIII of 1886) s 65. Where after his putni taluk had been sold under Reg VIII of 1819 the putindar sued a tenant for previously accrued arrears of rent and recovered a decree and subsequently the putni sale was set aside and the putindar there after applied for execution of the decrees by sale of the holding under the Bengal Tenancy Act but before the sale the putni was again sold under Reg VIII of 1819. *Held* that the decrees could be executed as a rent decree the case being covered by the Full Bench decision in *Kirtipal Singh v Krihartha Meysa Das* I L R 30 Calc 666 ac 10 C N 547 which has not been overruled by the Privy Council in *Failes v Maharaj Paladur Singh* I L R 41 Calc 596 ac 18 C N 747. *MAHENDRA NATH GHOSH v ASHUTOSH GHOSH* (1917) 21 C W N 1132

5 — Produce Rent—If holder can fall into arrears—Bengal Tenancy Act (VIII of 1885) s 45 (3) 65 and 153 (E). A holding which is held on produce rent or partly on produce rent and partly on money rent is liable to be sold in execution of a decree for arrears. *MAHARAJA RAUT v KOWBAT SIKON* 5 Pat L J 641

6 — Two compromise rent decrees both providing for satisfaction by sale of the tenure—Second decree if may be executed against tenant personally when the tenure was sold in execution of the first decree—Sale subject to directions in the second decree. Two compromise rent decrees provided that the landlord should satisfy his claim for rent by sale of the tenure. Under the first decree the property was sold and purchased by the decree holder and the decree-

RENT DECREE—*concl'd*

holder next applied for personal execution of the second decree *Held*—That the executing Court cannot go behind the decree and must give effect if possible to both the decrees. The second decree having been passed before the sale of the property the sale was subject to the directions contained in the second decree **PATAY LAL BISWAS v. NAFAR CHANDRA PAL CHOWDHURY** 26 C W N 708

7 ——— Not a mortgage decree—A rent decree is in no sense a mortgage decree *Fortick Chunder Dey Sircar v. Foley* 1 L R 10 Calc 492 approved. If the landlord obtains two rent decrees against a tenant and first executes one decree by sale of the holding without notifying that the sale is subject to the other decree and purchases the holding himself he is not debarred from executing the other decree against the remaining properties of the tenant **MAHAPAJA RAJ HO IRASAD SINGH v. MUSAMMAT PAPANJOTA KOOER** 5 Pat L J 354

8 ——— Where five persons are entered in the Record of Rights as the tenants of certain land a rent decree cannot be obtained in a suit against only one of them **BRADAR SINGH v. BACHA MARYO** 5 Pat L J 32

RENT FREE GRANT

See AGRA TENANCY ACT (II of 1901) s 158 1 L R 33 All 553
St. ESTOPPEL 1 L R 39 Calc 439
 See JURISDICTION OF CIVIL COURT 1 L R 43 All 325

RENT FREE HOLDING

Lakshray Land accretions to—Lakshraydar is entitled to hold same rent free—Suit to recover possession from superior tenure holder and raiyat who took settlement from latter—Meane profits—Regulation XI of 1825 s 4 sub 4 (1) and (b) The holder of a rent free holding is entitled to possession of all lands forming accretion thereto but he is not entitled to hold the same rent free *Mea Jan v. Akram* 8 C L J 541 *Gourhari v. Bholanath* 1 L R 21 Calc 233 *Colam Ali v. Pali Prishna Thakur* 1 L R 7 Calc 479 *Chooramonee Dey v. Howrah Mill Company* 1 L R 11 Calc 696 *Pammonce v. Oomesh Chunder* [1858] Beng S D A 1836 and *Ramgully Nag v. Buroda Churn* 1 W R 124 referred to. Where such a person sued to recover the accreted land from the holder of the superior interest and from a raiyat who in good faith had taken settlement of the land from the latter *Held* that the plaintiff was not entitled to eject the raiyat. The principle of *Benode Lal Pakrashi v. Kalu Pramanik* 1 L R 90 Calc 708 applies equally to firm and alluvial lands. As against the superior holder the plaintiff who it was found had never paid him any rent or offered to do so was not given a decree for meane profits the former's claim for rent being set off against the latter's claim of meane profits **RAJOLA NATH POI v. NARADA LAL GUYA SARKAR** (1914) 18 C W N 1205

RENT FREE TANK

St. ESTOPPEL 1 L R 30 Calc 439
St. LIMITATION 1 L R 39 Calc 453

RENT IN KIND

conversion of, into money rent—

See HINDU LAW (REVERSIONERS) 1 L R 40 Mad 871

RENT RESERVED

See LANDLORD AND TENANT 1 L R 44 Calc 403
See SUIT FOR RENT 1 L R 45 Calc 347

RENT ROLL

certified extracts of—

See BOMBAY CITY LAND REVENUE ACT (Bom II of 1876) ss 50 55 59 40 1 L R 39 Bom 684

RENT SETTLEMENT ACT (BENG VIII OF 1879)

See BENGAL TENANCY ACT (VIII of 1885,) ss 103B 104H 1 L R 48 Calc 90

RENT SUIT

See IJARADAR 1 L R 48 Calc 1078
See LIMITATION 1 L R 48 Calc 65
See LIMITATION ACT (XV of 1877) Sec II, Arts 110 116 1 L R 34 All 494
See NON JOINDER 1 L R 48 Calc 518

Bremature—

See LIMITATION 1 L R 48 Calc 870

Title Paramount due possession by—Onus of proof—Apportionment of rent—Evidence Act (I of 18,?) s 109 Where a tenant is sued for rent he can set up eviction by title paramount to that of his lessor as an answer and if evicted from part of the land an apportionment of the rent may take place but the onus is on the lessor to show what is the fair rent of the lands out of which the tenant was not evicted *Goparund Jha v. Lalla Govinda Prasad* 12 W P 109 referred to *SURENDRA NARAY POY CHOWDHURY v. DINA NATH BOSE* (1915) 1 L R 43 Calc 554

Suit against one of several recorded tenants—Whether rent dec or money decree may be paid When 5 persons are entered in the Record of Rights as the tenants of a certain piece of land a rent decree cannot be obtained in a suit against one only **BRADAR SINGH v. BACHA MARYO** 5 Pat L J 33

Against co-tenants—Non substitution of heirs of deceased co-tenant—Decree whether good money decree against survivors—Liability of joint or joint and several—Right of co-tenant to insist on all co-tenants being implicated—Contract Act (IX of 1872) s 43 Where in a suit for rent the landlord purported to make all the persons who had entered into the contract of tenancy parties defendants and obtained an ex parte decree but some of the tenants having died before the suit the surviving co-tenants objected to the ground that the decree was not validly obtained: *Held* that the decree passed in such circumstances

RENT SUIT—cc

was a good and valid money decree enforceable against the tenants who were alive at the date of the decree or their representative. If the landlord desires to obtain a decree good against the land under the Rental Tenancy Act he must ordinarily (apart from any question of representation) implead all the co-tenants including the heirs or legal representatives of a deceased co-tenant. But for the purposes of a money decree (in the absence of express agreement to the contrary) he is free under s 43 of the Contract Act to sue any or all of the tenants. *Per P CHATTERJEE J* (RICHARDSON *J* reversing *J* except 104) when the contract is with a single person as tenant and he dies the liability of his heirs is a joint liability. *Per RICHARDSON J*. Liability is joint if on the death of one of the joint promisors the liability becomes the liability of the surviving promisors and no liability devolves upon the heirs or legal representatives of the deceased promisor. There being no survivorship amongst co-tenants in India and co-tenants not living under s 43 the right to be sued together *prima facie* the liability is joint and several. Authorities reviewed. *KRISHNA DAS POY & KALI TARA CHOWDHURANI* (1917)

22 N W N 239

All tenants not made party nor all properly represented effect of. In a rent suit one of the tenants had not been joined as a party but he had received a copy of the summons and been represented by a pleader after filing a written statement. In the appeal too the defendant was not made a party but the district judge after he had delivered judgment issued a notice to him informing him that his name had been added as a party defendant. In the said rent suit another infant tenant's mother on being proposed as guardian appeared through a pleader and stated she could not act unless the name was corrected which not having been done she did not defend the suit on behalf of the infant. Held that no useful purpose could be served by adding in the appellate stage a party defendant if he had not been made a party to the appeal and that after judgment in the appeal had been delivered he could not be bound by the insertion of his name in the record by the defendant. *BURENDRA NATH BOSE & ACHORE NATH BOSE*

25 C W N 525

Pendency of suit for ejectment if and when prevents limitation running. It is established as a general principle that the right to demand the rent which falls due during the pendency of a suit for ejectment is not in suspense during the pendency of the litigation. *NAGENDRA NATH SEY & SADBHU PAM MANDAL*

25 C W N 954

RENUNCIATION

See PROBATE I L R 40 Bom 666

REPEAL

See BOMBAY DISTRICT POLICE ACT 1890 s 62 I L R 45 Bom 203

See CIVIL PROCEDURE CODE 1908 O XXI r 33 I L R 37 Bom 289

See LIMITATION I L R 37 Bom 231

See STATUTE CONSTRUCTION OF I L R 35 Bom 307

REPEALING AND AMENDING ACT (X OF 1914)

See ATTACHMENT I L R 43 Bom 716

REPRESENTATION

See CONTRACT I L R 39 Mad 509

See HEREDITARY OFFICES ACT (Bom 111 of 1871) s 2 30

I L R 34 Bom 101

See HINDU LAW—WILL

I L R 31 Calc 186

— principle of—

See LANDLORD AND TENANT

I L R 37 Calc 73

Deceased defendant—Executor not substituted—Decree passed against heirs of binding on the estate—Will. If one of the defendants in a money suit brought by P died during the pendency of the suit leaving a will in favour of the plaintiff in the present suit. On P's application the heirs of D were substituted as defendants in her place and the plaintiff's application for substitution of his own name was rejected as he had not obtained probate of D's will. A decree was passed *ex parte* and the property sold in execution thereof. Held that the estate of D was not properly represented in the suit and that so far as the estate covered by the will was concerned it was not affected by the decree or the sale. *Daroonlop v Ranu* I L R 9 Bom 86. *Kharay mal v Dham* 9 C W N 201. *See* I L R 32 Calc 296. *L R 32 I A 93*. *Malanguni Das v Chooney Mons Das* I L R 22 Calc 903 followed. *Pro sunno Chunder Bhattacharye v Krishna Chaulanya* Pol I L R 4 Calc 31. *Chun Lai Bose v Osmond Bedy* I L R 30 Calc 1013 distinguished. *HARISH CHANDRA BISWAS & PURIDAS DAS* (1910)

14 C W N 1041

REPRESENTATIVE

See CIVIL PROCEDURE CODE 1908 s 47 62

I L R 39 All 47

REPRESENTATIVE IN INTEREST

See EVIDENCE I L R 40 Calc 691

REPRESENTATIVE SUIT

See CONTRACT ACT (IX OF 1872) s 70

I L R 42 Bom 556

RE PUBLICATION

See WILL I L R 40 Calc 192

REPUDIATION OF TITLE

See LEASE I L R 42 Bom 734

REPUDIATION OF WILL

See JURISDICTION OF HIGH COURT

I L R 34 Mad. 257

RE PURCHASE

See SALE WITH AN OPTION OF RE PURCHASE I L R 35 Bom 258

REPUTATION

See LABEL I L R 37 Calc 76

REPUTE

See PURMISE LAW—MARRIAGE.

I L R 23 Calc 49

REQUIREMENTS

See MORTGAGE I L R 45 Calc 748

RE-SALE

See CONTRACT I L R 39 Calc 568

of tenure—

See BENGAL TENANCY ACT s 65
14 C W N 1096**RESCUE FROM LAWFUL CUSTODY**

See WARRANT I L R 38 Calc 789

See WARRANT VALIDITY OF
I L R 42 Calc 708

Lawful apprehension resistance to—Opium—Person selling article as opium which turns out not to be the same—Arrest and detention of such person—Legality of arrest—Escape from such arrest—Opium Act (I of 1878) s 15—Penal Code (Act XLV of 1860) ss 221 and 225 Where a person purports to sell an article as opium which afterwards turns out not to be the same and he is arrested but escapes with the aid of others Held that his arrest and detention are lawful under a 15 of the Opium Act (I of 1878) and that his conviction under s 221 and that of the others under s 225 of the Penal Code are legal It is an offence for a person to escape from custody after he has been lawfully arrested on a charge of having committed an offence although he may not be convicted of such latter offence *Deo Sahay Lal v Queen Empress* I L R 28 Calc 253 approved *Mohammd Kazi v Emperor* (1916)

I L R 43 Calc 1181

RESERVED FOREST

Assam Forest Regulation (VII of 1891) ss 4 6 8 11 15 16 27 and 28—Claim by proprietor of permanently settled estates—Disposal of claim—Disallowance of claim without enquiry—Order of rejection not appealed against—Validity of final notification—Objection to validity raised at trial for breach of Regulation Where on the issue of a notification under s 5 of the Assam Forest Regulation (VII of 1891) proposing to constitute a certain area a reserved forest a proprietor filed an objection of claim before the Forest Settlement Officer that part of the notified area was his permanently settled estate and not at the disposal of Government under s 4 but his plea was accorded at the hearing to the view of such officer that he was not empowered to adjudicate on the claim and stated that he merely put in his objection and offered to produce evidence as a safeguard in any future proceedings before the Civil Court whereupon the officer without holding an enquiry or taking evidence held that he was not empowered to decide an objection denying the title of Government and therefore disallowed the objection and the claimant did not appeal against the order and the final notification under s 17 was published Held that the claimant could not on his trial for offences under s 20 of the Regulation raise the question of the validity of the final notification either because he had not really submitted his claim for adjudication and had not therefore adopted the course specified by the Regulation or if he had so submitted his claim because it had been disposed of within s 17 and he had not appealed against the decision of the Forest Settlement

RESERVED FOREST—contdForest Officer *KHOWDAR HEDAYETULLA v Emperor* (1920) I L R 47 Calc 8**RESERVED RENT**

See TENANCY AT WILL

I L R 44 Calc 2

RESIDENCE

See DIVORCE ACT (IV of 1869) ss 4 7 45 I L R 38 Bom 18

See SECURITY FOR GOOD BEHAVIOUR I L R 43 Calc 11

See SUCCESSION ACT (X of 1905) s 7 9 10 I L R Bom 687

Hindu widows right of—

See HINDU LAW I L R 45 Bom 337

meaning of—

See TENANCY ACT s 37 20 C W N 118

notification of—

See CRIMINAL PROCEDURE CODE (Act V of 1898) s 505 I L R 35 Bom 137

RESIDENT AT ADEN

See ADEN SETTLEMENT REGULATION (VII of 1900) s 13 I L R 40 Bom 416

RESIDUARY CLAUSE

See WILL I L R 38 Mad 1096

RESIDUARY LEGATEE

See PROBATE AND ADMINISTRATION ACT See PARTIES I L R 45 Calc 882

A residuary legatee is entitled to such an account as is necessary for the purpose of ascertaining what his share is *HESTER MOVI DASEE v DEHENDRA NATH POY* I L R 41 Calc 271

RESISTANCE BY STRANGERSee EXECUTION OF DECREE 14 C W N 838
I L R 41 Calc 251

See SEARCH

RES JUDICATA

See AGRA TENANCY ACT (II of 1901)—

ss 4 19 I L R 37 All 230

ss 10 202 I L R 33 All 377

s 63 I L R 33 All 453

s 95 I L R 37 All 223

ss 95 AND 167 I L R 37 All 41

ss 142 199 I L R 41 All 379

s 171 I L R 43 All 191

s 199 I L R 32 All 8

See WARD I L R 33 All 430

See BENGAL TENANCY I L R 43 Calc 450

See BENGAL TENANCY ACT—

s 103B 14 C W N 364

ss 100 and 109A 8 Pat L J 859

ss 105A 107 AND 109 3 Pat L J 279

RES JUDICATA—C

See CIVIL PROCEDURE CODE 1857—

- § 13 I L R 32 All 213
 § 13 70 I L R 33 Mad 453
 § 1 43 I L R 32 All 119
 I L R 33 All 32
 § 13 44 I L R 35 Bom 237
 § 17 46 I L R 36 Bom 43
 § 17 47 I L R 32 All 464
 § 13 439 I L R 33 All 752
 § 43 I L R 34 All 172
 105 14 C W N 298
 35 I L R 33 Bom 102
 See CIVIL PROCEDURE CODE (ACT V OF 1908) § 11
 § 47 O VI P 2 All 450
 3 I L R 32 All 210
 70 I L R 39 Bom 421
 O II P 2 I L R 40 Mad 291
 I L P 36 All 261
 O VI P 16 I L R 36 All 289
 O VII P 11 I L R 42 Bom 185
 O VIII P 2 3 Pat L J 372
 See COMPANIES ACT 1857, ss 6 40 41
 I L P 40 Calc 1
 See COURT FEES ACT 1870 s 10
 4 Pat L J 703
 See DYCEBEE I L R 35 Bom 275
 See ENFORCEMENT OF DEEDS
 I L R 40 Calc 29
 See EVIDENCE ACT (1 OF 1872) § 44
 I L P 33 All 143
 See EXECUTION PROCEEDINGS
 14 C W N 114 433
 See EXECUTOR DE BONIS TOFT LIABILITY
 AS I L R 33 Mad 423
 See FRAUD I L R 41 Calc 990
 I L P 37 All 635
 See HINDU LAW—
 ADOPTION 5 Pat L J 184
 L L R 40 All 593
 ALIENATION 3 Pat L J 426
 I L R 43 Calc 417
 JOINT FAMILY I L R 42 Bom 69
 PARTITION L P 41 I A 247
 I L R 48 Calc 1059
 PERVERSION I L R 43 Bom 869
 See INAM LANDS I L R 38 Bom 272
 See JURISDICTION I L R 44 Calc 367
 See LANDLORD AND TENANT
 I L R 42 Mad 702
 See LIMITATION I L R 23 All 264
 I L P 42 Calc 244
 See LIMITATION ACT (V OF 1877)—
 § 5 AND 7 I L P 34 Bom 589
 § 10 AND SCH II ART 148
 I L R 36 All 227

RES JUDICATA—H

- § 11 HINDU LAW—
 C Pat L J 593
 See MAROLIDAN LAW—D WEP
 I L P 41 All 508
 See MORTGAGE
 I L R 47 Calc 602 70
 I L R 39 Calc 527 925
 See PARTITION I L R 32 All 469
 4 Pat L J 29
 See RECEIPT 14 C W N 924
 See REVENUE IN CHARGES ACT (III OF 1900) § 1 I L R 33 All 353
 I L P 41 All 378
 See SUFFICIENCY 3 Pat L J 367
 See REVIEW APPLICATION FOR
 I L R 40 Calc 541
 See SATANJAM I L R 40 Bom 600
 See SHERIFF I L P 39 Calc 887
 See SPECIFIC RELIEF ACT (1 OF 1877)
 § 9 I L R 41 All 108
 See TRANSFER OF PROPERTY ACT (II OF 1882) § 19 I L R 46 Bom 617
 See WAKF VALIDITY OF
 I L R 43 Calc 158
 See WILL I L R 46 Calc 485
 — application to have joint mah formed followed by application for exclusive possession—
 See UNITED PROVINCES LAND REVENUE ACT 1901 s 233
 I L R 42 All 309
 — Compromise decree dealing with properties other than those in suit effect of—
 See COMPROMISE 1 Pat L J 268
 — decision by Minda Court—
 See HINDU LAW—SUDRAS
 I L R 2 Lab 207
 — Decision on abstract question of Law—
 See JOURNAL OF JURISPRUDENCE CODE 1879
 48 216 217
 I L R 45 Bom 1260
 — dictum in previous suit effect of—
 See SPECIFIC RELIEF ACT 1872
 ss 41 AND 34 4 Pat L J 632
 — Exparte decree—
 See LAND ACQUISITION ACT 1894
 5 Pat L J 259
 — Necessity of specially pleading the plea
 See SECOND APPEAL 25 C W N 661
 — Order for directions without deciding question of jurisdiction—
 See THIRD PARTY NOTICE
 I L R 45 Bom 224
 — partition suit whether bars subsequent suit for whole estate—
 See SANTAL PARGANAS SETTLEMENT REGULATION 1862 6 Pat L J 373

RES JUDICATA—contd

rule of—

See DECLARATORY DECREE SUIT FOR
I L R 43 Cal 694

order for directions not—

See THIRD PARTY NOTICE
I L R 45 Bom 24suit in Revenue Court for rent
followed by suit in Civil Court claiming to be
occupancy tenants—See AGRA TENANCY ACT 1901 s 167
I L R 43 All 191refusal of Court to file arbitration
award—See CIVIL PROCEDURE CODE 1903 s 11
SCH II, R 20 I L R 45 Bom 329

1 — Adjudications—*Res judicata* between co defendants—Burden of proof. Where an adjudication between co defendants is necessary to give the appropriate relief to the plaintiff such adjudication will be *res judicata* between the defendants as well as between the plaintiff and defendants. There must be a conflict of interest between the defendants a necessity for a decision between them and a judgment defining the rights and obligations of the defendants *inter se*. *Ram Chander Narayan v Narayan Mahadev* I L R 11 Bom 216 2-0 referred to and followed. The general rule is that a person who claims property through some other person must prove that such property vested in that other person. A person who alleges that property in the hands of a female was inherited from some person whose heir he claims to be must prove that it belonged to that person. *Diwan Ran Bhat Bahadur Singh v Indar pal Singh*, L R 26 I A 226 225 referred to. *NARASIMMA AMMAL v SRINIVASARAGAVA AIYAR* AIR (1909) I L R 33 Mad 112

2 — Matter substantially in issue—Capacity of parties—Civil Procedure Code (Act XIV of 1932) s 13. The plaintiff in conjunction with another had in 1902 filed a suit against the defendant for possession of certain property basing his claim on the allegation that he was owner. He succeeded in the first Court but the Court of Appeal held that the property had been dedicated to charity and refused to uphold his claim as owner. The plaintiff declined to adopt the Court's suggestion to modify his claim and be content to ask for a decree for possession as manager and his suit was then for dismissed. Five years later he filed the present suit claiming possession as manager. *Held* that his title as manager was one which might and ought to have been put forward in the previous suit and that his present claim was therefore *res judicata*. If a plaintiff is suing in a capacity in which he is a stranger to the capacity in which he sued in a former suit his claim has no proper connection with that former suit and the Civil Procedure Code (Act XIV of 1932) s 13 does not apply. *HAROOVAN PAMJI v MULJI HANJIVAN* (1909) I L R 31 Bom 418

3 — Practice—Suit against defendant on ground which failed not to be decreed on another ground—Application for leave to amend dismissed after arguments heard in appeal disallowed. A suit brought against the defendants on one ground which failed should not be decreed against

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them on another ground which they had no opportunity of meeting. After arguments in appeal have been heard the Court will not allow an amendment of the plaint so as to convert a suit of one character into a suit of a substantially different character. *H* filed a suit in 1904 against *A* and *J* the drawer and indorser respectively of two hundies. At the time of filing the suit *J* was dead. *H* obtained a decree against both defendants which decree remained unsatisfied. In 1905 *H* filed a suit against the heirs of *J* on the same two hundies. *Held* that the earlier suit having been filed against the firm of *J* and not against *J* personally was a bar to the later suit. *BAYABAI v HAJI NOOR MAHOMED* (1905) I L R 34 Bom 244

4 — Cause of action, how to be determined—Civil Procedure Code Act XIV of 1882 s 103—Bar of suit under s 158—Scope of. The plaintiff in the present suit sued *one* *Srinivasa Aiyar* Original Suit No 7 of 1904 on the ground that he was prevented from entering on his property and prayed for an injunction restraining the said *Srinivasa Aiyar* from obstructing plaintiff. In the present suit plaintiff sued the successors in title of *Srinivasa Aiyar* alleging that *Srinivasa Aiyar* wrongfully got into possession prior to his filing Original Suit No 7 of 1904 and prayed for a declaration of title and possession. *Held* that the present suit was barred as *res judicata*. Where the causes of action are substantially the same the form in which they are stated or the difference in the frame of the relief will not affect the question. *Haji Hasam Ibrahim v Mancharam Kalandas* I L R 3 Bom 137 followed. *Sibant Vithal Rao v Shid Nath Chakrabarty* I L R 3 Cal 419 distinguished. A Court is not precluded from considering the issues in the two suits and from comparing the issues in the two suits and from considering what the plaintiff had to prove or undertake to prove in either case in considering whether the causes of action are identical. *Chand Kaur v Parbati Singh* I L R 16 Cal 93 explained. Where in a suit at an adjourned hearing neither the plaintiff nor his pleader appears the case may be dealt with under s 158 of the Civil Procedure Code 1882. There is nothing in the language of that section which precludes its application to such a case. *Srinivas Sagayrao v Smah* I L R 39 Bom 736 dissented from. *NAGAYADA AIYAR v KRISHNAIAH AIYAR* (1910) I L R 31 Mad 97

5 — Decision on merits—Dismissal for under valuation—Civil Procedure Code (Act IV of 1908) s 11—Second suit for trial on same merits. A previous suit between the parties failed on the ground that the claim was undervalued and the plaintiff when called upon to pay the deficit Court fees omitted to do so. There were more merits also decided. In a subsequent suit for trial on the same merits the decision in the first suit was pleaded as *res judicata*. It is that the rejection of the suit on the ground of under valuation at any stage of it did not make it *res judicata* for the purpose of a subsequent suit on the same cause of action or litigation—the same title. *Held* further that the dismissal of the suit on the ground of undervaluation having been effected by itself the finding on the issue on the merits were not necessary for the decision of the suit and could not have the force of *res judicata*.

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IRAWA KOM LAKHMA MUGALI v SATYAPPA BIV
SHIDAPPA MUGALI (1910) I L R 35 Bom 38

6 ——— Execution proceedings—Decisions in such proceedg not appealed against—Finality of such decision—Prior decision on a question of law whether *res judicata*—A decision in a previous execution proceeding which merely lays down what the law is and is found to be erroneous, cannot have the force of *res judicata* in a subsequent proceeding for a different relief
PAUL NATH GOENKA v LAKHMANI & CO (1911)
I L R 33 Cal 343

7 ——— Partition suit—Sutty's widow to recover possession of her husband's share in ancestral family lands after partition by metes and bounds—All got partition of a house—In result of suit family lands being found not divided—Subsequent suit by a reversioner to recover possession of the house no *res judicata*—There were two brothers Kishoribhai and Desaiibhai. Kishoribhai died leaving him surviving his widow Bai Hanku a daughter Bai Divali and brother Desaiibhai. Subsequently Desaiibhai died leaving behind him his daughter's son Muljibhai. In 1854 Bai Hanku brought a suit against Muljibhai to recover possession of her husband's share in divided family lands after partition by metes and bounds. She alleged that the house in which she lived had fallen to her husband's share at partition. It was found that the family lands were not divided and the suit was dismissed. Bai Hanku died in 1907. In the year 1909 the plaintiff who was the nearest heir of Kishoribhai brought the present suit against Muljibhai to recover possession of the house. A question having arisen as to whether the finding in the suit of 1854 with respect to family lands operated as *res judicata* with respect to the house. Held that the decision in the suit of 1854 did not bar the present suit.
MULJIBHAI NARBHAIKAR v PATEL LAKHIMIDAS (1911) I L R 36 Bom 127

8 ——— Suit against pledger—Ornaments—Unauthorized pledge—Subsequent proceedings—Pledge of judgment against pledger—Non satisfaction—Suit against pledgee for detention after demand—Tortfeasors—Judgment not *res judicata*—Omission to raise an issue suggested by defendant—Defendant not claiming under a person against whom the issue was decided after defendant's transaction—Moveable property—Doctrine of lis pendens not applicable—Party and privity—Plaintiff brought a suit No 169 of 1897 against M to obtain a declaration that M was not adopted by plaintiff's step mother and that she (the plaintiff) was the owner of the property in suit as the heir of her father and to obtain possession. The cause of action was laid in March 1897. The property in suit included ornaments of considerable value which M had pledged with his creditor. After the filing of the suit M redeemed the ornaments and again pledged them with G with the exception of two which had already been pledged with G. The plaintiff recovered judgment against M but it was not satisfied. The plaintiff then brought the present suit No 111 of 1908 against G as pledgee of the ornaments from an unauthorized pledger for detention of the ornaments after demand on or about the 11th August 1907. The defendant answered that the judgment in the suit of 1897 was a bar to the present suit on the ground that the pledger and the pledgee were joint tortfeasors and the matter had passed into *res judicata*. At

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the hearing of the suit the defendant wanted the Court to raise an issue as to whether M was not the validly adopted son but the Court refused to frame the issue and admitted the judgment in the suit of 1897 (which had decided the issue in the negative) in evidence on the ground *inter alia* that the defendant who was M's pleader in that suit was a party to it. The Court overruled the defendant's plea of *res judicata* and allowed the plaintiff's claim for the recovery of the ornaments or their value. Held on appeal by the defendant that the defendant's plea of *res judicata* could not stand. The cause of action in the second suit must be precisely the same as the cause of action in the first suit in order to make the judgment in the first suit a bar to proceedings in the second suit. Held further that it was an error not to raise an issue as to whether M was not the validly adopted son and to admit the judgment in the former suit in evidence on the ground that the defendant was a party to it. The judgment in the former suit was subsequent to the pledge and the defendant did not claim under a person against whom the issue of adoption had been at the time of the pledge finally heard and determined. The fact that the former suit was pending at the time of the pledge of the ornaments could not prejudice the defendant on the issue of *res judicata* for the doctrine of *lis pendens* did not apply to moveable property. The defendant was therefore not a party of M and was not bound by that judgment. Held also that the judgment in the previous case was irrelevant to prove that M had got possession of the ornaments by means of fraud. GOVIND BABA BURJAR v JIJIBAI SANDE (1911)

I L R 36 Bom 189

9 ——— Co plaintiffs—Civil Procedure Code (Act V of 1908) s 11—Civil Procedure Code (Act VI of 1852) s 26—Joinder of parties—The plaintiff D and his step mother R (defendant) brought a suit against G to recover possession of certain ornaments which formed part of the estate of M the father of D and husband of R. It was held by the Court of first instance that R was entitled to the ornaments because they were her *stridhan* but the appellate Court held that she was entitled to them not because they were her *stridhan* but because she was the absolute owner of the property. D then sued R for a declaration that he was son and heir to M was entitled to hold the decree. The defendant in reply contended *inter alia* that the suit was barred by *res judicata*. Held that the bar of *res judicata* did not apply inasmuch as there was no final adjudication as between P and D and in the first suit it was a matter of no consequence to the defendant therein for the purpose of the relief to be given against him whether P succeeded or whether D succeeded. A finding to become *res judicata* as between co plaintiffs must have been essential for the purpose of giving relief against the defendants. *Pamelaandra Narayan v Narayan Mahadevi* I L R 11 Ecm 216 followed. The Court ought not to hold a point to be *res judicata* unless it is clear from the pleadings and the findings in the previous suit. No Court ought to infer *res judicata* by mere arguments from a judgment in a previous suit. *Attorney General for Trinidad and Tobago v Ericle* [1933] A C 518 followed. *PERUMINI v THOONPO MAHADEVI* (1911) I L R 36 Ecm 207

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10 ——— Settlement—*Suit by after born son to set aside settlement—Difference between estoppel and res judicata* Estoppel and *res judicata* are entirely different. *Res judicata* precludes a man averring the same thing twice over in successive litigations while estoppel prevents him saying one thing at one time and the opposite at another. *CASSAMALLY JAIRAJINATH v. SRI CURRIMBOY EBRAHIM* (1911)

I L R 36 Bom 214

11 ——— Consent decree—*Civil Procedure Code (Act V of 1908) s 11—Consent decree between predecessors in title of parties in suit—Injunction granted in former suit—Res judicata and estoppel distinguished* A consent decree has to all intents and purposes the same effect as *res judicata* as a decree passed *per initum* and this notwithstanding the words in s 11 of the Civil Procedure Code has been heard and finally decided. *In re South American and Mexican Company [1890] 1 Ch 37* followed. A consent decree comes to between the predecessors in interest of the present parties touching matters now substantially and directly in issue between them is *res judicata*. *Res judicata* ousts the jurisdiction of the Court while estoppel does no more than shut the mouth of a party. Estoppel never means anything more than that a person shall not be allowed to say one thing at one time and the opposite of it at another time while *res judicata* means nothing more than that a person shall not be heard to say the same thing twice over. *BHAISHANKER NANDESHI v. MORARJI K. HAJI & Co* (1911)

I L R 36 Bom 283

12 ——— Compromise decree rescission of—*Civil Procedure Code s 237 A—Agreement contravening rule in—Not opposed to public policy—Judgment debtor may waive rule* The test for determining whether there is an estoppel in any particular case in consequence of a decree passed on a compromise is whether the parties decided for themselves the particular matter in dispute by the compromise and the matter was expressly embodied in the decree of the Court passed on the compromise or was it necessarily involved in or was it the basis of what was embodied in the decree. The basis of a compromise decree is a contract between the parties to the litigation and the principles applicable to contracts would often have to be considered in determining the rules of estoppel applicable to such decrees at the same time such a decree cannot be regarded as a mere contract and has got a sanction for higher than an agreement between parties. The parties to the decree cannot therefore put an end to it at their pleasure in the manner that they could rescind a mere contract. Nor can it be impeached on some grounds on which a mere contract could be impeached such as absence of consideration or mistake. *Jenkins v. Foleston* 11 L R 56 and *Du* 117 distinguished. The reason is that the Court having found to adopt the agreement between the parties as its own adjudication the interpretation to be placed upon such adjudication, ought to be the same as that to be placed on the agreement itself. A compromise decree may in some respects have a greater validity than one passed after contest between the parties as such a decree has all the force of a compromise or a species of contract which is highly favoured by the Courts. Judgments passed on mutual agreements of parties are dis-

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tinguishable from judgments by default and decrees passed upon a confession of judgment or an admission by the defendant that the plaintiff is entitled to a particular relief. An agreement in contravention of s 237 A of the Civil Procedure Code is not opposed to public policy. The prohibition in section 11 not based on any rule of public policy rendering such agreement illegal. It is merely unenforceable in execution proceedings or by a fresh suit as the case may be. A judgment debtor is entitled to waive the benefit of the rule. *VENKATA PERUMAL RAJA PANDUR v. THATA PAMASAMY CHETTA* (1911) I L R 36 Mad 5

13 ——— Rent decrees—*How far decrees for rent in previous suit res judicata on the question of title in subsequent suit* A landlord tendered patta to B his tenant who objected to the patta on the ground that the extent of his holding was overstated some of the lands included in the patta not belonging to A but to B himself. The issue was raised whether the patta tendered was proper. The Court found that it did not contain any objectionable matter and was therefore a proper patta. Decree was accordingly given for rent in favour of A. A tendered a similar patta to B for a subsequent year and B again raised a similar objection to the extent of the holding. In a suit brought by A for the rent B objected to the extent of the holding and it was contended first that the matter was *res judicata* by reason of the decision in the previous suit. —*Per MURDO J.*—The finding in the previous suit that the patta was proper was a finding that the relationship of landlord and tenant subsisted between the plaintiff and the defendant in the respect of the land entered in the patta and the defendants cannot be allowed to plaintiff again to prove of his title. —*Per SANKARAN NAIY J.*—A decree for rent does not necessarily require a decision as to the terms of the patta or the extent of the land for which rent has to be paid. There being no express finding in the previous suit on the question of the ownership of the land it cannot be implied from the mere passing of the decree for rent that the question was decided for the purpose of the subsequent suit. Where a question need not be deemed to have been decided on the ground that the decree in the previous suit requires such assumption to make it a decree right. Where a party is not in the absence of a clear and express finding precluded from raising the question in a subsequent suit. The question whether A or B was owner of the land included in the patta was not *res judicata* by reason of the previous decision. *BANMIDI BAYTA NAIDU v. BANMIDI PARADESI NAIDU* (1911) I L R 36 Mad 218

14 ——— Compromised decree—*Compromise also affecting land not in suit—Continuance Act (III of 1877) s 37 cl (1)—Compulsory registration* Where a compromise affected land not in suit and a decree was passed in terms of the compromise in so far as it related to the property sued for to render the compromise available as a defence to a future suit an order has been made for its registration in accordance with the provisions of the Continuance Act (III of 1877) s 37. It is held that a portion of a *res judicata* has not passed into a decree or order of Court. It is prima facie a difficult question as to the effect of it in the proceedings of the Court. Its inclusion in pleadings put before the Court will bring it within the operation of cl (1) of

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S. 170 Interpretation Act. *Pande v. Nank v. Gangra*
Saran Sahu 1 L R 40 All 11 and *Interanal*
Ann v. Lakshmi Ann 1 L R 40 All 515 ex
 plained. *Na v. Chetty v. Venkayachari* 1 L R
 33 All 10. Is cited from *Jayamallin Pinnas*
v. Phubin Je n 1 L R 38 Cal 46 distin-
 guished. *CHELAMANNA v. ALA IAC* (1913)
 1 L R 86 Mad. 46

15 ———— Decision based on oath, etc.
effect of—*Oath's Act* (X of 1905) *effect of*
 An adjudication by a Court on an oath made
 by one of the parties to the suit would make the
 matter of issue covered by the adjudication *res*
judicata in a subsequent litigation between the
 same parties where the subject matter of the suit
 is different. *Per Curiam*. The decision of any
 matter directly and substantially in issue in a
 former suit between the same parties would none-
 theless be *res judicata* because the decision was
 based on the oath of one of the parties or a witness
 in the former suit. The effect is similar to that
 of a decision of a Court based on a finding of an
 arbitrator or on a compromise between the parties.
 In all the cases the decision is the decision of
 the Court and not of the arbitrator or the parties.
SANTASI BARTHA v. ANTA WADO (1913)
 1 L R 38 Mad. 287

16 ———— Land assigned to support
 religion, &c. *Lease*—*Adverse possession*—
Limitation—*Suit to recover possession of vatan land*
on the ground that the mortgage by the previous
holder ceased to be effective on his death—*Defence of*
tenancy for a term—*Dismissal of suit*—*Subsequent*
suit to recover possession on the ground that the
deceased holder had no right to alienate the land in
any manner. In the case of a lease for a term of
 years by the holder for the time being of lands
 assigned to support services rendered to a Mahan
 and religious community by successive holders
 time began to run not from the commencement of
 the tenancy of the person claiming to hold as a
 tenant but from the date when the claims of the
 parties became openly and undoubtedly adverse.
T. K. Ram Chander Singh v. Srimati Madho
Amari 1 L R 12 I A 197 and *Trimal v. Pam*
chandra v. Sheikh Gulam Zilani 1 L R 24 Bom.
 279 referred to. The plaintiff brought a suit on
 the ground that the alienation by way of mortgage
 of certain *rywye* vatan lands ceased to be effective
 on the death of the alienor the previous holder.
 The defendant contended that the document of
 alienation was a lease and not mortgage. The suit
 was dismissed on the ground that the plaintiff
 failed to establish his contention as to the character
 of the document upon which he had elected to go
 to trial. In a subsequent suit the plaintiff asserted
 that the lands in suit being *Sary* *Inam* continuable
 in the plaintiff's family in the succession of disciples
 the plaintiff's deceased predecessor had no right and
 power whatever to pass in writing those lands by
 way of mortgage or lease or in any other manner
 so as to let the writing continue in force after his
 death. *Held* that the subsequent suit was not
 maintainable owing to the bar of *res judicata*.
 The complaint in both the suits was the unlawful
 retention by the defendant of the lands after de-
 mand for delivery free of incumbrances. The
 matter of the retention of possession of the lands
 by defendants upon the terms asserted by him
 had been heard and finally decided in the first
 suit and could not be raised again. *Boomata*

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Debra v. Aristokamani Dosset 18 II P 163 re-
 ferred to. *Aaro Balund v. Jambhendra Tulde*
 1 L R 13 Bom 3 II distinguished. *MAHAMAD*
GATS v. PAJABAKSHA (1913)

1 L R 37 Bom 224

17 ———— Estoppel—Mortgage by Hindu
 widow claiming an absolute estate—*Ever-*
soner previous independent title of. On 28th
 August 159 one Mu Ammat Bharno was declared
 to have preferential title to one Satyabadi in
 certain lands. On the 30th September 1904
 Bharno executed a conditional mortgage. In a suit
 for foreclosure brought by the mortgagee against
 Bharno and Satyabadi's brother Balchhar who
 was made a party on the allegation that he was in
 possession as a donee of the equity of redemption,
 a decree was granted to the mortgagee and
 Bharno was repudiated the title of Bharno and
 set up a title in himself alleging that the property
 belonged to him and Bharno was in possession as
 his guardian) was dismissed from the suit. Sub-
 sequently the mortgage decree having been made
 absolute and the mortgagee having been unable to
 obtain possession of the lands in question a suit
 for recovery of possession was filed on the 18th
 June 1906 by the mortgagee against Balchhar.
 This latter suit was decreed on the 17th September
 1906 and both Courts of Appeal subsequently con-
 firmed this decree. Shortly after the decision of
 the High Court in the above appeal Bharno died
 and on the 2nd April 1909 Balchhar brought a
 suit against the mortgagee for declaration of title
 and recovery of possession. *Held* that the deci-
 sion in the litigation of 1870 could not operate as
res judicata. *Baleswar Bagarti v. Bhagwati Das*
 1 L R 5 Cal 701 followed. *Held* also that
 the decision in the mortgage suit could not operate
 as *res judicata*. *Jaggelwar Dutt v. Dhan Mohan*
Mitra 1 L R 33 Cal 420. 2 C L J 705 referred
 to. *Held* further that the plaintiff was bound by
 his allegations in the suit for recovery of possession
 and could not now be permitted to say that Bharno
 was in possession as a Hindu mother and that he
 himself was entitled to succeed on her death.
Bhaja Choudhury v. Chuni Lal Marwari 1 C L J
 95 referred to. *BHAGIRATHI DAS v. DALEHWAR*
BAGARTI (1913) 1 L R 41 Cal 80
 17 C W N 877

18 ———— Suit for rent decreed—Ten-
 ant if can institute title suit to declare he was
 the tenant of another person and for recovery of
 amount realised under the decree—*Alleged landlord*
joined as party. Where B having sued C for rent
 on the basis of a registered *kabuliyat* C denied his
 tenancy under B and asserted that he was holding
 as tenant directly under B's superior landlord A.
 But C's defence was overruled and a decree made in
 B's favour. *Held* that a subsequent suit brought
 by C in which he made both A and B parties
 defendants for a declaration that he was not C's
 tenant and for refund of the money realised by B
 under his decree was barred by *res judicata*.
Duaria Nath v. Pam Chand 1 L R 26 Cal 498
 1 C L J 266 distinguished. *SREENATH*
DUTT v. KAYER SHEKH (1913) 18 C W N 116

19 ———— Execution proceedings—Order
 returning execution application for correction of
 the amount claimed without notice to judgment
 debtor whether binding on the decree holder.
 Where the Court without issuing notice to the
 judgment debtor returned an execution applica-

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tion directing the decree holder to amend the same by reducing the amount claimed and the decree holder failed to appeal against the order. *Held* that the order was a judicial adjudication in a proceeding between the parties that the decree holder was not entitled to the larger amount and that the decree holder was consequently debarred from claiming the larger amount in a fresh execution application. The fact that the judgment debtor had no notice is immaterial except when the order is passed against him in which case it is an *ex parte* order and cannot bind a party who had no opportunity to make his defence. *Huralal Bose v. Dwija Charan Pore* 3 C L J 240. *Bhola Nath Das v. Prafulla Nath Kundu Chowdhry* 1 L R 28 Cal 122 and *Delhi and London Bank Limited v. Orchard* 1 L R 3 Cal 47, distinguished. **VYATURI GOUNDAN v. CHIDAMBARAM MUDALIAR** (1912) 1 L R 37 Mad. 314

20 — Findings on two issues—*Civil Procedure Code (Act I of 1908) s 11*—Judgment or findings on two issues one of which alone was sufficient—Both findings *res judicata* Where a judgment is based on the findings on two issues the findings on both the issues will operate as *res judicata* though the finding on only one would be sufficient to sustain the judgment. *Krishna Behari Poy v. Brojnarayan Chowdhanry* L P 2 1 A 283 and *Venkayya v. Narasamma* 1 L R 11 Mad 204 followed. **VENKATARAJU v. RAMANAMA** (1913) 1 L R 38 Mad 158

21 — Execution of decree—Failure of judgment debtor to raise objection to an amount erroneously set forth in an application for the execution of a decree—*Civil Procedure Code (1908) s 11* explain IV. *Held* that if a judgment debtor does not take exception to the amount erroneously set forth in an application for the execution of a decree as being the sum due he is not prevented by the principle of *res judicata* from doing so on subsequent application for the execution of the same decree. **KALYAN SINGH v. JAGAN PRASAD** (1916) 1 L R 37 All 589

22 — Suit on mortgage—*Ex parte* decree against mortgagors members of joint Hindu family—Decree set aside against one member for insufficient service while remaining against other members—Decree on retrial made against all the members—Decision that decree was valid decree in suit on mortgage—Fresh suit to set aside decree on same grounds as in suit on mortgage and between same parties—*Civil Procedure Code (1882) ss 13 and 241*—Suit to set aside decree made with jurisdiction and allowed to become final—Valid decision unless fraudulent. A mortgage was executed in 1894 by the manager of a Hindu joint family of which he and his two sons were the adult members in favour of the predecessor in title of the respondents and in a suit on a mortgage an *ex parte* decree was on the 30th of April 1897 made against the mortgagor and his two sons one of whom was the appellant and an order absolute for sale was made in September 1900. In 1901 the *ex parte* decree was set aside against the other son on the ground of insufficient service on him and on the retrial of the suit the Subordinate Judge on the 22nd of September 1907 made a decree against all three members of the family notwithstanding that the decree of the 30th of April 1897 was still in existence against the appellant. In 1906 an order was applied for to make the decree of 1902

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absolute against all the judgment debtors. The appellant made objections which were overruled and an order absolute for sale was made by the Subordinate Judge on the 3rd of November 1906 which was affirmed by the High Court on the 28th of February 1908. *Held* that a fresh suit brought by the appellant against the respondents to have the decree of the 22nd of September 1907 set aside on the ground that he was not a party to it and that the Court had therefore no jurisdiction to make it was on the principle of *res judicata* not maintainable as being between the same parties and raising precisely the same grounds and objections as had been raised and disallowed in the former suit and proceedings on the mortgage. It is not open to suitors in India who have exhausted the remedies competent to them to institute a fresh suit the object of which is to declare that a decree competently and with adequate jurisdiction obtained therein is not applicable to them although they are named in the decree. Even if the objections were wrongly decided and the decree was erroneous it must when it has been allowed to become final be taken as being valid if the Court had jurisdiction to make it and provided as was the case here there was no fraud proved. **Malkarjun v. Aharari** 1 L R 93 Bom 367. **L P 27 1 A 216** followed. **RAJWAD PRASAD PANDIT v. RAM PATAN GIN** (1915) 1 L R 37 All 493

23 — Sale of Khoti lands—*Civil Procedure Code (Act I of 1908) s 11*—Sale of Khoti lands on the basis that they are alienable—Subsequent suit between the parties on the allegation that the lands were inalienable—Khoti Settlement Act (Bombay Act I of 1880) s 9. Certain Khoti lands were sold in execution proceedings between the parties on the footing that they were alienable and purchased by the defendant. The plaintiff then filed a suit to recover possession of the lands on the allegation that the lands being occupancies their sale was invalid under s 9 of the Khoti Settlement Act 1880. *Held* that the plaintiff's allegation was barred by *res judicata* inasmuch as the sale in execution decided inferentially as between the plaintiff and the defendant that the lands sold were not occupancies. **KASHI NATH KRISHNA v. DHONDIBHAI** (1916) 1 L R 40 Bom 675

24 — Effect of rule—Rule of *res judicata* not a mere technical rule. The application of the rule of *res judicata* by the Courts in India should be influenced by no technical considerations but by matter of substance within the limits allowed by law. **SHEOPAL ANAND v. RAMNANDAN PRASHAD NARAYAN SINGH** (1916) 1 L R 40 Cal 694. 120 C W N 33

25 — Finding in claim case if *res judicata* re other properties—*Civil Procedure Code (Act I of 1908) O 121 r 63* effect of—*Wakf validity of Properties A and B* are in a claim included in an alleged wakf. The finding in a claim case regarding A that the wakf is a fraudulent transaction is not conclusive in a suit for declaration and possession regarding a share in B. An order in a claim case is conclusive only as regards the particular property in dispute. *Held* further that a wakf having been given effect to during the life time of the wakfi is valid and irrevocable. **Sarnamogji Dasi v. Ashutosh Gokarnani** 1 L R 47

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sold in execution of a decree obtained on the mortgage and a part of it was purchased by the mortgagee and the rest by a stranger who later on sold it to the mortgagee. The mortgagee purchaser was no party to the suit of the 4th zemindar of A who had purchased only the equity of redemption at the sale in execution of his rent decree. *Held* that the decision in that suit was not *res judicata* against the mortgagee purchaser who was entitled to show that he held certain portions of the land purchased by him under permanent leases granted to the mortgagor by the proprietors of B on certain terms. That as regards such lands the 4th zemindar title being found to be in the proprietors A *res judicata* in the present suit in which both the proprietors of B and the mortgagee purchaser are parties the mortgagee purchaser is entitled to hold them under the 4th proprietor of A as to that share on the terms of the permanent leases granted by the proprietors of B. *SHRI CHANDRA RAY & HARENDRA LAL RAY* (1918)

22 C W N 721

31.—Finding on unnecessary issue.—*On the Procedure Code (Act V of 1908) s 11—Finding recorded on an issue which is not necessary in the first suit—Finding does not become res judicata—Finally decided meaning of.* In 1903 the plaintiff sued the defendant to recover possession of land and arrears of assessment at an enhanced rate alleging that the defendant was a tenant at will and not a permanent tenant. The Court held in that suit that the defendant was a yearly tenant and though it decreed the claim to recover arrears of assessment at the enhanced rate it dismissed the claim to recover possession on the ground that no notice to quit had not been given by the plaintiff. Ten years later the plaintiff gave to the defendant a legal notice to quit and brought a second suit to recover possession of the land alleging that the defendant was a tenant at will and that he was prevented from continuing otherwise by *res judicata*. *Held* by *HEARON J* that though the issue as to the nature of the tenancy was undoubtedly directly and substantially in issue it could not be said that it was finally decided in the earlier case. *Held* by *FRANK J* that the dismissal of the claim for possession prevented the finding that the defendant was not a permanent tenant from operating as *res judicata* and that the issue as to the character of the tenancy was a matter collateral to the liability to pay enhanced assessment. *DAUDHAI ALLIBHAI & DARA RAMA* (1918)

I L R 43 Bom 563

32.—Adoption suit.—*Civil Procedure Code (Act V of 1908) s 11—Suit by Hindu widow to set aside adoption made by her as invalid—Suit dismissed on the ground of estoppel and also on the merits—Fresh suit by reversionary heir to declare adoption invalid if maintainable—Hindu widow how far presents estate.* A suit by a Hindu widow to set aside an alleged adoption by her of the defendant as the son of her deceased husband was dismissed by the Courts in India on the ground that the plaintiff was by her conduct estopped from denying that the defendant was validly adopted but on appeal to the Privy Council the Judicial Committee did not confine its decision to the question of estoppel only but held as a fact that the plaintiff had authority to adopt the defendant and he was validly adopted.

RES JUDICATA—*contd*

On the death of the widow an alleged reversionary heir sued the defendant in the previous suit for recovery of the estate on the allegation that the widow had no authority to adopt. *Held* that the decision in the previous suit was a bar to the maintainability of this suit. That in that suit, the widow notwithstanding the personal estoppel under which she laboured represented the estate on the question of fact as to whether the defendant had or had not been adopted. Where the estate of a deceased Hindu has vested in a female heir a decree fairly and properly obtained against her in regard to the estate is in the absence of fraud or collusion binding on the reversionary heir and a Hindu widow otherwise qualified to represent an estate in litigation does not cease to be so qualified merely owing to personal disability or disadvantage as a litigant although the merits are tried and the trial is fair and honest. *RISAL SINGH & BALWANT SINGH* (1918)

23 C W N 399

33.—Decision.—*Administration suit—Validity of gift—Decision in same suit—Civil Procedure Code (Act V of 1908) s 11* S 11 of the Code of Civil Procedure 1908 is not exhaustive of the circumstances in which an issue is *res judicata*. A testator by his will and codicils provided that certain annuities should be paid out of a trust fund thereby created and that the residue of the income of the fund should be paid to the deacons of a Baptist church subject to certain conditions with a gift over to another Baptist church if the conditions were not fulfilled. In an administration suit in the High Court during the life of the last surviving annuitant it was held that the conditions had not been fulfilled and that there was not an intestacy as to the surplus income rejecting a contention on behalf of the next of kin that the gift over was invalid as creating a perpetuity. The decree provided for the determination of the destination of the income or corpus of the fund upon the death of the annuitant. It should be deferred until after that event. In further proceedings in the suit after the annuitant's death the next of kin contended that under the reservation in the decree they were entitled again to raise the contention that the gift over was invalid. *Held* that the validity of the gift over was *res judicata*. *Fam. Appeal & Appeal v. Pappaswami I L R 43 C 33 L P 111 A 37 and Peart v. Merriott 23 Ch D 189* followed. *Judgment of the High Court reversed. HOOD & ADMINISTRATOR GENERAL OF BENGAL* (1911)

I L R 43 Cal 400

25 C W N 915

34.—Rent suit.—*Question of title in the civilly raised if res judicata.* In a suit by the Plaintiff to recover lands appertaining to a *zamindar* belonging to his predecessors the defence was that the latter had abandoned the *jete*. In a previous suit by the Plaintiff against the Defendant for rent on the basis of a *kabuliyat* the Defendant had averred that the *kabuliyat* had been obtained by misrepresentation and set up a tenancy under a third party. It had been found in that suit by the first Court that the *kabuliyat* was not genuine but in the Appellate Court the dismissal of the suit by the first Court was upheld on the finding that the Plaintiff had abandoned the *jete*. *Held*—That the decision was not *res judicata* in the present suit. *GOHER SRIKANT & ALBERT SRIKANT* 24 W N 717

RES JUDICATA—*contd.*

35. — Family Custom, Effect of decision as to—*Portion of descendants of non-contenting branches of the family* Where it is necessary to establish a custom in a family and where pains have been taken to bring upon the record every branch of the family and where that custom has been the subject of content and thoroughly threshed out in the presence of all branches of the family the matter cannot be a *sua* raised by the descendants of the branches even though certain branches did not take an active part in the content but contented themselves with admitting that the custom existed. *MOWAR SHEWBAK SINGH v. MOWAR THAKUR DAVAL SINGH* 1 Pat. L. J. 221

36. — Decision incidental to main issue—*Halter operate as a judgment—Examining a plea of plea and judgment to a certain what was decided and a substantially in issue* In a previous suit by the plaintiff for delivery of a taluk and it was alleged that the rent was Rs. 49 per annum. The court, finding that the rent was less than Rs. 49 per annum, dismissed the suit and in order to decide what was the defendants were entitled to record a finding that the real rent was Rs. 40 per annum. In the present suit the plaintiff sued for rent at the rate of Rs. 40 per annum. Held that the question of the rent payable by the defendants was *res judicata*. The decision that the rent was Rs. 30 per annum being recorded in reliance for the purpose of arriving at a correct conclusion regarding the cost was only incidental and recorded for a purpose collateral to the main issue. In order to ascertain what matter directly and substantially in issue in the previous suit was heard and finally decided, the pleadings and judgment in that suit may be examined. *MITTLE LODDAR v. JADAB CHANDRA CHATTOPADHYAY* 2 Pat. L. J. 156

37. — Mortgage suit property wrong ly described—*Decree is binding on suit for sale of property actually covered by decree* Where the execution of a decree on a mortgage bond failed on the ground that in the plaint in the suit the property was described as being situated in Mouzah L whereas in fact it was situated in Mouzah M. Held that a subsequent suit on the mortgage bond was not barred by the rule of *res judicata*. Non suit does not operate as *res judicata*. *JAYARDELLAR SARAH MISSE v. AMBICA PRASAD SINGH* 2 Pat. L. J. 313

38. — Failure to produce evidence in first suit—*Withdrawal will use to bring fresh suit effect* If a suit is dismissed on the ground that as constituted it could not succeed the dismissal is not *res judicata* however erroneous may be the idea that the frame of the suit barred a decision. If however it is dismissed for want of evidence the decision is final. Where the plaintiff's suit was dismissed by the first Court and the plaintiff appealed and applied to the appellate Court for leave to withdraw the appeal on the ground that he had not been able to adduce evidence necessary for the substantiation of his case. Held that the order of the appellate Court granting leave to withdraw amounted to a decision that the evidence on the record was not sufficient to support the plaintiff's case and therefore a subsequent suit between the same parties in which the same matters were substantially in issue was

RES JUDICATA—*contd.*

barred by the rule of *res judicata*. *SATTABAD GOLIA v. BEDIADHAP BAN IANPA* 3 Pat. L. J. 404

9. — First suit decreed in the Second Class Subordinate Judge's Court—Subsequent suit in Court of the First Class Subordinate Judge—*Held that a suit involving both suits—No bar of res judicata—Jurisdiction—Civil Procedure Code (Act I of 1908) O II = 2—Minor plaintiff not to be prejudiced by misale of his guardian* The plaintiff's guardian filed a suit in the Second Class Subordinate Judge's Court to recover possession of property alleging that the plaintiff was the adopted son of one Nathu. The plaintiff's adoption was upheld and suit decreed. The plaintiff subsequently filed a second suit in the First Class Subordinate Judge's Court for the recovery of another portion of family property. The defendant pleaded that the plaintiff was not the adopted son and that the suit was barred by O II = 2 Civil Procedure Code. On plaintiff's behalf it was contended that the defendants were barred by *res judicata* from disputing plaintiff's adoption. Held that the decree in plaintiff's favour in the previous suit could not be pleaded as *res judicata* in the subsequent suit as the judge by whom it was made had no jurisdiction to try and decide the subsequent suit in which the issue as to adoption was subsequently raised. Held also that the suit was not barred under O II = 2 of the Civil Procedure Code 1908 as the plaintiff was a minor when the first suit was brought and could not be prejudiced by a mistake made by his guardian as his right to sue in his own name came into effect on his attaining majority. *Gulab Mander v. Judmanand Singh* (1902) 1 I 99 I A 200 referred to *YANKAT v. UNKAR NATHU* (19 0) 1 L R 45 Bom 805

40. — Where both parties appealed from decree of first Court and Appellate Court disposed of both appeals by one judgment accepting plaintiff's appeal and rejecting that of defendant separate decrees being given—and defendant in his second appeal did not file a copy of the decree passed on his appeal—*Civil Procedure Code Act I of 1908 O 42 = 1—Circumstances in which consent as to interest—Whether oral evidence of agreement to pay interest is admissible—Indian Evidence Act I of 1872 s 90 proviso (2)* Plaintiff respondent sued for recovery of Rs. 8.5 principal and Rs. 412 8 0 interest on a *bahi* entry which made no mention of interest. First Court decreed Rs. 325 and interest at Rs. 2 per cent per mensem making a total of Rs. 448 8 0. Both parties appealed and the Lower Appellate Court wrote a judgment in defendant's appeal covering both appeals and accepted plaintiff's appeal allowing Rs. 895 the amount given in the entry and Rs. 264 as interest total 1089 and dismissed defendant's appeal. A short judgment was also written in the plaintiff's appeal referring to the other and separate decrees were given in the two appeals. Defendant then preferred a second appeal to this Court attaching thereto copies of the two judgments and of the decree in plaintiff's appeal but not of the decree passed in his own appeal. Held that as there was no valid appeal before this Court in respect of the decree of the Lower Appellate Court on defendant's appeal the decision relating to the sum of Rs. 448 8 0 was final and the present appeal in respect of this item was barred as *res*

RES JUDICATA—contd

judicata C v C and B (22 F R 1903) referred to, *Jugal Kishore v Chammo* (85 F R 1903 F B) distinguished *Held* also that, having regard to the concluding words of *proviso* (2) of s 92 of the Evidence Act oral evidence of an agreement to pay interest on the amount shown due in the entry was admissible such entries in *balis* not being of a formal character *Kishore Chand v Guran Ditta Mal* (52 F R 1911) distinguished *Bura v Maisha Shah* (104 F R 1901) and *Paghu Mal v Bandu* (110 F R 1903) referred to *BHAN SINGH v GOKAL CHAND*

I L R 1 Lah 83

41 ——— Decision in previous suit whether "res judicata" as between the defendants—necessary essentials—Estoppel—Admission by defendant in a previous suit which did nothing to influence plaintiff's beliefs or actions *Held* following *Ram Chandra Narain v Narain Mahadev* (I L R 11 Bom 216) that where an adjudication between the defendants is necessary to give the appropriate relief to the plaintiff the adjudication will be *res judicata* between the defendants as well as between the plaintiffs and defendants But for this effect to arise there must be a conflict of interests between the defendants and a judgment defining the real rights and obligations of the defendants *inter se* Without necessity a judgment will not be *res judicata* amongst defendants nor will it be *res judicata* amongst them by mere inference from the fact that they have been collectively defeated in resisting a claim to a share made against them as a group *Broja Behari v Kedar Nath* (I L R 12 Calc 530 F B) and *Balambhat v Narayanbhat* (I L R 25 Bom 74) approved *Held* further that as the plaintiff was fully cognizant of his own rights and position the admission of the defendant made in a previous suit between the parties who did nothing to influence either plaintiff's beliefs or actions could not operate as an estoppel in the present suit *MPHRA v DEVI DITTA MAL*

I L R 1 Lah 88

42 ——— *Ex parte* decree—Application for rehearing on ground of non service of summons—Application dismissed—Suit to contest decree on the same ground whether maintainable—Code of Civil Procedure (Act V of 1908) O IX r 13 Although a decree can be set aside on ground of fraud yet if question has already been agitated between the same parties and decided by a Court of competent jurisdiction the matter is *res judicata* *JANGAL CHAUDHRY v LALGIT PASTAN*

6 Pat L J 1

43 ——— Withdrawal from Suit—Where a defendant has entered appearance and filed a written statement and then withdrawn from the suit he is not entitled to institute a suit to set aside the *ex parte* decree obtained against him in these circumstances merely on the ground that the plaintiff in a joint suit procured his decree by means of perjured evidence *RAM NARAIN LAL SHAW v TOOKI SAO*

5 Pat L J 259

44 ——— Suit by public—If barred by the decision in a previous suit between a Manager appointed under the Religious Endowments Act and some claimants as *Mohants* A Manager was appointed under s 11 of the Religious Endowments Act of 1863 in respect of a temple and thereupon a person claiming to be a *Mohant* or *Dundee* of the temple instituted a suit for estab-

RES JUDICATA—contd

lishment of his title There were three Defendants in the suit viz the said Manager his successor in office and another rival claimant to the office of *Dundee* The suit was decreed During the pendency of the suit the public brought the present suit under s 92 of the Civil Procedure Code but the District Judge dismissed the suit on the ground that the trial of the question raised in the present suit was barred by the result of the decision in the previous suit which was pending at the date of the institution of the present suit *Held*—That the decree in the earlier suit though operative against the Manager appointed under s 11 of the Religious Endowments Act as also against the rival claimants could not possibly operate to defeat a suit by members of the public instituted under s 9 C P C s 92 contemplates the administration of a trust created for public purposes Such administration may include the removal of an existing trustee the appointment of a new trustee or both In such a suit it may be held that the endowment was not of such a nature as to attract the operation of the provisions of the Religious Endowments Act 1863 and that the appointment of the Manager under s 5 of the Act was without jurisdiction and so forth *SAHAYAM CHAKRABARTY v KHA GENDRANANDA*

28 B W N 504

45 ——— Land Acquisition Act—(I of 1894)—Decision under it may be reopened in regular suit—*Res judicata* general principle of not limited by Civil Procedure Code (Act V of 1908) s 11—Land Acquisition Act (I of 1894) s 64—Award if includes decision on disputed question as to disposition of compensation money—Gift by Hindu to wife whether limited or absolute—Principle of construction Under a deed of settlement executed by one P one half of certain properties was given to his adopted son and the remaining half was given to his two wives who were to take the same half and half One of these properties having been acquired by Government a question arose in a proceeding under s 32 of Act I of 1894 between the adopted son and one of the wives as to whether the latter was absolutely entitled to her share of the compensation money or whether the same was to be retained by her having no right to alienate her interest in the property under the deed of settlement The High Court when the matter came up before it held that by the deed of settlement the wife was intended to have a widow's estate only in the property devised Subsequently the wife having bequeathed her properties to Respondent by Will, the representatives of the adopted son instituted a suit against the claimants under the Will alleging that she had a limited estate under the deed of settlement and had no power to dispose of the properties by Will *Held*—That it was not open to the Courts in this suit to review the decision of the High Court In the proceeding under s 32 of Act I of 1894 that the lady had only a limited estate in the property without power of alienation It is not competent for the Court in the case of the same question arising between the parties to review a previous decision no longer open to appeal This principle is of general application and is not limited by the specific words of s 11 of the Civil Procedure Code so that the fact that the decision in question was not

RES JUDICATA—contd

claimed in a former suit did not make any difference. The importance of a judicial decision is not to be measured by the pecuniary value of the particular item in dispute and the Defendants in the suit could not be heard to say that in view of the comparatively small value of the property involved in the proceeding under s. 32 of Act I of 1893 it was not thought worth the while to appeal from the decision of the High Court in that proceeding. The award as constituted by the Land Acquisition Act is nothing but an award which states the area of the land the compensation to be allowed and the apportionment amongst persons whose interests are not in dispute. A dispute between interested people as to the extent of their interest forms no part of the award. The determination of such a dispute in the High Court was a decree and appealable as such to the Privy Council. It is not accurate to say that under the Hindu law in the case of a gift of immovable property to a Hindu widow she has no power to alienate unless such power has been given. **T B PALACHANDRA PAO v B S PANCHANDRA PAO** 20 E W N 715

RESPONDENT

— d at of—

See APPEAL, PARTIES TO AN
I L R 39 Mad. 386

RESTITUTION

See ASSIGNOR OF A MONEY DECREE.
I L R 38 Mad. 36

See CIVIL PROCEDURE CODE 188 s. 493
I L R 38 All 163
I L R 32 All 79

See CIVIL PROCEDURE CODE 1908

s. 47 AND 144 I L R 44 Bom 702
s. 144

— claim for—

See CIVIL PROCEDURE CODE (ACT I OF 1909) s. 144 I L R 43 Bom 492

Application for restitution of property—subsequent application for mesne profits res judicata—Code of Civil Procedure (Act I of 1908) ss. 141 and 144 and O II r 2—(Act XIX of 1881) s. 58.—Limitation Act (IX of 1908) s. 1 Art 181. Where a decree obtained against the defendants was reversed on appeal and they applied for and obtained restitution of the property from the plaintiff held that a subsequent application for mesne profits in respect of the property for the period during which the plaintiffs were in possession was maintainable and that the period of three years provided by Art. 181 of Sch I to the Limitation Act 1908 began to run from the date of the appellate Court's judgment. A proceeding in which relief by way of restitution is claimed is neither a suit nor an execution proceeding but a miscellaneous proceeding to which the rules applicable to execution proceedings in substance apply. The provisions of O II r 2 of the Civil Procedure Code do not apply to such a proceeding. Article 181 of Schedule I to the Limitation Act 1908 does not control the period

RESTITUTION—contd

during which mesne profits shall be allowed to accumulate and whatever the number of years during which the decree holders have been in possession the defendant is entitled to be compensated in respect of the whole of that period provided he applies within three years from the date on which the right to the relief accrued. **KRUPASINDHU RAY v MAHANTA BALBHADRA DAS** 3 Pat L J 367

RESTITUTION OF CONJUGAL RIGHTS

See CIVIL PROCEDURE CODE 1908—

s. 11 I L R 37 Bom 563

O XXXIX r 1 I L R 42 All 134

See COURT FEES ACT (VII of 1870) Sch

II Art 17 (vi) I L R 33 All 767

See DIVORCE ACT (IV of 1869) ss. 2 & 4

4 I L R 38 Bom 125

See HUSBAND AND WIFE

I L R 37 Bom 393

See LIMITATION ACT (IX of 1909) s. 20

I L R 34 All 412

See MAHOMEDAN LAW—DOWER

I L R 35 Bom 386

See MAHOMEDAN LAW—RESTITUTION OF

CONJUGAL RIGHTS

See MARRIAGE I L R 33 All 80

— decree for should not be executed by detention of wife in prison—

See CIVIL PROCEDURE CODE 1908 O XXI
r 33 I L R 44 Bom 972

— suit for effect of—

See MAHOMEDAN LAW—DIVORCE
I L R 46 Cal 141

Jurisdiction—valuation of claim—Jurisdiction of Second Class Subordinate Judge to entertain the suit—Bombay Civil Courts Act (XVI of 1869) s. 24—Suits Valuation Act (VII of 1857) s. 11. A suit for restitution of conjugal rights wherein the claim was valued by the plaintiff at Rs. 65 was instituted in the Court of the Second Class Subordinate Judge. The First Court decreed the claim and on appeal the decree was confirmed. On second appeal it was contended that the First Court had no jurisdiction to try the suit. Held that the valuation of the claim by the plaintiff must be accepted for the purpose of jurisdiction unless it was shown to have been made either from any improper motive or deliberately for the purpose of giving the Court a jurisdiction which in fact it had not. **Jan Mohamed Mandel v Mashar Effendi** I L R 34 Cal 22 followed. **JATODA v CHHOTU** (1909) I L R 34 Bom 236

— Decree against wife—Information against wife's parents—Costs. Plaintiff filed a suit against his wife and her parents to obtain a decree for restitution of conjugal rights against his wife and a personal injunction restraining the parents from obstructing his wife from living with him and from allowing her to live in their house. The lower appellate Court gave the Plaintiff a decree for restitution of conjugal rights and granted an injunction against the parents. On appeal—Held that the order granting the injunction was wrong. **Jamunobai v Narayan**

RESTITUTION—contd

Moreswar Pendse 1876 1 Bom 165 distinguished
Bai JAMANA v DAYALJI MAKANJI (1919)
 I L R 44 Bom 454

RESTORATION OF APPEAL

See APPEAL 6 Pat L J 625

RESTORATION OF SUIT

See CIVIL PROCEDURE CODE 1909 O IX
 NR 8 AND 9 S 131

I L R 34 All 426

See SMALL CAUSE COURT SUIT

I L R 44 Calc 950

Decree set aside for fraud—Order of Court of concurrent jurisdiction of effective to restore suit Where a decree obtained in a Court of equal jurisdiction was set aside by another Court which went on to add that the result of the decree being declared fraudulent would be that the original suit would be restored *Held* that this order of a Court of equal jurisdiction could not operate as a direction to the first Court to restore the suit and that in refusing to restore the suit the Court had committed no error *KHETRA MOHAN BARIK v MANGOBINHA PAL (1910)*

14 C W N 558

Order dismissing application for restoration—appeal No appeal lies from an order dismissing an application for restoration of a suit *JAGDISH NARAIN PRISAD SINGH v HARDANS NARAIN SINGH*

2 Pat L J 720

RESTRAINT ON PROCEEDINGS

See INJUNCTION I L F 38 Calc 405

RESTRAINT OF TRADE

See CONTRACT

I L R 48 Calc 1030

See CONTRACT ACT s 27

RESTRAINT ON ALIENATION

See TRANSFER OF PROPERTY ACT 1882 s 10

RESTRAINT UPON DRUNKEN AND DISORDERLY PERSON—

See PENAL CODE s 341

I L R 44 Mad 913

RESTRICTION OF HABITUAL OFFENDERS (PUNJAB) ACT 1918—

s 3 and 7—Order of restriction following an order of acquittal for good behaviour—where her legal *Held* that a restriction order under s 7 of the Restriction of Habitual Offenders (Punjab) Act following an order for security for good behaviour is *ultra vires* under the provisions of the section and must be set aside *HARIN BAKULH v CROW*

I L R 1 Lah 100

ss 8 12 and 13—Whether an order of restriction for a period exceeding one year passed by a Magistrate requires confirmation by the Sessions Judge—Criminal Procedure Code Act I of 1898 s 103 *Held* that an order of restriction for a period exceeding one year passed by a Magistrate under the provisions of the Restriction of Habitual Offenders (Punjab) Act does not require confirmation by the Sessions Judge *CROW v SURELA*

I L R 1 Lah 614

RESULTING TRUST

See LIMITATION ACT (XV of 1877) s 10
 I L R 35 Bom 49

See SETTLEMENT BY A HINDU WOMAN OF TRUSTS I L R 40 Bom 341

Purchase by husband of land in Pangoon and conveyed to wife—Erection of land of dwelling houses—Suit by husband against wife as a mere benamidar—Parties born of English parents but with permanent residence in India—Law applicable to such a suit—English Law with rebuttable presumption of advancement in wife—Onus of proof The parties in this case were husband and wife born in India of English parents and who had resided in India all their lives except for a visit to England occasionally The appellant had bought land with money of his own or borrowed and had procured it to be conveyed to the respondent by two deeds and had at his own expense erected thereon two dwelling houses In a suit brought by the appellant against his wife for a declaration that the houses were held by her as his benamidar and that he was the true owner of them and for an order that she should convey them to him the respondent while admitting that the sites of the houses had been so purchased and conveyed to her and that the houses had been built upon them as stated alleged that the sites were conveyed and the houses built on them for her as an advancement and that she was consequently entitled to a beneficial interest in them as her own property *Held* that the principles and rules of law which would be applicable to the case if it were tried in a Chancery Court in England were applicable to it when tried in Pangoon There would be a presumption of an intended advancement which might be rebutted but that the onus of rebutting it rested in the appellant *Gopalrao v Gopalrao v Gungapersaud Gopalrao 6 Moo I A 53 and Usher Ali v Ulfat Fahma 13 Moo I A 3* distinction gashed To rebut such a presumption it was not sufficient for the appellant merely to state that he did not intend to confer any beneficial interest on the respondent but he must establish with reasonable clearness that he had other and different motives for the action he took *Devoy v Devoy 3 Am & G 403 per 1 C Sir Fane Wood* applied in principle *Held* further that on the evidence the onus had been discharged by the appellant and he was entitled to succeed *KERWICK v KERWICK (1920)* I L R 40 Calc 960

PRESUMPTION

See ASSESSMENT I L R 43 Calc 913

See CANTONMENT PROPERTY

I L R 38 Bom 1

See CHAUKHATI CHAKFAN LANDS

I L R 42 Calc 710

I L R 45 Calc 685

I L R 37 Calc 51

I L R 44 Calc 841

I L R 45 Calc 765

See CIVIL PROCEDURE CODE 1880 s 44
 I L R 35 Bom 382

See FORFEITURE I L R 38 Bom 539

See CRIMINAL I L R 38 Bom 433

I L R 39 Bom 89

RESUMPTION—contd

See JAGIR I L R 39 Calc. 1
I L R 46 Calc. 683

See KAM

See MAPPAH REGULATION (XXX OF 1800)
s 4 I L R 38 M. d. 620

See RESUMPTION BY GOVERNMENT

See RESUMPTION OF SARANJAM

See SHERMAN LANDS

I L R 31 Bom 560

See SHERMAN I L R 31 Bom 403

— distinguished for enfranchisement—

See CHAPITABLE LANDS
I L R 40 Mad. 939

— of grant—

See GRANT OF LAND
I L R 43 Bom 37

— of muaf—

See AGRA TENANCY ACT (II OF 1901)
s 108 I L R 39 All 689

— of Pargana Inam land—

See BOMBAY LAND REVENUE CODE (BOM
ACT V OF 1879) s 102
I L R 45 Bom 884

— of Saranjam—

See SARANJAM I L R 41 Bom. 408

Presumption for public purpose by Government of land granted by East India Company—Scheme to erect dwelling houses at adequate rent for the accommodation of Government Officers in Bombay—Construction of a lease and sanad—Exemption from public purpose as to exemption from public purpose—Notice of resumption addressed to one party and served on another—Held: In these cases the Judicial Committee held affirming the decisions of the Courts in India) that the providing of housing accommodation for Government Officials by the erection of dwelling houses for their private residences at adequate rents was a public purpose within the meaning of a lease of land from the East India Company given in 1801 and a Sanad or Government Permit of land granted in 1803 by the same Company which made such lands (situate on Malabar Hill Bombay) liable to resumption for public purposes upon certain terms as to notice and compensation. The scheme was one which their Lordships agreed with the Courts below would under the circumstances in evidence redound to public benefit by helping the Government to maintain the efficiency of its servants. Held also (agreeing with the Courts below) that the English decisions which construed the words "public purposes" as used in the Statute 43 Eliz c 2 with reference to exemptions from rating afforded no help as to the proper construction to be put on the words in the contracts in suit. The definition of a public purpose that the phrase whatever else it may mean must include a purpose that it is an object or aim in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned approved by their Lordships of the Judicial Committee. A notice which though addressed to one of the defendants (a testator who was dead) was served on one of his executors

RESUMPTION—contd

and trustees also a defendant and accepted and acknowledged by his solicitors who corresponded on the basis of it with the Government as to the resumption was held to be a valid notice the irregularity having been thereby waived. *HABIBI FRANKIE v SECRETARY OF STATE FOR INDIA (1914)* I L R 39 Bom 279

*Land held under Sanad from Government—Valuation of land to be determined by a committee appointed by Government—Construction of the word a committee—Valuation fixed by the majority binding on parties to the Sanad—Relation between public purposes and public purpose—Land was held by the plaintiffs under a Sanad from Government which provided the said ground to be at any time resumable by Government for public purposes six months notice being previously given and a just valuation of all buildings or improvements thereon being paid the owner the amount of which a committee appointed by Government in such a case to determine. The land being resumed with due notice given under the above clause the Government appointed a committee of three persons to value the compensation to be paid to the plaintiffs. Two members of the committee valued the land at Rs 10383 the third valuing it at Rs 19744. The Government accepted the report of the majority as the determination by the committee under the terms of the Sanad and the possession of the land after payment of Rs 10383 to the plaintiffs. The plaintiffs filed the present suit to recover compensation at the higher valuation or any sum in excess of Rs 10383 which the Court might think just and proper. Held dismissing the suit (i) that it was the understanding and will in the contemplation of all the parties to the Sanad that the determination of the just value of the land to be made by a committee appointed by Government should be accepted if that determination represented the concurrent opinion of a majority of the committee (ii) that the valuation agreed upon by the majority of the committee appointed by Government was the valuation expressed to be determined and so made binding upon the parties to the resumption term in the Sanad. *MATHEWADY ADAM v SECRETARY OF STATE FOR INDIA (1914)**

I L R 39 Bom 688

RETAINER

See BAR COUNCIL v OFFICERS OF
I L R 40 Calc 598

RETRACTION OF STATEMENT BY WITNESS

See SANCTION FOR PROSECUTION
I L R 37 Calc 618

RE TRIAL

See A C T OF EXAMINATION OF
I L R 40 Calc 163

See ACCUSED'S ACQUIT
I L R 41 Calc 1072

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898) 33 1 "

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RE-TRIAL—contd

Power of High Court to order after obtaining additional evidence—Code of Criminal Procedure (Act I of 1898) s 428—Government of India Act (5 and 6 Geo 6 c 61) s 107—It is the duty of Court to secure attendance of—Petitions filed by parties duty of Court to pass order on—The High Court has power to direct the Sessions Judge to rehear an appeal after obtaining additional evidence—It is the duty of the Court when processes have once been issued for the attendance of witnesses to exhaust all the powers allowed by law to enforce their attendance unless the party citing such witnesses can be shown to have been guilty of wilful obstruction and delay—Where the accused repeatedly requested that certain persons should be summoned as witnesses and the Court twice issued process without securing their attendance held that the fact that the accused had failed to deposit the travelling and diet expenses of the witnesses did not excuse the Court from its duty to secure their attendance as the accused had never been requested to deposit the sum necessary for the expenses—MAHOMED ZAMIRUDDIN v. KADU ENFERON 3 Pat L J 632

REUNION

See HINDU LAW—JOINT FAMILIES
I L R 41 All 361

See HINDU LAW—PARTITION
I L R 37 Cal 703
I L R 35 Bom 293
I L R 35 All 41

REVENUE

attachment of arrears of—

*See CONTRACT ACT (IX of 1872) ss 69
70 I L R 39 Mad 795*

covenant to pay—

See CONSTRUCTION OF DOCUMENT
I L R 38 All 230

REVENUE COMMISSIONER

See COMMISSIONER POWER OF
I L R 40 Cal 552

REVENUE COURT

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 105 CLS (b) AND (c)
I L R 25 Bom 642
s 476 4 Pat L J 475

See JURISDICTION OF CIVIL COURT
See JURISDICTION OF CIVIL AND REVENUE COURTS

See MADRAS ESTATES LAND ACT (I OF 1905) ss 169 ETC
I L R 39 Mad 239

See PENSIONS ACT (XXIII OF 1871)
s 4 I L R 36 Mad 559

jurisdiction of—

See CERTIFICATE OF SALE
I L R 37 Cal 107
See MADRAS ESTATES LAND ACT (I OF 1905)
I L R 38 Mad 33
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proceedings in—

See PARTITION I L R 46 Cal 236

REVENUE COURT—contd

sales by—

See LIMITATION ACT (IX OF 1908)
ART 12A I L R 45 Bom 43

REVENUE-FREE LAND

See UNITED PROV LAND REVENUE ACT (III OF 1901) s 32 (d)
I L R 31 All 931

REVENUE JURISDICTION ACT (X OF 1876)

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876)

s 4 (a)—

See HEREDITARY OFFICES ACT (BOM III OF 1874) s 11A
I L R 37 Bom 37

See SARANJAM I L R 41 Bom 403

ss. 4 (c) 5 and 6—Bombay Land Revenue Code (Bom Act I of 1879) s 140—Finality of land revenue—Attachment of goods of Mamladar—Suit against Mamladar for recovery of damages—No denial of the allegation that the goods belonged to plaintiff—Jurisdiction of Civil Courts—Delegation of the powers by the Collector for his own district S 4 (c) of the Revenue Jurisdiction Act Bombay (X of 1876) is not a bar to a suit in which there is a claim arising out of the alleged illegality of the proceedings taken for the realization of land revenue—Where the legality of the proceedings initiated by a revenue officer is in question the Court has to inquire under s 6 of the Act whether the act complained of was done bona fide by the officer in pursuance of the provisions of any law—The Mamladar in order to justify his acts under s 140 of the Land Revenue Code (Bom Act I of 1879) must show that the Collector of the District in which he is the Mamladar had delegated his powers—The Mamladar can only exercise delegated powers in the taluka in which the delegation occurred—The delegation by the Collector of any other District would not justify his act.—GANGARAM HATIRAM v. DYERKAR GANESH (1913)
I L R 37 Bom 542

s. 4 sub-s (a)—Act VI of 1859—Land held as Saranjam—Decision of the Inam Commissioner—Finality—Suit for declaration of title and possession—Exclusion of jurisdiction of Civil Courts—In the year 1858 the Inam Commissioner decided that a certain estate was Saranjam of P and not his Sary Inam. On P's death in 1909 the Government resumed the estate on the ground that it was Saranjam and re-granted it to one of P's grandsons. Subsequently the plaintiff another grandson of P brought a suit against the Secretary of State for India and F for declaration of title and possession on the ground that the immovable property in suit was plaintiff's Sary Inam property and could not be taken from his possession by Government or its officers or re-granted to any one else. Held (i) that the decision of the Inam Commissioner was by virtue of the provisions of Rule 1 of Sch A of Act VI of 1859 final as regards the land and interests concerned in the decision (ii) That after such final decision the title and continuance of the estate must be determined under Sch B Rule 10 of the Act under such rules as Government may find it necessary to issue from time to time (iii) That in accordance with these

REVENUE JURISDICTION ACT (X OF 1876)

—could

— s 4, sub-1, — could

rules the estate was on P's death reserved by Government who granted it to I. Held further that the suit having been against Government relating to land as Sanjayam was excluded from the jurisdiction of the Civil Courts by the provisions of sub s (a) of s 4 of the Revenue Jurisdiction Act (X of 1876). *PANRAY GOVINDRAO v SECRETARY OF STATE* (1909) I L R. 34 Bom 232

— s 5, cl. (c) —

See *PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)* SCH II ART 17
I L R. 39 Bom 131

REVENUE OFFICER

See *JURISDICTION* I L R. 43 Calc. 136

REVENUE PAYING ESTATE.

See *CHAUKIDARI CHAKRAN LANDS*
I L R. 45 Calc 705

REVENUE RECORDS

— entry in —

See *MAHLADARS COURTS ACT* (Bom II OF 1906) s 19 23
I L R. 35 Bom 487

— Entry in more than 12 years—
whether sufficient for acquisition by adverse possession—

See *EQUITY OF REDEMPTION*
I L R. 1 Lah 549

REVENUE RECOVERY ACT (MAD II OF 1864)

See *MADRAS REVENUE RECOVERY ACT*

REVENUE REGISTER

See *LIMITATION ACT* (IX OF 1909) SCH I ART 118 I L R. 37 Bom 513

REVENUE SALE

ACT

See *BENGAL LAND REVENUE SALES*

See *CONTRACT ACT* s 59
15 C W N 443

See *REVENUE SALE LAW*

See *SALE FOR ARREARS OF REVENUE*

See *TRANSFER OF PROPERTY ACT* (IV OF 1882) s 65 (c) I L R. 39 Mad 959

— An incumbrance or under tenure is not *ipso facto* avoided by the sale of an estate for arrears of revenue and is only liable to be avoided at the option of the purchaser at such sale *RAMRATAN KAPALI v ASWINI KUMAR DUTT*

I L R. 37 Calc 559

— *Revenue Sale Law* (Act XI of 1859) s 6 33—Publication of notification sale in the Vernacular Government Gazette if necessary—Omission thereof is an irregularity and not illegality—*Bengal Land Revenue Sales Act* (Beng VII of 1868) s 8 Where the Subordinate Judge of Cuttack decided that it was absolutely necessary that the notification of a Revenue Sale should be published in the Vernacular Gazette in Urya and that its non publication had made the sale null

REVENUE SALE—could

and void apart from any consideration as to its adequacy of price: *Held* that the publication of a notification of sale in the *Calcutta Gazette* only was sufficient compliance with a provision of Law (Act XI of 1859 s 3) requiring the publication of such notification in the "Official Gazette" *Held* further that even if it had been necessary to publish the notification in the *Urya Gazette* the omission to do so would not have rendered the sale null and void in the absence of any proof of substantial injury by reason of this omission as s 33 of Act XI of 1859 applied to such a case *Coliad Lall Poy v Ramyaram Misser* I L R. 31 Calc 10
I L R. 1 4 165 followed *Lalit Mohan Lal v Secretary of State for India* I L R. 11 Calc 200 referred to *RADHA CHARAN DAS v SHARFUDDIN HOSSAIN* (1913) I L R. 41 Calc 206

— Notification—

Calcutta Gazette—*Calcutta Gazette*—Government Vernacular Gazette—*Bengal Land Revenue Sales Act* (XI of 1859) s 33 The Official Gazette in which by s 6 of Act XI of 1859 a notification is to be published of the revenue sales therein referred to is the *Calcutta Gazette*. A sale is not contrary to the provisions of this Act within s 33 by reason of no notification having been published in a Government Vernacular Gazette circulating in the locality *SHARFUDDIN HOSSAIN v RADHA CHARAN DAS* (1913) I L R. 45 I A 205

— *Revenue Sale Law* (Act XI of 1859) s 37 and 4th exception to s 37—*Scope of s 37*—Benefit of the 4th exception in s 37 when can be claimed s 37 of Act XI of 1859 applies to sale of an entire estate for recovery of arrears due on account of an entire estate as well as to a sale for recovery of arrears due on account of a share only provided the entire estate is sold under the provisions of s 14 of the Act and that so long as it is the entire estate which is sold and the arrears are due on account of the estate itself and not on account of estates other than that which is sold s 37 applies. The benefit of the 4th exception to s 37 is limited only to such portions of land as are covered by buildings tanks etc and cannot be extended to cover those lands included in the lease on which no permanent works have been constructed *Najemoddeen Moonsah v Syed Hassan Hyder Chowdhury* 9 C W N 852 *Wahid Ali v Pahat Ali* 12 C W N 1029 *Bisweshwar Ghatak v Fattah Hussain* 10 C W N XXIVa and *Mathura Nath Ghosal v Ratnagar Sen* III O 917 referred to *Kiron Chunder Poy v Namuddi Talukdar* I L R. 30 Calc 498 not followed *JOGENDEA NARAIN ROY CHOWDHURY v KIRAN CHANDRA ROY* (1918) I L R. 46 Calc 730

REVENUE SALE LAW ACT (XI OF 1859)

See *CHAUKIDARI CHAKRAN LANDS*
I L R. 45 Calc 765

— s 2, 3—

See s 20

s Pat L J 68

— *Beng Act* I II of 1868 s 30—*Panchannagram* tenure in if may be sold for arrears of revenue—*Default* date of fixed by state in or notification thereunder if may be varied by administrative Rules—*Rent* when becomes arrears and when default in payment takes place Tenures held under Government in Diku Panchannagram in the District of 24 Pargunnas are saleable

RE-TRIAL—*contd*

Power of High Court to order after obtaining additional evidence—Code of Criminal Procedure (Act V of 1898) s 403—Government of India Act (5 and 6 Geo c c 61) s 107—It is the duty of Court to secure attendance of—Petitions filed by parties duty of Court to pass order on—The High Court has power to direct the Sessions Judge to rehear an appeal after obtaining additional evidence It is the duty of the Court when processes have once been issued for the attendance of witnesses to exhaust all the powers allowed by law to enforce their attendance unless the party citing such witnesses can be shown to have been guilty of wilful obstruction and delay Where the accused repeatedly requested that certain persons should be summoned as witnesses and the Court twice issued process without securing their attendance held that the fact that the accused had failed to deposit the traveling and diet expenses of the witnesses did not excuse the Court from its duty to secure their attendance as the accused had never been requested to deposit the sum necessary for the expenses MAHOMED ZAMRUDDIN v KING EMFEROR 3 Pat L J 632

REUNION

See HINDU LAW—JOINT FAMILY
I L R 41 All 361

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I L R 37 Cal 703
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REVENUE

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See CONSTRUCTION OF DOCUMENT
I L R 33 All 230

REVENUE COMMISSIONER

See COMMISSIONER POWER OF
I L R 40 Cal 552

REVENUE COURT

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 103 CLS (b) AND (c)

I L R 38 Bom 642
s 476 4 Pat L J 475

See JURISDICTION OF CIVIL COURT

See JURISDICTION OF CIVIL AND REVENUE COURTS

See MADRAS ESTATES LAND ACT (I OF 1908) ss. 169 ETC

I L R 30 Mad 239

See PENSIONS ACT (XXIII OF 1871)

s 4 I L R 30 Mad 559

jurisdiction of—

See CERTIFICATE OF SALE

I L R 37 Cal 107

See MADRAS ESTATES LAND ACT (I OF 1908)

I L R 38 Mad 33

I L R 41 Mad 121

proceedings in—

See PARTITION I L R 46 Cal 236

REVENUE COURT—*contd*

sales by—

See LIMITATION ACT (IX OF 180)
ART 12A I L R 45 Bom 43

REVENUE-FREE LAND

See UNITED PROV LAND REVENUE ACT
(III OF 1901) s 32 (d)
I L R 36 All 231

REVENUE JURISDICTION ACT (X OF 1866)

See BOMBAY REVENUE JURISDICTION ACT
(V OF 1866)

s 4 (a)—

See HEREDITARY OFFICES ACT (BOM III
OF 1874) ss 11 11A
I L R 37 Bom 37

See SARANJAM
I L R 41 Bom 408

ss 4(c) 5 and 6—Bombay Land Revenue Code (Bom Act V of 1869) s 140—Fetters of land revenue—Attachment of goods by Mamlatdar—Suit against Mamlatdar for recovery of damages—No denial of the allegation that the goods belonged to plaintiff—Jurisdiction of Civil Courts—Delegation of the powers by the Collector for his own district ss 4 (c) of the Revenue Jurisdiction Act Bombay (V of 1876) is not a bar to a suit in which there is a claim arising out of the alleged illegality of the proceedings taken for the realization of land revenue Where the legality of the proceedings initiated by a revenue officer is in question the Court has to inquire under s 6 of the Act whether the act complained of was done bona fide by the officer in pursuance of the provisions of any law The Mamlatdar in order to justify his acts under s 140 of the Land Revenue Code (Bom Act V of 1879) must show that the Collector of the District in which he is the Mamlatdar has delegated his powers The Mamlatdar can only exercise delegated powers in the taluka in which the delegation occurred The delegation would not justify his act of any other District would not justify his act GANGARAM HATIRAM v DINKAR GANESH (1913)
I L R 37 Bom 542

s 4, sub s. (a)—Act XI of 1859—Land held as Saranjam—Decision of the Inam Commissioner—Finality—Suit for declaration of title and possession—Exclusion of jurisdiction of Civil Courts In the year 1853 the Inam Commissioner decided that a certain estate was Saranjam of P and not his Sarv Inam On P's death in 1899 of P and not his Sarv Inam On P's death in 1899 Government resumed the estate on the ground that it was Saranjam and re-granted it to V one of P's grandsons Subsequently the plaintiff another grandson of P brought a suit against the Secretary of State for India and V for declaration of title and possession on the ground that the immovable property in suit was plaintiff's Sarv Inam property and could not be taken from his possession by Government or its officers or re-granted to any one else. Held (i) that the decision of the Inam Commissioner was by virtue of the provisions of Rule Sch A of Act XI of 1859 final as regards the land and interests concerned in the decision (ii) That after such final decision the title and continuance of the estate must be determined under Sch B Rule 10 of the Act under such rules as Government may find it necessary to issue from time to time (iii) That in accordance with these

REVENUE SALE LAW ACT (XI OF 1859)—
contd

s 13, 54—contd

in the previous portion of that section. Where a separate account in respect of a share sold share owned by H in a revenue paying estate was entered in the Collector's books as for a share sold share and revenue proportionate to a share sold share was apportioned to it. Held that upon sale of the share under s 13 of Act XI of 1859 the purchaser acquired the share recorded in the Collector's books and not the share actually owned by H. *Bal Kishan Das v. P. J. Chavan Ghosal* 1 L J 22 Cal 611 *Penalata Dass v. Mokmatta Nath Garwani* 11 C N 515 *in eda* *Prasad Glose v. Pyjendra Kumar Glose* 1 L J 22 Cal 223 s e 6 C N 335 and *Gangadhar Misser v. Akroor Mandul* 14 B L R 107 held on. *KUNESH CHANDRA PAKHIA v. ARDUL HAMID BIKDAR* (1914) 19 C W N 782

s 14—Separate account—Separated

share not in fact in arrears shown in Collector's books as in arrears—Consensual sale of whole estate if valid—Failure of co-sharers to buy share—Sale of whole estate after closing separate accounts—Up to what date accounts to be closed—Sale as for March list without arrears after estate falls into arrears for June list if valid—*Maharaja Pagar extract from* evidence Where owing to the revenue payable on account of a share of a revenue paying estate in respect of which a separate account had been opened, being erroneously recorded in the Collector's books as Rs 10116 when the correct amount was Rs 21111 less the share though not in fact in default was shown in those books to be in arrears at the end of the March list of 1904 (29th March 1904) to the extent of Rs 5435 and was put up for sale for that amount on 6th June 1904 but the bids not reaching that amount the Collector gave 15 days time i.e. up to 17th June 1904 to co-sharers to buy up the share by paying the arrears under s 14 of Act XI of 1859 but the latter not doing so the Collector closed the accounts of the whole estate up to 9th March 1904 and found the arrears for the whole estate on that date to be Rs 3 odd but by reason of payments made since 29th March 1904 there were in fact no arrears due for the March list on 17th June 1904 though an arrear of Rs 206 appeared to be due if the June list was included and the whole estate was put up for sale on the 19th September 1904 as for the arrears due up to 29th March 1904. Held (by the High Court) that as in point of fact the share in question was not in arrears on 29th March 1904 the proceeding for the sale of that share was void and consequently the sale of the entire mahal under s 14 was also void. That assuming that the Collector's books were correct the Collector was bound to close all the separate accounts on 17th June 1904 on which date he became entitled to sell the whole estate and as on that date there were no arrears due in respect of the March list a sale of the estate as for arrears due to the March list was *ultra vires* though the sale might legitimately have been held for the June list. *Bal Kishan Das v. Simpson* 1 L J 25 Cal 833 2 C N 613 followed. An attested copy of entries in Maharaja Pagar's kept under s 4 of Act VII of 1870 M C showing the revenue assessed on each of two mauzas comprising a revenue paying estate was admissible in evidence. The mere fact

REVENUE SALE LAW ACT (XI OF 1859)—
contd

s 14—contd

that the Revenue Officer's notice of the Government tender of purchase on one corner did not make it a document kept by that officer. The Judicial Committee saw no reason to interfere with the judgment of the High Court. *Mitashankar Dixit v. Mahomed Ismael* (1914) 19 C W N 764

s 14, 33—Sale of share not in fact

in arrears but payable as a share in a revenue paying estate—Sale of share not in fact in arrears but payable as a share in a revenue paying estate in respect of which a separate account has been opened 1 year put up for sale the highest offer was not equal to the amount due thereon and the Collector stopped the sale and declared that the entire estate will be put up to sale for arrears unless the offer recorded sharer or sharers or one or more of them shall within 10 days purchase the share in arrears by paying to Government the whole arrear due from the share and more than one such recorded co-sharer separately make the necessary payment within the time specified the Collector must recognize as purchaser the depositor who first pays the whole amount or if there are more depositors than one to recognize as joint purchasers those whose payments first amount to the total arrears due. S 33 of Act XI of 1859 applies to sales under s 14 and when the first payer has been declared by the Collector to be the purchaser a co-sharer who has paid up the arrears subsequently cannot have the sale set aside by suit in the Civil Court except upon proof of the circumstances specified in s 33. Such a sale under s 14 cannot be attacked as a nullity and as such not requiring proof of the circumstances. *Chootulbiy Dutt v. Ismael* 1 L J 1 Cal 834 *Gokindlal Day v. Jamaiam Misser* 1 L J 1 Cal 840 followed. *Quaere* Whether the s 14 of Act XI of 1859 precludes sharers of the share exposed for sale from purchasing the defaulting share. *HAMBHO HON. J. MARSHALL PERSHAD* (1914) 18 C W N 1071

s 25—

See COMMISSIONER

I L R 40 Cal 552

s 25 2 and 3—Date from which revenue due becomes an arrear—Sale before such date illegal—Power of Commissioner to set aside sales not restricted in case of error of procedure. In a revenue paying estate in which there were three separate accounts and a residuary share one of the separate accounts and the residuary share were in arrears when the March list of 1915 became due to the extent of Rs 3100 and Rs 686 respectively while there was a total excess of Rs 710 in respect of the other two separate accounts. In April Rs 3100 was paid in respect of the separate account in arrears with the permission of the Collector and this account was exempted from sale in May. The residuary share was put up for sale in respect of the arrear of Rs 686 and sold. The Commissioner set aside the sale on the ground that Rs 3100 having been paid the excess payment in respect of the other two separate accounts was sufficient to cover the arrear due on the residuary share. The purchaser sued for a declaration that the residuary share was sold for its own arrear of revenue and that he had acquired a good title. *Held* (5) that

REVENUE SALE LAW ACT (XI OF 1859)

—contd

— ss 25 2 and 3—contd

after Rs 3 10 0 had been accepted in respect of the separate account in arrear there was no arrear due on the whole estate and the residuary share was no longer liable to be sold (11) that the default in payment did not become an arrear until the 1st April and the property was not liable to be sold until the date fixed by the Board of Revenue namely the 28th June 5 2a of the Revenue Sales Act 1859 does not restrict the Commissioner's power to set aside a sale to cases in which there has been an irregularity in procedure CHAKRAVARTY SINGH v THE SECRETARY OF STATE FOR INDIA IN COUNCIL 5 Pat L J 66

— ss 29 37—Sale of entire estate for arrears of *pro facto annuls incumbrances*—Sale voidable at purchaser's option—Option how may be exercised—Annulment by notice—Mesne profits claim for when arises—Compensation for use and occupation The sale of an entire estate for arrears of revenue does not *pro facto* avoid incumbrances and under tenures but only renders them voidable at the option of the purchaser The purchaser may elect to annul an under tenure not only by institution of a suit or by giving notice to vacate but may indicate it by other means The delivery of possession by the Collector under s 20 of Act X of 1859 does not convert under tenure holders into trespassers The persons whom in terms of that section the Collector may remove in delivering possession must refer to the former proprietors or persons claiming proprietary right through them and do not refer to under tenure holders *Mir Waziruddin v Iala Deekinandan* 6 C L J 472 referred to The purchaser is not entitled to mesne profits for the period antecedent to the exercise by him of his option of annulment He is only entitled to compensation for use and occupation on the basis of the rent payable by the tenure holder of the first decree Where the under tenure has been annulled by notice the purchaser is entitled to claim mesne profits from the date on which the notice was expressed to expire *DURJAN SINGH v BHAWANI KOER* (1913)

[17 C W N 984]

— s 31—

See ARREARS OF REVENUE

I L R 47 Cal 331

See SALE FOR ARREARS OF REVENUE

I L R 38 Cal 537

— ss 31 53—Estate left in arrear and purchased by proprietor *benami* at revenue sale—Incumbrancers if can demand satisfaction from both surplus sale proceeds and the mortgage property—Court's power on appeal to grant relief in favour of party who did not appeal—Civil Procedure Code (Act V of 1908) ss 107 151 and O XXI r 33—Settled by conduct in suit—Fraud punishment of During the pendency of a suit by B to enforce a mortgage upon a revenue paying estate the mortgagor deliberately let the property fall into arrear which being sold under Act XI of 1859 was purchased by the mortgagor in the *benami* of another A suit was then brought by K to enforce a prior mortgage over the property in which (not being presumably aware of the real character of the sale) he claimed a decree for payment of his dues out of the surplus sale proceeds Before this suit was decreed B (whom K had joined as a party in his

REVENUE SALE LAW ACT (XI OF 1859)

—contd

— ss 31 53—contd

suit) brought a suit in which he alleged the purchase at the sale for arrears of revenue to have been *benami* by the proprietor and claimed a decree either for setting aside the sale or for a declaration that his mortgage should remain valid and operative against the estate In view of this suit the Court, whilst decreeing K's suit as prayed further ordered that in the event of the sale being set aside the mortgage monies, interest and costs due to K should be realised by the sale of the mortgaged property B appealed against this decree and his appeal was heard in the High Court along with appeals against B preferred from decrees obtained by him in his suits by one of which his allegations as to the real character of the purchase at the revenue sale had been found proved whilst the other had given him the usual mortgage decree All three appeals were dismissed but at the instance of the mortgagor the High Court varied the decree in K's suit by setting aside the direction that his mortgage monies should be paid out of the surplus monies of the revenue sale Upon further appeals to the Privy Council the mortgagor urged inter alia that B was estopped by his conduct as defendant in K's suit from questioning the sale under Act XI of 1859 and B urged that K not having appealed to the High Court the decree of the lower Court could not be varied in the manner stated and also that K was in spite of what was found as to the real character of the sale entitled to be satisfied out of the proceeds of the sale so that in case K was entirely paid off out of the sale proceeds, B would have more abundant security in the mortgaged property to satisfy his decree Held that s 53 of Act XI of 1859 distinctly contemplates a purchase of property by a recorded proprietor and the only effect of the finding that so far as was *benami* by the proprietor was that the sale was of the incumbrances were concerned, the direction of the High Court in K's suit was in accordance with the law That the High Court had abundant power to give that direction notwithstanding that K did not appeal under ss 107 and 151 of the Civil Procedure Code and O XXI r 33 thereof the Court having had authority under the first mentioned provision if necessary to take additional evidence That B who had no power of controlling the form of K's suit and did not appear to have taken any step therein irrevocably asserting his intention to stop therein irrevocably asserting the whole proceedings was not estopped from claiming the relief which he prayed for in his suit to set aside the sale That if the sale had in fact been to the incumbrances would have been transferred to the sale proceeds since the purchaser would obtain a title free from incumbrances as not right to punish a man for fraudulent behaviour by making him suffer other penalties than those which are the direct consequence of his fraud *TARINI CHARRAN SAKKAR v BI HUN CHAND* (1917)

22 C W N 505

— s 33—

See s 14

See SALE FOR ARREARS OF REVENUE

18 C W N 1071

Revenue Sale Law (Act XI of 1859) ss 5 23 33—Exemption in respect of land revenue—Sale of property for arrears other than

REVENUE SALE LAW ACT (IX OF 1859)

—cor d.

§ 33—contd.

land revenue for which certificate proceedings initiated —For real order of exemption on the sale of—Special notice under s 5 necessary for—Where after an estate has been advertised for sale for arrears of land revenue the Collector upon the defaulter's application for exemption ordered that the arrears may be accepted if paid to day and the plaintiff duly paid the amount and the same was received and acknowledged but nevertheless the property was put up to sale on account of certain arrears of embankment charges the intention to recover which by sale under Act XI of 1859 did not appear to have been conveyed to the defaulter by the Collectorate mohurrar when enquiries were made of him as to the amount to be deposited and which arrears the Collector has already elected to recover by the certificate procedure from the defaulter and a usufructuary mortgagee from him—Held that the Collector was not justified in putting up the property for sale on account of these arrears without serving special notice on the defaulter under s 5 of Act XI of 1859 on the mere ground that no special exemption order had been made There were in the circumstances no arrears for which the property could be sold *Gobind Lal Poy v. Pamjanam Misser* 1 L R 21 Cal 40 81 *Bunwari Lal v. Mahabir Prasad* 12 B L P 297 *Demondan Singh v. Manabath Singh* 1 L P 30 Cal 111 referred to *HARI DAS DEB v. DITRAJ CHANDRA BOSE* (1910) 15 C W N 38

§ 33 34—Sale for arrears of revenue set aside on appeal by Commissioner—Commissioner's order reversing that order and affirming sale declared by Civil Court to be ultra vires—Application to execute decree—Limitation—Where the Commissioner of Revenue on appeal preferred by the proprietors of a revenue paying estate set aside a sale for arrears of revenue but subsequently in review can be set aside that order and affirmed the sale and the Civil Court in a suit by the proprietors declared the Commissioner's order on review ultra vires and upheld his previous order setting aside the sale and also awarded possession and mesne profits to the plaintiffs—Held that the decree was not one annulling a sale as contemplated by s 34 of Act XI of 1859 as it only held that the Commissioner's order setting aside the sale must stand good That s 34 did not apply to this case as it was not a suit under s 33 of the Act to annul a sale the contention of the plaintiffs being that there was no subsisting sale to be annulled § 31 refers to cases brought under s 33 and the rule of limitation laid down in s 31 (requiring the decree holder to apply for execution within six months of the decree) applies only to suits brought under s 33 *BAIJYATH GOZYKA v. BAIJYATH SINGH* (1914)

[19 C W N 484

§ 35—Suit against certified purchaser for specific performance of agreement to convey purchased property made before purchase—Vain liability—The plaintiff who wished to purchase a mahal at a revenue sale requested the defendant to watch the sale and to offer bids and the defendant agreed to do so and to convey the property to the plaintiff Defendant bid for the property in plaintiff's absence took one fourth of the purchase money for deposit from the plaintiff and

REVENUE SALE LAW ACT (XI OF 1859)

—cor d.

§ 35—contd.

deposited the same but refused to accept the balance of the purchase money from the plaintiff and having procured the same from other sources took out a certificate in his own name—Held that a suit by the plaintiff against the defendant for specific performance of the contract was maintainable and s 36 of Act XI of 1859 was no bar to it *MOGHOTHA NATH PAL v. GIRISH CHANDRA RAY* (1912) 17 C W N 76

§ 37—

See s 29 17 C W N 984

See HOMESTEAD LAND I L R 42 Cal 638

See OCCUPANCY HOLDING I L R 42 Cal 745

See REVENUE SALE I L R 48 Cal 730

Public documents chatas prepared for distributing public revenue on partition of an estate of—Revenue Sale Law (Act XI of 1859) s 37—Protected interest—Portion of taluk existing at Permanent Settlement but transferred and held under different names if protected—When a portion of a taluk existing from before the time of the Permanent Settlement is transferred and the said portion is subsequently held at a proportionate jama under a name different from the original taluk but the subsequent transfers and descent thereof can be traced from the original taluk the portion so transferred is also protected under s 37 of Act XI of 1859 *NOBENDRA KISHORE ROY v. DURGA CHAPAN CHOWDHURY* (1910) 15 C W N 515

Purchaser if means

certified purchaser—Person in adverse possession for more than 12 years if may be ejected—Thak map = hence of possession and so of title—Presumption backward when proper—The word purchaser in s 37 of Act XI of 1859 does not mean the certified purchaser only and the certified purchaser is not the only person who can sue an incumbrancer for ejectment under that section An adverse possessor is an incumbrancer within the meaning of that section The Thak map is used primarily as evidence of possession of the party who relies thereon and as soon as it is established from the Thak map that the claimant was in possession at that time such possession may legitimately be attributed to title Where the Thak map however showed the lands as included in the plaintiff's estate but to be in possession of the defendant this principle did not apply Although it cannot be affirmed as a proposition of law that merely because certain specified lands were included in an estate at the time of the Thak survey in 1859 they must have been included within that estate at the time of the Permanent Settlement yet it is open to the Court to draw such inference from all the surrounding circumstances The land in dispute in this case not being *chur* land and its history not showing that its area or situation had in any way been changed from the time of the Permanent Settlement—Held that the Courts below were justified in inferring from all the circumstances of the case that the land (shown in the Thak map of 1859 as within a certain estate) was included within that estate at

REVENUE SALE LAW ACT (XI OF 1859)

—contd

ss 25, 2 and 3—contd

after Rs 3 10 0 had been accepted in respect of the separate account in arrear there was no arrear due on the whole estate and the residuary share was no longer liable to be sold (1) that the default in payment did not become an arrear until the 1st April and the property was not liable to be sold until the date fixed by the Board of Revenue namely the 29th June S 25 of the Revenue Sales Act 1859 does not restrict the Commissioner's power to set aside a sale to cases in which there has been an irregularity in procedure CHHAKOWRI SINGH ■ THE SECRETARY OF STATE FOR INDIA IN COUNCIL 5 Pat L J 66

ss 29, 37—Sale of entire estate for arrears if *pro facto annuls incumbrances*—Sale voidable at purchaser's option—Option how may be exercised—Annulment by notice—Mesne profits claim for when arises—Compensation for use and occupation The sale of an entire estate for arrears of revenue does not *pro facto* avoid incumbrances and under tenures but only renders them voidable at the option of the purchaser The purchaser may elect to annul an under tenure not only by institution of a suit or by giving notice to vacate but may indicate it by other means The delivery of possession by the Collector under s 20 of Act XI of 1859 does not convert under tenure holders into trespassers The persons whom in terms of that section the Collector may remove in delivering possession must refer to the former proprietors or persons claiming proprietary right through them and does not refer to under tenure holders *Mir Waziruddin v Iala Deokinandan* 6 C L J 472 referred to The purchaser is not entitled to mesne profits for the period antecedent to the exercise by him of his option of annulment He is only entitled to compensation for use and occupation on the basis of the rent payable by the tenure holder of the first decree Where the under tenure has been annulled by notice the purchaser is entitled to claim mesne profits from the date on which the notice was expressed to expire DURJAN SINGH ■ BHAWANI MOH (1913)

[17 C W N 984]

s 31—

See ARREARS OF REVENUE

I L R 47 Cal 331

See SALE FOR ARREARS OF REVENUE

I L R 38 Cal 537

■ 31 53—Estate left in arrear and purchased by proprietor *benami* at revenue sale—Incumbrancers if can demand satisfaction from both surplus sale proceeds and the mortgage property—Court's power on appeal to grant relief in favour of party who did not appeal—Civil Procedure Code (Act V of 1908) ss 107 151 and O XLI r 33—Estoppel by conduct in suit—From punishment of During the pendency of a suit by B to enforce a mortgage upon a revenue paying estate the mortgagor deliberately let the property fall into arrear which being sold under Act XI of 1859 was purchased by the mortgagor in the *benami* of another A suit was then brought by K to enforce a prior mortgage over the property in which (not being presumably aware of the real character of the sale) he claimed a decree for payment of his dues out of the surplus sale proceeds Before this suit was decreed, B (whom A had joined as a party in his

REVENUE SALE LAW ACT (XI OF 1859)

—contd

■ 31, 53—contd

suit) brought a suit in which he alleged the purchase at the sale for arrears of revenue to have been *benami* by the proprietor and claimed a decree either for setting aside the sale or for a declaration that his mortgage should remain valid and operative against the estate In view of this suit the Court, whilst decreeing A's suit as prayed further ordered that in the event of the sale being set aside the mortgage monies interest and costs due to A should be realised by the sale of the mortgaged property B appealed against this decree and this appeal was heard in the High Court along with appeals against B preferred from decrees obtained by him in his suits by one of which his allegations as to the real character of the purchase at the revenue sale had been found proved whilst the other had given him the usual mortgage decree All three appeals were dismissed but at the instance of the mortgagor the High Court varied the decree in A's suit by setting aside the direction that his mortgage monies should be paid out of the surplus monies of the revenue sale Upon further appeals to the Privy Council the mortgagor urged *inter alia* that B was estopped by his conduct as defendant in K's suit from questioning the sale under Act XI of 1859 and B urged that K not having appealed to the High Court the decrees of the lower Court could not be varied in the manner stated and also that K was in spite of what was found as to the real character of the sale entitled to be satisfied out of the proceeds of the sale so that in case K was entirely paid off out of the sale proceeds, B would have a more abundant security in the mortgaged property to satisfy his decree Held that s 53 of Act XI of 1859 distinctly contemplates a purchase of property by a recorded proprietor and the only effect of the finding that the purchase was *benami* by the proprietor was that so far as the encumbrances were concerned, the sale was of no effect and that therefore the direction of the High Court in K's suit was in accordance with law That the High Court had abundant power to give that direction notwithstanding that K did not appeal under ss 107 and 151 of the Civil Procedure Code and O XLI r 33 thereof the Court having had authority under the first mentioned provision if necessary to take additional evidence That B who had no power of controlling the form of K's suit and did not appear to have taken any step therein irretrievably asserting his intention to rely on the sale and not impeached the sale proceedings was not estopped from claiming the sale which he prayed for in his suit to set aside the decree That if the sale had in fact been transferred to the encumbrancers would have been transferred to the sale proceeds since the purchaser would obtain a title free from encumbrances It is not right to punish a man for fraudulent behaviour by making him suffer other penalties than those which are the direct consequence of his fraud. TARINI CHAND SAKKAR v BISHU CHAND (1917)

22 C W N 505

s 33—

See s 14

See SALE FOR ARREARS OF REVENUE

18 C W N 1071

Revenue Sale Law (Act XI of 1859) ss 23 33—Exemption in respect of land revenue—Sale of property for arrears other than

REVENUE SALE LAW ACT (IX OF 1859)

—contd.

§ 33—contd.

Land revenue for which a certificate procedure was initiated — Formal order of exemption at once of — Special notice under s 5 necessary for — Where after an estate has been advertised for sale for arrears of land revenue the Collector upon the defaulter's application for exemption ordered that the arrears may be accepted if paid to day and the plaintiff duly paid the amount and the same was received and acknowledged but nevertheless the property was put up to sale on account of certain arrears of embankment charges the intention to recover which by sale under Act XI of 1859 did not appear to have been conveyed to the defaulter by the Collectorate mohurr when enquiries were made of him as to the amount to be deposited and which arrears the Collector has already elected to recover by the certificate procedure from the defaulter and a usufructuary mortgage from him — Held that the Collector was not justified in putting up the property for sale on account of these arrears without serving special notice on the defaulter under s 5 of Act XI of 1859 on the mere ground that no special exemption order had been made There were in the circumstances no arrears for which the property could be sold. *Gobind Lal Roy v Ramjanam Misser* I L R 21 Calc 70 83 *Bunwar Lal v Mahabir Prasad* 1st B L P 237 *Deomanand Singh v Mandath Singh* I L R 3rd Calc 111 referred to *HARI DAS DEB v DHIRAJ CHANDRA BOSE* (1910) 15 C W N 38

§ 33, 34—Sale for arrears of revenue set aside on appeal by Commissioner—Commissioner's order reviewing that order and affirming sale declared by Civil Court to be ultra vires—Application to execute decree—Limitation—Where the Commissioner of Pervence on appeal preferred by the proprietors of a revenue paying estate set aside a sale for arrears of revenue but subsequently in review can call that order and affirm the sale and the Civil Court in a suit by the proprietors declared the Commissioner's order on review ultra vires and upheld his previous order setting aside the sale and also awarded possession and mesne profits to the plaintiffs — Held that the decree was not one annulling a sale contemplated by s 34 of Act XI of 1859 as it only held that the Commissioner's order setting aside the sale must stand good That s 34 did not apply to this case as it was not a suit under s 33 of the Act to annul a sale the contention of the plaintiffs being that there was no substantiating sale to be annulled S 34 refers to cases brought under s 33 and the rule of limitation laid down in s 34 (requiring the decree holder to apply for execution within six months of the decree) applies only to suits brought under s 33 *BALWATH GOVINDA v BALWATH SINGH* (1914) 19 C W N 464

§ 36—Suit against certified purchaser for specific performance of agreement to convey purchased property made before purchase — Maintenance of — The plaintiff who wished to purchase a mahal at a revenue sale requested the defendant to watch the sale and to offer bids and the defendant agreed to do so and to convey the property to the plaintiff Defendant bid for the property in plaintiff's absence took one fourth of the purchase money for deposit from the plaintiff and

REVENUE SALE LAW ACT (XI OF 1859)

—contd.

§ 36—contd.

deposited the same but refused to accept the balance of the purchase money from the plaintiff and having procured the same from other sources took out a certificate in his own name — Held that a suit by the plaintiff against the defendant for specific performance of the contract was maintainable and s 36 of Act XI of 1859 was no bar to it *MOGHOTHA NATH LAL v GIRISH CHANDRA RAY* (1912) 17 C W N 75

§ 37—

See s. 29 17 C W N 984

See HOMESTEAD LAND I L R 42 Calc 638

See OCCUPANCY HOLDING I L R 42 Calc 745

See PREVENCE SALE I L R 46 Calc 730

Public documents that are prepared for distributing public revenue on partition of an estate of — Revenue Sale Law (Act XI of 1859) s 37—Protected interest—Portion of taluk existing at Permanent Settlement but transferred and held under different names if protected When a portion of a taluk existing from before the time of the Permanent Settlement is transferred and the said portion is subsequently held at a proportionate jama under a name different from the original taluk but the subsequent transfers and descent thereof can be traced from the original taluk the portion so transferred is also protected under s 37 of Act XI of 1859 *NOBENDRA KISHORE ROY v DURGAS CHAMAN CHOWDHURY* (1910) 15 C W N 515

Purchaser if means

certified purchaser — Person in adverse possession for more than 12 years if may be ejected — That map evidence of possession and so of title — Presumption backward when proper The word purchaser in s 37 of Act XI of 1859 does not mean the certified purchaser only and the certified purchaser is not the only person who can sue an incumbrancer for ejectment under that section An adverse possessor is an incumbrancer within the meaning of that section The That map is used primarily as evidence of possession of the party who relies thereon, and as soon as it is established from the That map that the claimant was in possession at that time such possession may legitimately be attributed to title Where the That map however showed the lands as included in the plaintiff's estate but to be in possession of the defendant this principle did not apply Although it cannot be affirmed as a proposition of law that merely because certain specified lands were included in an estate at the time of the That survey in 1859 they must have been included within that estate at the time of the Permanent Settlement yet it is open to the Court to draw such inference from all the surrounding circumstances The land in dispute in this case not being char land and its history not showing that its area or situation had in any way been changed from the time of the Permanent Settlement — Held that the Courts below were justified in inferring from all the circumstances of the case that the land (shown in the That map of 1859 as within a certain estate) was included within that estate at the time

REVENUE SALE LAW ACT (XI OF 1859)— —contd

s 37—contd

of the Permanent Settlement *Jagadindra Nath Poy v The Secretary of State I L R 30 Cal 291* s c 7 C W N 193 distinguished *MOIZUDDI BISWAS v ISHAN CHANDRA DAS (1910)*

15 C W N 708

Revenue Sale Law (Act XI of 1859) s 5—The question of notice if may be raised after confirmation of sale—*Laches* if can arise without knowledge—*Mortgagee in possession a trustee, default in payment of revenue and subsequent purchase of mortgaged property mortgagee if bound to account—Co sharer if may make default and purchase at revenue sale—Trustee for co sharer, position of* Although the question as to proper service of notice cannot be raised after confirmation of a sale under Act XI of 1859 that is only so far as setting aside the sale on the ground of irregularity is concerned, but it does not prevent the Court from a certifying for other purposes whether notice was so served as to fix on the party served the knowledge of it Defendant was the mortgagee of a share belonging to some of the plaintiffs out of a revenue paying estate Defendant was bound under the mortgage contract to pay his share of the land revenue for the portion of the estate held by him In one of these kists he made an over payment of Rs 36 as which was credited as an excess in the kistal account On a subsequent occasion the other co sharers took advantage of the excess standing to the credit of the estate and paid only the balance remaining due from them After this the defendant on one occasion paid Rs 11 less than he was bound to pay without however asking to be credited with the excess paid by him previously Some days after this short payment the plaintiffs paid their share of the revenue For the short payment thus made by the defendant the estate was subsequently sold under XI of 1859 and purchased by the defendant Held that in the absence of evidence that they knew of the default the plaintiffs could not be held guilty of laches in not seeing whether there was a deficit as laches signify knowledge or at least such abstinence from legitimate enquiry as to amount to constructive notice That the defendant as mortgagee could not take advantage of his purchase as against his mortgagors A mortgagee in possession is for certain purposes a trustee for his mortgagors and cannot take advantage of that position to the detriment of his mortgagors *Nasab Sidhee Nuur Ali Khan v Ojodharam 10 Moo I A 530* referred to Where a co sharer who makes default in paying up his share of the land revenue subsequently purchases the property at a sale for arrears of revenue the purchase entitles to the benefit of all co sharers *Carter v Home I Eq Ca Ab 7 Khadim v Sheomung S D N W I 1851 57 164 (1855)* referred to A trustee for co sharer cannot derive any benefit for himself at the expense of the co sharers of the *cestui que trust* by committing a breach of trust *JANAKI SINGH v DEBINANDAN PRASAD (1910)*

15 C W N 778

Onus of proof—Jakhraj or mal lands In a suit for khas possession free of incumbrance of lands on the ground that they were included within a taluk purchased by the plaintiff at a revenue sale it was found

REVENUE SALE LAW ACT (XI OF 1859)— —contd

s 37—contd

that the defendants held certain rent free tenures within the estate and that these tenures existed from before the Permanent Settlement Held that the onus was on the plaintiff to prove that the lands in suit were included within the taluk lands of the estate *HALODHAR CHATTOPADHYA v PABENDRA NARAYAN RAY CHoudhury (1912)*

16 C W N 980

Purchaser's suit for recovery of possession—Defendant's plea that land included in houlra which is protected—Onus When a suit for recovery of possession of land by a purchaser of an undivided share in an estate at a revenue sale was resisted by the defendants on the plea that the land in suit was included within the houlra which was a protected interest Held that the onus lay on the defendants to prove the allegation *Phudoy Krista v Dobin Chunder I L J 457 Rajendra Kumar v Mohan Chunder 3 C W N 763* explained *Sheedens Poy v Chatoorbhuy Roy 12 C L J 476* approved *RUTNESSUR SEN v KALI KESAR BUDYABHUSAN (1912)*

16 C W N 693

Taluk in existence before permanent settlement—Portion thereof transferred and held under a new name—Such portion if protected when it can be traced to original taluk When a portion of a taluk existing from before the permanent settlement is transferred and that portion is subsequently held in proportionate parts under a name different from the original taluk, but the subsequent transfer and descent thereof can be traced from the original taluk the portion so transferred is also protected under s 37 Act XI of 1859 *DOYAMATY CHOWDHURY v NARENDRA KISHORE ROY (1913)*

18 C W N 79

Registered pindar par charing estate at revenue sale if may annul the ordinary tenures The plaintiff who was the owner of a punit which was specially registered and so protected at a sale for arrears of revenue purchased the parent estate at a sale for arrears and sought to annul the tenures subordinate to the punit Held that the plaintiff was not entitled to annul the tenures subordinate to the punit to annul the tenures subordinate to the punit *PRITANATH BISWAS SATEOWRI CHATTERJEE v PRITANATH BISWAS SATEOWRI CHATTERJEE (1913)*

18 C W N 60

s 37 (4)—purchaser at revenue sale if may eject talaharajdar from land which has been mortgaged or built upon—Incumbrance how annulled S 37 of the Revenue Sale Law does not protect land held without payment of rent upon which dwelling houses manufactures or other permanent buildings have been erected or whereon gardens plantations etc have been made The assignee or transferee of the auction purchaser at a Revenue sale is entitled to exercise the rights of a purchaser It is not essential on the part of the auction purchaser or his assignee who seeks to annul an incumbrance to give a formal written notice to avoid it All that is necessary is to notify to the incumbrancer by some unambiguous act the intention to annul *KRISHNA KALYANI DASI v R BRAUNFELD (1915)*

20 C W N 1008

REVENUE SALE LAW ACT (XI OF 1859)——*concl*—

s 54—

See s 13.

10 C W N 782

See SALE FOR ARREARS OF REVENUE.

1 L R 43 Calc 48

s 55—

Collector's from starting of bidding according to custom by bidding one rupee—Subsequent bids falling short of arrears—Collector if may legally buy property for the highest bid—Irregularity or illegality—See 6 and "—
Notice signed by Sub Deputy Collector of arrears sale. Where a revenue paying estate in arrears having been put up for sale the person a Government official started the bidding according to custom as a matter of form by bidding Re 1 and thereafter other people having bid for the property the highest bid came up to Rs 58 which being less than the amount in arrears the Collector purporting to act under s 58 of Act XI of 1859 purchased the property for the highest amount bid *Held* (by the majority) that this was a different case from *Hallmanns Choudhurs v The Secretary of State for India* 1 L R 31 Calc 106 8 C W N 880 and the purchase by the Collector was not in contravention of the letter or the spirit of s 58 of the Revenue Sales Act. The fact that the notices under ss 6 and 7 of the Act were signed not by the Collector or other officer authorised to hold sales but by a Sub Deputy Collector on behalf of the Collector did not vitiate the sale. *ABHITA LAL POY v SECRETARY OF STATE FOR INDIA* (1018) 22 C W N 769

REVERSAL OF JUDGMENT

Effect of on connected and dependent orders—Pstitution of money taken away by decree holder in execution of decree under erroneous decision on question of limitation—Restitution of moneys with interest—Limitation Act (IX of 1908) Art 181 The decree holders made an application for execution of a decree by attachment and sale of moveables which was opposed by the judgment-debtors on the ground of limitation. The objection was treated as a separate case. While this application for execution was pending the decree holders made a fresh application for execution to attach funds in Court standing to the credit of two of the judgment debtors. This application was treated as a separate proceeding. The objection case was decided against the judgment-debtors and the Court thereupon made an order in the second execution case directing the decree holders to take steps. Then on the decree holders' application payment of the fund in deposit in Court was ordered. An appeal was preferred to the High Court in the objection case but none against the payment order. This appeal was decreed and the High Court directed that any sums taken away by the decree holders under the order of the Court below must be refunded at once. The judgment debtors whose deposit had been taken away by the decree holders then applied to the Court below for restitution. *Held* that it is a general rule that upon the reversal of a judgment order or decree all connected or dependent judgments or orders fall with it specially judgments subsequently entered and dependent thereon although this rule does not operate by implication to set aside a distinct and independent judgment

REVERSAL OF JUDGMENT—contd

or proceeding though it forms a part of the same litigation. That the payment order was in essence ancillary to the decision in the objection case and the cancellation of the order in the objection case by the High Court in appeal involved by necessary implication a cancellation of the consequential payment order. The judgment-debtors were therefore entitled to restitution even though they did not formally appeal against the payment order. That the only Article of the Limitation Act which may possibly apply to an application by the judgment debtors for restitution is Art 181 and the period of three years provided therein commences from the date when the erroneous order is set aside. That restitution must be made of the sum with drawn together with interest thereon at 6 per cent per annum. *ASUTOSH GOSWAMI v UPENDRO PRASAD MITRA* (1916) 21 C W N 564

REVERSAL OF SALE

See PARTIES 1 L R 59 Calc 881

REVERSIONARY HEIR

See CONSENT DECREE

1 L R 38 Calc 639

See LIMITATION ACT (IX OF 1908) SEC 1 ARTS 141 144

1 L R 42 Bom 714

REVERSIONARY INTEREST

See HINDU LAW—PARTITION

1 L R 43 Calc 1118

—attachment of—

See HINDU LAW—WIDOW

1 L R 39 Mad 565

—transfer of—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 6 1 L R 41 All 811

Transferability of The interest of a Hindu reversioner is an interest expectant on the death of a gratified owner. It is not a vested interest but a *spes successionis* or mere chance of succession. It cannot be sold mortgaged assigned or relinquished and is not transferable under a bill of the Transfer of Property Act 1882 but he may estop himself from claiming as Reversioner. *AKHADA MOHAN ROY v GOVIND MOHAN MALLIK* 25 C W N 498

REVERSIONARY TRUST

See WILL. 1 L R 45 I A 257

REVERSIONER

See CIVIL PROCEDURE CODE (Act V of 1908) O XXIII r 1 (3)

1 L R 33 Mad 987

See DECLARATORY DECREE.

1 L R 45 Calc 510

See DECLARATORY DECREE SUIT FOR

1 L R 43 Calc 694

See FRAUD 1 L R 38 Bom 185

See HINDU LAW—ADOPTION

1 L R 40 Mad. 848

See HINDU LAW—ALIENATION

1 L R 40 Calc. 721

1 L R 41 Calc 793

1 L R 45 Bom 105

REVERSIONER—*contd**See* HINDU LAW—GIFT

I L R 37 Calc 1

See HINDU LAW—JOINT FAMILY

I L R 42 Bom. 69

See HINDU LAW—REVERSIONER*See* HINDU LAW—WIDOW

14 C W N 226

I L R 32 All. 176

16 C W N 106

I L R 34 All. 207

I L R 35 All. 326

I L R 47 Calc 466

I L R 39 All. 1 520

I L R 43 Bom. 249

I L R 43 All. 535

See LIMITATION ACT 1908—

SCH I ART 91

I L R 40 Bom. 51

SCH I ART 125

I L R 41 Mad. 659

See SPECIFIC RELIEF ACT (I OF 1877)

s 42 I L R 33 All. 430

See SUCCESSION CERTIFICATE ACT s 4

15 C W N 1018

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 6 CL. (a)

I L R 32 All. 88

— claim by—

See HINDU LAW—INHERITANCE

I L R 40 Mad. 654

— consent of—

See HINDU LAW—ALIENATION

I L R 42 Calc 878

See HINDU WIDOW

I L R 42 Bom. 719

— redemption by after foreclosure decree—

See MORTGAGE I L R 38 Mad. 426

— relinquishment of right of suit by—

See REGISTRATION ACT (XVI OF 1908)

s 17 I L R 40 All. 384

— right of—

See APPEAL TO PRIVY COUNCIL

I L R 38 Mad. 406

— right of several independent—

See LIMITATION ACT (IX OF 1908) s 6

SCH I ART 125

I L R 38 Mad. 570

— suit by—

See ABATEMENT OF SUIT

I L R 73 Mad. 408

See HINDU LAW I L R 33 Mad. 410*See* LIMITATION ACT (XV OF 1877) SCH

II ART 141 I L R 33 All. 312

See LIMITATION ACT 1908

ART 118 I L R. 41 Bom. 728

ARTS. 140 141 I L R 40 Bom. 239

— title of—

See PRAJUDICATA I L R. 41 Calc. 69**REVERSIONER—*contd***

— contingent interest of reversioner during widow's lifetime—

See HINDU LAW I L R 45 Bom. 1187

— Gift by a Hindu widow—Reversioner alone can dispute validity of—

See HINDU LAW I L R 45 Bom. 103

— deed of gift by widow and next reversioner—

See HINDU LAW I L R 44 Bom. 483

— Widow's estate—

See HINDU LAW I L R 44 Bom. 253**REVIEW***See* APPEAL I L R 43 Calc 13
14 C W N 44*See* APPEAL TO PRIVY COUNCIL

I L R 41 Calc 734

See ARBITRATION I L R 43 Calc 490*See* ARBITRATION BY COURT

I L R 38 Calc 421

See CIVIL PROCEDURE CODE 1908—

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ss 14 151 O XLVII s 1

I L R 2 All. 71

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O XLVII

O XLVIII s 1 I L R 33 All. 566

O XLVIII s 9 I L R 38 All. 280

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I L R 40 Calc 552

See COSTS. I L R 47 Calc 974*See* COUNTERFEIT COIN

I L R. 41 Calc 477

See CRIMINAL CASES

I L R 46 Calc 60

See CRIMINAL PROCEDURE CODE

I L R 33 All. 134

See EXECUTION OF DECREE

3 Pat L J 51

See JURISDICTION

I L R. 33 Bom. 418

See LIMITATION ACT (IX OF 1908) s 14

I L R 42 Bom. 293

See POSSESSORY SUIT

I L R. 43 Calc 519

See PRACTICE

I L R. 44 Calc 43

See PRIVY COUNCIL, PRACTICE OF

I L R 39 Calc 505

See REVIEW OF JUDGMENT*See* SMALL CAUSE COURT SUIT

I L R 44 Calc 950

See TRANSFER OF PROPERTY (VALIDITY)

ACT 1917 s. 3. I L R. 42 All. 430

— application for—

See LIMITATION I L R 44 I A 213

— High Courts power of—

See CRIMINAL PROCEDURE CODE s. 359

I L R. 33 All. 134

REVIEW—contd.

Power of the Small Cause Court to review its judgment—

See *PRESIDENTY SMALL CAUSE COURTS ACT (XV OF 1854)* CHAF VII s 48

I L R 45 Bom 972

subsequent filing of appeal—

See *CIVIL PROCEDURE CODE 1908* O XLVII r 1 I L R 42 All 79

1 ——— Appeal against order granting review of judgment—*Civil Procedure Code (Act I of 1908) O XLIII r 1 d (w) and O XLIII r 1* O XLIII r 1 cl (w) must be read with and subject to r " O XLVII An order granting application for review of judgment can only be objected to on grounds specified in r " of O XLVII *Jagannath Periad Singh v Ram Aular Singh* 111 d No 311 of 1909 (unrep.) *Tripathi (haran) Kal v Sora hi Lala C P No 173 of 1913 (unrep.)* *Eurendra Nath Talukdar v Sita Nath Das Gupta* 111 A O 185 of 1910 (unrep.) referred to HARI CHARAN SABA v BAHAN KHAN (1914)

I L R 41 Calc 746

2 ——— New Evidence—Dismissal of application for admission of second appeal—Application for review based on alleged discovery of new and important evidence—High Court Jurisdiction of—*Civil Procedure Code (Act I of 1908) O XLII r 11 and O XLIII r 1* The High Court has no authority merely on the ground of alleged discovery of new and important evidence to review an order dismissing an application for the admission of a second appeal under O XLII r 11 of the Code of Civil Procedure *Bhuvan Nath Tice v Kally Chunder Choudhry* 16 W P 110 followed *Herra Lal Ghose v Pam Taruck Dey* 23 W P 373 discussed *Paru Kuli v Mamod* I I 1 18 Mad 480 and *In re Nand Kishore* I L J 37 All 71 referred to *PAJAN KANTA DAS v KALI PRASAD NUKHERJEE* (1914)

I L R 41 Calc 809

3 ——— High Court judgment—Application for review presented to Court presided over by Chief Justice under special circumstances—Deputy Registrar certifying application not in order—Application if made is presented within seven days of return of application with such certificate The application for review was properly presented to the Court presided over by the Chief Justice as there was no time after the application was put in order to present it to the Bench which had disposed of the appeal in the first instance one of them having retired from the Court some days before and the other having gone away on furlough two days after that date R 4 of Chap XI of the Appellate Side Rules was intended to apply to the case where the Deputy Registrar gives a certificate that the review application was in order and not to cases where the certificate is to the effect that the proceedings were not in order *GANGADHAR KARNHAR v SHEKHAR BASINI DASTA* (1916)

20 C W N 967

4 ——— Application for review subsequent to filing of second appeal—*Civil Procedure Code (Act V of 1908)* s 114 O XLVII r 1 Where an application for review of judgment is filed and later during the pendency of the same an appeal is preferred Held that the Court has power and in fact is bound to proceed with the application for review of judgment notwithstanding the fact that an appeal has been

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subsequently filed But the power exists so long as the appeal is not heard *Bharat Chandra Maumdar v Pungunga Sen* (1966) B L R (F B) 360 *Chenra Peddi v Peddacks Reddi* I L R 30 Mad 416 followed *Flaccor Prosad v Baluck Pam* 12 C L P 64 *Sarat Chandra Dhal v Damodar Manna* I C M A 885 *Varayan Purushottam Gorgate v Laxmibai* I L P 38 Bom 416 referred to On the other hand if the application is successful the appeal cannot proceed *Kankaya Lal v Baldeo Prasad* I L I 98 All 240 referred to *PIART MOHAN KHANU v KALU KHAN* (1917) I L M 44 Calc 1011

5 ——— Appeals under clause 15 of the Letters Patent—*Conditions for review in main tenability of* It is competent to the High Court to review judgments in appeals preferred under clause 15 of the Letters Patent *VENKATA SUBBARAJADU v SRI RAJAN KRISHNA YACHEY DEVLU VARU BHABHUR* (1915)

I L R 40 Mad 851

6 ——— Discovery of new and important matter of evidence—Procedure and Practice—Character of evidence—Trial of issue—Appeal against order granting review—*Civil Procedure Code (Act I of 1908) O XLIII r 1 (u) O XLIII r 1 d 7 8* The plaintiff obtained a decree in a suit instituted against the defendant Subsequently the defendant applied for a review of the decree on the ground of the discovery of new and important matter of evidence which was not within his knowledge and could not be produced by him at the trial and obtained a Rule calling upon the plaintiff to show cause why the said decree should not be reviewed and why this suit should not be set down on the peremptory list of suits for hearing Upon the Rule coming on for hearing the Court directed an issue to be tried as to the new and important matter discovered after the judgment in this case This issue having come on for trial the Court decided the issue in favour of the defendant and the Rule was made absolute Held that this application for review was not granted in contravention to s 4 of O XLVII of the Civil Procedure Code and it was not possible for the Court on this appeal to say that the learned Judge ought not to have made an order for review Held also that the additional evidence was of such an unsatisfactory nature and it came into existence in such an unsatisfactory way and the learned Judge was apparently in such doubt as to whether it should be accepted that it ought not to be taken as sufficient to overrule the distinct and clear opinion which he had formed *Pr SANDERSON C J* It is most important that there should be some finality in the trial of cases and the greatest care ought to be exercised in granting a review when that review is asked for upon the allegation that fresh evidence has been discovered since the judgment was given In an ordinary case where the appeal is on a question of fact where the learned Judge of the Court of first instance has heard and seen the witnesses and has come to a conclusion upon the question of fact upon the evidence on the one side and on the other there is a very great onus upon the shoulders of the appellant when he comes to this Court and asks it to overrule the decision of the learned Judge upon the question of fact *Per MOOKERJEE J* Under O XLIII r 7 an order granting an application for review may be attacked by way of appeal on the ground that the application has been

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granted on the ground of discovery of new evidence without strict proof of the applicant that such new evidence was not within his knowledge or could not be adduced by him when the decree was passed. **NANDALAL MULLICK v PARSHANAN MUKERJEE** (1917) **I L R 45 Calc 60**
21 C W N 1076

7 ——— **Criminal cases—Order summarily rejecting an appeal—Application for review of the order—Criminal Procedure Code (Act V of 1898) s 362** The High Court has no power to review an order passed in its Criminal Appellate jurisdiction rejecting an appeal summarily. In the matter of **Gibbons** **I L R 14 Calc 42** followed. Where a case is disposed of merely for default of appearance or an order is passed to the prejudice of the accused and by mistake or inadvertence no opportunity was given him to be heard the High Court may review the same. **Bidhu Mohan Roy v Dasmoni Das** **7 C W N 1076** **Bidhu Mohan Roy v Dasmoni Das** **10 C L J 80** and in the matter of an Attorney **I L R 41 Calc 734** referred to **RAJIB ALI v EMPEROR** (1918)
I L R 46 Calc 60

11 ——— **Power of Collector to review his own order—The Collector has no power to review his own order refusing to interfere with an order passed by his subordinate confirming a sale for arrears of land revenue** **DAVID NADAR v MANICKA VACHARA DESIJA GNANA SAMBANDA PANDARA SANNADI** (1909) **I L R 33 Mad 65**

9 ——— **Application for leave to appeal to Privy Council—Order rejecting such application if subject of review—Interest subsequent to decree how far can be allowed by the High Court in be calculated—Order rejecting application for review by a Court other than High Court of appealable—Civil Procedure Code (Act V of 1908) s 114** **OO XLVII and XLIII = 1 (v)** An order rejecting an application for leave to appeal to His Majesty in Council comes within the description of orders contemplated in s 114 of the Code of Civil Procedure 1908 and is subject to review. **Lutf Ali Khan v Asgur Reza** **I L R 17 Calc 456**, distinguished. The High Court should not grant leave to appeal to His Majesty in Council in cases in which the specified amount of Rs 10,000 can only be reached by the addition of interest subsequent to the decree. **Goorooperad Khoond v Jugguchunder S Moe I A 166** followed. **NAND KISHORE SINGH v RAM GULAM SAHU** (1912)
I L R 39 Calc 1037

10 ——— **Appeal from original decree—Review of judgment—Effect of order on review—The effect of the granting of an application for review is to supersede the decree which is the subject of such application. No appeal can therefore be maintained against the decree anterior to the review but only against the subsequent decree** **Kuar Sen v Ganga Pam Ali Weekly Notes** (1890) **144** and **Kanhai Lal v Baldeo Prasad** **I L R 23 Al 246** followed. **Uma Kunwar v Jambhandari** **I L R 30 Al 479** distinguished. **BRINHASI LAL v SALGI RAM** (1912)
I L R 34 Al 232

11 ——— **Application for review—Sui—Res judicata—Compromise decree** An application for review is not a suit within the meaning of s 13 of the Code of Civil Procedure 1892 and a decision of a question arising in an

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application for review cannot operate as constructive *res judicata*. **Gulab Koor v Badshah Bahadur** **10 C L J 420** referred to. **Ram Gopal Maynard v Prasanna Kumar Samad** **2 C L J 308** distinguished. **SRISHI CHANDRA PAL CHOWDERY v TRIGUNA PRASAD PAL CHOWDERY** (1913)
I L R 40 Calc 541

12 ——— **Vendor and purchaser—Conditions of sale effect of—Title—Commissioner of Partition sale by not sale by Court—Rules and Orders of the High Court s 496 scope of—Under an order of Court that he "be at liberty to sell a Commissioner of Partition sold certain property by public auction. The conditions of sale set forth stipulated that there were no documents of title except the one mentioned in the abstract of title that the purchaser should not be entitled to call for any other document or to object to the title on the ground of the non production thereof and that no objection to the title should be allowed. The purchasers at the auction subsequently obtained an order of Court directing the Registrar to enquire and report under r 4 b as to the vendor's title. On an application for review of judgment held that the review must be granted on the ground that the sale was not a sale by the Court** **Gulam Hassan Casim Anji v Fatima Begum** **10 C W N 394** and **Chandranath Basu v Bisanath Basu** **6 B L R 498** followed. The conditions of sale did not preclude the purchasers from raising the question of the vendor's title where it appeared (i) that the abstract of title commenced with a bond of indemnity which was in no sense a root of title and (ii) that the abstract did not expressly disclose the nature of the title or indicate that the property was subject to a permanent lease at a small rent. **JOCEMALA DASSEE v ANKOR COOMAR DAS** (1911)
I L R 40 Calc 140

13 ——— **Criminal cases—Power of a Division Bench of the High Court to review its judgment discharging a Rule before signature—Discharge of the accused in a part heard case for absence of remaining witnesses without consideration of the evidence already on the record—Criminal Procedure Code (Act V of 1898) s 331 369—Practice** It is competent to a Division Bench of the High Court which has erroneously discharged a rule on a point of law and a misapprehension of the facts in connection therewith to review its judgment before it has been signed. In the matter of the petition of **Gibbons** **I L R 14 Calc 42** **Queen Empress v Lalit Tiwari** **I L R 21 Al 117** referred to. **Queen Empress v For** **I L R 10 Pom 176** distinguished. Where a Magistrate after some of the prosecution witnesses had been heard by another Bench of Magistrates discharged the accused because the other witnesses were not present the High Court set aside the order of discharge and directed him to dispose of the case after argument with reference to the evidence already on the record. **AMODINI DASSEE v DARSAN CHOSE** (1911) **I L R 38 Calc 828**

14 ——— **Point of law not taken during trial—Whether affords ground for review—Code of Civil Procedure (Act V of 1908) O XLIII r 1—other sufficient reasons—occupancy holding—mortgage to proprietors—sale to co-proprietor to satisfy mortgage whether valid** The mere fact that a point of law which might have been raised was not raised during the trial is not necessarily

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in itself sufficient to support an application for review *Query*—Whether an omission to raise a point of law which, had it been raised might and probably would have brought about a different result, is necessarily a mistake or error apparent on the face of the record for which a review can be claimed. *Query*—Whether in the case of a mortgage to the landlords of a raiyath holding where the holding is not transferable without the landlords' consent, they are bound to permit the mortgagor to transfer the holding to anybody whom he may choose (in this case a co-proprietor) in order to put himself in funds to pay off the mortgage. **HANU PRASAD CHOWDHURY v. LALU BEHARI MANDER.**

5 Pat L J 344

15 ——— Appeal—Revision—Permission of an order rejecting an application for review not maintainable when the original decree has been the subject of appeal. A Munsif decided a suit in favour of the plaintiff. One of the defendants filed an application for review of judgment whilst another of them filed an appeal in the court of the District Judge. The application for review was rejected and the applicant then applied in revision to the High Court against the order of rejection. Before however this application came on for hearing the appeal before the District Judge had been disposed of. *Held* that although the Munsif might have been wrong in rejecting the application for review the Munsif's decree no longer subsisted and the application for revision could not be heard. **PAN PRASAD UPADHYA v. NAGESH PANDY.**

I L R. 42 All 317

16 ——— Discovery of new matter or evidence—Appeal—Strict proof. meaning of—Civil Procedure Code (Act XI of 1882) ss 696 cl (b) 699 Civil Procedure Code (Act V of 1908) O XLVII rr 4 (2) (b) 7 (1) (b). In a 626 of the Code of 1882 strict proof does not mean proof that convinces the Appellate Court but that there must be legal proof adduced before the Court that has to deal originally with the question of granting a review. The whole scheme of the Act recognises that with proper safeguards the Court of first instance is the proper Court to determine whether or not there should be a review but that before a review is granted the safeguards must be observed. *Per JENNINGS CJ*. Proof ordinarily has one of two meanings either the conviction of the judicial mind on a certain fact or the means which may help towards arriving at that conviction the use of the word strict points to the second of these two meanings and strict proof means anything which may serve directly or indirectly to convince a Court and has been brought before the Court in legal form and in compliance with the requirements of the law of evidence. It is a formality that is prescribed and not the result that is described. *Per WOODROFFE J* Cl (b) of sub s (2) of r 7 of O XLVII of the new Code does not refer to the weight or sufficiency of the evidence. If the legal formalities are observed it is no objection that the probative force of evidence legally taken appears to be different to the Appellate Court from what it appeared to the Court granting review. Strict proof means proof according to the formalities of law. It does not refer to sufficiency of proof in securing a particular conviction. Whether the proof is according to law or not is within the jurisdiction of the Appellate Court to determine the question of sufficiency

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of evidence is for the Court admitting the review. **Gyanund Asram v. Depin Mohun Sen** I L R 2 Cal 734 **Bhagub Chunder Surmah Choudhury v. Madhub Chunder Surmah** 11 B L J (F B) 473 20 W R 84 **Chunder Churn Auggrodany v. Looduram Deb** 25 W J 374 **Kolemoddeen Mundul v. Heerun Mundul** 24 W R 186 referred to **ANID KHONDKAR v. MAHENDRA LAL DE** (1915) I L R 42 Cal 830

17 ——— Appeal against order granting review—New and important evidence—Civil Procedure Code (Act I of 1908) O XLVII rr 1 & 4 and 5. An application for review was made by a defendant on the ground that the evidence of B who could not be got at the time the decree was made was very relevant and material and if that could be given at the time of hearing might possibly have altered the judgment. The applicant obtained a rule and that was made absolute without strict proof as to the important nature of the evidence its discovery after the decree or the applicant's inability to produce it at the time the decree was made. *Held* that the order for review was made in contravention of O XLVII r 4 of the Civil Procedure Code consequently there was a right of appeal. *Per MOOKENZEE J*. It is the duty of the Court to come to the conclusion before it grants an application for review that the evidence in question is new and important and that it was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made. **Ahid Khondkhar v. Mahendra Lal De** I L R 42 Cal 830 **Nanda Lal Mullick v. Panchanan Mukerjee** I L R 45 Cal 60 **Young v. Kerehaw** 81 L T 531 16 T L R 89 and **Brown v. Dean** [1910] A C 373 referred to **CHIRANJIL RAMLAL v. TULSI RAM JANKIDAS** (1919) I L R 47 Cal 568

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See ACQUITTAL I L R 42 Cal 612

See ADMINISTRATION BOND
I L R 39 Cal 563See AGRA TENANCY ACT (II OF 1901)
ss 58 167 I L R 41 All 28
ss 167 199 I L R 41 All 226See APPEAL I L R 38 Cal 717
I L R 41 Cal 323See ARBITRATION 4 Pat L J 264
I L R 38 All 354See CIVIL PROCEDURE CODE 1908—
ss 10 AND 115 I L R 42 All 409
ss 105 AND 115 I L R 43 All 305
115O XXI RR 89 AND 115
4 Pat L J 340

O XXI R 95 I L R 40 All 216

O XXI RR 97 103
4 Pat L J 95O XXIII R 1 & 115
I L R 40 All 612

O XXIV R 5 5 Pat L J 342

O XLJ R 10 I L R 42 All 628

O XLIV R 1 I L R 40 All 381

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SCH II PARAS 15 AND 16

I L R 34 ALL 489

See COMPOSITION OF OFFENCE

I L R 43 Cal 1143

See CRIMINAL PROCEDURE CODE—

ss 107 125 438 I L R 40 ALL 143

s 125 I L R 39 ALL 468

I L R 41 ALL 651

s 145 I L R 39 ALL 612

I L R 40 ALL 384

ss 145 435 I L R 36 ALL 233

ss 145 435 AND 439

I L R 42 ALL 214

I L R 41 ALL 302

ss 145 439 I L R 32 ALL 132

s 195 I L R 35 ALL 90

ss 195 439 I L R 36 ALL 403

s 347 I L R 37 ALL 127

ss 345 438 439 I L R 42 ALL 474

ss 345 (2) AND 439

I L R 32 ALL 153

ss 403 423 439 I L R 36 ALL 4

s 435 I L R 43 Bom 864

ss 435 439 I L R 43 Bom 607

I L R 43 ALL 497

ss 435 439 133

I L R 39 Mad 537

s 438 L L R. 38 Mad 1028

s 439

s 476 I L R 34 ALL 267 393

I L R 38 ALL 695

I L R 39 ALL 91 367

s 477 I L R 41 ALL 197

s 537 I L R 37 ALL 110

See DEKKHAN AGRICULTURISTS RELIEF
ACT (XVII OF 1879) ss 3 (v) 10
AND 33 I L R 39 Bom 165See DISMISSAL FOR DEFAULT
4 Pat L J 277

See HIGH COURT I L R 41 ALL 587

See INSOLVENCY 14 C W N 143

See JURISDICTION OF CIVIL COURT
I L R 34 Bom 267See JURISDICTION OF CRIMINAL COURTS
I L R 34 ALL 118See JURISDICTION OF HIGH COURT
I L R 38 Cal 832See LAND ACQUISITION ACT 1894 s 49
2 Pat L J 204See LEGAL PRACTITIONERS ACT (XVIII
OF 1879) s 36 I L R 40 ALL 153

See LIMITATION I L R 45 Cal 84

See MAHAYDARS COURTS ACT (BOX II
OF 1906) ss 19 23

I L R 35 Bom 487

See MAFAL CODE s 280

15 C W N 835

See PRACTICE I L R 48 Cal 534

REVISION—*contd*See PROVINCIAL INSOLVENCY ACT (III
OF 1907)—

ss 15 to 22 46 52

I L R 38 Mad 15

ss 21 26 I L R 34 ALL 42

See PROVINCIAL SMALL CAUSE COURTS
ACT (IX OF 1887)—

s 25

SCH II ART 31 I L R 40 ALL 659

See RELIGIOUS ENDOWMENT ACT 1886

s 5 I L R 43 ALL 86

See REVIEW OF JUDGMENT

I L R 42 ALL 31

See REVISIONAL JURISDICTION

See REVISION BY SINGLE JUDGE

See SANCTION FOR PROSECUTION

I L R 37 Cal 13

I L R 40 Cal 249

See SPECIFIC RELIEF ACT (I OF 1877) s 4

I L R 33 ALL 64

See WITHDRAWAL OF PROSECUTION

I L R 48 Cal 1108

by High Court—

See TEMPORARY INJUNCTION

I L R 41 Cal 438

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See SANCTION FOR PROSECUTION

I L R 44 Cal 816

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of Court fee—

See SECOND APPEAL I L R 2 Lah 1

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See CRIMINAL PROCEDURE CODE 1909,

s 197 I L R 2 Lah 805

grounds for—

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in petition by private parties—

See CRIMINAL PROCEDURE CODE (ACT

OF 1898) s 439 440 497

I L R 39 Mad 505

non maintainability of—

See AWARD I L R 38 Mad 256

power of the High Court to interfere

in—

See CIVIL PROCEDURE CODE (ACT 1 OF

1909) s 110 I L R 39 Mad 195

See PROVINCIAL SMALL CAUSE COURTS

ACT (IX OF 1887) s 25

I L R 45 Bom 86

Want of sanction to prosecute—

whether a ground for revision—

See CRIMINAL PROCEDURE CODE s 231

I L R 45 Bom 835

application to set aside order of

acquittal—

See CRIMINAL PROCEDURE CODE 1909

s 211 I Pat L J 264

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ing— Board of Revenues powers regard

See ESTATES PARTITION ACT 1897 s 11
1 Pat L J 491

— for irregularity of subordinate

court— See I RECEIVER 4 Pat L J 20
Interlocutory order—High Courts
power to call to record—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 11 1 L R 44 Bom 619

— Perjury—Contradictory statements
made before different Courts—

See CRIMINAL PROCEDURE CODE (ACT V OF 1908) ss 231 19 337 (b) 161
1 L R 45 Bom 835

— under Criminal Procedure Code—

See PRACTICE 1 L R 48 Cal 534

— whether application should be made
to Sessions Judge or District Magistrate—

See CRIMINAL PROCEDURE CODE ss
435 AND 439 1 L R 43 All 497

— Extradition—warrant
issued by President in Nepal—Proceedings the on
by District Magistrate in British India and order
of surrender of fugitive—Lower of High Court to
interfere in revision with such order—Nepal whether
a Foreign State—Criminal Procedure Code
(Act V of 1898) ss 435 439 491—Extradition Act
(XI of 1904) s 15 Nepal is not a Foreign
State within the meaning of the Indian Extradition
Act (XI of 1903) Where a warrant has been
issued by the Political Agent under s 15 of the Act
its execution by the District Magistrate in British
India in accordance with the Act is an executive
act and the High Court cannot interfere in revision
with the proceedings of the Magistrate and the
order to surrender the fugitive criminal but if the
latter considers him self aggrieved thereby he can
invoke the action of the Government under s 15
The power of the High Court however to interfere
under s 491 of the Criminal Procedure Code which
applies whatever be the occasion of the deprivation
of the liberty of the subject remains untouched
by the Extradition Act GULLI SARTI v
EMPEROR (1914) 1 L R 42 Cal 793

— Civil Procedure Code
(Act V of 1908) s 110—Government of India Act of
1915 s 107—Difference of opinion in a Divisional
Bench in disposing of a Rule—Appal under s 15
Letters Patent if lies Judgment debtor whose
two thirds share of a *pattna* was sold in execution
of his landlord's decree for rent and purchased by
the owner of the remaining one third of the *pattna*
applied to have the sale set aside under O XXI
r 90 alleging *inter alia* that the value of the
property sold was deliberately underestimated
and the property sold at an inadequate value
The Munsif upheld both objections to the sale
and set it aside but the District Judge on appeal
restored it holding that the value fetched was
not seriously inadequate To this conclusion the
District Judge was led by a summing that what
was sold was only one third and not two thirds of
the *pattna* and that the purchaser was a stranger
On an application for revision the Judges of the
Division Bench (N P CHATTERJEE and MULLICK

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J J) differing in opinion the order of the senior
Judge setting aside the order of the District Judge
and remanding the case prevailed Held per
CURRIAM that a further appeal lay under s 15 of
the Letters Patent Held (by the majority
TATTON J contra) (affirming MULLICK J) that
this was not a case for interference in revision for
although the District Judge made a grave mistake
of fact the failure of justice was not due to a fault
of procedure such as is contemplated by s 115
cl (c) of the Civil Procedure Code nor was it a
case for interference under s 107 of the Govern-
ment of India Act as this mistake could have been
corrected by an application for review Per
TATTON J (agreeing with N P CHATTERJEE J)
—The District Judge having in this case set him-
self to value not the property sold but an entirely
different property the error was not one of fact
only and the High Court should interfere
CHANDRA KISHORE ROY CHOWDHURY v BASARAT
ALI CHOWDHURY (1917) 22 C W N 627

— Delay in applying to
High Court The Revisional jurisdiction of the
High Court is discretionary and the Court will not
interfere in revision at the instance of applicants
who do not show reasonable diligence in prosecuting
their cases ADADI BEHARI MISRA v DWARKA
PRASAD SINGH 1 Pat L J 185

— Interference under s 145
Criminal Procedure Code—Difference of opinion
—Jurisdiction of High Court—Grounds for exercise
of its jurisdiction—Omission to add a party—
Material prejudice—Criminal Procedure Code ss
145 435 439—Government of India Act (s 6
(co 1 c 61) s 10—Letters Patent cl 36 S
439 of the Criminal Procedure Code does not
apply to a proceeding under 145 which is outside
it. On a difference of opinion on revision of
such a proceeding the opinion of the senior
Judge prevails under cl 36 of the Letters
Patent Laddi Singh v Sukdeo Narain Singh
1 L R 97 Cal 399 and Shaikh Syadaddi
Mondal v Corb 92 C W N 499 commented
on Emperor v Har Prasad Das 1 L R 40 Cal
477 relied on Mathura Sahu v Damri Parn 16
C L J 337 and Bapu v Popu 1 L R 39
Mad 100 approved Queen Empress v Dada
Aho 1 L R 15 Bom 457 dissented from Semble
If it be held that cl 36 applies only to original
or appellate jurisdiction the Court should act in
the absence of any provision to the contrary upon
the principle underlying the clause The power of
the High Court to interfere under s 107 of the
Government of India Act in cases under s 145 of
the Criminal Procedure Code is not confined to
questions of jurisdiction alone It may also
interfere when the Magistrate has acted with
illegality or material irregularity and a party
has been prejudiced thereby Sukh Lal Sheikh v
Tara Chand Ta 1 L R 33 Cal 68 followed
Per NEWBOULD J The omission to add a party
in a proceeding under s 145 of the Code is not an
error of jurisdiction Krishna Kamini v Abdul
Jubbar 1 L R 30 Cal 155 followed There
was no irregularity in the present case resulting
in such material prejudice as would justify the Court's
interference Per SHANKS UL HUDA J Where the
refusal of the Magistrate to add a party on his
application to the proceedings has resulted in a
serious failure of justice the Court will set aside

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this attachment but the High Court refused his application as barred. On appeal to the High Court in its Appellate Jurisdiction reference was made by this Court to a Full Bench. *Held* that the application of the 1st June 1904 and the order of the 30th June 1904 did not constitute a revival within Art. 183 of the 1st Schedule of the Limitation Act 1904. *Per SANDEEPSON C J*. The substance and not the form of the matter must be looked at and considered from that point of view the application was for the transmission of a certified copy of a decree together with a certificate of non-sati fact and no more and the order made in substance was that the application should be granted. The notice which was used under s. 248 was inapplicable to the proceedings in question. The question whether a decree was capable of execution would have to be determined by the Court itself under s. 249 of the Civil Procedure Code. The Registrar was not clothed with authority to decide such a question as arises in this case viz., whether the decree was barred by the Statute of Limitation P. 30 in Belchambers Rules and Orders was not consistent with the scheme of the Code of 1882. These rules must be read as modified by the Civil Procedure Code 1882 under which the application in this case was made and the notice issued and the order made did not operate as a revival within the meaning of Article 183 of the Limitation Act Schedule I. The fact that the word revival is used in Art. 183 instead of the different matters specified in Art. 182 being set out again or referred to in Art. 183 as might have been done shows that something different to such matters was intended. Further the conditions dealt with by the two clauses are essentially different and the periods of limitation vary materially. *Per WOODROFFE J*. An order for transmission as such is not an order on an application for execution though it is an order on an application in execution. It is a proceeding taken with a view to further action by way of execution elsewhere on which action unless previously determined the question of the right to execute the decree is decided. If the Registrar had power to issue as a quasi-judicial act notice under s. 248 he had no power to determine judicially that the decree was alive had the debtor contested the point. The Judge must have done that and the fact that the debtor did not appear on the notice cannot give the order passed that judicial character which is necessary for an order operating as a revival. The last two words of the Order (Let execution issue as prayed) make the order operative as one for transmission of the decree for this was what was asked. *Per MOOKJEE J*. S. 230 makes it plain that the application for execution must be presented to the Court to which the decree has been transmitted for execution while the explanation to s. 248 shows that the notice required by that section must where the decree has been transmitted be issued by the Court to which the decree has been sent for execution. Consequently the issue of the notice in this case under s. 248 on the basis of the application for transmission of the decree was not in conformity with the Code of 1882 which was in force at the time. Upon the application for transmission of the decree under s. 223 a notice under s. 248 could not properly be issued such notice though issued did not by itself operate

REVIVAL—contd

as revival of the decree and there was not in act and could not in law be such a determination by the Master under s. 249 as would operate to revive the decree. *CITIZENRY SINGH v. SATT SUNDARI MULL* (1916) I L R 43 Cal 903

REVOCAION

See HINDU—LAW—WILL.

I L R 39 Mad. 107

See LETTERS OF ADMINISTRATION

I L R 40 Cal 5

See PROBATE

I L R 37 Cal 387

I L R 42 Cal 480

See SANCTION FOR PROSECUTION

I L R 40 Cal 423

— of authority—

See GUARDIAN

I L R 38 Mad 807

— of gift—

See MUHAMMADAN LAW—GIFT

I L R 36 All 333

See CONTRACT ACT s. 19

I L R 36 Bom 37

— power of—

See GIFT

I L R 39 Cal 933

— presumption of—

See WILL.

I L R 45 Bom 906

REVOLUTIONARY ACTIVITY

See SECURITY FOR GOOD BEHAVIOUR

I L R 46 Cal 215

RHANDERIAS

See MUHAMMADAN LAW—ENDOWMENT

I L R 43 Cal 1085

RICE MERCHANTS ASSOCIATION RULES

See JURISDICTION OF CIVIL COURTS

I L R 34 Bom 13

RIGHT OF APPEAL

See APPEAL TO PRIVY COUNCIL

I L R 40 Cal 21

RIGHT OF AUDIENCE

See JURISDICTION

I L R 48 Cal 768

RIGHT OF CROSS EXAMINATION

— continuance of—

See CROSS EXAMINATION

I L R 37 Cal 236

RIGHT OF OCCUPANCY

See LANDLORD AND TENANT

I L R 37 Cal 449

See OCCUPANCY HOLDING

See OCCUPANCY TENANT

— acquisition of—

See LANDLORD AND TENANT

I L R 38 Cal 432

RIGHT OF PRIVATE DEFENCE

- See ASSESSORS EXAMINATION OF
I L R 40 Calc 163
- See PENAL CODE ss 96 to 106
- See PRIVATE DEFENCE
- See RIOTING I L R 39 Calc 896
I L R 41 Calc 43
- See SEARCH WITHOUT WARRANT
I L R 36 Calc 304

RIGHT OF RE ENTRY

- See BOMBAY RENT (WAR RESTRICTIONS
ACT II OF 1918) ss 9 AND 12
I L R 45 Bom 535

RIGHT OF REPLY

- See APPEAL I L R 38 Calc 307

Right of reply—Duty of Appellate Court to determine accomplice character of Evidence—Criminal Procedure Code (Act V of 1893) s 421—Practice The appellant has a right of reply to the Crown on the hearing of an appeal *Promoda Bhushan Roy v Emperor 11 C W N 211* followed The Appellate Court is bound to find specifically whether witnesses said to be accomplices are so or not and to weigh their evidence accordingly *AMANAT SARDAR v VAGENDRA BISWAS (1910)*

I L R 38 Calc 307

Exhibiting documents not part of the record on behalf of the accused during the cross examination of the prosecution witnesses—Doctrine of surprise—Criminal Procedure Code (Act V of 1893) ss 289 and 292 S 292 of the Criminal Procedure Code is not to be read independently but in connection with s 289 and gives a right of reply only when the accused or any of them adduces evidence after the case for the prosecution has concluded. The prosecution has no right of reply when the counsel for the accused has during the cross examination of a prosecution witness and before the close of the case for the Crown put certain letters which do not form part of the record to such witness and then tendered and had them admitted in evidence. The question whether the prosecution has been taken by surprise is not the correct test under s 292 of the Code *EMPEROR v GREENWATH MAHAPATRA (1910)*

I L R 43 Calc 426

RIGHT OF SUIT

- See ALIEN ESTATE
I L R 46 Calc 526
- See CIVIL PROCEDURE CODE (ACT V OF 1903) ss 47 73 101
I L R 39 Mad 570
- See CONTRACT
I L R 33 Mad 788
- See EXECUTION SALE
I L R 39 Mad 803
- See LEASE AND LESSEE
I L R 39 Mad 1042
- See PARTIES
I L R 45 Calc 862
- See RIGHT TO SUE

— destruction of—

- See DEED I L R 38 Mad 46
- See RIGHT TO SUE

RIGHT OF SUIT—contd

1 ——— Non service of Summons—*Fraud—Civil Procedure Code (Act XIV of 1883) s 102—Ex parte decree* A fresh suit would not be to set aside a decree on the mere ground of non service of summons though it would be maintainable on the ground of fraud. *Radha Ramas Shaha v Pran Nath Roy I L R 28 Calc 475* and *Khagendra Nath Mahata v Pran Nath Roy I L R 29 Calc 395* referred to *Puran Chand v Soodat Ras I L R 29 All 212* followed *NARSIMHA DAS v RAYIKAN (1909) I L R 37 Calc 197*

2 ——— Suit by person not party to an instrument—sustainable when charge created in such person's favour—Decrees for relief not specifically asked for when allowable A plaintiff asking for certain specific reliefs and for such other relief as the Court should deem fit should on being found disentitled to the specific reliefs asked for be given such relief as the circumstances justify. A person who is not party to a document but in whose favour a charge is created by such document is entitled to maintain a suit to enforce its terms either as the actual beneficiary or as the charge holder *SATTU AMMAL v SUBRAMANIAM (1903)*

I L R 33 Mad 933

3 ——— Election suit—*Madras District Municipalities Act (IV of 1881)—Election as Municipal Councillor—Declaration of its invalidity by Collector under r 36 of Election Rules—Civil Courts no jurisdiction to question in—Appointed by election in a 10—Meaning of election* An order of a Collector declaring the invalidity of an election of a candidate to a seat in a Municipal Council passed under r 36 of the Election Rules after enquiry and based on proper grounds (i.e. those set forth in r 35) and otherwise complying with the requirements of the rules framed under s 250 of Madras Act IV of 1881 (District Municipalities Act) cannot be questioned in a civil suit but is conclusive as far as the result of the election is concerned *Bhaisankar v The Municipal Corporation of Bombay I L R 31 Bom 604* 609 followed *Maxwell on Interpretation of Statutes 4th Edition p 197* referred to *1909 Raghu v The Secretary of State for India I L R 34 466* *Sabhapati Singh v Abdul Gaffur I L R 34 Calc 107* *Lalbahar v The Municipal Commissioner of Bombay I L R 33 Bom 334* distinguished. *PER CURIAM* The status of a Municipal Councillor is the creation of s 10 of Act IV of 1881 and the creation is subject *inter alia* to the conditions imposed by the Election Rules framed by the Governor in Council under s 250 of the Act and invested by clause (3) with the force of law. One of these rules in s 36 the election gives the candidate elected no vested status as the election is liable to be declared invalid an invalid election can confer no status whatever. The words "appointed by election" in s 10 refer only to a valid election i.e. one which is not set aside without r 36. *Semle II* an order is passed on grounds other than those set forth in r 35 a suit would probably lie to set it aside as *ultra vires*. A suit for damages lies in consequence of an invalid order and a suit for a declaration of the validity of an election and an injunction stand on very different footings than is based on the same facts. The former may be decreed while the latter may not. *NARAYANA MUDALIYAR v THE MUNICIPAL COUNCIL OF MAYA VARAM (1913)*

I L R 36 Mad 129

RIGHT OF SUIT—*contd.*

4 ——— Suit for exemption from land revenue—Owner alone can bring suit for land by A and B and not in favour of A—Third party cannot question—*Pesjudicata Civil Procedure Code Act 1 of 1908 s 13 not exhaustive* A suit for a declaration that the land is not liable to assessment can be instituted only by the person entitled to it as owner. If a suit relating to ownership of the land between two persons has ended in favour of one of them third parties having no interest in the land at the time of the litigation cannot in the absence of any collusion or fraud on them dispute the settlement of the dispute between them as to title even for supposed want of jurisdiction and it is equally true that neither of the parties to the litigation can be permitted to aver as against third persons in the like position that the land belongs to him self and not to his opponent in the litigation. Second Appeal No 4 of 1909 followed *Bigelow on Toppel* 5th edition, 44 referred to *Per Curiam* The question does not depend upon the application of the doctrine of *res judicata* s 13 Civil Procedure Code does not cover all cases of estoppel by judgment. The suit was for a declaration that the defendant the Secretary of State for India was not entitled to levy any assessment on certain lands which the plaintiffs claim as part of their *agraraham*. In previous suits by B against plaintiffs once for a declaration of title and afterwards for possession of the lands the judgments were in favour of B. *Held* (i) that the plaintiffs in the present suit cannot be permitted to prove as against the present defendant that they were the owners and (ii) that the suit was not maintainable. *Semle* Even if the previous litigation had ended in favour of the present plaintiffs the Government though it would not be entitled to question the plaintiffs' title would not be bound to regard the land as exempt from revenue. *RAMIA MURTI DHORA v SECRETARY OF STATE FOR INDIA* (1913) I L R 38 Mad. 141

5 ——— Transfer of property in consideration of transferee paying sums to third parties—Failure of transferee to pay in reasonable time—Right of transferor to sue for same sums plus costs of damage II A transfers his property to B in consideration of B agreeing to pay certain sums to third person, A himself entitled to sue B for the recovery of those sums as if they are due to him in case of B's failure to pay the third persons within a reasonable time and A is not in such a case bound to show that he was in any way damaged by B's failure. *Dorasinga Tetar v Aruna Lalum Chetty* I L R 3 Mad 441 *Rengannatham v Appala Naidu* [C W J 1 No 119 of 1908 (unc. reported)] and *Gopala Aiyar v Pamasuami Sistrupal* [S A No 183 of 1907 (unreported)] followed. *Sita Subramania Mudaliar v Gnana sambanda Pandara Sannadhi* 21 Mad I J 359 *Chenchuramaya v Subaranyan* 3 Mad L T 79 *Dorasinga Tetar v Lalshmanan Chetty* 14 Mad L J 284 *Thangam v Nalliar v Sibbam* Mal 16 Mad L J 90 *Putti Narayana Murthy Ayyar v Mariamut Pillai* I L R 26 Mad 322 *Kumar Nath Bhattacharye v Nabo Kumar Bhattacharye* I L R 26 Cal 441 and *I atin Hassan Begam v Kunwar Pertab Singh* L R 361 A 203 distinguished. *Suhas Naidu v Bathula Bee Sahiba* 8 Mal L T 188 referred to. *PAGHU NATHA v SADAGOPA* (1913)

I L R 38 Mad. 348

RIGHT OF SUIT—*contd.*

6 ——— Acquisition of inam land by Government for municipal purposes—Madras District Municipalities Act (IV of 1884) s 29 effect of—Sale by Municipalities—Imposition by Government of ground rent on occupier—Ground rent liability to pay—C O No 20 of 20th February 1889 effect of—Exemption from ground rent to be excepted—Even an inam land which is subject only to a quit rent becomes when acquired by Government under the Land Acquisition Act ordinary Government land liable to assessment in the hands of any person who might afterwards become the occupier whether deriving his title directly from the Government or from a Municipality which after such acquisition by the Government becomes owner under s 10 of the Madras District Municipalities Act (IV of 1884) by payment of the amount settled as compensation. Acquisition is only by the Government and not by the Municipality hence the previous inamdar's right to exemption from assessment does not rest in the Municipality. A transferee from the Municipality of such land cannot therefore claim as against the Government exemption from assessment. A person who claims exemption from the payment of such assessment as the Government may fix must show some grant exempting him from the payment of the ordinary assessment. No exemption can be claimed without a grant or exemption in express words. Effect of C O No 210 dated 20th February 1889 permitting Municipal Councils to transfer lands vested in them by sale mortgage or otherwise was not to exempt the transferees from ordinary assessment that might be imposed but was only to remove all objection to the transfer on the ground that the transferor is a Municipal Council. *HANU MAYLU v SECRETARY OF STATE* (1913)

I L R 38 Mad. 373

7 ——— Title to property seized—Civil Court—Jurisdiction—Order of forfeiture passed by Magistrate—Criminal Procedure Code (Act 1 of 1898) s 503 524—Disposal of property—Sale proceeds credited to Government—Suit to recover the amount The plaintiff's house was searched in connection with a dacoity and certain property was attached on suspicion. On a proclamation being issued by the 2nd Class Magistrate under s 53 (2) of the Code of Criminal Procedure 1898 the plaintiff appeared before the Magistrate to establish his claim to the property. The claim was disallowed and an order was passed under s 504 of the Criminal Procedure Code for sale of the property. The sale proceeds having been credited to Government the plaintiff brought a suit for the recovery of the amount. The defendant pleaded that a Civil Court had no jurisdiction to entertain the suit. The Assistant Judge decided the suit in plaintiff's favour. The District Judge on appeal dismissed the suit holding that as under s 524 the property was at the disposal of Government the special provisions relating to investigation of claims to property mentioned in s 523 made the decision of the Magistrate final and deprived the person aggrieved of any right of action. On appeal to the High Court—*Held* reversing the decree that the order of the Magistrate disposing of the property under s 504 of the Criminal Procedure Code was not final and that it did not deprive the plaintiff of his right to establish his claim in a Civil Court. *Queen Empress v Tribho*

RIOTING—concl'd

Bengal Excise Act (V of 1909) confers wider powers on excise officers than were given under the former Act. Under s 67 read with r 75 of the Rules framed by the Local Government an excise inspector and sub inspector may enter a house for the purpose of arresting without a warrant a person found in the illicit distillation of liquor. S 67 does not relate to any search and an excise officer not below the rank of a sub inspector entering a house for the purpose mentioned therein is not required to comply with the formalities prescribed in Ch X r (8) of the Instructions of the Board of Revenue unless he finds it necessary further to make a search in the house. Where an excise sub inspector accompanied by a constable and two chowkidars and excise peons went to the house of the accused in order to arrest without warrant persons found in the act of illicit distillation of liquor and were attacked and beaten by them before they had time to enter or search the same. Held that they were acting legally under s 67 of the Bengal Excise Act and that the accused were rightly convicted under ss 147 and 353 of the Penal Code. On a charge of rioting with the common object of assaulting public servants persons shown to have committed a separate offence under s 303 of the Penal Code may be separately sentenced thereunder. Formalities required by law prior to search considered. **PROKASH CHANDRA GUPTA v EMPEROR** (1914)

I L R 41 Cal 836

Interefois acquit—Common object—Penal Code (Act XLV of 1860) ss 79, 141, 147 and 342—Criminal Procedure Code (Act I of 1893) s 403. Several police constables were convicted of rioting. Two of them were previously tried and acquitted on a charge of wrongful confinement for having taken into custody some persons in course of such rioting. Held that the second trial was not vitiated by contravention of the rule embodied in s 403 (1) of the Criminal Procedure Code. **R v Barron** [1914] 2 K B 570 followed. **Suresh Chandra v Banku** 2 C L J 629 distinguished. **PAM SAHAY RAM v EMPEROR** (1920)

I L R 48 Cal 78

RIPARIAN RIGHTS

See EASEMENT

I L R 37 Mad 304

See FISHERY

See MADRAS IRRIGATION CESS ACT

I L R 40 Mad 886

See NAVIGABLE RIVER

I L R 46 Cal 390

Nature of—Rights of upper riparian owner—Grant of right for user apart from the tenement validity of—artificial reservoir fed by natural stream, grant by riparian owner of right to take water from validity of—Obstruction to exercise of riparian rights—Limitation Act (IX of 1908) ss 23 and 26. The right of a riparian owner is not an easement but a right based on the principle that all streams are publici juris and all the water flowing down any stream is for the common use of mankind living on the bank of the stream. A riparian owner is entitled to use the water from a stream for all reasonable purposes and may therefore permanently divert water for the purpose of irrigating his tenement. He may also make a grant to another riparian owner to take water by

RIPARIAN RIGHTS—concl'd

means of a channel running through the grantor's land from an artificial reservoir created by the grantor. The question as to whether such an user would be reasonable would depend upon the proper requirements of all the riparian owners. S 3 of the Limitation Act 1908 has no application to the case of an obstruction to the right to take water from a stream whether such right is founded on riparian ownership or a lost grant. An obstruction to such enjoyment is a continuing wrong within the meaning of s 23. **MATHANA KRISHNA DAYAL GIR v MUSAMMAT BHAWANI KOER**

3 Pat L J 51

Natural stream flowing in artificial channel rights of user in. The proper inference for the user of water in a natural stream flowing in an artificial channel is that the same as if the stream had been a natural one that is that the water should come without obstruction. **RAM KRIPAL SINGH v HANUMAN SINGH**

6 Pat L J 6

RISK NOTE

See CONTRACT I L R 43 Bom 69

See RAILWAYS ACT ss 72 AND 75

See RAILWAY COMPANY

Send s risk note—making Railway administration liable only if complete package lost whether opposed to public policy. The sender's risk note used in the East Indian Railway system under which the Railway Company takes liability only when there is a loss of a complete package due to wilful negligence of their staff or theft by their servants is not opposed to public policy. **ALL DAS MULLICK v E I RAILWAY CO** (1911)

21 C W N 515

rites and ceremonies

See HINDU LAW—MARRIAGE

I L R 38 Cal 700

RIVAL CANDIDATE

See MUNICIPAL ELECTION

I L R 80 Cal 130

RIVAL DECREE HOLDERS

See EXECUTION OF DECREE

I L R 74 Cal 109

RIVER

See GRANT

I L R Mad 840

See FIVER BED

RIVER BED

See GRANT

See PUBLIC NAVIGABLE RIVER

24 C W N 639

See REGULATION XI OF 1875

See RIPARIAN OWNERS

—sitting up and becoming culturable whether part of public domain when river admitted or grooved non navigable—Resumption that it was part of permanently settled estate—Suit to contest wrongful assessment of such river bed—Limitation—Fug II of 1819 ss 23 and 24—Act IX of 1871—Fug III of 1875 s 10—Act IX of 1871.] As soon as it is shown or admitted that a river within the ambit of the zamindari was never a public navigable river the onus which lies on the zemindar to show that its bed was included within the limits

FIVER BED—contd

of his permanently settled estate is discharged or allotted. The test for determining whether a river is a public navigable river or not is whether or not the river is navigable for boats at all seasons of the year. The question of size may not be without importance but speaking generally the presumption in the one case is that the bed belongs to the public or is public domain and in the other that the bed belongs to a private proprietor. In the absence of any other evidence than that afforded by a *thal* or survey map these natural pre-emptions may be sufficient to displace the contrary evidence of the map. *Maharaja Jagadindra v Secretary of State* L P 30 I A 41 s c I L P 30 Calc 231 7 C W N 193 (1907) *Haridas v Secretary of State* 6 C L J 90 (P C) (1917) *Secretary of State v Bijoy Chandra Mahatab* I L P 6 Calc 90 s c 22 C W N 53 (1918) and *Secretary of State v Palamudunnisa* L P 17 I A 40 s c I L P 1 Calc 590 (1859) referred to. The bed of a river included in a permanently settled estate is in no respect different from other waste lands included in the estate and whatever changes may have occurred from natural or artificial causes and however the land may have improved in value Government is not entitled to additional revenue for such land. *Lope v Muddun Mohun* 13 M J 46 at p 417 5 B L P 571 11 B P 11 (180) and *Bala Surya Prasad v Secretary of State* L P 44 I A 166 at p 185 s c I L R 40 Mad 846 21 C W N 1050 (1917) referred to. When the bed of such a river silt up and becomes fit for cultivation neither Peg II of 1819 nor Act IX of 1847 authorises the revenue authorities to assess the lands with revenue. Where nevertheless the revenue authorities have assessed such land with revenue under Act IX of 1847 *Quare*—Whether upon the enactment of Act IX of 1847 the limitation provided by s 24 of Peg II of 1819 ceased to be applicable to a suit by the owner to contest the validity of the assessment and to recover possession of the land. *SECRETARY OF STATE FOR INDIA v PRATULLA NATH TAGORE*

24 C W N 809

*Suit to contest order of Board of Revenue confirming assessment of land formed by silting up of river bed—Limitation—Peg II of 1819 s 24—Peg III of 1878 s 10—Act IX of 1847 s 6—Bed of public navigable river shown in *thal* and revenue survey maps as within permanently settled estate—Bed of to be presumed part of estate. The rules contained in s 10 of Peg III of 1828 and s 24 of Peg II of 1819 govern a suit to contest an order of the Board of Revenue under s 6 of Act IX of 1847 confirming an assessment under the Act and to obtain incidental relief such as recovery of possession of lands of which possession has been taken under s 10 of Reg III of 18.8. *Fahamudunnisa* s case I L P 14 Calc 17 (F B) (1886) on P C L R 17 I A 40 (1889) referred to. An order under s 6 of Act IX of 1847 confirming an assessment of revenue corresponds to a decision of the Board under Peg II of 1819 and unless the suit of the nature indicated by cl (3) of s 10 of Reg III of 18.8 is brought within the time limited by s 24 of Reg II of 1819 the decision of the Board declaring the land liable to assessment becomes final and conclusive for all purposes. Where the Board of Revenue found that a river the channels whereof had not materially changed between 1893 and 1894*

RIVER BED—concl

was a public navigable river but the *thal* and survey maps of 1861 shewed the whole width of the river as included in the permanently settled estate of the plaintiff the plaintiff offering no other evidence. *Held*—That the *thal* and survey maps were not in themselves sufficient to justify the Court in saying that the Board's order was wrong and should be reversed. *Maharaja Jagadindra* s case L P 30 I A 41 s c I L R 30 Calc 231 7 C W N 193 (1907) referred to. The question whether a river or watercourse is navigable or not does not depend on its name. *PRATULLA NATH TAGORE* SECRETARY OF STATE FOR INDIA 24 C W N 813

RIWAJ I AM

- See CUSTOM L L E 39 All 574
 — evidentiary value of—
 See CUSTOM I L R 44 Calc 749
 — Jhelum District Jats succession to acquired property—
 See CUSTOM (SUCCESSION) I L R 2 Lah. 28
 — Karnal District—Succession by daughter to self acquired property—
 See CUSTOM—SUCCESSION I L R 2 Lah 368
 — Ludhiana District—Adoption by an adopted son—
 See CUSTOM (ADOPTION) I L R 1 Lah 39
 — Jullundur District—Adoption of daughter's son—
 See CUSTOM (ADOPTION) I L R 2 Lah 193
 — Jullundur District—Succession of sister—
 See CUSTOM (SUCCESSION) I L R 1 Lah 1 & 433
 — Jullundur District—Adoption of brother's daughter's son—
 S c CUSTOM (ADOPTION) I L R 1 Lah 15
 — Jullundur District—Succession—daughter or collaterals—
 See CUSTOM (SUCCESSION) I L R 1 Lah 464
 — Shahpur—Succession—daughter or near collaterals—
 S c CUSTOM (SUCCESSION) I L R 1 Lah 284
 — Tahsil Chakwal District Jhelum—alienation in favour of daughter—
 See CUSTOM (ALIENATION) I L R 1 Lah 170
- ROAD**
 See BHAGDARI VILLAGE I L R 37 Bom 87
 See MUNICIPALITY I L R 43 Calc 130
 — making and maintenance of—
 See FORT I L R 39 Mad 351

ROAD AND PUBLIC-WORKS CESS ACT

See CESS ACT

ROAD CESS

— arrears of—

See PUBLIC DEMANDS PROCEEDINGS ACT s
10 14 C W N 807

— sale for arrears of—

See MUTT, HEAD OF
I L R 38 Mad 356**ROAD CESS RETURN**

See TRISHUKANA PAPER

[I L R 39 Calc, 995

1 — Evidence—Road cess return filed by a temporary lessee—Bengal Cess Act (IX of 1880) s 95—Evidence Act (I of 1872) s 21. The provisions of s 95 of the Bengal Cess Act are not exhaustive. They merely limit the application of s 21 of the Indian Evidence Act and exclude road cess returns when they are sought to be admitted in favour of the person by or on behalf of whom they have been filed. A road cess return filed by a person in his capacity as a temporary lessee of a certain property is admissible in evidence in favour of the superior landlord inasmuch as he could not be regarded as a person by or on behalf of whom the return was filed. **BEWDEO NARAIN SINGH v. AJODHYA PRASAD SINGH** (1912) I L R 39 Calc 1005

2 — Statements made in road cess returns by *Khopa khars* or holders of a maintenance grant as to the character of their tenure are good evidence of title against a defendant claiming under them, if not as admissions certainly as positive evidence in support of plaintiff's claim. **KALI SANKAR SAHAI v. MAHARAJA INATAP UDAI SAHI DYO** (1911) 16 C W N 623

ROAD CESS ACT (BENG IX OF 1880)

ss 8 72 76 80 81—The Royalty or percentage on the products of a mine payable by mine owners to the proprietor of the land is part of the annual net profits of the mine and liable to cess. **MAHARAJA MANINDRA CHANDRA NARAY v. THE SECRETARY OF STATE**

15 C W N 201

s 20—Rent suit for—Rent claimed at higher rate than amount entered in Road Cess Return. Unless there has been a material alteration of the holding a landlord is not entitled to claim rent at a rate higher than that stated in the Road Cess Return. Mere alteration in area due either to re-measurement or encroachment will not take a case out of s 20 of the Road Cess Act 1880. A suit for an entry in the Record of Rights which only raises a presumption for an entry in a *jama* would fail which states what the tenant's rent for a particular year was can override the provisions of the Act. **PHANTERHARI MANTON v. SAID SEBAZUL HUDA**

1 Pat. L J 521

ss 47 and 64 (A and B)—

See BENGAL TENANCY ACT 1885 s 65
1 Pat. L J 161**ROYAL PROCLAMATION OF AUGUST 1914**

See CONTRACT WITH ENEMY

I L R 44 Bom 631

ROYALTY

See INCOME TAX ACT 1918 s 6

6 Pat. L J 89

See MINES I L R 33 Calc 39

— action for—

See TRADE MARK I L R 42 Calc 289

— arrears of—

See MORTGAGE I L R 30 Calc 810

— payment of—

See LANDLORD AND TENANT I L R 46 Calc 659

— suit for—

See LIMITATION I L R 44 Calc 759

ROYALTY OR SEIGNIORAGE FEES

— right of Government to buy—

See INAM I L R 40 Mad 259

RULESSee CALCUTTA RENT ACT 1910
25 C W N 661See ULTRA VIRES
I L R 43 Calc 935**RULES AND ORDERS OF COURTS**

See UNDER VARIOUS HIGH COURTS

RULES OF EVIDENCE

See APPEAL I L R 38 Calc 145

RULING CHIEF

— suit against—

See CIVIL PROCEDURE CODE 1909 s 68
6 Pat. L J 185
I L R 30 Mad. 635**RULING OF COURT**

— of co-ordinate jurisdiction. A Judge on the Original Side is ordinarily bound to consider with respect to the decision of another Judge on the Original Side produced before him but that if he is convinced that the decision is erroneous he is not under any obligation to follow it against his own judgment. **MAHARAJA DASS MOOLJI v. BISSERSWAR TAL HARGOVIND**
24 C W N 1039

RYOT

See MADRAS ESTATES LAND ACT (I of 1909) s 3 I L R. 30 Mad 1135

RYOTI LANDSee MADRAS ESTATES LAND ACT (I of 1909) s 3
I L R. 30 Mad 1135
I L R. 40 Mad. 599ss. 9 11 151 157
I L R. 3 Mad. 81

RYOTI RENT

See MADRAS ESTATES LAND ACT (I OF 1905) s. 3. I L R. 111 Mad. 733

RYOTWARI LAND OWNER.

See MADRAS ESTATES LAND ACT (I OF 1905) s. 189 I L R. 111 Mad. 239

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S**SACRIFICE OF GOAT**

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See JURISDICTION I L R 114 Bom 13

See LAND REVENUE CODE (BOM ACT V OF 1879) s 74
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See LIMITATION ACT (IX OF 1908)

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ART 44 I L R 42 Bom 626

ARTS 62 AND 97

I L R 38 Mad 887

ART 116 I L R 40 All 605

See MAHOMEDAN LAW—PRE EMPTION

I L R 37 All 522

See MORTGAGE I L R 118 Calc 923

I L R 40 Calc 534

I L R 42 Calc 780

See OCCUPANCY HOLDING

I L R 48 Calc 184

See PRE EMPTION I L R 114 Bom 567

See PRIVATE SALE

I L R 45 Calc 780

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 34 I L R 37 All 452

See PATNI TALUK I L R 48 Calc 454

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See SALE BY GOVERNMENT

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See SPECIFIC RELIEF ACT (I OF 1877) s 27 I L R 38 All 184

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 40 I L R 40 Bom 498

s 54 I L R 34 Bom 129
I L R 37 All 631

s 55 I L R 43 All 314
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I L R 111 All 254

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- by Mahomedan to Hindu
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- by mother—
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- by prior mortgagee—
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- by servant or partner—
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- by minor co partner—
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- by a Municipality—without written contract.
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- By natural guardian—
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- Compromise in a suit for land—
whether a sale—
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- consideration—whether par^a co
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- claimant paying into Court the
decretal amount to set aside sale—
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- Execution proceedings transferred
to the Collector—
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- Deposit or Earnest money on—
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- of mortgaged property—
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- of mortgagor's rights—
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- of right title and interest of mort-
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- of trust property—
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- properties advertised for by the
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- right of repurchase reserved on—
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- suit for on a mortgage—
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- to prior mortgagee after creation of
a puisne mortgage—
See MORTGAGE I L R 38 Mad. 18
- validity of—
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I L R 37 Cal. 107
- See CIVIL PROCEDURE CODE (ACT V OF
1908) ss 47 AND 70
I L R 38 Mad. 108
- See TRANSFER OF PROPERTY ACT (II OF
1882) ss 85 91
I L R 38 Mad. 418
- Order for stay of—Only
becomes effective only when communicated to the
lower Court. An order by the Appellate Court for
stay of sale takes effect only when communicated
to the lower Court; and a sale by the lower Court

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after the passing of the order but before the order was communicated is valid. *Devewari Chowdhury v. Horromunder Moondar* I C N 11 276 followed. *Hikim Chard Bui v. Kamalchand Singh* I L R 33 Cal 90, not followed. **MUTHUKRISHNAN POWTHER MINDA NATANAR v. KUTTESAMI VITANGAR** (1909) I L R 11 Mad 74

2 ——— Option of re-purchase.—*Suit by vendor's grandson against the vendee's daughter in law*—Covenant to repurchase purely personal. A deed of sale with an option of repurchase contained the following clause:—*I have given the land into your possession if perhaps at any time I require back the land I will pay you the aforesaid Rs. 600 and any money you may have spent on enlarging the land into good condition and purchase back the land.* In a suit brought 30 years after execution of the deed by the grandson of the vendor against the daughter in law of the vendee to exercise the option of repurchase—*Held* that the covenant to repurchase was purely personal and the suit was not maintainable. **GURUNATH BALAJI v. YAMANAYA** (1911) I L R 115 Bom 258

3 ——— Sale by Receiver.—*Sale by the Court and sale by Receiver under direction of Court distinction*—*Sale by Receiver if requires confirmation of sale certificate by Court*—*Civil Procedure Code (Act I of 1908) O XXI rr 9 and 94*. A sale by a Receiver under direction of Court is not a sale by Court and in such a sale the Court does not grant a sale certificate nor does it confirm the sale. *Vinodchinnisa Bibee v. Khatonissa Bibee* I L R 21 Cal 479 explained. **GOLAN HUSAIN CASSIM AHMED v. FATIMA BEGUM** (1910) 16 C W N 34

4 ——— Covenant for title.—*Claim made against purchaser compromised before suit brought*—*Right of purchaser to claim indemnity from covenantor*. The purchaser of immovable property concerning which the seller has covenanted to indemnify the purchaser in the event of the title proving defective is not bound to wait until a suit is brought and he is deprived of the property by reason of a decree passed therein but if a claim which the purchaser has substantial reason to believe to be valid is brought against him he may after notice to the covenantor compromise such claim and sue the covenantor on his covenant to recover the amount paid by him to effect the compromise. *Smith v. Compton* 3 B & A 407 referred to. **DURGAPADAIAH v. KALI CHARAN** (1913) I L R 35 All 168

5 ——— Contract for sale.—*Transfer of Property Act (IV of 1882) s. 54—Pains—Rent liability for—Mere possession without assignment of lease effect of*. A contract for sale as defined by s. 54 of the Transfer of Property Act does not of itself create an interest in property and therefore a mere agreement to buy does not create a liability to pay the rent of the tenure the subject-matter of the contract for sale. *Cox v. Bishop* 8 DeG M & G 815 and *Chaturbhuy Morari v. Bennett* I L R 29 Bom 323 referred to. *Mere possession of a pains will not render a man liable for rent if the lease has not been assigned to him*. *Clo v. Wilberforce* 1 Bea 110. *Sanders v. Benson* 4 Beav 350. *Flight v. Bentley* 7 Sim 149 and *Walsh v. Lonsdale* L R 21 Ch 11 referred to. **Prasanna Coomari Paul Chowdhury v. Koylash**

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Churder Paul Chowdhury v. S. H. P. 498. *Macnaghten v. Bheerappa Singh* 2 C I P 393. *Ka. v. Kishor Sen v. Satyendra Nath Bhadra* 15 C N 191 and *Ibidiab Chowdhury v. Eggar* I L R 35 Cal 157 distinguished. **ANANDA CHANDRA ROY v. ABDULLAH HOSSEIN CHOWDHURY** (1913) I L R 41 Cal 148

6 ——— Court sale.—*Acceptance of bid—If incomplete without Court's sanction*—*Court and Nazir's respective functions in regard to bids*. **PER COX J.**—Under the rules it is the Nazir's business to complete the sale though the Court (as well as the Nazir) has a discretion to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so. The Court has a quasi-revisional discretion in the matter and is not required itself to knock down the property. If a person goes to bid at a sale and in full knowledge of this condition offers bids for the property and the property is knocked down to him the mere fact that the Court has subsequently the discretion to confirm or annul the Nazir's action does not leave it open to the bidder to withdraw his bid. *Quare*. Whether a second appeal lies from an order refusing leave to the decree holder to withdraw his bid. **RAJENDRA PRASAD JHA v. UPENDRA NATH JHA** (1913) 19 C W N 628

7 ——— Execution sale decree reverses d. alter.—*Purchases in parts by decree holder by a defendant not a judgment debtor and by a stranger how effected*—*Mother of infant defendants appointed guardian without express consent*—*Decree if binds infants—Infants' interest if passes at sale*. A Court is not competent to appoint the mother of infant defendants their guardian ad litem without her express consent. Where in a mortgage suit the mother who was proposed by the plaintiff as guardian did not appear or signify her willingness to act as guardian ad litem of the infant defendants but the Court nevertheless appointed her guardian and the suit ended in a decree and a sale of the infants and others' properties. *Held* that the infants were not properly before the Court and were not bound by the decree and the sale did not pass the right title and interest of the infant. Where a decree is set aside subsequently to a sale in execution of the decree the sale will be cancelled if the purchase has been made by the decree holder but not when the purchaser is a stranger. The sale will also be cancelled when the purchaser though not the decree holder is one who was a party to the proceeding. Though r. 4 of O XXIV of the Civil Procedure Code contemplates a sale of the mortgaged properties the decree must be suitably modified in exceptional circumstances. *eg* when the mortgaged properties have already been converted into money by operation of law. **NARENDRA CHANDRA MANDAL v. JOGENDRA NARAYAN ROY** (1914) 19 C W N 537

8 ——— Execution of rent decree.—*Encumbrance—Bengal Tenancy Act (VIII of 1885) ss. 159, 163 to 167—Decree for arrears of rent—Sale under the Bengal Tenancy Act effect of—Purchase by landlord*. Where a tenure is sold under the provisions of the Bengal Tenancy Act in execution of a decree for arrears of rent and the procedure presented in the Act has been observed the result therein described as follows namely the purchaser becomes entitled to annul

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all encumbrances other than registered and notified encumbrances the consequence of the sale does not depend upon the amount of the bid offered by the successful purchaser it is independent of the value of the bid. S 165 of the Act was enacted solely for the benefit of the decree holder if the bid is not sufficient to satisfy his decree and courts it entitles him to have the property sold with power to annul all encumbrances but it is not obligatory upon him to adopt this extreme measure and he is not in peril if he decides not to pursue this special remedy. *Banbihari Kuper v Akhtra Pal Singh Poo* 1 L R 33 Cal 293 not followed. *SALIMULLAH v PAKISTAN* (1915) 1 L R 43 Cal 263

9 ——— District Board, sale by—*Immovable property—Transfer of Property Act (IV of 1882) s 51—Incorporated Company—Suit dismissed—Contract rescission of—Waiver—Ponderit—Cross objection—Civil Procedure Code (Act of 1908) O XII r 22 (3) 33—Corporation d t t of when it receives money under an illegal or ultra vires agreement* S 54 of the Transfer of Property Act provides that a sale of tangible immovable property of the value of Rs 100 and upwards can be made only by a registered instrument. Title to land therefore cannot pass by a mere admission when the statute requires a deed. *Jada Nath v Poo Lal* 1 L R 3 Cal 967. *Dharam Chard v Mangoo Sah* 16 C L J 436. *Narak Lal v Mangoo Lal* 22 C L J 380 referred to. *Hemendra Nath Mukerjee v Kumar Nath Poo* 1 L R 32 Cal 169 distinguished. The effect of rr 93 and 98 of the Statutory Rules made by the Lieutenant Governor on the 10th December 1883 under s 138 (d) of Beng Act III of 1883 is that no immovable property vested in a District Board can be sold except with the previous approval of the Local Government and except by an instrument under the common seal signed by the Chairman and by two members of the Board. It is well settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment and since by those whose duty it has been to construe execute and apply it although such interpretation has not by any means controlling effect upon the Courts and may be disregarded for cogent and persuasive reasons. *Balehar v Bhargathi* 1 L R 35 Cal 701 referred to. When a public body or a Company is established by statute or is incorporated for special purposes only and is altogether the creature of Statute Law the prescriptions for its acts and contracts are imperative and essential to their validity. *Hard v Peck* 13 C B (N S) 678. *Stapleton v Haymen* 2 H & C 918. *The Andalusian* 1 R 31 D 180. *Le Feuvre v Miller* 8 E & B 321. *Cope v Thames Haven* 3 Fzch 841. *Duggle v Io don and Jackwell Ry* 6 Exch 447. *Frend v Dennett* 4 C B (N S) 576. *Cornwall Mfg Co v Beandt* 2 H & C 493. *Irish Post Co v Millar* 1 H & C 398. *Bottomley's Case* 16 Ch D 631 and *In Pe Gifford and B ry Town Council* 20 Q B D 329 referred to. A suit need not be dismissed merely because the authority for its institutions such as a certificate under the Pensions Act 1861 or s 78 of the Land Registration Act or s 60 of the Bengal Tenancy Act or s 4 of the Succession Certificate Act is not produced with the plaint. But this principle has no application

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to a case where the plaintiff at the date of the institution of the suit had no title at all. *Chard v Akhtra Kri. Poo*, 1 H C L J 5 referred to. One contract is rescinded by another between the same parties when the latter is inconsistent with and renders impossible the performance of the former but if they differ in terms their legal effect is the same and the second is merely a ratification of the first and the two must be construed together where the second contract is consistent with the continuance of the former one it has no effect unless and until it is performed. *Hunt v South Eastern Railway Co* 45 L J C P 87. *Dodd v Chirion* (1857) 1 Q B 562. *Patmore v Colburn* 1 Cr M & E 65. *Tierney v Yeats* 3 C B (N S) 831 referred to. E 1 where parties enter into a contract which if valid would have the effect, by implication of rescinding a former contract and it turns out that the second transaction cannot operate as the parties intended it does not have the effect by implication of affecting their rights in respect to the former transaction. *Wade v Ward* 4 H & C 149. *L P 1 Exch 177*. *Doe dem. Biddis v Post* 11 Q B 713 referred to. Where the question is whether the one party is set free by the action of the other the real matter for consideration is whether the acts or conduct of the one do or do not amount to an intimation of an intention to abandon and altogether to refuse performance of the contract. The true question is whether the acts and conduct of the party evince an intention no longer to be bound by the contract. *and* *Mersey Steel and Iron Co v Taylor Ben and Co* 9 App Cas 431. *General Billposting Co v The Atkinson* (1909) A C 113 referred to. The Court requires as clear evidence of the waiver as of the existence of the contract itself and will not act upon less. *Carolan v Brabo* on 3 J & J 200 referred to. Where a corporation receives money or property under an agreement which turns out to be ultra vires or illegal it is not entitled to retain the money. The obligation to do justice rests upon all persons natural and artificial if one obtains the money or property of others without authority the law independently of express contract will compel restitution or compensation. *Chaples v Drury* 11 Building Society 6 Q B D 696 referred to. As an ordinary rule a respondent in an appeal is not entitled to urge cross-objections except as against the appellant. But r 2 (3) of O XII of the Code of 1903 has materially altered the pre-existing law by the substitution of the words "party who may be affected by such objection" for the word "appellant" contained in s 51 (3) of the Code of 1883. Further r 33 of O XII has conferred wide discretionary powers on the Court of Appeal to alter the decree of the Court below as the case may require. *MATHURA MONA* SAHA v PAM KUMAR SAHA (1915) 1 L R 43 Cal 260

10 ——— Benami—*Suit by purchaser under registered kholas against defendant's possession—Plaintiff has to prove passing of consideration—Plaintiff in deed admitted receipt of consideration—Second appeal—Onus of proof on plaintiff to prove his title when a defendant in possession pleads he is only a benami holder shows a prima facie title by producing a recital of a conveyance which usually contains a recital of*

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the receipt of consideration. The onus in such a case is on the defendant to show non payment of consideration. The fact that the defendant is in possession is an important element to be taken into consideration in determining whether the transaction is *benami*. But there is no presumption in favour of *benami* even where the defendant is in possession. Where the lower Appellate Court held that the plaintiff's purchase was *benami* being influenced by the erroneous view that the onus was on the plaintiff though it relied also on the fact that the defendant was in possession the finding was reversed in second appeal and the case was sent back for re hearing. A recital in a deed of sale admitting the receipt of consideration is evidence though not conclusive against the vendor. *DURG CHARAN CHANDRA v THE HUF DA Co* LD (1915) 20 C W N 254

11 — **Sale of Tenancy—Bengal Tenancy Act (VIII of 1885)—Status of the decree holder—Effect of the cessation of interest (partial or entire) of the landlord** Where the decree holder continued to be the sole landlord at the date of the application for execution of the decree and in his character as landlord decree holder took the necessary steps for the sale of the under tenure in conformity with the statutory provisions the effect of the execution sale is to pass the under tenure to the purchaser even though the decree holder has lost his interest as landlord before the actual sale. *Forbes v Maharaja Bahadur Singh* I L R 41 Calc 978 distinguished *Hem Chunder Bhunia v Mon Mohini Das* 3 C W N 604 *Chhatrapati Singh v Gopi Chand Bhatia* I L R 26 Calc 720 *Srimant Roy v Mahadeo Mahata* I L R 31 Calc 550 *Khehra Pal Singh v Kriarathamoy Das* I L R 33 Calc 566 *Profulla v Narabhanes* 24 C F J 331 referred to *STEDUTTESA KHATY v AMIRUDDI* (1917) I L R 45 Calc 294

12 — **Date of sale—With the date of confirmation—Bengal Tenancy Act (VIII of 1885)** ss 167 162 The words date of sale referred to in s 167 of the Bengal Tenancy Act mean the date when the sale is confirmed and not the date when the property is actually sold to the purchaser. *Matangini Choudhuran v Sreenath Das* 7 C W N 559 referred to *Banko Behary Das v Krishna Chandra Bhattacharya* 13 C W N 49 18 C L J 170 approved *Yusuf Gani v Asmat Mollah* 17 C W N 440 dissenting from *NANDA LAL BANERJEE v UMESH CHANDRA DAS* (1917) I L R 45 Calc 151

13 — **Application to set aside—Limitation—Civil Procedure Code (Act V of 1908)** s 47 O XXI r 90—Application to set aside a sale in execution of a decree on the ground that the property did not belong to the original judgment debtor—Limitation Act (IX of 1908) Sch II Arts 166 181 An application under s 47 of the Code of Civil Procedure for setting aside the sale of a property on the ground that it did not belong to the original judgment debtor is governed by Art 166 of the Limitation Act and not Art 185. *SATISH CHANDRA KUNZOR v NISHU CHANDRA DUTTA* (1919) I L R 46 Calc 975

14 — **Application to set aside sale on the ground that application for execution was barred by limitation—grounds for setting aside sale which has been confirmed** No application to set aside a sale held in execution

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of a decree on the ground that the application for attachment and sale was barred by limitation can be made after confirmation of the sale. *Lakhu Rai v Maharaja Kesho Prasad Singh Bahadur* 2 Pat L J 157

15 — **Application to set aside sale—Fraud involving suppression of processes and submission of false returns its continuing influence—Burden of proving clear and definite knowledge of facts constituting fraud—Civil Procedure Code (Act V of 1908) s 115** In a case to set aside sale under O XXI r 90 Civil Procedure Code the applicant must have knowledge not merely of the factum of the sale but a clear and definite knowledge of the facts which constitute the fraud before time can run against him or her. When by a fraud involving suppression of processes and submission of false returns the applicant is kept out of knowledge of the sale of his property such fraud must be held to have a continuing influence. Indeed in such a case it is for the other side to show that the injured party had clear and definite knowledge of the facts which constitute the fraud at a time from which taken as a starting point the suit is barred by limitation. *Karayan Sahu v Mohanlal Damodar Das* 16 C W N 394 and *Rohimbhoy Habibbhoj v Turner* I L R 17 Bom 341 referred to. The Court below in shutting out evidence acted with material irregularity in the exercise of its jurisdiction. *BRISWAN MANT DAS v PROFULLA KRISTO DES* (1920) I L R 48 Calc 119

16 — **Notice—In the case of an oral sale with possession and payment followed by a registered sale to another person with notice of first sale it was held that first sale had priority and could claim a registered sale deed.** *DESAIBHAI JORABHAI v ISHVAR JESHING* I L R 44 Bom 586

17 — **Sale under mortgage decree—High Court Original Side—Mortgage Decree—Civil Procedure Code (Act V of 1908) O XXI r 89** The provisions of O XXI r 89 of the Civil Procedure Code (Act V of 1908) apply to a sale under a mortgage decree and in the Original side of a Chartered High Court. A Judge on the Original Side is ordinarily bound to consider with respect the decision of another Judge on the Original Side produced before him, but if he is convinced that the decision is erroneous he is not under an obligation to follow it against his own judgment. *Surendra Kristo Roy v Guru Pada Ghosh* 24 C W N 536 overruled *Chaitram Rambhaya v Briddichand Kesrichand* I L R 42 Calc 1140 explained *VRJIBAN DASS MOOLJI v BISRWAR LAL HARGOVIND* (1920) I L R 48 Calc 69

18 — **Procured by fraud—Reconveyance—Where a sale under Act XI of 1859 was brought about by deliberate default on the part of the agent of one of the co owners of the estate and the purchase at the sale was effected under a pre arranged plan to which the said agent was a party in the name of a person who under that arrangement was to hold the property for the benefit of himself and the other parties to it.** *Held*—That the sale had no higher effect than a private alienation and the purchaser had taken with notice of or was imp

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fraud should be made to reconvey the property to the rightful owners **KUMAR SATISH KANTO ROY & SATISH CHANDRA CHATTOPADHYA**
24 C W N 662

19 ——— For rent arrears under Bengal Tenancy Act—In Orissa since the extension there to of Ch XIV of the Bengal Tenancy Act 1885 a sale under Bengal Act VIII of 1865 is liable to be set aside under s 174 of the Bengal Tenancy Act upon the Judgment Debtor depositing in Court within 30 days of the sale the amount of the decree **LAKSHMIDAR MAHANTI & KATYAKAR MAHAPATRA**
I L R 48 Cal 811

SALE ABSOLUTE

See INCUMBRANCE I L R 43 Cal 558

SALE BY GOVERNMENT

See WASTE LANDS ACT 1863 s 18
I L R 44 Cal 328

SALE CERTIFICATE

See ADVERSE POSSESSION
I L R 40 Cal 173

See CIVIL PROCEDURE CODE 1908—
s 66 24 C W N 1011

s 115 AND O XXI R 68
2 Pat L J 130

O XXI R 94
S & MORTGAGE

I L R 44 Mad 483
See SALE IN EXECUTION OF DECREE
20 C W N 819

Misdescription of property to be sold—Right of auction purchaser to recover possession of property actually liable to sale
Where a holding is sold in execution of a rent decree the paramount description in the sale certificate is ordinarily the general description of the holding. The plot numbers are a subordinate description **RAJENDRA PRASAD SAHU & GANGAN KOER**
2 Pat L J 623

SALE-DEED

See AGREEMENT TO SELL
I L R 36 Bom 446

See CONSTRUCTION OF DEED
I L R 39 Bom 119
I L R 40 Bom 74

See DEKHAN AGRICULTURISTS RELIEF ACT (XVII of 1879) s 3 CL (y) AND 10A
I L R 40 Bom 397
I L R 45 Bom 87

See EVIDENCE ACT 1872 s 92
I L R 34 Bom 59
I L R 35 Bom 93

See LIMITATION ACT 1877 SCH II ARTS 132 144
I L R 35 Bom 438

See LIMITATION ACT 1908 SCH I ART 91
I L R 42 Bom 638

See SUIT FOR CANCELLATION OF DOCUMENT
I L R 38 All 232

See TRANSFER OF PROPERTY ACT 1882 s 54
I L R 40 Bom 313
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See TRUST ACT 1850 s 68
I L R 43 Bom 173

SALE-DEED—*condid*

— for a low value from client—
See PROFESSIONAL MISCONDUCT
I L R 40 Mad 69

— *misale in*—
See EVIDENCE ACT (I of 1872) s 91
CL (a) I L R 39 Mad 99

— Minor's suit to set aside—
See SPECIFIC RELIEF ACT 1872 s 41
I L R 34 Bom 15

— Old document—admissibility of—
See EVIDENCE ACT 1872 s 99
I L R 44 Bom 710

— Price specified in—
See EVIDENCE ACT (I of 1872) s 99
I L R 38 Mad 314

— *Covenant for title*
breach of—Limitation Act (IX of 1908) Art 116—
Transfer of Property Act (IV of 1882) s 55 (1)
A suit for compensation for breach of an express or implied covenant for title and quiet enjoyment in respect of a sale deed executed after coming into force of the Transfer of Property Act is governed by Art 116 of the Limitation Act. Case law reviewed **Subbarga Reddier v Raja gopala Reddier** (1914) Mad W N 516 approved. Covenant for title under s 55 (1) of the Transfer of Property Act is annexed to the contract of sale as well as to the conveyance **ARUNACHALA v RAMASAMI** (1914)
I L R 38 Mad 1171

— *Unregistered agreement to reconvey—Mortgage by conditional sale*
The plaintiff purchased the property in suit for defendant in 1895 and at the same time passed an agreement to reconvey the property after 5 years. This document was not registered. Thereafter the plaintiff leased the land to the defendant from time to time and in 1915 sued to recover possession on the strength of the rent notes passed to him by defendant. The Court of first instance allowed the plaintiff's claim holding that s 10A of the Dekhan Agriculturists Relief Act did not apply and that the agreement to reconvey could not be looked into for want of registration. The lower Appellate Court reversed the decree on the ground that the sale deed was obtained by misrepresentation and that the defendant would never have passed the same if the plaintiff had not assured him that his ownership was not lost and that he would be allowed to redeem. The plaintiff appealed to the High Court. Held decreeing the suit (1) that the lower Appellate Court's view that the transaction must be considered a mortgage because there had been a misrepresentation at the time the document was signed could not be upheld (2) that the defendant's case did not proceed upon the footing that the two documents together constituted a mortgage by conditional sale nor was there evidence before the Court to come to that conclusion (3) that the case set up by the defendant was one for specific performance of an agreement to reconvey and that defence could not succeed in law. **PER MACLEOD C J**—
Where the question is whether a sale-deed and the agreement to reconvey make together a mortgage by conditional sale the Court has strictly speaking to look to the actual contents of the documents and to construe them accordingly. But it may

SALE-DEED—*concl*

be that there is such extrinsic evidence and circumstances which show the relation of the written language to existing facts that therefore it would be possible to come to the conclusion that the documents which on the face of them constitute a sale and an agreement to receive within a certain period or after a certain period amount to a mortgage. *SATTA NET v DHOOPU* (190) I L R 41 Bom 901

SALE FOR ARREARS OF RENT

See LIMITATION ACT 1908 s 2

I L R 33 Mad 842

See SALE

Purchase of putni—

Opposition to purchaser's possession—Application for proclamation—The District Judge or the Collector the proper authority to issue proclamation—*Pent Recovery (Under Tenures) Act* (Beng VIII of 1865) s 3—*Peeping Act* (VII of 1835) s 1—*Pegulations VIII of 1819* ss 8 9 15 (*) 1 of 18 0 and VII of 1835 s 16 Cl (*) of a 15 of Pegulation VIII of 1819 has not been affected by s 3 of Beng Act VIII of 1865. Proceedings taken to annul the sale of certain putni lands sold for arrears of rent having terminated in favour of the purchaser and the sale having become final and conclusive the purchaser in attempting to realise the rents from the cultivators of the lands comprised in the tenure purchased by him was opposed in his attempt by some of the intermediate holders who claimed interest between the late putni and the cultivators. Thereupon he applied to the District Judge to issue a proclamation under s 15 of the Putni Peg VIII of 1819. The District Judge returned the application and directed that it should be made to the Collector who was the proper authority to issue the proclamation. *Held* that the view taken by the District Judge was erroneous and that he had failed to exercise the jurisdiction still vested in him by law under cl (2) s 15 of the Putni Reg VIII of 1819. *MANMATHA NATH MITTER v DISTRICT JUDGE 24 PARGANAS* (1916)

I L R 44 Calc 715

Sale under Ben Act

VIII of 1885—Deposit in Court—Setting aside sale. In Orissa since the extension thereto of Ch XIV of the Bengal Tenancy Act (VIII of 1885) a sale under Ben Act VIII of 1885 is liable to be set aside under s 174 of the Bengal Tenancy Act 1895 upon the judgment debtor depositing in the Court within 30 days of the sale the amount recoverable under the decree. Judgment of the High Court affirmed. *LAKSHMINAR MAHANTI v RATNAKAR MAHAPATRA* (1901)

I L R 48 Calc 811

SALE FOR ARREARS OF REVENUE

See PROVINCIAL INSOLVENCY ACT 1907 ss 20 AND 22 I L R 39 Mad 479

See REVENUE SALE LAWS

See SALE

Judgment Debtor remaining in Possession—Suit to recover—

See LIMITATION ACT 1908 SCH I ART 12A I L R 45 Bom 45

1 ——— Irregularity—Substantial Loss—

Sale Notification incorrect entry in—Notice—Beng

SALE FOR ARREARS OF REVENUE—*concl*

Act VII of 1865 ss 8 11—*See* Act VI of 1859 s 23. An incorrect entry in a sale notification resulting in misleading intending bidders is an irregularity such as is contemplated by s 33 of Bengal Act VI of 1859. *Dwarkanath Singh v Bankola Singh I L R 37 Calc 111* discussed. Though s 8 of Bengal Act VII of 1865 prevents a plaintiff from proving any irregularity in the service of notice required by s 11 yet it would not prevent him from proving that a notice in contravention of the provisions of that Act was served in a wrong manner which in itself and by its service supported the conclusion that the misstatement in the sale notification constituted a serious irregularity. *IAJPAJI DAIF CAWESH PRASAD SRIKHANDAN MAHAPATRA* (1910)

I L R 37 Calc 407

2 ——— Incumbrance—*Lis pendens* if applies to property attached in execution of money decree—Attachment in execution of money decree if creates a charge—Revenue Sale Law (Act VI of 1859) s 5—Attachment of incumbrance—Sale for arrears of revenue if alienation by proprietor. The doctrine of *lis pendens* is applicable to sales in *metum*. The doctrine is applicable to proceedings to realise the mortgage money after a decree for sale of the property. But where a property not mortgaged is attached in execution of a money decree the doctrine of *lis pendens* does not apply to the sale of that property. Where a property was attached in execution of a money decree and in the course of the execution proceedings was sold for arrears of revenue. *Held* that the attachment did not create any title or charge on the property and did not constitute an incumbrance within the meaning of s 54 of Act VI of 1859. *Fredrick Peacock v Madan Gopal I L R 29 Calc 428* s c 6 O B A 577. *Moti Lal v Karrebuidin Singh I L R 25 Calc 179* referred to. *Parsi Lal Singh v Chand Charan Singh 5 C L J 80* s c 11 C B A 163 distinguished. *Held* further that a sale for arrears of Government revenue cannot be regarded as an alienation made by the proprietor so as to make the doctrine of *lis pendens* applicable. *MAHENDU SARAN SAHU v THAKUR PRASAD SINGH* (1910) 14 C W N 877

3 ——— Incumbrance or under tenure how avoided and when—*Meane profits*—Liability of several classes of tenure holders—Damages. An incumbrance or under tenure is not *ipso facto* avoided by the sale of an estate for arrears of revenue and is only liable to be avoided at the option of the purchaser at such sale. *Titu Bibi v Mahesh Chunder Bagchi I L R 9 Calc 683* followed. The law does not require any notice as a necessary preliminary to a suit to avoid an under tenure but the option of the purchaser may be exercised by the institution of a suit within the time approved by law. Where such a suit has been instituted the tenure must be regarded annulled from the date of the commencement of the suit. For the period antecedent to a suit for annulment of an incumbrance the possession of the under tenure holder is not wrongful and purchasers at the revenue sale are not entitled to claim by way of damages for use and occupation any sum in excess of what actually represents the rent payable by the tenure holder of the first decree. A decree for rent in such a case can be made only against such of the defendants as held the tenure directly under the

SALE FOR ARREARS OF REVENUE—contd

defaulting proprietors and not against all of them jointly and severally. In respect of meane profits which accrue during the pendency of a suit for possession the liability of different tenure holders of the same degree and of separate under tenure holders of different degrees should be apportioned according to the share of the profits intercepted by each. *Jotindra Mohan Lahiri v Guru Prosunno Lahiri*, 1 L R 31 Cal 597 L R 31 I A 94 referred to. A release of one joint wrong doer without any intention to release the other joint tortfeasors, but only as a partial satisfaction discharges the others only *pro tanto*. Where the plaintiffs released some of the wrong doers from liability the claim against the others have been split up by their own conduct and a joint decree ought not to be passed against all the defendants. *Biswanath Tewary v Koylashbany Narain Singh* 2 May 1917 followed. *PANRATAN KAPARI : ASWINI KUNAR DUTT* (1910)

I L R 37 Cal 559

4 ——— Liability of auction purchaser in respect of payment of arrears of revenue—Appropriation of payment to particular kist and acceptance and acknowledgment of Treasury Officer—Subsequent appropriation by Treasury Officer to earlier kist—Sale for arrears so created not to set aside—Contract Act (IX of 1872) ss 59 60. Where the proprietor of an estate made a payment in respect of arrears of revenue and in the document which accompanied the payment to the Government expressly appropriated it to the satisfaction of a particular kist and the money was accepted and acknowledged by the Treasury Officer as paid on that account. *Held* it was not in the power of one of the parties to the transaction without the assent of the other to vary the effect of transaction by altering the appropriation in which both originally concurred. After a payment had been so specially appropriated and accepted as paid in respect of a kist due in January 1902 the Treasury Officer applied part of it to the satisfaction of an earlier kist due in September 1901 and only paid the remainder towards the January kist with the result that an arrear was created in the January kist to which the payment had been wholly appropriated and a sale took place for such arrear. In a suit to set aside the sale—*Held* (reversing the decision of the High Court) that no arrears in respect of the January kist were really due at the date of the sale which was therefore without jurisdiction and invalid. *See* ss 59 and 60 of the Contract Act (IX of 1872) relating to the appropriation of payments might have been applicable to the case if the parties to the transaction had not by their own actions placed the matter beyond doubt. *MASOUD JAY : GAYO BHAU SINGH* (1911)

I L R 38 Cal 537

5 ——— Incumbrance extinguished by sale under mortgage-decree—at the date of sale not of confirmation—Liability of mortgage purchaser for revenue—Act XI of 1859 s 51. The appellant as a purchaser at a revenue sale of the property in suit sued to eject the respondent who claimed title under a certificate dated April 23rd 1900 confirming his purchase thereof on March 19th 1900 under a decree for sale obtained by himself as mortgagee. The revenue became in arrear on March 20th 1900. *Held* that the respondent's

SALE FOR ARREARS OF REVENUE—contd

proprietary title was complete on March 19th and that it passed to the appellant by the revenue sale. His mortgagee title could not be kept alive so as to operate on March 29th 1900 as an incumbrance within the meaning of s 54 of Act XI of 1859. *BHAWANI KUWAR : MATHURA PRASAD SINGH* (1912) L R 39 I A 293

6 ——— Common Tenancy—Revenue Sale Law (Act XI of 1859) ss 10 11 and 53—Purchase at a revenue sale of an undivided interest of specific mouzas in an estate in respect of which separate accounts were opened effect of—Preference to a third Judge—Civil Procedure Code (Act XIV of 1874) s 575—Act V of 1890 s 98 (2). Per *MOOKERJEE* and *VINCENT JJ* (*BRETT J* dissenting) that a proprietor who is not a recorded sharer of a joint estate held in joint tenancy within the meaning of s 10 of the Revenue Sale Law nor a recorded sharer whose share consists of a specific portion of the lands of the estate within the meaning of s 11 but is recorded as proprietor of an undivided interest held in common tenancy of a specific portion of the lands of the estate but not extending over the whole estate within the meaning of s 70 of the Land Registration Act is not entitled to acquire the estate purchased by him at a sale held for arrears of revenue free of encumbrances. The expression *estate* held in common tenancy in s 10 of the Revenue Sale Law means an estate where all the sharers have a common right and interest in the whole of the estate. Where therefore various co-sharers have certain interest not in the whole estate but only in particular villages of that estate it cannot be said that the estate is held in common tenancy. *See* *Runoo Shah v Pann Perash Varain Singh* 21 W P 33 followed. *MAHAMMAD MENDI HASSAN KHAN : SHAKSHAN PERSHAD SINGH* (1911) I L R 39 Cal 533

7 ——— Government Land—Act XI of 1859 s 2 and 3—Bengal Act VII of 1863—In Government tenure in mahal Panchannagram in the 24 Pergannahs—Kabulyat fixing date for payment of revenue in every year—Sale for arrears when no arrears were due—Cancellation of contract of parties by general considerations or administrative rules not permissible. S 2 of Act XI of 1859 enacts that if the whole or a portion of a mahal or instalment of any month of the era according to which the settlement and *kud bandi* of any mahal have been regulated be unpaid on the 1st of the following month of such era the sum so remaining unpaid shall be considered as an arrear of revenue. S 3 provides that the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue shall be paid up in each district under their jurisdiction in default of which payment estates in arrear shall be sold with that section on 6th October 1871 fixed with that section on 23rd June of each respective year as the latest date of payment of the rents of all descriptions of tenures in khas mahal Panchannagram in default of which payment on or previous to that date tenures in arrears in that mahal will be sold. The appellant was the holder of a Government tenure in Dibi Panchannagram to which by virtue of Bengal Act VII of 1863 Act XI of 1859 was applicable; and the law was under which he held stipulated for payment of the whole jumma in the Collectorate within 23rd

SALE FOR ARREARS OF REVENUE—*id.*

June every year. The revenue remaining unpaid on 25th Jun 1902 the tenure was, after the preliminary procedure prescribed by the Acts, sold for arrears of revenue on 15th March 1903 and purchased by the respondent H 11 (reversing the decision of the High Court) that on the construction of the Acts and the above provision the revenue was not in arrears until 1st July 1902 and the date fixed as that on which the tenure could be sold in default of payment of the arrears was 25th Jun 1903. There were therefore at the date of the sale no arrears of revenue and in accordance with the decision in *Pallister Day v Simpson* 1 L. R. 2, Cal. 533 1 P. 2. I A 151 the sale was consequently invalid. No variation of the contract of parties and the statutory provisions applicable thereto is possible by reason of general considerations of administrative rules which have not the sanction of Indian statute.

Haji BUKH ELANI v. DULAY CHANDRA HAN
1 L. R. 39 Cal. 981

8 — Sale within 30 days of service of sale proclamation if nullity—*Peruene Sale Law Act (Act XI of 1859) s. 6 33—Question if one of due service—Beng Act I II of 1863 s. 8—Second appeal—Finding of irregularity and inadequacy of price—*Sol. is must be held bad as matter of law* The fact that the proclamation of sale was affixed in the Collectorate less than 30 days before the date of sale in contravention of the provisions of s. 6 of Act XI of 1859 does not make the sale a nullity. The sale in such a case is a sale under the provisions of the Act and the restrictions imposed by it on the right of the defaulter to have the sale set aside apply. *Lala Moharak Lal v. The Secretary of State* 1 L P 11 Cal 200 held not binding by reason of the decision in *Tasadduk Pa ul v. Ahmad Hussain* 1 I J 21 Cal 66 and *Gowind Lal v. Ramyanam* 1 L P 21 Cal 70. Where the Court of Appeal below found (i) that the sale proclamation was affixed in the Collectorate within less than 30 days of the sale (ii) and that the price realised at the sale was inadequate (iii) but that there was no evidence to connect the inadequacy of the price with the irregularity and dismissed the suit to set aside the sale. *Held* that it was not open to the High Court in second appeal to hold as a matter of law that the inadequacy of the price was the consequence of the irregularity and the appeal was concluded by the findings of fact of the lower Appellate Court. *Emble Per Cox v. J—*The question whether notice of the proclamation was served in time is part of the larger question whether it has been duly served within the meaning of s. 8 of Beng Act VII of 1863. *Jankhai v. Secretary of State* 7 C W N 377. *Shesh Mohamed Aga v. Jadunandan* 10 C W N 137. *Sheo Ratan v. Net Lal* 1 L B Cal 1 6 C W N 638 doubted. *GANGADHAR DASS v. BHUPATI CHARAN DAS* (1911)*

18 C W N 227

9 ————— Suit to recover from person in wrongful possession from before sale—*Revenue Sale Law (Act XI of 1859) s 64—Purchaser of share of revenue paying estate—Limitation A purchaser at a revenue sale of a share in a revenue paying estate is not a person claiming from or through the defaulter but rather adversely to him and under a paramount title A person who has not acquired title as against the defaulter*

SALE FOR APPEARS OF FIFTY — 12

In address space of the file system, $y = 1$
 can't see the purchase of the file system
 unless a new $y = 1$ is added to the
 purchase for the state $y = 1$. For $y = 2$
 the case of $y = 1$ is $y = 1$ and $y = 2$
 follows. In the case of $y = 2$ the case of
 $y = 1$ is $y = 1$ and $y = 2$ follows.

10 ——— Purchase by mortgage in execution of a mortgage decree of the mortgaged property. — The respondent obtained a mortgage decree of the mortgaged property in 1859 for such arrears as he was entitled to in execution of a decree of Civil Court No. 11, 1859. The decree was for arrears of Rs. 24,000. Act XI of 1859 enacts that when a mortgage is sold, the purchaser shall acquire the estate in the share subject to all incumbrances and shall not acquire any rights which were not possessed by the previous owner. On 21st August 1860 a mortgage was granted in favour of the respondent over a certain share in 4 out of "1" village. On 31st May he obtained a decree on his mortgage which was made absolute on 19th December 1860. He executed his decree and a sale took place on 10th March 1860 at which the respondent himself became the purchaser. On 6th March an instalment of Government revenue on the "1" villages fell into arrear and the whole residuary share of 71 villages including the 4 villages purchased by the respondent was notified for sale. The respondent did not pay the revenue due. On 23rd April he obtained a certificate confirming the sale of 10th March in execution of his decree. On 6th June 1860 the whole of the villages was sold for arrears of revenue and was purchased by the predecessor in title of the appellant. In a suit against the respondent for the share purchased at the execution sale — filed by the Judicial Committee (reversing the execution of the High Court) that the sale in execution of the mortgage decree took effect from the actual date of the sale and not from its confirmation and therefore from 10th March 1860 the respondent by his purchase became the proprietor of the estate sold and not merely the purchaser of such right title and interest in it as the mortgagor might have had. He was therefore notwithstanding the provisions of s. 54 of Act XI of 1859 (which in fact rather confirmed the view taken) not in a position to maintain as against himself or as against third parties unconnected with mortgage transactions upon the property the position that his mortgage still remained an incumbrance thereon. That incumbrance had become extinct by the mortgagee's overriding right when he became complete owner of the lands. To keep it alive as the respondent sought to do would introduce confusion into the mechanism of transfer and insecurity into the rights in immovable property which were not warranted by the Act. BHAWANI KUMAR MATHURA PRASAD SINGH (1912)

227. 11 ———— Share of estate not sold at auction—Payment of arrears by defaulting prior—Subsequent payment by co sharer—I jointly between depositors—Suit to set aside sale—Future Sales Act (XI of 1859) ss 13 14 33 63 In respect of a certain lot, numerous separate accounts had been opened in the Collector's register. The plaintiff had an interest in separate account No 282 the 1st

I L R 40 Calc 89

SALE FOR ARREARS OF REVENUE—*contd.*

and the 2nd defendant in No 22 several of these accounts fell in arrears and among them was No 222 and a residuary share No 22, which formed the subject-matter of the present suit was among others advertised to be put up for sale on the 29th September 1899 but a notice was received by the Collector under s 14 of Act XI of 1859 declaring that the entire estate would be put up for sale at a future date unless the hereditary share was paid up by the arrears within 10 days. On the 21st and 25th September 1900 the 1st defendant paid into the Treasury the whole of the arrears in respect of all the various accounts including No 22 and the residuary share. On the 31st September 1900 the plaintiff deposited in the Treasury the arrears due on account of the account including No 22 but excluding the residuary share. Subsequently the Collector declared the defendant's purchase of the estates represented by the various separate accounts. On appeal to the Commissioner the decision of the Collector was upheld and the sale confirmed on the 8th February 1910. Thereafter the 1st defendant took possession of the several properties and on the 21st December 1910 he conveyed the same by sale to the 3rd defendant. On the 7th February 1911 the plaintiff presented his plaint for recovery of possession of No 22 and in the alternative for the possession of the half share in it but owing to the plaint being insufficiently stamped time to pay in the proper court fee was granted to the plaintiff with the compliance of the defendants. At the expiry of such time some holidays intervened and it was not till the 2nd March 1911 that the plaint was aually filed. The District Judge having decreed the suit the 3rd defendant alone appealed to the High Court. *Held* that the question of limitation could not now be raised but it is improper for a Court to extend the period of limitation for the institution of a suit merely for the convenience of the plaintiff. *Held* further that there could be no doubt that the 2nd defendant was the real purchaser both in the purchase by the 1st defendant in September 1900 and in the sale by the 1st defendant to the 3rd defendant in December 1910. *Held* further that in s 14 of the Revenue Sales Act 1859 the words "other" or "d" share must mean a recorded share of a share other than the share exposed for sale. *Ques.* Whether the Legislature intended to exclude a defaulting sharer of a share exposed for sale from pur having such share under s 14. *Held* further that the estate could only be sold if the whole of it was in arrears and that it could not be said that the plaintiff's deposit was insufficient without proof of that fact. *Held* further that as soon as the payment was made the purchase was complete and there was nothing left for anyone else to buy and that the Collector was bound to recognize the depositor who first paid the whole amount or if there were more depositors than one to recognize as joint purchasers those whose payments first amounted to the total arrears due. *Debi Pershad v. Atho Koer & Co. W. A. 463 r. 1* referred to. *Held* further that the suit was barred by s 33 of the Revenue Sales Act 1859. *Bhawan Chaturbhoy Dutt v. Jethur Mulji & Co. 1 Cal 844* and *Gobind Lal Roy v. R. Janim Mitter & Co. 1 P. J. Cal 70* followed. *BAHURIA SAMBHO KUMAR v. HARINAR PRASAD (1914)*. I. L. R. 41 Cal 1092

SALE FOR ARREARS OF REVENUE—*contd.*

12. — *Setting aside sale—Irregularity—Arrears under Act XI of 1859 paid—Embarkment charge a debt—Sale under Act XI of 1859 as for arrears of revenue and of an account—Plaint—Demands Recovery Act (Beng. Act I of 1859) as amended by Beng. Act I of 1877—Embarkment Act (Beng. Act II of 1852)*. In this case the High Court set aside a sale for arrears of revenue holding that where the Collector had a knowledge of payment in full of the arrears of land revenue of which the case had been advertised, and had directed to proceed by certificate procedure against an arrear of different character and had already directed a sale under that procedure he could not turn round and treat the arrear under the certificate as an arrear of land revenue without any notice to the parties under s 6 and proceed to sell under the Land Revenue Proclamation on the mere ground that no special exemption had been passed. The embarkment charges awarded to be levied under the Certificate Act (Beng. Act I of 1850) as amended by Beng. Act I of 1877 were taken out of the purview of Act XI of 1859 unless and until fresh notices were issued under s 5 and they could not be treated as arrears of land revenue. The sale therefore not being for an arrear of land revenue was liable to be set aside. An appeal from that decision was dismissed by their Lordships of the Judicial Committee who said they saw no reason to interfere with it. *DHIRAJ CHANDRA BOSE v. HAZI DASI DEBI (1914)*. I. L. R. 42 Cal. 763

13. — *Setting aside sale—Defect in specification of property to be sold—A notification of sale—Sylam share in property where there are many separate accounts opened—Sale Law (Act XI of 1859) s 6 10 11—Inadequacy of price caused by want of proper specification of the property for sale. The proper specification of the property for sale in a mahal in which 149 of Sylam or joint share in a mahal in which 149 of the owners of specific but undivided shares had obtained from the Collector separation of accounts under s 10 and 11 of Act XI of 1859 was put up to sale for arrears of revenue and purchased by the respondent. In the notification under ss 6 and 13 of the Act the specification of the share to be sold was in the following terms—Sylam share which cannot be specified excluding the separate account number—Then followed a list of the 149 separate accounts referred to and at the end it was stated that all other shares besides that specified are excluded from the sale. And the entry in column 5 (the specification column) was—The Sylam share cannot be particularly divided owing to separate accounts having been opened. The shares to be sold are those given in a separate sheet after excluding the shares in respect of which the separate accounts had been opened. In a suit to set aside the sale—*Held* (reversing the decision of the High Court) that the notification of sale was invalid and irregular and not in compliance with the requirements of the law. The case must depend on its own particular facts and what had to be considered was whether in all the circumstances the sale was procured to induce like sale. It was not to obtain the price or office of the sale.*

SALE FOR ARREARS OF REVENUE—contd

tell purchasers what they were invited to bid for. Held also on the evidence that the property had been sold at an inadequate price and that the lowness of the price was due to the defectiveness of the specification of the property to be sold in the notification of sale which was not merely an irregularity but a defect that rendered the sale void. *IAVAN PWAR I PA AD SIKH v BALWATH PAM GOENKA (1915)*

I L R 42 Calc 59

14. ——— Purchaser of a share.—*Meaning of the words "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners" —Revenue Sale Law (Act VI of 1859) s 51. At a sale under s 13 of Act VI of 1859 it is not the rights of the recorded proprietor that pass, but the share itself. The policy of the revenue law is to protect the revenue and make the share on which the revenue is assessed available for the arrears of revenue due upon it. *Dibi Das Chowdhury v Bijoy Charan Ghosal I I P 2 Calc 611* followed. *Janolata Das v Monomtha Nath Goswami II C W N 51 Kumar Kaland Singh v Syed Sarafat Hussain II C W N 578 Palimuddi Munnish v Nalini Kanta Lahari II C W N 40 Dilas Chandra Mukerjee v Alivoy Kumar Das II C W N 57 Bhawanji Koor v Mathura Itraad C L J I Annota Prasad Ghose v Rajendra Kumar Ghose I I P 29 Cal 93 and Gunrajdeo Misser v Kheeroo Mundal II B L R referred to. KHEMESHI CHANDRA PAKSHIT v ABDUL HALIM SIKHAR (1915)**

I L P 43 Calc 48

15. ——— Adverse possession.—*Limitation—Incumbrance—Limitation Act (IX of 1908) Sch I Arts 121 122 144—Assam Land and Revenue Regulation (I of 1856) ss 70 71. In a suit for khas possession and mesne profits in respect of certain lands purchased by the plaintiffs at a sale for arrears of Government revenue the defendants contended that they had been in adverse possession of the said lands for a long time that their occupation was in the nature of an incumbrance and that the plaintiffs were not entitled to avoid the same. Held that the interest which the defendants acquired was an incumbrance within the meaning of Art 191 and the suit was barred by limitation. *Karmi Khan v Brojo Nath Das I L P 22 Calc 214 and Auffer Chandra Pal Choudhury v Rajendra Lal Goswami I L R 25 Calc 167 approved. Kumar Kaland Singh v Syed Sarafat Hossein II C W N 578 and Palimuddi Munnish v Nalini Kanta Lahari II C W N 407 distinguished. PRASAD KUNAR DUTT v NARENDRA KUNAR DUTT (1915)**

I L R 43 Calc 79

16. ——— Co owners of a share of estate subject to usufructuary mortgage.—*Mortgagee in possession undertaking to pay revenue—Default deliberately made by agents of minor mortgagee—Purchase at sale for arrears by mortgagee agents—Beneficiaries purchase—Fiduciary relation between mortgagee and mortgagors—Suit by co-owners to set aside sale—Terms on recovery of property—Contribution towards expenses properly incurred by mortgagee—Duty of counsel in ex parte case—Irrevocable practice of Of a 12 annas share of revenue paying estate a 3 annas share belonged to the plaintiffs (respondents) subject to a usufructuary mortgage of that share for the*

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benefit of the defendant (appellant) a minor who as mortgagee in possession undertook (as was stipulated in the mortgage deed) to pay the revenue to Government for the mortgaged share. The remaining nine annas belonged to others of the plaintiffs. In June 1904 a sum of Rs 3 annas 6 in excess of the quota payable was paid on the mortgagee's behalf by his agents. In September 1904 only Rs 8 instead of Rs 12 was so paid and that left a balance owing which in due course amounted to an arrear within the meaning of Act VI of 1859 and to recover this arrear the 12 annas rate was sold by the Collector on 20th March 1904 and purchased by the agents (beneficiaries) on behalf of the mortgagee defendant. The High Court reversing the judgment of the subordinate Judge who had dismissed the suit found that the purchase was fraudulent within the Lordships of the Judicial Committee acquitted the minor of any personal misconduct in relation to the default or sale and were of opinion that regarding the position as a whole it led to the conclusion that the revenue was intentionally allowed by the agents to fall into arrear with a view to the property being put up for sale and bought on behalf of the minor. Held that the arrear which occasioned the sale was due to the insufficient payment made in respect of the three annas share and this was none the less the result of the default of the co-interests in that share because an excess payment had been made in June 1903 that had been long overdue and had ceased to be an excess credit in the ledger. However free from personal blame the minor may have been he could not profit by his agents deliberate default committed in breach of the terms of his mortgage. As against his mortgagors therefore the mortgagee could not be allowed to hold for himself any advantage gained by the default for which his agents were responsible nor could he be permitted to hold such advantage to the prejudice of the co-owners. *Doorga Singh v Shro Ishad Singh I L P 16 Calc 194* dissented from. *Fazir Ismail v Maimuna Khatun II C W N 1233* approved. The mortgagee here through his representatives had a duty to perform which was inconsistent with his becoming a purchaser in the way he did his title therefore could not operate to the exclusion of his co-owners. It was no answer to say that Act VI of 1859 contemplates a purchase by a co-sharer. The sale would stand but under the circumstances the transaction was in effect nothing more than payment of an arrear for the benefit of all. But that gave a right to contribution so that it must be a term of granting the plaintiff's equitable relief that they should contribute to the expenses properly incurred by or for the mortgagee in the purchase of the property. Where an appeal is heard *ex parte* it is the duty of counsel to bring to the notice of the Board adverse as well as favourable authorities. *DEO NANDAN PRASAD v JANKI SINGH (1916)*

I L R 44 Calc 573

17. ——— Defaulter.—*Defaulter—Assam Land Revenue Regulation (I of 1859) ss 63 67 85—Limitation—Limitation Act (IX of 1908) Sch I Arts 191 192. Where persons are in actual possession of a part of the estate sold for arrears of revenue under the Assam Land Revenue Regulation they are deemed to be in possession. *Astaf Ali v Brojendra Choudhury**

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24 O L J 60 referred to A suit for recovery of possession brought within 12 years from the date on which the Collector gave symbolical possession to the purchasers is within time *Mo usser Wahid v Abdus Samad*, 6 C L R 539 followed. § 63 cannot be construed as restricted to persons who profess to hold the land as included in the estate sold for arrears of revenue *MAHES CHANDRA CHOWDHURY v PIRAPI IAL DAS* (1916) I L R 44 Cal 412

18 ——— Notification of Sale—*publication of—Act XI of 1859* s 6 and 33—*Calcutta Gazette* the *Official Gazette* within the meaning of s 6—*Non publication in Urya Vernacular Government Gazette not an illegality in sale proceedings—Grounds for annulling sale under s 33 of Act XI of 1859* The provisions of s 6 of Act XI of 1859 are for the purpose of notifying a sale for arrears of revenue under the Act sufficiently complied with by the publication of the notification of sale in the *Calcutta Gazette* which is the '*Official Gazette*' within the meaning of that section on its proper interpretation Where a sale has been so notified the non publication of the notification of sale in the *Urya Vernacular Government Gazette* is not an illegality which renders the sale contrary to the provisions of the Act and is therefore not a ground for setting it aside under s 33 *SHARFUDDIN HO SAIN v RADHA CHARAN DAS* (1918)

I L R 46 Cal 255

19 ——— *Act XI of 1859* s 2 and 3—*Bengal Act (VII of 1863)—Tenures in Dhi Panchannogram—Board's Notification regarding time for sale effect of—Sale for arrears of revenue when premature and ultra vires—Date of payment of revenue* The effect of the Notification of the Board of Revenue dated the 6th October 1871 is that no holding can be sold till after the 28th June next after the first day of the month following the month in which the revenue or rent should have been paid The date on which the revenue is payable depends primarily not on general or administrative considerations such as the course of business in the Collectorate or the mode in which the accounts are kept but on the contract between the parties Where a tenure was held under a *kabuliyat* dated the 10th November 1862 containing a stipulation to pay rent year by year in Dhi Panchannogram to which by virtue of Bengal Act VII of 1863 Act XI of 1859 was applicable and the tenure was sold for arrears of revenue of 1914 and 1915 on the 17th May 1915 it was held that the sale was premature and *ultra vires* and conferred no title on the purchaser as the current demand for 1914 1915 was not payable till the 10th November 1914 so that the tenure could not be sold before the 28th June 1915 *MAMMOTH NATH MULLICK v MAHAMED SOLEMAN*

26 C W N 140

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See APPEAL TO PRIVY COUNCIL.

I L R 40 Cal 635

See ATTACHMENT BEFORE JUDGMENT

I L R 45 Cal 780

See BENGAL TENANCY ACT (VIII OF 1855) ss 85 159

I L R 43 Cal 178

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 47

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s 115 O XXI R 89

I L R 40 Bom 735

O XXI R 89 I L R 40 Bom 557

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See EXECUTION SALE—

See PARTIES I L R 39 Cal 831

See SALE—

ing— duty of Courts in India in conduct

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXI s 68

I L R 38 Mad 337

——— incorrect entry in sale notification—

See SALE FOR ARREARS OF REVENUE

I L R 37 Cal 404

1 ——— Caveat emptor doctrine of—*Sale in execution of decree—Refund of purchase money suit for—Civil Procedure Code (Act XIV of 1882) s 313 315* Under s 313 of the Civil Procedure Code (Act XIV of 1882) a purchaser can apply to have a sale set aside on the ground that the person whose property purported to be sold had no saleable interest therein The doctrine of caveat emptor has not the same effect under the Code of Civil Procedure of 1882 as under the old Code (VIII of 1859) *Dorab Ally Khan v Executors of Khajah Moheemooddeen* I L R 3 Cal 806 and *Sourdaminnee Chowdhra v Ahsan Ali Khan* 806 and *Sourdaminnee Chowdhra v Ahsan Ali Khan* Poddar 12 W R & F B distinguished Under s 315 of the Civil Procedure Code (Act XIV of 1882) a suit lies to recover purchase money paid at a Court sale for property to which the judgment debtor had no title or saleable interests *Har Doyal Singh Roy v Sheikh Samuddin & Co W N 240* and *Ajayanand Roy v Juggat Chandra Ghosh* 7 C W N 105 followed. *PAN KUMAR SHANU v RAM GUR SHARA* (1909) I L R 37 Cal 67

But See CIVIL PROCEDURE CODE 1882 s 315 I L R 35 All 419

2 ——— Fresh proclamation—*Civil Procedure Code (Act XIV of 1882) ss 287 291—Execution-sale proclaimed by July 13th and held on July 20th without fresh proclamation—Sale upheld* A sale in execution was not in contravention of ss 287 and 291 Civil Procedure Code merely because having been proclaimed to be held at the monthly sale commencing on July 13th it was not held till July 20th and then without a fresh proclamation It appeared that sales were to commence then owing to the presiding officer's absence they did not actually begin till the 17th that on that day a postponement was refused and that the monthly sale was continued on the 20th *RANG LAL SINGH v RAVANESHWAR PERSHAD SINGH* (1911) L R 38 I A 900

3 ——— Claim or objection—*Civil Procedure Code (Act V of 1908) s 47 O XVI s 33* s 115—*Claim or objection by purchaser during attachment in execution of money-decree if may be entertained—High Court Revisional jurisdiction exercised on appeal where order was without jurisdiction* Where after the attachment of the judgment debtor's property in execution of a

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money-decree the property was sold in execution of a mortgage-decree and the purchasers applied to the Court for exemption of the property from sale. *Held* that the purchasers being not entitled to be attached the application could not be treated as a claim or objection under O XXI r 53 of the Civil Procedure Code. That as the purchasers were really setting up an anti-nomistic title based on their purchase they could not be said to be representatives of the judgment-debtors for the purpose of s 4 of the Code. An order exempting the property from sale on the application of the purchasers not being contemplated by any provision in the Code was without jurisdiction and can be set aside by the High Court in revision. **MAHADEO LAL v. DARSAN GORE (1910) 15 C W N 512**

4 ——— Fraud—Execution sale—Suit to set aside as collusive and fraudulent after application refused under s 31F Civil Procedure Code (Act XIX of 1908)—Benami purchase allegation of—Misrepresentation by judgment-debtor's partner—Auction purchaser if in bono held responsible—Concurrent findings of fraud reversed. In a suit to set aside an auction sale on the ground that it was brought about by the fraud of the decree-holder and the judgment-debtor it being alleged further that the auction purchaser was a benamidar of the judgment-debtor it was found that the debtor and the decree-holder were genuine and that the property was purchased by the auction purchaser who was a man of substance out of his own funds which thereupon went to pay off the judgment-debtor's creditors. *Held* on the evidence that the allegation of fraud and conspiracy made against the auction purchaser had not been brought home to him and that under all the circumstances there was no sufficient ground for setting aside a sale confirmed by the Court after prompt local enquiry and for inflicting on the auction purchaser a forfeiture of the considerable purchase money paid by him out of his own funds. *Held* further that if the allegation that the plaintiff's men were dissuaded from bidding at the sale by the pleader for the judgment-debtor falsely assuring them that he had instructions to apply for a postponement was true the auction purchaser could not be held responsible for the misrepresentation. The concurrent judgments of the Courts in India holding the sale to be fraudulent and collusive reversed. **BISHUN CHAND BACHHAOT v. BHOOT SINGH DUDHIA (1911) 15 C W N 648**

5 ——— Understatement of value of fraud—Limitation—Limitation Act (IX of 1908) s 18 Sch I Art 166—Sale before Act new or old Act applicable—General Clauses Act (V of 1897) s 6 Per Cox J (TENNANT J expressing no opinion).—An understatement of value in the sale proclamation cannot by itself justify an inference of fraud on the part of the decree-holder. *See* s 18 of the Limitation Act does not apply to a case in which the fraud is antecedent to the accrual of the right. **Purna Chandra Mandal v. Anukul Biswas I L P 36 Calc 651 Rahimkhoy Hobibkhoy v. C A Turner I L P 17 Bom 311** referred to. *Held* that s 18 can apply only to such fraud as amounts to concealment and is intended to keep from the injured party the knowledge of the wrong or its remedy. The action therefore can have no application

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where the fraud alleged by a party applying to set aside an execution sale is understatement of the value of the properties in the sale proclamation. The burden of proving fraud lies on the applicant. *See* s 166. An application to set aside on the ground of fraud an execution sale held prior to the coming into operation of Act IX of 1908 will be governed by Art 166 of Sch I of that Act if made after that Act came into operation. *See* s 6 of the General Clauses Act does not preserve the right of applicant held to apply within three years from the date of the sale. **PAKISHANK DASIA v. MEHTA v. LAL DUTT (1911) 15 C W N 955**

6 ——— Agreement between judgment-debtor and decree-holder before confirmation of sale—Auction purchaser if bona fide—Limitation Act (IX of 1908) s 18 Sch I Art 166—Where after the sale of a property in execution of a decree but before confirmation thereof the decree-holder consented to the sale being set aside on payment of the decretal amount by the judgment-debtor and the payment was made and certified in Court. Held that this did not preclude the auction purchaser whose right is independent of that of the decree-holder from asking for confirmation of the sale in his own right. He would also if his application were rejected be entitled to appeal from that decision being a party prejudicially affected by that order. **Poorna Chandra v. Doorga Prasad 3 Shome 101** commented on. The High Court has no power to extend the time allowed to the judgment-debtor by O 21 r 9 sub r (2) to deposit the decretal amount etc. with a view to setting aside the sale either under s 6 Limitation Act or under s 148 Civil Procedure Code. **SHARAFAT v. MAHOMED HABIBUDDIN (1911) 15 C W N 685**

7 ——— Application to set aside—Limitation Act IX of 1908 s 18 Sch I Art 166—Fraud employed to bring about sale if may save bar of limitation—Fraudulent concealment what amounts to—Fraud plea of—Proof. When an application to set aside an execution sale was made more than 30 days after the sale but it was urged that s 18 of the Limitation Act applied to the case. *Held* that the fraud which it is necessary to prove to bring the case within s 18 of the Limitation Act may have occurred prior to the sale—for fraud at any rate of the nature generally employed in bringing about an illegal sale is a continuing influence and until that influence ends it retains its power of mischief. **Purna Chandra Mandal v. Anukul Biswas I L P 36 Calc 651** explained. **Rahimkhoy Hobibkhoy v. Turner I L P 17 Bom 311** referred to. Fraud is not to be lightly charged or lightly found specially in cases of applications to set aside an execution sale where this reserve is too often neglected. Misstatement of value if it can be described as fraud does not constitute fraudulent concealment and non publication of sale proclamation in the mofussil even if it exposes the sale to attack at the instance of the judgment-debtor would not by itself bring the case under s 18 of the Limitation Act unless it is shown that the judgment-debtor by means of fraud

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of which the decree-holder was guilty or to which he was necessary being kept from the knowledge of his right. *NARAYAN SARTI v. MOHAN DAS* (1912) 16 C W N 894

8 ——— Deposit—Civil Procedure Code (Act V of 1908) O 111 r 89—Previous purchaser of property not affected by the sale if may apply to make deposit—Conditional deposit if valid—Withdrawal of condition effect of—Deposit not made on the last day owing to absence of Judge—Effect Where on the last day allowed by law to make a deposit under r 89 of O 111 of the Civil Procedure Code for the purpose of setting aside a sale the petitioner owing to the preiding officers having left the Court earlier than usual was unable to make the required deposit. *Held* that the petition and the deposit were properly received on the next day as no act of the Court itself ought to be allowed to prejudice the position of the petitioner. A conditional deposit is not a good deposit under r 89 O 111 but where the petitioner withdrew the condition the moment the decree holder auction purchaser objected *Held* that there were no sufficient grounds under the circumstances to treat the deposit as invalid. P 89 O 111 does not confer a right to make deposit to a person who had purchased the property sold so far back from the date of the sale and the execution proceeding that his interest was not affected by the sale. *DILIP NATH DAS KOKER v. BANSI DASS SINGH* (1911) 16 C W N 904

9 ——— Setting aside Sale—Application to set aside sale by some of the judgment-debtor if whole sale can be set aside—Sale proclamation gross understatement of value by decree holder if by itself vitiates sale—Waiver by judgment debtor of fresh sale proclamation if amounts to waiver of other irregularities Where a decree was obtained jointly against several persons and their respective liabilities were not a certain therein and the decree holder proceeding against jointly had their property sold in execution. *Held* that upon good cause shown the whole sale should be set aside although only some of the judgment debtors applied within time to set aside the sale. The application of the other judgment debtors though made out of time could very well be treated as applications to be added as parties to the previous application of their co judgment debtors having regard to the fact that all the applications were tried together and were thus virtually consolidated. Where on the date fixed for the sale of immovable property in execution of a decree the judgment debtor applied for a postponement and agreed that if the decree was not paid up by the adjourned date the sale might be held without the issue of further proclamation and the decree not having been paid up the sale took place on the adjourned date. *Held* that in the absence of evidence to show that they were aware of the contents of the sale proclamation it could not be said that the judgment debtor had waived any irregularities in the sale proclamation which contained a gross understatement of the value of the attached properties. *(Jharna Singh v. Hurdoo Narain L P 314 1906 W P 11 Surachalam v. Arunachalam L P 151 1911 I L R 12 Mad 19 ditin gusted)* Where with the object of securing a very valuable property for the smallest possible

II 1 EXECUTION OF DECREE—*contd*

price the decree holder grossly understated its value in the sale proclamation with the consequence that he was able to purchase the property without competition at a fraction of its real price. *Held* that the deliberate misstatement of value in the sale proclamation was by itself a sufficient ground for vacating the sale. *Sadat Vard Khan v. Phul Kuar I L R 70 All 41. I K 931 A 146 2 C W N 550 followed Abdul Koshem v. Benode Lal 12 C W N 757 not followed. KADIRAMUND THAKUR v. PARTUL CHAND LAL CHOWDHURY (1911) 16 C W N 904*

10 ——— Setting aside sale—Material irregularity allegation of Civil Procedure Code (Act V of 1887) s 61—Proclamation of sale—Sale fixed to take place at monthly sales naming day place and hour of commencement of such sales—Absence of presiding officer A sale in execution of a decree was adjourned from 16th May until 13th July and in the fresh proclamation of sale it was notified that in the absence of any order of postponement the sale would be held at monthly sales commencing at 6 o'clock on the morning of 13th July 1903 at Monghyr. Owing to the absence of the presiding officer from the station the monthly sales did not begin until 17th July and in the course of them the sale in question was held on the 17th. On an application under s 311 of the Civil Procedure Code (Act V of 1887) to set aside the sale on the ground of material irregularity within the meaning of s 257 and 91 of the Code. *Held* (affirming the decision of the Courts in India) that in holding the sale on 17th July the Court had not acted in contravention of the provisions of the Code and there had been no material irregularity in publishing or conducting the sale. *RINA LAL SINGH v. PARNANSHAN PERSHAD SINGH* (1911) I L R 99 Cal 28

11 ——— Description of property in schedule to execution process—Confirmation of sale—Order granting certificate of sale of property sufficient from that described in schedule—Illegible in sale—Order set aside as being void as ultra jurisdiction Certain property to be sold under a decree was described in the schedule to the application for execution and in the proclamation of sale as six anna share of a mahal subject to an existing mortgage and after the sale had been confirmed the auction purchaser applied for a certificate of sale and alleged that a mistake had been made in the schedule by the omission of the word 'no' as led to have the purchase of property declared in the certificate to be a six anna share of the mahal and a claim there by the mortgage. The alleged mistake was stated to have been corrected before the sale by an advertisement in the Calcutta Gazette. The Subordinate Judge granted a certificate of sale in that form, and his order was upheld by the High Court. *Held* (reversing those decisions) that what is sold at a judicial sale can be nothing but the property attached which in this case was the property described in the schedule in the execution proceedings. It was not a case of misdescription which might have been treated as an irregularity. Identity and not description had here to be dealt with. An execution property was accurately described in the schedule and the order of the Subordinate Judge granted

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a sale certificate which stated that another and a different property had been purchased at the judicial sale. If it was the wrong property was attached and sold the only course was for the decree holder to commence the execution proceedings over again. The advertisement in the Gazette purporting to correct the alleged mistake could not validate a sale of property which was not that to which the attachment related. The order of the Subordinate Judge was made without jurisdiction as there was no power to sell in the judicial proceedings the property which the certificate of sale declared had been purchased. Their Lordships set aside the order confirming the sale together with the sale certificate granted thereunder. **THAKUR BAPUJI v. JIBAN RAM MAHWARI (1913)**

I L R 41 Cal 590

12 ———— **Sale certificate—Purchaser at suit for rent by order of court under Land Registration Act—Decree obtained therein sale in execution of—Purchase by decree holder—Certificate of sale subsequently cancelled—Rent decree and sale if it be reversed—A having purchased property at a sale under the Public Demands Recovery Act on 14th September 1909 sold it to B who duly obtained a sale certificate from the revenue authorities was placed in possession and had his name registered under the Land Registration Act. B then sued the tenant on the property for rent and obtained an *ex parte* decree in execution whereof the tenure was sold and purchased by the decree holder himself on 20th November 1909. The sale under the Public Demands Recovery Act was cancelled on 29th March 1910 on the ground that no notice had been served under s. 10J of the Act and that the proceedings were invalid and inoperative in consequence. Held that the rent decree and sale thereunder which were duly and regularly had at the instance of a stranger who had no concern with the irregularities in connection with the certificate sale were not affected by the reversal of the certificate sale. **NADENDRA NATH BOSE v. PARBATI CHAKRAVARTY (1914)****

20 C W N 819

13 ———— **Hold good when *ex parte* order set aside where property has been assigned by decree holder purchaser to stranger—Decree subsequently passed if validates sale—Court's power to take notice of facts which have occurred since institution of proceedings** The assignee from the decree holder who has purchased property in execution of his own decree is in no better position than his assignor and the sale is set aside when the decree is set aside even when the decree holder has sold the property to a stranger. **Sahu Chandra v. Ram suary 20 C W N 655** followed. As soon as an *ex parte* decree is set aside the sale where the decree holder is the purchaser falls through and is not validated by a fresh decree subsequently made. **Set Umdmal v. Srinath Iyer I L R 27 Cal 310** see also **4 C W N 692** **Harari Mull v. Janki Prasad 6 C L J 90** and **Ram Yeoh v. Emdeswar 6 C L J 100** distinguished the decree in those cases though temporarily set aside having been ultimately maintained. It is well settled that the Court may in order to shorten litigation or to do complete justice between the parties take notice of events which have happened since the institution of the proceedings and may afford relief to the parties

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on the basis of the altered conditions. **ABDUL RAHMAN v. SARAFAT ALI (1915)**

20 W N 667

14 ———— **Sale in execution when set aside when decree set aside—Decree holder purchaser—Purchase by stranger from latter before decree set aside—Equity** The Court as a matter of policy has a tender regard for honest purchasers at sales held in execution of its decree though the decree may be subsequently set aside where the purchasers were not parties to the suit and the decree had not been passed without jurisdiction. But the same measure of protection is not extended to purchasers who are themselves the decree holders nor can purchasers from such decree holders claim that the Court owes them any duty or to be within the policy which prompts the extension of protection to strangers since they have bought from one whose title is liable to be defeated. **Sheik Ismail Routher v. Inajab Routher I L R 30 Mad 99** dissented from **SATISH CHANDRA GHOSH v. RAMESHARI DASGI (1914)**

20 C W N 805

15 ———— **Void or voidable when decree fraudulent—Suit to set aside decree barred by limitation—Sale if may be vacated** A sale in execution of a fraudulent decree is not a void but a voidable sale till vacated by an appropriate proceeding the rights created thereby are effective. Such a sale cannot be set aside without setting aside the decree consequently where the right to have the decree set aside as fraudulent has become barred by limitation no decree can be made setting aside the sale only as made in execution of a fraudulent decree. **Ram Narayan v. Sheu Bhunjan I L R 27 Cal 19** distinguished **Raj Kumar Sarkel v. Paj Kumar Maiti (1916)**

20 C W N 850

16 ———— **Sale of putni in execution of decree for arrears of rent—Purchaser if liable for arrears previous to confirmation of sale** The plaintiff purchased a putni taluq at a sale held in execution of a decree for arrears of rent due thereon. Some of the putnidars applied to set aside the sale and while the proceedings for setting aside the sale were pending the zemindar brought the suit against the recorded putnidars for arrears of rent subsequent to the period covered by the decree in execution of which the sale was held at which the plaintiffs purchased the taluq. The plaintiffs were made parties to this suit which was decreed and in execution of the decree the putni was put up for sale and the plaintiffs whose purchase at the previous sale had been by that time finally confirmed deposited the decretal amount and saved the putni from sale. Held that in the absence of anything to denote the contrary a sale of a tenure held in execution of a decree for its own arrears of rent passes it free from liability for previous arrears and the plaintiffs were not liable for the arrears of rent for the period to the date of confirmation of sale at which they purchased the putni. **MATHURA MOHAN SARKAR v. NAREN CHANDRA DUTT (1916)**

20 C W N 749

17 ———— **Hindu Joint Family—Decree against father of joint mistakshara family—Suit by sons the other members of the family to have it declared that their shares were not affected by the sale under mortgage decree—Right title and in**

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Interest of judgment debtor—Substance and not technicalities of transaction to be regarded in cases of this kind. In execution of a mortgage decree against the father of a joint mutakshara family who was alone was a party to the mortgage the decree and the execution proceedings his two sons the other members of the family objected that only one third of a *patni* taluk forming the joint family property could be sold on the allegation that the debts in respect of which the decree had been made were contracted for illegal and immoral purposes and the order for sale was amended by adding the words right title and interest of the judgment debtor as indicating what was to be sold which expression the Court said was not calculated to affect the case of either party. The property was sold and purchased by the decree holder. In a suit by the sons to have it declared that only one third of the property passed by the sale both Courts in India found that the debts were for legal and necessary purposes. The Subordinate Judge made a decree in the plaintiffs favour which was reversed by the High Court on appeal *Held* (affirming the decision of the High Court) that the proper construction of the order for sale as amended was that if the plaintiffs succeeded in establishing that the debts had been incurred for immoral purposes only one third of the property would be affected by the sale while if they failed in that contention the whole of the property would be held to have passed by the sale. The expression right title and interest did not limit what was to be sold to a one third share. In cases of this kind the substance and not the mere technicalities of the transaction should be regarded. *Mahabir Pershad v Mohanwar Nath Sahas* I L R 17 Cal 534 L R 17 I A 11, followed. *SRI PAT SINGH DUGAR v PRODYOT KUMAR TAGORE* (1916) I L R 44 Cal 524

18 ———— **Benami purchase—Purchase on behalf of another person—Certified purchaser—Agreement to convey made after sale to carry out agreement made before sale—Civil Procedure Code 1908 s 66 sub s (1) S 80 of the Code of Civil Procedure 1908 sub s (1) enacts that No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims. The appellant purchased at an execution sale certain immovable property which he had before the sale agreed with the respondents to convey to them. After the sale agreements were made by which the appellant bound himself to carry out the original agreement with the respondents. In suits by the respondents against the appellant for specific performance the defence was that the suits were barred by s 66 sub s (1) *Held* that the fresh agreements made after the sale though carrying out those made before the sale were not affected by s 66 and the suits were therefore not barred. *Venkatappa v Jalayya* (1919) I L R 42 Mad 615 approved. *VADIVELU MUDALIYAR v PERIA MANICKA MUDALIYAR* (1920)**

I L R 43 Mad (PC) 643

SALE OF GOODS

See CIVIL PROCEDURE CODE (1908) s 20

I L R 39 All 368

SALE OF GOODS—*contd*

See CONTRACT

I L R 43 Cal 77
I L R 47 Cal 458
— I L R 45 Bom 129 1222

See CONTRACT ACT 1872—

ss 5, AND 63 I L P 43 All 257

= 76 to 123

= 103 I L R 40 Bom. 530

——— contract for—Stamp duty on—

See STAMP DUTY I L R 29 C 16 689

——— re sale on purchasers default—

See CONTRACT

I L R 33 Cal 568

——— return of rejected goods

See CONTRACT

I L R 35 All 376

——— Warranty of fitness for purpose for which bought—

See CONTRACT

15 N W N 981

1 ———— **Contract for forward monthly deliveries—Construction—Anticipatory breach—Measure of damages.** In a contract dated Jan 4th for the purchase of 300 tons of Java sugar it was stipulated that shipments to be made by steamers during July to December 1914. The agreement to be construed as a separate contract in respect of each shipment. Without giving any delivery on the 18th August the sellers repudiated the contract. In an action for breach of contract brought by the buyer on the 26th August claiming damages in respect of the whole contract for 300 tons *Held* that on the true construction of the contract the buyer had the right to demand delivery of the goods by separate shipments and the true measure of damages was the aggregate of the differences between the contract price and the market price at the appointed times of delivery in each month. *Roper v Johnston* L R 3 C 1 167. *Wertheim v Chicoutimi Pulp Co* (1911) A C 301. *Frost v Knight* L R 7 Ex 111 and *Brown v Muller* L R 7 Ex 319 referred to. *Per MOOREHEAD J*—In the circumstances of the case the instalments must be deemed to have been intended to be distributed ratably over the period appointed for the delivery of the whole quantity of the goods. *Colman v Davis* Iron Co 47 L J Q B 615. *Coddington v Paine* logo L R 2 Ex 193 referred to. *Thornton v Simpson* 8 Taunt 558. *Tatling v O'Riordan* L R Ir 22. *Colonial Insurance Co of New Zealand v Adelaide Marine Insurance Co* L J 19 A C 128 cited by MOOREHEAD J—It being found that the principle applied by the Court of first instance in assessing damages was erroneous but that on the application of the proper principle the damages to be allowed would be larger on the defendant's appeal the Court declined to disturb the judgment or order a remand. *WILLIAM TRANKER v GUBBAY* (1915) I L R 43 Cal 303

2 ———— **C I F Contract—Insurance of goods against war risk without buyer's instruction—Buyer not obliged to pay for such insurance—Payments against documents—Bill of lading must be tendered—Bill of lading what**

SALE OF GOODS—*co id*

is a—War—Government proclamations prohibiting trading with the enemy—Effect of proclamations on contract goods shipped in enemy port—Enforcement of contract becomes illegal On the 9th June 1914 the defendants purchased from the plaintiff 5 tons round copper bottoms *c i f* Mahomera July shipment and agreed to pay for the said copper in Bombay on being tendered the bills of lading and other documents in respect thereof. The copper was shipped on board the *S S Tancian* on or about the 28th July 1914 the plaintiff obtained relative bills of lading and insured the goods against ordinary marine risks. On the 6th August in consequence of war having broken out between Great Britain and Germany the plaintiff's agent in England although not instructed to do so by the defendants insured the copper against war risks and paid 10 per cent premium. The documents arrived in Bombay on the 17th September where upon the plaintiff tendered them to the defendants and demanded payment of the invoice price of the goods including the above-mentioned extra premium of 10 per cent in respect of insurance against war risks. The defendants refused to pay the amount demanded on the ground that they were not liable to pay the above said extra premium. *Held* that in the absence of express instructions from the defendants to effect insurance against war risks the defendants were not liable to pay the extra premium. By another contract dated 17th July 1914 the defendants purchased from the plaintiff 500 bags of sugar *c i f* Mahomera July shipment and agreed to pay for the said sugar in Bombay on being tendered the bills of lading and other documents in respect thereof. The plaintiff got the sugar shipped at Hamburg on the *S S Nicomedia* on the 26th July 1914 and obtained as he alleged relative bills of lading in respect thereof and he insured the goods. Subsequently after the documents relating to the said sugar had arrived in Bombay the plaintiff presented them to the defendants and demanded payment but the defendants refused to accept the document or to pay the money on the grounds firstly that by reason of the state of war which existed and the Government proclamations prohibiting trade with the enemy performance of the contract would be impossible and secondly that the documents which the plaintiff presented as bills of lading were not bills of lading and were not therefore the proper documents to be tendered in accordance with the terms of a *c i f* contract. *Held* that in view of the Government proclamations the tender of the shipping documents was not a valid tender and that acceptance of and payment against the said documents would be a violation of the said proclamation. *Duncan Fox & Co v Schrempf and Bonke (1915) A B 365* followed. *Held* also that a bill of lading as known to merchants is a receipt for goods actually delivered over and shipped on board the ship named therein and signed by the Captain or his representative and that the documents tendered to the defendants as bills of lading were not bills of lading but mere receipts for warehousing or shipment. As such they were no evidence of any shipment and a purchaser under a *c i f* contract if tendered such a receipt would be entitled to ask for a bill of lading for he is not obliged to pay upon proof merely that the goods

SALE OF GOODS—*co id*

had arrived at the port of departure. *MISSIN I AG BERNHARD & HAJI SULTANALI SHASTARY AND CO (1915)* I L 40 Bom 11

C I F contract—Payment to be made after goods had been landed—Breach of contract—Failure of vendors to deliver bill of lading or goods—Contract of affreightment—Property conveyed in enemy vessel—War declared whilst cargo at sea—Capture of vessel and cargo—Adjudication by Prize Court—Condemnation of vessel—Release of cargo—Effect of war on executory contract—Impossibility of performance—Void contract—Contract Act (IX of 1872) s 56 On the 2nd February 1914 the defendant firm agreed to sell to the plaintiffs 10 tons of basic steel bars under a *c i f* contract free Hooghly. The shipments were to be made in June July and October and delivery to be completed within three days from the date of the landing of the goods. Furthermore it was agreed between the parties that 45 days credit from the date of the delivery of the goods should be allowed to the plaintiffs. In respect of the July shipment the goods which consisted of partly Belgian and partly German manufacture were shipped on the 2nd July 1914 from Antwerp per *S S Steinurm* a German steamer. On the 4th August 1914 when war was declared between England and Germany the *S S Steinurm* was at sea. She was subsequently captured with her cargo by a British cruiser and taken to Colombo for adjudication. The Prize Court condemned the vessel but released the cargo which was brought to Calcutta at the expense of Government. The Government thereupon notified the vendors that the goods had arrived and the latter immediately communicated with the purchasers asking them to take delivery of the goods on payment of certain extra charges to Government. The plaintiffs having refused to do so the goods were sold by the defendants on purchasers account and risk. In a suit for breach of contract and for damages *Held* that the variation of the terms as to the time of payment did not alter the nature of the contract as a *c i f* contract. *Held* also that it was an implied part of the contract of the 2nd February 1914 that the defendants should procure a contract of affreightment under which the goods would be delivered in the Hooghly. *Held* also that the contract between the plaintiffs and the defendants included the performance of an act (viz the procuring of the contract of affreightment under which the goods would be delivered in the Hooghly) which after the contract was made became impossible by reason of the outbreak of war within the meaning of s 56 of the Indian Contract Act and consequently the contract of the 2nd February 1914 was void. *MADHOKAM HIRDOO DAS & C SETH (1914)* I L 45 Cal 28

4—Contract under C I F terms—Policy of insurance omitted from shipping documents—Payment made under mistake—Bank remitting the money to the drawer—Instructions by drawer to withhold payment after remittance—Liability of the Bank as agent—Indian Contract Act (IX of 1872) s 7—Estoppel—Posting of a demand draft whether equivalent to payment In May 1915 the plaintiff entered into two contracts under *c i f* terms with one P. Vella for supply to him of certain goods. P. Vella drew

SALE OF GOODS—contd

a demand draft on the plaintiff and endorsed it over for collection to the Anglo Egyptian Bank Ltd Malta who in turn endorsed it to the defendant Bank at Aden. On August 10th 1915 the plaintiff was informed by the defendant Bank that the latter held a demand draft upon him and would deliver shipping documents to him on payment of the draft. On August 12th 1915 the plaintiff paid the amount due on the draft and removed from the Bank certain shipping documents among which on inspection at his office the plaintiff failed to discover the policy of insurance. On discovery of this omission the plaintiff wrote to the defendant Bank on August 13th 1915 stating that the draft had been honoured under a mistake and requested the Bank not to pay the amount of the draft to the drawer of the bill and in case the remittance had already been made to cable at the plaintiff's expense instructions to withhold payment. The defendants having refused to stop payment of the sum paid by the plaintiff the latter filed a suit claiming refund of the money. The defendant Bank replied that they were acting merely as agents for collection on behalf of the Anglo Egyptian Bank at Malta through whom the demand draft was received and that they having given telegraphic intimation of the receipt of money to their principal on the 12th August that is before the receipt of the plaintiff's letter of the 17th idem were unable to do anything further in the matter. The plaintiff's suit was dismissed by the Judge at Aden. He appealed to the President's Court and pending the appeal a reference being made to the High Court Bombay under s 8 of the Aden Act II of 1884 for consideration of questions *inter alia* (i) whether the money was paid by plaintiff to the defendant Bank under a mistake of fact as to the documents delivered in exchange therefor (ii) whether the defendants could and should have stopped payment of the price as instructed by the plaintiff (iii) whether the defendant Bank acted as principals or agents in collecting the price of goods (iv) whether if defendants acted as agents in collecting the price of the goods they had any better rights than the sellers P Vella (v) whether in the circumstances the plaintiff was entitled to repayment of the price from the defendants under s 72 of the Indian Contract Act 1872. *Held* (1) that the money was paid by the plaintiff to the defendant Bank under a mistake of fact (2) that although the posting of the draft was neither payment nor an act so prejudicing the defendant Bank that it would be inequitable to require them to refund yet in view of the telegraphic intimation to the defendant's principals at their express request to the effect that money had been paid by the plaintiff he (the plaintiff) was estopped having regard to the peculiar relation of the parties and therefore the defendants could not nor should they have stopped payment of the price as instructed by the plaintiff (3) that the defendant Bank were mere agents (4) that the defendants had higher rights than P Vella in consequence of estoppel arising from plaintiff's conduct (5) that the plaintiff would not be entitled to repayment under s 72 of the Indian Contract Act 1872 as that section should be read subject to the law of estoppel and in view of the fact in the present case there was a clear case of estoppel. *Deutch Bank (London Agency) v*

SALE OF GOODS—contd

Barro & Co 73 L T 669 referred to *Shen Chaud v The Govt of W P 1 L P 1 AB 9* disented from *SOLOMON JACOB & THE NATIONAL BANK OF INDIA LTD ADEN (1917)*

I L R 42 Bom 11

5 ——— Indentor who has accepted the shipping documents and if drafts for the amount due but refused to take delivery on the ground of goods not being in accord with description—Plaintiff's failure of consideration—Warranted title—Contract of sale—Defendant accepted the shipping documents and the drafts for the amount due but refused to take delivery on the ground that the goods were not in accord with the description as entered in the indent. The contract was a sale of goods contract and the indent also expressly showed that the indentors were bound to pay the drafts as matured and if they had any claim in regard to the nature of the goods they would bring it in the manner laid down in the indent. *Held* that the defendants could not in answer to the claim upon the draft plead failure of consideration because what they contracted for were the shipping documents and not the actual goods. *Barro & Co v Nagesh Chand Phil Chaud (S. Indian Cus 644)* referred to *STELLING MASOV AND CO v JAWALA NATH BAGHWAN DAS*

I L F 1 Lab. 99

6 ——— Insolvency of purchaser before delivery—Endorser's right to refuse delivery—Official Assignee duties and rights of election within reasonable time—Tender of cash before delivery—Presidency Towns Insolvency Act (III of 1909) as s 62 63—Joint Hindu family, insolvency of member of—Infant partner—Contract Act (IX of 1872) s 247 On the insolvency of the karta of a *Musalhara* Hindu family a suit is not maintainable by the Official Assignee for damages for breach of a contract entered into by the firm which was the joint business of the family. Under a 5- of the Presidency Towns Insolvency Act the rights that passed to the Official Assignee were the rights the insolvent had under the contract as a partner; hence it was the duty of the Official Assignee to declare his election to take up the contract within a reasonable time and to tender cash before calling for delivery. *Ex parte Chalmers L P 8 CA App 269 and Morgan v Davis L P 20 C P 16 followed. GREY v LAMOND WALKER (1913)*

I L P 80 Cal. 593

7 ——— Bought and sold notes—Bought by your order and for your account from our principals—Principal and Agent—Principal's liability of broker—Contract Act (IX of 1872) s 30 (2)—Broker an intermediary—Correlation of employment—Award Where a broker engaged and sent to a party a bought note in the following terms: We have this day bought by your order and for your account from our principals 200 bales of jute (name) Brokers and a correspondent, sold note was signed and sent by the broker to another party the names of the principals being disclosed to each other by the broker at a subsequent date. *Held* in proceedings taken by the latter that the broker was merely an intermediary and not an agent for sale and was not liable under s 240 (2) of the Contract Act. The contract (if any) between the broker and the buyer was a

SALE OF GOODS—*contd*

contract of employment the employment being to negotiate and not to sell on behalf of another
Sou Lureil v Lorditch L P I C P 311 followed
Gulboy v Aitcom I L P I C 449 distin-
 guished. **PATIRAM BANERJEE v KANKEABARRA**
 Co. Ltd. (1915) I L R 42 Cal 1030

8. ——— Exception clause excusing delay due to late shipment—*Failure of seller to deliver on due date—Tender on a subsequent date—Onus on party relying on exception—Ship ment to be shown to be unavoidably delayed—“Shipments meaning of—Measure of damages*
 Defendant contracted with plaintiff to deliver to him in Calcutta 50 tons of Pangoon rice in June 1909 and another 50 tons in July 1909. A clause in the contract provided that no objection was to be raised by the plaintiff in case of the delivery of the goods being delayed by reason of the non arrival in time of the steamer carrying the goods on account of the shallowness of water at Diamond Harbour damages to the steam engine accidents of the sea and other causes not under human control as also owing to late shipment at Pangoon. The June consignment was not tendered by defendant until the 9th of July and the July consignment until the 3rd August. The market rates on both the days were the same as those on 30th June and 31st July respectively. The plaintiff relied on the tenders on both days and sued for damages being the difference between the contract price and the market price on the said two dates. Defendant relying on the clause relative to late shipment pleaded that under the contract there was no particular due date of delivery. *Held* that the defendant could not rely on that clause unless he was able to prove that the circumstances which led to delay in shipment were not attributable to his negligence. *Dunn v Bucknall (1909) 2 K B 614* followed. That the burden of establishing that his case was covered by the exception on which he relied was on the defendant. *Sandeman and Sons v Tyack and Branfoot Steamship Co. Ltd (1913) A C 650* followed. The term shipment in the contract included not merely the loading of goods on board the ship but also the starting of the ship. That as soon as the contract had been broken the obligation of the purchaser to take delivery of the goods vanished and he was not bound to accept the goods when they were delivered and that the right measure of damages was the difference between the contract price and the market price on the dates of delivery originally agreed upon by the parties. *Grenon v Iachmi Varain I L R 24 Cal 8* relied on. **KALI KANTA SHAHA v ISMAIL (1914)** 20 C W N 159

SALE OF GOODS ACT (56 & 57 VIC C 71)

—— ss 45 and 47 — *S appears in transit—Ultimate destination of goods—Duration of transit—Ledge of bill of lading—Measure of damages—Sale of Goods Act (56 and 57 Vic C 71) ss 45 and 47* The plaintiffs a Bombay firm imported hardware goods from M & Co of Manchester for sale on commission the business being carried on and financed in the following manner M & Co on shipping the goods handed over the complete shipping documents to B and received from him an advance of 60 per cent of the invoice price. B then handed

SALE OF GOODS ACT (56 & 57 VIC C 71)

—*contd*—— ss 45 and 47—*contd*

over the shipping documents to the National Bank of India in England and himself received a similar advance by drawing on a credit opened with the Bank by the plaintiffs. The Bank then forwarded the shipping documents to India where they were handed over to the plaintiffs in exchange for true receipt the plaintiffs becoming responsible to the Bank for any short fall in the advances made to B. On 12th February 1907 M & Co contracted to purchase 50 boxes of tin plates delivery to be made at Newport in four or five weeks after date. On 6th February M & Co wrote to L & Co enclosing instructions and marks for shipment of the 50 boxes to Bombay and on 2nd March requested them to forward the goods to W & Co at Newport in time for shipment in S S Clan Macleod for Bombay. On 21st March L & Co enclosed to M & Co an invoice for 200 boxes and on 27th March another invoice for the remaining 50 boxes the material part of the invoice in each case being: No claim concerning these goods can be recognised unless made within fifteen days from delivery to Messrs W & Co Newport for shipment on your account. The 250 boxes were put on board the steamer by W & Co as the agents of L & Co but in obtaining a bill of lading for 500 boxes (including the 250 in question) W & Co acted as the agents of M & Co. The steamer left Newport on 4th April. Following the usual course of business as above described M & Co handed over to B the shipping documents relating to the 500 boxes and obtained an advance of £2500 (being 50 per cent of the invoice value). B on the 6th April obtained a similar advance from the Bank. On the same day M & Co suspended payment and on 9th April L & Co as unpaid vendors of 250 boxes notified the steamship owners the first defendants to stop these goods in transit. The S S Clan Macleod arrived in Bombay on 13th May and the bill of lading which had been duly handed over by the Bank to the plaintiff on 29th April was in due course presented by the latter. They were informed however of the stop put on the 250 boxes and were offered a delivery order for the remaining 250 alone. This they declined refusing to accept anything but the full payment of the advance or the full amount of the goods. On 29th June the plaintiffs repaid the Bank the amount of the advance and the trust receipt of 29th April was duly cancelled. On the plaintiffs subsequently suing the steamship owners and their agents for damages. *Held* that the transit did not cease at Newport and L & Co were entitled to stop the goods after they had started for Bombay. *Ex parte Golding Davis & Co 13 C D 63* followed. *Held* further that the plaintiffs were after 9th June—on which date they had fulfilled their obligations to the Bank—pledgees for value of the bill of lading if indeed they did not occupy that position from 29th April being transferees of the Bank's rights in respect of the advance as against the defendants. *Held* further that the plaintiffs were entitled to join both defendants in the suit. The utmost benefit which the defendants were entitled to obtain from the position of L & Co as sureties (See to the plaintiffs for the advance made by the latter to M & Co) was the right

SALE OF GOODS ACT (56 & 57 VIC, C 71)

—concl'd

— ss 45 and 47—concl'd

to the security of the 250 boxes which they were willing from the outset should be received by the plaintiffs. The plaintiffs by refusing to take delivery of the 250 boxes had omitted to do an act which their duty to the surety required them to do and to the extent to which that omission had resulted in loss the surety was discharged. *In re Westinhus & B & Ad 817* discussed. *BAFUJI SONABJI v THE CLAY LINE STEAMERS LD (1910)* I L N 34 Bom 640

SALE OF LAND

See LIMITATION ACT (IV of 1908) SCH I ARTS 87 62

I L R 37 Bom 538

See MORTGAGE

I L R 47 Cal 377 924

See TRANSFER OF PROPERTY ACT (IV of 1882) s 55 (d)

I L R 88 Mad 997

— agreement for—

See SPECIFIC PERFORMANCE

I L R 38 Cal 805

By Municipality without written Contract

See BOMBAY DISTRICT MUNICIPAL ACT 1901 s 96 AND 40

I L R 45 Bom 797

Agreement by vendee to pay revenue—Reservation of portion out of property sold—Agreement not binding on transferee. The vendor of a village reserved for her maintenance 108 bighas and the vendee also agreed not to ask for rent of those 108 bighas. Vendee further did not insist upon payment of the proportionate share of Government revenue due from the vendor but paid it himself. Held that any agreement which might have existed as between the vendor and the vendee as regards the payment of Government revenue was a purely personal matter and could not bind the vendee after the death of the vendor when the land was in the possession of her legatee. *Sri Thakurji Maharaj v Lachmi Narayan 11 All L J 212* *Pam Gobind v Sri Thakurji Maharaj 11 All L J 231* and *Ali Hussain v Hakimullah I L R 33 All 230* referred to. *LACHMI SINGH v JANGOTI SINGH (1916)* I L N 39 All 166

Duty of vendor—Right of vendee to be put in possession. A vendor of land when he holds himself out in that capacity is bound to ascertain whether in fact the subject matter of what he is selling exists and he must be in a position to give possession of the physical thing which he has contracted to sell. The obligation is upon the vendor to give the vendee possession and not upon the latter to get possession for himself especially when any difficulty arises in notifying the particular land sold. *DARFAN KURR v HEDAR NATH* I Pat L J 140

Contract of re-sale—Time essence of the contract—Doctrine applicable to contracts of sale whether applicable to contracts of re-sale—Rule of English law applicability of to India. The doctrine that time may not be of the essence of the contract which arises on the

SALE OF LAND—cont'd

construction of contracts of sale of immovable property is not applicable to contracts of re-sale of property conveyed. If the transaction is not a mortgage the right to repurchase being an option must be exercised according to the strict terms of the power. Rule of English law followed—*Joy v Birch 7 F R 22* *Randolph v Mellon 62 E R 627* and *Dibbins v Dibbins (1896) 2 Ch 318* referred to. *SAMABAYUR CHETTIAR v SUDARSANCHARIAR (1919)*

I L R 42 Mad 832

—on payment of price—Right of vendee to sue for possession—Decree for possession whether can direct payment of price or be conditional on payment—Transfer of Property Act (IV of 1882) ss 54 and 55. A vendee who has not paid the purchase money of the lands bought by him is entitled to a decree against the vendor for possession of such lands. The Court cannot make the decree conditional on payment of the purchase money nor can it decree payment of the price to defendant in the vendee's suit. *KRISHNANATHA v MALI (1920)*

I L R 43 Mad 712

Duty of to protect vendee's title—caveat emptor. Where in a suit brought by a third party against a vendor and vendee of immovable property the former admits the claimant's title and the suit is decreed upon that admission he cannot in a subsequent suit for the recovery of the purchase money paid to him by the vendee plead that the former suit was wrongly decided. *Per INSTANT J*—In vernacular conveying the expression *pak aaf* means a flawless title. *BRATTU PAM v GARGA PRASAD* S Pat L J 358

Sale of specific area of land—vendees evicted from part of this area—Vendor's liability—Transfer of Property Act (IV of 1882) s 55—Measure of damages—Indian Contract Act IX of 1872 s 73. On the 16th September 1907 C D and his son M B the predecessors of defendants 3 to 8 sold to the plaintiff 79 kanals and 4 marlas of land. The property comprised several plots of land which formed part of different *khasra* numbers specified in the sale deed. The price paid by the vendees was Rs 83,160 and was calculated as expressly stated in the deed at the rate of Rs 1,050 per kanal. The plaintiffs asserted that they got possession of the 79 kanals and 4 marlas but were subsequently evicted by the defendants 1 and 2 from an area measuring 4 kanals 4 marlas. It was found that defendants 1 and 2 were as a matter of fact the owners of the latter area. Held that as under the terms of the deed of conveyance that as the vendors sold 79 kanals and 4 marlas at so much per kanal to the plaintiffs it was the duty of the vendors either to make good the deficiency or to pay damages for the loss caused to the vendees having regard to the admission by the defendants that there was a guarantee of title and to the provisions of s 55 of the Transfer of Property Act. Held further that the measure of damages is the price of the land at the time of eviction—*vide* s 73 of the Indian Contract Act. *Agardas Saubhaggyadas v Ahmed Khan (I L R 21 Bom 175)* *Parmahod Bhagwan v Manmohan Das (I L R 32 Bom 165)* and *Nabinchandra Saha v Krishna Barina (I L R 38 Cal 455)* followed. *JAI KISHAY DAS v ARYA PRITI NIDHI SABAHA* I L R 1 Lab 950

SALE OF MORTGAGED PROPERTY

See MORTGAGE I L R 39 Calc 527

SALE OR AGREEMENT TO SELL.

See CONSTRUCTION OF DOCUMENT
I L R 37 Mad 490

SALE OR EXCHANGE

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 54 118
I L R 37 Mad 423

SALE-PRICE

See PRE EMPTION 14 C W N 295

SALE PROCEEDS

See CRIMINAL BREACH OF TRUST
I L R 41 Calc 844

See LIMITATION I L R 41 Calc 654

— attachment of—

See PAYABLE DISTRIBUTION
I L R 46 Calc 64

— surplus of—

See MORTGAGE I L P 37 Calc 907

— surplus sale-proceeds in the hands of Collector attachment of—

See MORTGAGE 14 C W N 484

SALE-PROCLAMATION

See EXECUTION OF DECREE
I L R 38 Calc 482

See PROVINCIAL INSOLVENCY ACT (III OF 1907) ss 20 22
I L R 39 Mad 479

— decision of question of valuation—

See CIVIL PROCEDURE CODE 1909 ss 2 AND 47 5 Pat L J 270

— Position of purchaser with notice of incumbrance—

See CIVIL PROCEDURE CODE 1908 O XXI R 66 I L R 43 All 489

Valuation of property

To order property which is to be put up for sale in execution of a decree to be valued at twenty times the Government revenue is merely a colourable pretence of making the valuation required by law and such an order cannot be sustained JAGANNATH PERSHAD v CHITRAPUTTA NARAIN SINGH 8 Pat L J 580

Insertion of parties valuation legality of The insertion of any valuation in a sale proclamation other than the valuation fixed by the Court is calculated to mislead intending bidders and is therefore wrong Neither the valuation assessed by the decree-holder nor by the judgment debtor should be inserted RAI BENI PRASAD v EDUL SINGH 4 Pat L J 37

SALE WITH OPTION OF RE PURCHASE

See SALE

See CONSTRUCTION OF DOCUMENTS
I L R 40 Bom 378

A deed of sale contained the following decrees I have given the land into your possession If perhaps at any time I require it back I will pay you the aforesaid

SALE WITH OPTION OF RE PURCHASE—contd

Rs 100 and any money you may have spent in bringing the land into good condition and purchase back the land In a suit 3 years later by vendor's grandson against vendee's daughter in law Held the option was personal GUNNATH RALLI v YAMAGURA I L R 35 Bom 259

SALTPETRE

See NIMAK SAKAR MITHAL
I L R 41 Calc 286

SALT WORKS

See ASSESSMENT I L R 42 Bom 692

SALVAGE

See CIVIL PROCEDURE CODE 1909 O XXI R 93 2 Pat L J 676
See SHIPPING

SAMBALPUR DISTRICT

See APPEAL I L R 38 Calc 391

See CENTRAL PROVINCES LAND REVENUE ACT 1981 s 130 1 Pat L J 290

SAME TRANSACTION

See JURY RIGHT OF TRIAL BY
I L R 37 Calc 467

SANAD

See BOMBAY LAND REVENUE CODE 180 s 1 I L R 44 Bom 110

See PROOF 16 C W N 683

See PRESUMPTION OF LAND
I L R 44 Bom 668

— construction of—

See BOMBAY HEREDITARY OFFICES ACT, s 2 I L R 44 Bom 323

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 12 I L R 45 Bom 463

See JAIGIR I L R 42 Calc 305

See PENSIONS ACT (XXIII OF 1871) s 9 I L R 32 All 148

See PRESUMPTION I L R 39 Bom 279

Sanad construction of—Grant creating title of Rajah of Deur in 1867 —Meaning of Lands attached to Deur —Whether confined to lands in Salara where Deur is situated or extended to other lands in Bombay Presidency—Use of contemporaneous exposition in interpretation of documents—Jagir nature of tenure—Saranjam—Inam—Jalan—Hakl—Nature of evidence in interpreting documents—Alterations of records The plaintiff and the defendant were brothers descendants of the Bhoir family (Pajabs of Nagpur) whose possessions lapsed to the British Government in 1853 The object of the suit was to have it declared that the whole of the property in dispute (all situated in the Bombay Presidency) belonged to the two brothers in equal shares The elder brother the defendant (appellant) was Rajah of Deur and his defence was that he had succeeded to the property in suit under the law of primogeniture as an appanage to the title of Rajah conferred on him by a Sanad issued by the Governor General Lord Canning in 1862 The question depended mainly on the construction

SANCTION FOR PROSECUTION—cc 13

by single Judge of Chief Court—

See CRIMINAL PROCEDURE CODE 1898
s 19. I L P 1 Lab 239

public servants—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898) s 19. I L P 1 Lab 239
I L M 43 Bom 147

refusal by 1st class Magistrate—

Whether Additional Session Judge may on
appeal—See CRIMINAL PROCEDURE CODE 1898
s 19. I L P 44 Bom 877

Subordination of Courts—

See CRIMINAL PROCEDURE CODE 1898
s 19. I L R 2 Lab 57

Pe jury—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898) ss 236 19 337 (b) 101
I L M 45 Bom 834

refusal of—

See DEFAMATION I L R 48 Calc 388

1 ——— Contradictory statements—False statement before the Committing Magistrate retracted and true evidence given at the trial—Retraction of witness for contradictory statements—Consolidation of circumstances under which false evidence was given and repudiated—Criminal Procedure Code (Act V of 1898) s 195. It would be dangerous to hold that the mere fact of contradictory statements having been made by a witness would justify the Court in granting sanction to prosecute him for giving false evidence. It is necessary to consider the circumstances under which they were made and repudiated. Where a witness was arrested and after pointing out the spot where the stolen property was concealed as alleged by one of the accused was released but stayed with the police and was examined the next day in Court before the date fixed for the hearing of the case the question having been put by a police officer in violation of s 495 of the Criminal Procedure Code and the evidence so given was false and was retracted at the trial when he gave true evidence alleging that he had been tortured and threatened by the same officer before his deposition in the lower Court. Held that having regard to the events leading up to the examination before the Committing Magistrate the conditions under which it was conducted and the fact that the witness did not persist in his false statements but gave true evidence at the trial sanction should be granted. *DURBOR : TRIPURA SHANKAR SARKAR (1910)*

I L P 37 Calc 618

2 ——— Procedure—Criminal Procedure Code s 194—Court is bound to take care. In disposing of the application for sanction to prosecute for bringing a false suit under s 194 of the Criminal Procedure Code the Court has to decide whether the original suit was false and whether if it was false sanction should be granted and must make a full enquiry into the matter even if it involves trying the case *de novo*. So where there was no evidence in the records of the original case to prove that it was false and the Small Cause Court refused sanction on the

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ground that it was not found to go beyond the record and the Court ordered the case to be sent back and tried according to law. *1 ANANDI RANJA v SHIVAPAL SINGH (1910)* I L R 37 Calc 714
14 C W N 806

3 ——— False information to Police—Criminal Procedure Code (Act V of 1898) s 194 (b) 476. No sanction should be granted or prosecution directed unless there is a reasonable probability of conviction though the authority granting a sanction under s 194 or taking action under s 476 should not decide the question of guilt or innocence. Great care and caution are required before the Criminal law is set in motion and there must be a reasonable foundation for the charge in respect of which a prosecution is mentioned or directed. *Ishar Lallad v Sham Lal I L P 111 S 1 Kals Charan Lal v Basudeo Naresh Singh I L R 2 C W N 3 and Queen v Bairoo Lal I L P 1 Calc 49* referred to. Where there had been prolonged litigation between the petitioner and the opposite party in which the former had been successful so that the case was by no means improbable and two Magistrates had in the course of the judicial investigations preceding the trial accepted the prosecution story as substantially true and the Assessors had only found the case not proved. Held that under the circumstance it was not a proper case for a prosecution under s 476 of the Code. *JADU NANDAY SINGH v DURBOR (1909)*

I L R 37 Calc 250

4 ——— Disobedience of order—Penal Code s 188—Disobedience of order under s 144 of the Code of Criminal Procedure (Act V of 1898)—Sanction to prosecute essentials for granting. A Magistrate should not sanction a prosecution under s 188 Penal Code unless he thinks that all the elements necessary for a conviction are present. Where the order sanctioning a prosecution under s 188 Penal Code for an alleged disobedience of an order under s 144 Criminal Procedure Code did not show that the disobedience caused or tended to cause obstruction annoyance or injury or a riot the High Court set it aside in revision. *PROJAPAT JHA v THE EMPEROR (1909)*

14 C W N 234

5 ——— Forgery—Criminal Procedure Code s 195 (c)—Sanction for prosecution want of effect of. On the prosecution of the accused for an offence under s 467 Indian Penal Code alleged to have been committed in respect of a document which was subsequently produced at the hearing of a suit tried on the Original Side of the High Court in which the accused was a party. Held that the prosecution was incompetent with out the previous sanction of the Court which tried the suit or of the Court to which it was subordinate. That s 463 Indian Penal Code referred to in s 194 (c) of the Criminal Procedure Code covers forgery of the description for which penalty is provided under s 467 Indian Penal Code. *TEJI SHAH v BOLANI SHAH (1909)*

14 C W N 479

6 ——— Sanction refused by Munsif—Appeal—Sanction granted by Subordinate Judge—Jurisdiction—Criminal Procedure Code (Act V of 1898) s 195—Civil Courts Act (XII of 1887) ss 21 and 22—Civil Procedure Code (Act V of 1908) ss 24 (1) (a) and 113. A suit having been

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Dismissed by the Munsif and on appeal by the Court of Appeal the defendants applied to the Munsif for sanction to prosecute the plaintiffs for offences under ss 468 and 471 of the Indian Penal Code. This application was refused but on appeal the Subordinate Judge granted such sanction. Held that the Court of the District Judge was the only Court to which such an appeal would properly lie. *Per N R CHATTERJEE J*—For the purposes of s 195 of the Criminal Procedure Code a Munsif is not subordinate to a Subordinate Judge. *RAM CHARAN CHANDA TALUKDAR v. TARIPULLA* (1912) **I L R 39 Calc 774**

7 ————— Jurisdiction—Application to District Judge under s 195 of the Criminal Procedure Code (Act V of 1898)—Transfer of such application to a Subordinate Judge for disposal—Jurisdiction—Civil Courts (Act XII of 1887) ss 21 (2) (4) and 22 (1)—Appeal—An application made to a District Judge under s 195 sub s (6) of the Criminal Procedure Code against the order of a Munsif cannot be transferred by the District Judge to a Subordinate Judge for disposal. *Ram Charan Chanda Talukdar v. Taripulla* **I L R 39 Calc 774** approved. *Semle*. An application under s 195 sub s (6) of the Criminal Procedure Code is not an appeal within the meaning of s 22 sub s (1) of the Bengal Civil Courts Act 1887. *HARI MANDAL v. KESHAB CHANDRA MANA* (1912) **I L R 40 Calc 37**

8 ————— Appeal—Right of—Grant or refusal of sanction by a lower authority—Application to superior authority which is a matter of appeal or revision—Limitation of the period of such application—Criminal Procedure Code (Act V of 1898) s 195 (6)—Limitation Act (IX of 1908) Sch I Art 151 Sub s (6) of s 195 of the Criminal Procedure Code does not confer a right of appeal to the superior authority but only invests the latter with powers by way of revision. *Hardeo Singh v. Hanuman Datt Narain* **I L R 26 All 244** *Mathurams Mandal v. Veenu Chetty* **I L R 30 Mad 389** discussed and distinguished. *Hars Mandal v. Keshab Chandra Manna* **16 C W N 903** *Mehdi Hasan v. Tata Pam* **I L R 15 All 61** approved. *Ram Charan Talukdar v. Taripulla* **I L R 39 Calc 774** referred to. Where the question arises with reference to Art 154 of the Limitation Act (IX of 1908) it has merely to be stated that there is a doubt as to whether an appeal lies or not in such a case in order to give the applicant the benefit of the longer period. The High Court accordingly directed the Sessions Judge to hear an application to revoke a sanction made to him after the expiry of a month from this date. *In re North Ex parte Hasluck* (1895) **2 Q B 264** *Gopal Lal Sahai v. Bahrons* **15 C L J 170** followed. *POCHAI MEYER v. EMPEROR* (1912) **I L R 40 Calc 239**

9 ————— Jurisdiction—Criminal Procedure Code (Act V of 1898) s 195—Verbal application—Jurisdiction—Revocation—Power of Court granting sanction—Practice—Where a verbal application was made by counsel for sanction to prosecute under s 195 of the Criminal Procedure Code and granted by the Court but no order could be drawn up as the application was not made upon formal petition. Held that upon a formal petition being subsequently presented the Court had jurisdiction to grant such sanction the former

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sanction being inoperative. Held further that a Judge sitting on the Original Side has no jurisdiction to revoke a sanction previously granted by him and that application for such revocation must be made to a Civil Appellate Bench of the Court. *Kali Kankar Sett v. Dinobandhu Auddy* **I L R 32 Calc 379** discussed. *THADDER v. JANAKI NATH SAHA* (1912) **I L R 40 Calc 493**

10 ————— Second sanction—Criminal Procedure Code (Act V of 1898) s 195—Subsequent order only a repetition of the first order—Repetition of Proceedings—Penal Code (Act XLV of 1860) ss 193 471—Limitation—Where there are two orders purporting to grant sanction to the same prosecution the later order will ordinarily be taken to be merely a repetition of the first and the period of limitation will begin to run from the date of the first order. *Durbars Mandar v. Jagoa Lal* **I L R 22 Calc 573** referred to. *DURGO PRASAD PATHAK v. LACHMAN BANIA* (1913) **I L R 40 Calc 584**

11 ————— Disobedience of prohibitory order—Necessity of application for sanction—Police report setting forth the facts of disobedience and containing a request for prosecution—Criminal Procedure Code (Act V of 1898) s 195 (1) (a)—Penal Code (Act XLV of 1860) s 188—A police report which sets out the facts of disobedience of an order under s 144 of the Criminal Procedure Code prohibiting the slaughter of cows on a certain day and contains a request that the accused should be prosecuted under s 188 of the Penal Code is a sufficient application for sanction within s 195 (1) (a) of the Criminal Procedure Code. *Per CHATMAN J*—No application for sanction is necessary in cases falling under s 195 (1) (a) of the Code. *PANDEY MANDAL v. EMPEROR* (1913) **I L R 41 Calc 14**

12 ————— Discretion—Judicial decisions—application of—Criminal Procedure Code (Act V of 1898) ss 4 (4) 195 476 490—S 195 scope of and practice under—Public Prosecutor S 195 of the Code of Criminal Procedure vests in the Court an absolute discretion as regards granting sanction to prosecute this discretion cannot be restricted by judicial decisions but must be fairly exercised according to the exigencies of each case. The Court being astute to see that there is no abuse of the administration of criminal justice. *Garner v. Jay L R 29 Ck D 50* and *Saunders v. Saunders* (1897) **I S 99** referred to. Under s 195, no notice of the application for sanction need be issued and the accused person need not even be named. The validity of the sanction cannot be questioned in the enquiring or the trying Court. *Per STEPHEN J*—Proceedings under s 195 should frequently and even usually be *ex parte*. *In re Parree Kun hammed* **I L R 96 Mad 116** *Pam papati Sastri v. Subba Sastri* **I L R 93 Mad 210** *In the matter of Gauri Sahai* **I C B N 114** *Ram Prasad Roy v. Soba Roy* **I C B N 400** *Radha Nauth Banerjee v. Kanglee Mollah* **16 J Marsh 407** *Queen v. Mahomed Ho sain* **16 J W R Cr 37** *Sharp v. Wakefield* (1891) **A C 173** *Khepu Nath Sikdar v. Gush Chunder Mukerji* **I L R 16 Calc 730** *Paperam Surma v. Gaurirath Dutt* **I L R 40 Calc 474** *Mahomed Bhakku v. Queen Empress* **I L R 23 Calc 530** *In the matter of Vally Lall Ghose* **I L R 6 Calc 393** cited and discussed by CHAUDHRY J. An attorney

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is criminally liable for a false statement in an affidavit made by him in answer to a Pule issued against him under the discretionary jurisdiction of the Court. *In re ANATHAN* (1913)

I L R 41 Calc 448

13 ————— Jurisdiction of High Court and District Court—*District Judge—Criminal Procedure Code (Act I of 1895) s 193 (1) cl (b) and 4 G—Petition—Civil Procedure Code (Act I of 1908) s 11a* Neither the High Court nor the District Judge has power under s 4 G of the Criminal Procedure Code to direct prosecution for an offence committed before a Provincial Small Cause Court. *Regu Singh v Emperor I L R 34 Calc 551* referred to. The High Court itself is precluded from granting sanction in such a case under s 193 sub s. (1) cl (b) of the Criminal Procedure Code as a Provincial Small Cause Court is no subordinate to it within subs (c) cl (c) nor can it interfere under subs (6) with an order of a District Judge revoking a sanction granted by such Small Cause Court. *Hamayudlin Mondal v Damodar Ghose 10 C W N 106 G Ganga Sankar Roy v Binode Sishik 5 C L J 299* and *Muthuramami Madala v Leena Chetti I L R 30 Mad 389* referred to. Where the District Judge revoked a sanction granted by a Subordinate Court to a District Magistrate on the ground that a sanction could not be granted to a third party and initiated proceedings under s 4 G of the Criminal Procedure Code. *Held* that he acted illegally in the exercise of his jurisdiction, and that the High Court had power to set aside his order under s 11, of the Code of Civil Procedure (Act V of 1908). *Hamayudlin Mondal v Damodar Ghose 10 C W N 106 G distinguished. In re PAM PRASAD MALLA (1909)*

I L R 37 Calc 12

14. ————— Jurisdiction—Resistance to attachment—of movables on evidence only of the executing process—Other evidence called for by the Court but not heard when produced notwithstanding previous summonses on witnesses and adjournments for their appearance—Delay in granting sanction—Criminal Procedure Code (Act I of 1895) s 195 The Court executing a decree has jurisdiction if satisfied on the evidence without cross examination solely of the person who was alleged to have been resisted in the attachment of movable that a *prima facie* case had been made out to sanction the prosecution of the persons so resisting execution under s 183 of the Penal Code notwithstanding the fact that the Court had previously called for evidence from both parties issued summonses on their witnesses who were produced on the date of the hearing of the application for sanction and adjourned the case several times for their appearance. The High Court deprecated the dilatoriness in disposing of the application by the Court of first instance. *MAKHAN LAL SAHA v SAROJENDRA NATH SAHA (1920)*

I L R 47 Calc 741

15 ————— Offences committed in the Court of a Deputy Magistrate—Transfer of same from the sub-division—Successor in office—Application for sanction to another Deputy Magistrate subsequently posted to the sub-division—Power of latter to grant sanction—Criminal Procedure Code (Act I of 1895) s 195 Where there are several Deputy Magistrates at a place and one of them is transferred the Deputy Magistrate

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who comes to fill the gap is not the successor in office of the Magistrate. *Madhachari v Emperor I L R 35 Calc 40* referred to. Where a proceeding under s 10 of the Code during the course of which a forged oath was filed and evidence given in support thereof was disposed of by H K C a Deputy Magistrate who became afterwards the Officer next senior to the Sub-divisional Magistrate and on the transfer of the former two other Deputy Magistrates became successively the next senior officers and ultimately H L M a Deputy Magistrate joined the sub-division as the next senior officer and an application was made to him for sanction to prosecute the petitioners for offences under s 41 and 193 of the Penal Code committed in the Court of H K C. *Held* that H L M was not the successor in office of H K C and had no power to grant sanction under the circumstance. *CIRI N CHANERA JAY v SARAT CHANERA SENON (1914)*

I L R 42 Calc 667

16 ————— Revisional jurisdiction of High Court over Presidency Small Cause Court—Criminal Procedure Code (Act I of 1908) s 115—Criminal Procedure Code (Act I of 1908) s 195—Stay in a judicial proceeding until—Oath—Delay—A Judge of the Presidency Small Cause Court Calcutta had dismissed six applications for sanction to prosecute the plaintiffs for having made false claims. On an application to the High Court under s 115 of the Criminal Procedure Code to set aside the orders *Held* that under s 195 of the Criminal Procedure Code the High Court is the superior Court to the Presidency Small Cause Court and has power to deal with the order which was made by that Court. *Held* also that an application for leave to sue is a stage in a judicial proceeding where such leave is necessary to give the Court jurisdiction. *Held* also that the delay in making the application for sanction to prosecute had been satisfactorily explained and was not in the circumstances such as to prejudice the plaintiffs. *BUDHU LAL CHATTI GOPE (1916)*

I L R 43 Calc 587

17 ————— Information to the police reported false—No subsequent application to the Magistrate—Order of Magistrate calling on informant to prove case and examination of witnesses—Grant of sanction—Necessity of sanction when false charge made to the police but not followed by complaint—Complaint—Power of Magistrate to direct prosecution himself in such case—Judicial proceeding—Criminal Procedure Code (Act I of 1895) ss 4 (1) 19 (1) (b) 476 No sanction is necessary under s 195 (1) (b) of the Criminal Procedure Code to prosecute an informant under s 11 of the Penal Code when a false charge has been made by him only to the police. *Ismail Baksh v King Emperor - Cr L J 66 Bhimnarya Venkateswarulu v Moovun Deputy 13 C L J 450 Emperor v Sheikh Ahmad 13 Cr L J 578* followed. But sanction is requisite under the section when he has subsequently preferred a complaint to the Magistrate praying for judicial investigation. *Queen Empress v Sham Lal I L R 14 Calc 707 Jogendra Nath Mookerjee v Emperor I L R 33 Calc 1 Qu en Empress v Sheikh Bazar I L R 10 Mad 232* followed. When a person who has laid an information before the police reported the same as false has not

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subsequently applied to the Magistrate for an investigation or has not impugned the correctness of the police report and prayed for a trial he has not made a 'complaint' within the meaning of s 4 (h) of the Code. An order for prosecution cannot be made under s 476 of the Criminal Procedure Code when the alleged offence under s 211 of the Penal Code has not been committed in Court but in relation to a police investigation only. *Dharmadas Awar v King Emperor* 7 C L J 373 *Jadunandan Singh v King Emperor* 10 C L J 561 followed. The procedure of calling on the informant who is reported by the police to have made a false charge before them to prove his case and the examination of witnesses is not contemplated by the Code and the proceeding is not a judicial one within s 476 of the Code. *Mouli Durzi v Nawrang Lal* 4 C W 301 followed. **TATYBULLA v EMPEROR** (1916) 1 L R 43 Cal 1152

18 ———— **Prefering a false charge—Power to revoke by superior Court—Application to High Court to set aside refusal of Criminal Procedure Code (Act I of 1898) s 195 (6) main tenability of—Judges of High Court, jointly divided in opinion—Senior Judge's opinion to prevail under cl 6 Letters Patent—Criminal Procedure Code (Act I of 1898) ss 429 and 439 inapplicability of to such application—Application to a superior Court under Criminal Procedure Code (Act I of 1898) s 19 to set aside a sanction given by an inferior Court not an appeal within the Indian Limitation Act (IX of 1908) Art 141 held by the Full Bench (i) An order refusing to revoke a sanction granted by a lower Court is one granting sanction from which an appeal lies to a superior Court under s 195 cl (6) Criminal Procedure Code. *Muthusami Mudali v Teens Chetti* 1 L R 30 Mad 382 followed (ii) When Judges composing a bench of the High Court are equally divided on opinion on hearing an application under s 195 cl (6) of the Criminal Procedure Code against an order of the lower Court in a sanction matter the procedure to be followed is that laid down in cl 36 of the Letters Patent and not the one in s 429 or 439 of the Criminal Procedure Code accordingly the opinion of the senior Judge prevails. *Per CURRIE*—The power conferred upon the High Court by s 195 (6) Criminal Procedure Code is not a part of the appellate and revisional jurisdiction of the High Court conferred by Chapters 31 and 32 of the Criminal Procedure Code but it is a special power conferred by s 195 (6) of the Code. *Held* by the Division Bench (**SENDAPA AYYAR** and **SPENCER JJ**) that an application to a superior Court under s 195 cl (6) Criminal Procedure Code to revoke a sanction granted by an inferior Court is not an appeal within the meaning of Art 154 of the Limitation Act and hence is not governed by the rule of 60 days allowed by that Art for criminal appeals. *Per SPENCER J* in the Division Bench—But delay in applying may be a ground for refusing to grant sanction. *Baru v Baru* (1912) 1 L R 39 Mad 50**

19 ———— **False information to the police followed by a complaint to the Magistrate—Complaint investigated by the Magistrate—Necessity of sanction to prosecute informant only in respect of the false charge to the police—Criminal Procedure Code (Act I of 1898) s 195 (1) (b). Where an information to the police is**

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followed by a complaint to the Court and the same allegations and the same charge and such complaint has been investigated by the Court the sanction or complaint of the Court itself is necessary even for a prosecution in the informant under s 211 of the Penal Code in respect of the false charge made to the police. *Tatybulla v King Emperor* 24 C L J 131 1 L R 43 Cal 1152 approved. *Putram Ruidas v Mahomed Kasim* 3 C W 33 discussed. *Jadu Nandan Singh v Emperor* 1 L P 57 Cal 250 distinguished. *Emperor v Hardwar Pal* 1 L R 11 All 527 referred to. *BRONN v ANANDA LAL MULLICK* (1916) 1 L R 44 Cal 516

20 ———— **Jurisdiction of High Court—Practice—Procedure—Suit in the Presidency Small Cause Court—Statement made in the course of a judicial proceeding—Sanction refused by Presidency Small Cause Court—Revision by single Judge sitting on the Original Side of High Court—Remand—Powers of the Chief Justice to remit case for retrial by Division Bench of High Court—Civil Procedure Code (Act V of 1908) s 115—Criminal Procedure Code (Act I of 1898) s 195 (6) and (7) (c) 45 and 439—High Court Rule Appellate Side Ch II r 7. This as instance of a Judge of a High Court can in a matter of sanction to prosecute from the Presidency Small Cause Court be invoked only under s 195 (6) of the Criminal Procedure Code. Under that provision the only order which such a Judge is competent to pass is to revoke a sanction given or grant a sanction refused by the Subordinate Court. He has no jurisdiction to remand the case to the Small Cause Court for further enquiry. Under the Rules of Court (Ch II r 7) he would have such jurisdiction if this were a matter under s 115 of the Civil Procedure Code but as it falls within s 195 (6) of the Criminal Procedure Code it can be decided only by a Judge or Judges to whom it may have been allocated by the Chief Justice. The Judge exercising jurisdiction under s 195 (6) of the Criminal Procedure Code is competent to take additional evidence to enable him to decide whether he should confirm or reverse the order of the Subordinate Court. **BUDHU LAL v CHATTU GOPE** (1916) 1 L R 44 Cal 516**

21 ———— **"Produced" meaning of—Document called for by a party and brought into Court and referred to by his pleader and the Court—Antecedent forgery and use before the Subordinate Court—Dubious production of document in Court—Necessity of sanction—Criminal Procedure Code (Act I of 1898) s 195 (1) (c). Where a document was called for by a party to a proceeding under s 145 of the Criminal Procedure Code brought into Court and referred to by his pleader in argument and by the Magistrate in his judgment though he expressly refrained from any opinion as to its authenticity. Held that the document was produced in the proceeding within the meaning of s 195 (1) (c) of the Code. *Guru Charan Shaha v Gurya Sundari Das* 1 L P 9 Cal 887 *Alid Chandra De v Queen Empress* 1 L R 22 Cal 1004 *Sew Dholi Singh v Pandita Datta* 14 C W 806 and *In re Gopal Sudheshwar* 9 Bom L P 735 referred to. Where before complaint made a document has been produced in a Court by a party to a proceeding before it**

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the sanction of such Court is necessary for his prosecution in respect of an antecedent forgery and antecedent user before a Sub Registrar. *Tera Shah v. Bhabu Shah* 11 C B N 19 Emperor v. Bhawanji Da I L R 35 All 169 and *Je Iramanram v. Varadram* I L R 33 Mad 11 followed. *Neer Mahomed Caim v. Kaikhru Manseljee & Bom* L R 63 Distorted from *VALENT KANTA LAHA v. ANKUL CHANDRA LAHA* (1917) I L R 44 Calc 1002

22 ———— **Procedure—Propriety of proceedings under s 300 Penal Code—Discharge—Acquittal—Penal Code (Act XLV of 1860) ss 211 300—Criminal Procedure Code (Act I of 1898) s 190** Where an offence though described as an offence under s 300 of the Penal Code still remains an offence punishable under s 211 Process should not issue under the former section on the application of a person discharged or acquitted when the Court has refused sanction under the latter section. *Per RICHARDSON J*—The care taken to protect complainants from being harassed by prosecutions for stating false cases is a clear indication that the Legislature never intended that upon refusal of leave to prosecute under s 211 a person who has been discharged or acquitted or allowed to fall back upon s 300 to return to such a court, to be taken would render entirely nugatory the salutary provisions of s 190 of the Criminal Procedure Code. The question moreover does not rest entirely upon inferences in regard to the intention of the Legislature. The offence charged in the present case though it is described as an offence under s 300 is not altered by that description. It still remains an offence punishable under s 211. When the Magistrate had refused leave to prosecute under the latter section he ought not to have issued process under s 300. *PRAFULLA KUMAR GHOSH v. HARENDRA NATH CHATTERJEE* (1918) I L R 44 Calc 970

23 ———— **Court's—Court of Justice—Calcutta Improvement Tribunal whether a Court—Criminal Procedure Code (Act I of 1898) s 195—Calcutta Improvement Act (Beng V of 1911) ss 70 71 (a) (c) and 77 as amended by the Calcutta Improvement (Appeals) Act (XVIII of 1911)—Evidence Act (I of 1872) s 3** The word Court in s 190 of the Criminal Procedure Code has a wider meaning than Court of Justice under s 20 of the Penal Code and includes a tribunal entitled to deal with a particular matter and authorized to receive evidence bearing thereon in order to enable it to arrive at a determination upon the question. *Paglobuna Sahoy v. Kukul Singh* I L R 17 Calc 872 and *Chandi Charan Giri v. Oodadhar Pradhan* 22 C B N 160 referred to. The Tribunal constituted by the Calcutta Improvement Act (Beng V of 1911) as amended by the Calcutta Improvement (Appeals) Act (XVIII of 1911) is a Court within the meaning of s 190 of the Criminal Procedure Code. *Hars Pandurang v. Secretary of State for India* I L R 97 Bom 424 distinguished. *NANDA LAL GANGULI v. KUNTRA MOHAN GHOSH* (1918) I L R 45 Calc 585

24 ———— **Sanction by Deputy Collector in appraisement proceedings—No appeal from orders in such proceeding—Jurisdiction—Subordination of such Deputy Collector to the District**

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Judge or Commissioner of the Division—Bengal Tenancy Act (VIII of 1885) ss 69 and 70—Criminal Procedure Code (Act I of 1898) s 195 (6) (7) (b) (c) A Collector or a Deputy Collector exercising the powers of a Collector under ss 69 and 70 of the Bengal Tenancy Act (VIII of 1885) is a Court within s 190 of the Criminal Procedure Code. *Paglobuna Sahoy v. Kukul Singh* I L R 17 Calc 872 followed. *Aldullah Khan v. Emperor* I L R 3 Calc 5 referred to. Proceedings under s 69 of the Bengal Tenancy Act are civil in nature and the Court of the Deputy Collector acting thereunder is subordinate to that of the District Judge under s 190 (7) *Per CHITTY J*—S 190 (7) (c) is intended to apply only where no appeal lies from any decision of a particular Court and not where a particular order is non-appealable. Appeals from the Collector under the Bengal Tenancy Act do not ordinarily lie to the Commissioner of the Division. In some cases they lie to him and in others to the Civil Court. The Collector in proceedings under ss 69 and 70 of the Act by reason of s 190 (7) (b) of the Criminal Procedure Code is subordinate to the Court of the District Judge. *Per RICHARDSON J*—Cl (c) includes both a particular case or class of cases in which no appeal lies and a Court from which no appeal lies in any case. *Asharan Chandra Chakrabarty v. Ashoy Kumar Dasyee* 1 C B N 948 referred to. *Per CHITTY J*—The words Principal Court of Original Jurisdiction do not refer to a Court of any particular class but to a Civil Criminal or Revenue Court according to the nature of the case in which the question of sanction arises. *Ayudha Prasad v. Pam Lal* I L R 34 All 197 referred to by *RICHARDSON J*. *CHANDI CHAPAN GIRI v. GADADHAR PRADHAN* (1917) I L R 45 Calc 336

25 ———— **False suit—application for sanction to prosecute plaintiff for bringing a false suit—Revision—Delay** A defendant against whom an ex parte decree has been passed is not bound to have that decree set aside before applying for sanction to prosecute the plaintiff for bringing a false suit and such sanction can be given even though the period of limitation for setting aside the ex parte decree has expired. When an offence against public justice has been committed the offenders are liable to punishment irrespective of the state of affairs in the civil Court. Ordinarily delay on the part of a private prosecutor in obtaining sanction in respect of offences against public justice is material as bearing upon the question of bona fides but where the Government is in fact the real prosecutor the question of bona fides does not arise. *JIGE BHAR LEPSEAD v. RAJENDR MISSEER* 11 F L J 688

26 ———— **Delay in applying for sanction—Whether is evidence of mala fides when Government is the applicant—Discussion** Generally delay by a private person in applying for sanction to prosecute indicates want of bona fides or culpable negligence or laches. Where however the real applicant for sanction to prosecute for bringing a false suit was the Government and before the application was made the Criminal Investigation Department of Bihar and Oris had to make inquiries from the Criminal Investigation Department of the United Provinces and a reference had also to be made to the Local Remem-

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brancer and seven months elapsed between the date of dismissal of the suit and the date of the application held that the delay was not such as to show want of bona fides and did not amount to wilful negligence. THE GOVERNMENT ADVOCATE AND THE PUBLIC PROSECUTOR = MAHARAJ SINGH
 Pat L J 692

SANCTION TO SUE

to two persons jointly—

See RELIGIOUS ENDOWMENTS ACT (XX of 1863) ss 14 AND 18
 I L R 38 Mad 1190

SANITARY CESS

Owners of private latrines connecting with Municipal sewers—

See BOMBAY DISTRICT MUNICIPALITIES ACT 1901 s 59 I L P 41 Bom 527

SANTAL CIVIL RULES

— s 36—

See DECLARATORY DECREE
 6 Pat L J 85

SANTAL PARGANAS

See DECLARATORY DECREE
 6 Pat L J 95

SANTAL PARGANAS SETTLEMENT REGULATION 1872

— s 6—

See EXECUTION OF DECREES
 4 Pat L J 49

— s 11 24 and 25—Entry in record of rights effect of—Whether suit maintainable to set aside—Fraud effect of Where the record of right has been finally published under s 5 a Civil Court has no jurisdiction to question any decision of the settlement officer made during the settlement Plaintiff's right to a 8 anna share in an estate having been recorded under the Regulation he sued for a partition In the plaint he stated he also claimed the entire estate in another suit and prayed for temporary partition should only be decreed on terms to be annulled if he won his other suit The Court decreed partition without saying whether it was temporary or permanent Held (SULLIVAN J dissenting) (1) that it must be assumed that the Court had granted plaintiff lease under O 11 r 1 to reserve for subsequent decision whether he was entitled to entire estate (2) that plaintiff was not debarred by *res judicata* from claiming the property not awarded to him by a subsequent suit (3) that the entry in the record of rights barred this suit unless he could prove it was fraudulent
 HARI KRISHNA SETH v UMESH CHANDRA DUTT
 6 Pat L J 373

SANTAN

Santan means is no generally and is not limited to male issue KUNUD KRISHNA MANDAL v JOGENDRAO NATH SARKAR (1917)
 21 C W N 634

SANYASIS

See HINDU LAW—SUCCESSION
 I L R 80 Bom 169
 14 C W N 191

SAPINDAS

See HINDU LAW—STRIDHAN
 I L R 43 Cal 844
 See HINDU LAW—INHERITANCE
 I L R 42 Cal 384

— consent of remotest—
 See HINDU LAW—ADOPTION
 I L R 39 Mad 77

27 — Duty of Court in granting—Code of Criminal Procedure (Act V of 1898) ss 195 and 409—Whether Court of Magistrate with first class powers is subordinate to Additional Sessions Judge—Penal Code (Act XLV of 1860) s 211 when sanction should be granted An Additional Sessions Judge is competent to grant sanction in a matter arising out of a trial before a Magistrate having first class powers In dealing with an application for sanction the sanctioning Court must proceed with caution and discernment and must be guided by two principles namely (1) whether there is a *prima facie* case against the person for whose prosecution sanction is asked and (2) whether the real object of the applicant is not to satisfy his private ends or personal spite Before sanctioning a prosecution under s 211 of the Indian Penal Code there must be a reasonable belief in the mind of the Court that there was no foundation for the criminal charge and that in instituting criminal proceedings the complainant acted knowingly without belief in the truth of the allegations made by him or recklessly without caring whether the allegations were true or false KUSOM SAO v JANAK LAL
 4 Pat L J 374

28 — Expiry of sanction before date of complaint—Plea of guilty at trial—Validity of conviction without sanction—Absence of failure of justice—Criminal Procedure Code (Act V of 1898) s 537 (b) Section 537 (b) of the Criminal Procedure Code applies equally to the case of an expired sanction as to one of a total want of it A conviction of an offence mentioned in s 195 of the Code cannot be reversed or altered on appeal or revision on the ground that the sanction required by the section had expired when the prosecution was initiated unless it is shown that the absence of sanction has in fact occasioned a failure of justice Where the accused pleaded guilty it was further held that there had been no failure of justice in the case Ray Chunder Mozumdar v Gour Chunder Mozumdar I L R 12 Cal 176 overruled Sunder Das v Sital Mahto I L R 28 Cal 217 approved Perumal Nayudu v Emperor I L R 31 Mad 80 referred to BHETRA MOHAN DAS v EMPEROR (1920) I L R 48 Cal 867

SANCTION OF COURT

— for sale of Immovable property—
 See TRUSTS I L R 43 Bom 519

SANCTION OF GOVERNMENT

See LOTTERY I L R 42 Bom 678

SANCTION TO SELL

See MAHOMEDAN LAW—WAKF
 I L R 37 Cal 870

SARANJAM

See BOMBAY HEREDITARY OFFICES ACT
1874 s 15 I L R 41 Bom 23*

See REVENUE JURISDICTION ACT s 4
SUB (a) I L R 31 Bom 232

See SARANJAM I L R 36 Bom 639

Grant of royal share of revenue—Presumption of Saranjam—Lands can be still held on payment of a cess—Suit to recover possession of land—Revenue Jurisdiction Act (X of 1866) s 4—Pensions Act (XIII of 1871) s 4 It is well established that in the case of Saranjam or Jaghir (the terms being convertible) the grant is ordinarily of the royal share of the revenue and not of the soil and that the burden of proving that in any particular case it is a grant of the soil lies upon the party alleging it. *Arishanar Ganesh v Jantrar* 4 Bom H C P (A C J) 1 *Panchandra v Venkatarao* I L R 6 Bom 398 606 and *Pamris Inarao v Janarao* 6 Bom. L R 933 followed. The right to the possession of the land in the case of the Saranjam grant of the royal share of the land revenue does not form part of the Saranjam and is independent of it. The Government can therefore resume what they granted as Saranjam and the royal share of the land revenue and the right to the occupation of the land subject of course to the payment of the full assessment can and does survive the resumption of the Saranjam. *Another* s 4 of the Revenue Jurisdiction Act (X of 1866) nor s 4 of the Pensions Act (XIII of 1871) bars a suit to recover possession of land the Saranjam rights in which have been resumed by Government. *CHETIAO SHERIVAS v SECRETARY OF STATE FOR INDIA* (1917) I L R 41 Bom 408

Inam rights—Mira (permanent tenancy)—Denial of Saranjamdar a title—Attornment to succeed in Saranjamdar—Eloppe—Claim to hold as Miras tenant—Limit denied—Adverse possession In an ejectment suit brought by an inamdar against person claiming to hold as miras or permanent tenants it was conceded that the inam rights in the land in suit appertained to a Saranjam holder on political tenure and that the present incumbent of the Saranjam was the plaintiff. The defendants resisted the plaintiff's claim to eject them on the ground that the inam rights were merely the right to receive the royal share of the revenue and that the proprietary rights in the soil were prior to the date of the grant vested in the grantee of the inam had descended to his heirs independently of the inam and furnished the leasehold or miras rights. *Held* that the defendants' contention involved the denial of the title to the reversionary rights in the lands in the defendants' occupation of the successive Saranjamdars approved by Government. The defendants had however been continuously paying rent for their holding to the successive Saranjamdars including the plaintiff. They were thus estopped by attornment from disputing the plaintiff's title. *Janadev Dary v Babaji Rana* 8 Bom H C R (A C) 175 and *Doctem Marlow v Wiggins* 4 Q B 367 referred to. The rights of successive holders of hereditary and impartible estates not governed by the ordinary rules of inheritance but subject to the condition that Government shall approve of the heir may be barred by adverse possession. *Telant Ram Chunder Singh v Srimati Madlo Kumari* L R 12 I A 197 referred to. Where

SARANJAM—contd.

In an ejectment suit by an inamdar it was shown that the defendants for more than twelve years before the suit openly asserted their claim to hold as permanent miras tenants. *Held* that the defendants had acquired a title to the limited interest claimed by them and could not be ejected. *TRIMBAK RAMCHANDRA v SURESH CULAM ILANI* (1909) I L R 34 Bom 329

Succession to Saranjam—Title by inheritance—Saranjam rr 2 and 5 under Act XI of 1854—Suit by previous holder of Saranjam—Subsequent holder filing a suit for the same relief—Pecuniary—Civil Procedure Code (Act I of 1908) s 11—Adverse possession against the previous holder—Rights of successive holder barred by limitation—Loss of right to levy assessment—Indian Limitation Act (IX of 1908) Sch I Art 130 The plaintiff was a Saranjamdar of an ancestral and hereditary Saranjam village where the land in suit were situated. The lands were in defendant's possession on tenure in consideration of rendering certain Shetranadi services. The defendants having no longer rendered any service the plaintiff prayed for possession of the lands or in the alternative for a declaration establishing his right to levy assessment. The defendants contended that the suit was barred by limitation and also by *res judicata* in consequence of a previous decision in a suit (No 48 of 1848) between the plaintiff's brother and the predecessor in title of the defendants for substantially the same reliefs as claimed by the plaintiff. *Held* that the previous decision operated as *res judicata* as against the present plaintiff because he was claiming under the previous holder and was litigating under the same title as the previous holder in 1848. *Held* further that since the decision in suit of 1848 the defendants and their predecessors in title had been holding adversely without payment of assessment and therefore the claim for assessment was barred by limitation inasmuch as neither special mode of devolution nor an incapacity of alienation would prevent limitation operating against an estate. *Padalao and Pamelandra Konker v Anantav Diogant Deshpande* I L R 9 Bom 149 followed. *Per HAZARD J* The words between parties under whom they or any of them claim litigating under the same title in s 11 of the Civil Procedure Code 1908 are intended to cover and do cover a case where the later litigant occupies by succession the same position as the former litigant. The words of the section are not intended to make any distinction between different forms of succession. *MADHAPAO HAKHARPAN v ANUSUNAI* (1916) I L R 40 Bom 606

SARANJAM RULES

See SARANJAMDAR

I L R 45 Bom 694

SARANJAMDAR

Grant of sub inam and Miras rights—Enjoyment of sub inam for statutory period—Sub inam binding on succeeding Saranjamdar—Saranjam rr 5—Indian Limitation Act (IX of 1908) s 28 Art 10 The defendant was the Saranjamdar of the village of Bagn which was devendible by inheritance to the eldest member of his family. An ancestor of his had many years ago granted a sub-inam to an ancestor of the

SARANJAMDAR—concl'd

plaintiff since when the plaintiff's family enjoyed the lands rent free. After the introduction of the survey settlement into the village in 1903 the defendant levied assessment for the lands from the plaintiff. The plaintiff having sued to recover the amount of the assessment so levied from him—*Held* that the grant of a subinam made by the Saranajmdar was binding on his successors inasmuch as the Saranajmdar had, on the date of the subgrant at all interest in the estate. *Dalibai v Ishwardas Jagjeeandas* (1891) 15 Bom. 222 applied. *Held* further that a suit to levy assessment on rent free lands being a suit for possession of property under s. 28 of the Indian Limitation Act 1909 the effect of the failure to institute such a suit within the time allowed by Art. 130 of the Act was the extinguishment of the right to levy the assessment. *Abhay Churn Pal v Kally Perhad Chatterjee* (1890) 5 Calc. 949 followed. *SARAHAM GOVIND v TRIMBARAO PANCHANDRABAO* (1920)

L. L. P. 45 Bom. 694

SARANJAMI

— meaning of —

See PATRY LEASE.

25 C W N 308

SARBARAKARS

— in Orissa —

See LAND TENURE L. R. 45 L. A. 246
I. L. R. 46 Calc. 378

Sarbarakar in Orissa—*status of* of that of tenure holder—*Dalibehara jagirs—resumption and settlement of—Effect—Lands reserved to Dalibeharas at resumption tenure in the jagirdars of the military jagirs into which under Native Princes the greater part of Killah Khurdah (in Orissa) was parcelled out (styled Dalibeharas) and native revenue officers known as Pradhans, Bhumsal, Kotekharas, Kowri Bhasmas, when the jagirs were resumed by the British Government engaged with Government under the denomination of sarbarakars for the collection and payment of the revenue assessed by it. Held on the evidence, that although from 1818 onwards the tendency of Government and of the majority of its officers was to regard the sarbarakars as mere office holders, they themselves had never before 1861 distinctly acknowledged that this was their position and on the other hand had asserted their status as tenants and there were circumstances connected with their tenure of the lands which militated against the Government's view of their position as servants and their status under their engagement with Government was something higher than that of servants. That from 1861 to 1896 defendant No. 1 the present sarbarakar and his father before him were regarded and treated as tenants and they have successfully asserted their status and maintained their possession as such. That the defendant No. 1's status is that of a tenure holder. Sarbarakars who were originally Dalibehara jagirdars could not in any case be ejected from lands which were reserved to the Dalibeharas at the general resumption of the jagirs. *APRIMA INDHU LOK v PARMANAND DAS* (1913) 18 M. W. N. 74*

SARBARAKARI TENURE.

See BENGAL RENT ACT 1865 s. 13.

2 Pat. L. J. 75

SARBARAKARI TENURE—concl'd

See LANDLORD AND TENANT

14 C W N 399

Tenure holder of mouzats in Khurdah in Orissa—Liability of Sarbarakar to dismissal for misconduct—Penalty attached to dismissal as to Fertile or transferable right in office of Sarbarakar In this case which related to the tenure of a Sarbarakar in Orissa, and to the question whether the first defendant was a tenure holder under the plaintiff or merely a Sarbarakar. Held on the evidence (reports and other papers in Selections from the correspondence on the settlement of the Khurdah Estate in the district of Puri, Vol. I and II, published in 1879 and 1881) that Sarbarakars in Khurdah had under the Government no heritable or transferable right in their office of Sarbarakar or in the Sarbarakari jagirs that they were liable to be dismissed for misconduct and that on dismissal they lost all right to occupy any Sarbarakari jagirs and that on the termination of a settlement they were bound to enter into a fresh engagement with the Government if they wished to be continued in the office of Sarbarakar. *Saddananda Mahto v Souranalla Mahto* 8 B. L. R. 250 16 W. R. 259 disented from. Held there fore (reversing the decision of the High Court) that the first defendant was not a tenure holder that he was liable to be dismissed for misconduct from his office of Sarbarakar that he was not duly dismissed from that office and that on his dismissal he ceased to be entitled to hold the Sarbarakari lands in mouzah Bando and that except as to the Sarbarakari lands in mouzah Panabasta the plaintiffs were entitled to the decree in ejectment and for possession and to the declaration of title which the Subordinate Judge gave to them. *PARASWANTHA DAS GOWDARI v KATTA SUNDAR POR* (1918) I. L. R. 46 Calc. 378

SARDESHMUKHI HAG

See PENSIONERS ACT (XXIII OF 1871)
s. 4 AND 6 I. L. R. 45 Bom. 196

SARDRAKHTI

See PUNJAB PRE-EMPTION ACT 1913
s. 3 I. L. R. 1 Lah. 567

SARSA WANTA LAND

S. v. GOSWAMY TALUKDARS ACT (BOM. ACT VI OF 1885) s. 31
I. L. R. 35 Bom. 97

SATL

See PENAL CODE s. 306
I. L. R. 80 All. 26

SATISFACTION

See CIVIL PROCEDURE CODE (1859) s. 207A I. L. R. 39 Bom. 219
See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXI s. 2.
I. L. R. 40 Bom. 333

SATTA

See CONTRACT ACT 1872 s. 30 AND 63
I. L. R. 42 All. 419

SATYAGRAHA MOVEMENT

See HIGH COURT JURY DICTIONARY
I. L. R. 41 Bom. 418

SAYADS

MI Kharkhanda—

See CUSTOM (SUCCESSION)—

I L R 2 Lah 383

SCANDALOUS MATTER

See AFFIDAVIT

14 C W N 153

SCHEDULED DISTRICTS ACT (XIV OF 1874)

— Whether applicable to South Par
ganah—

See JURISDICTION I L R 42 Calc 116

— s 44—R 44 not ultra vires—
Jurisdiction of High Court over conviction and sent-
ences by Mewas Agent in 44 framed by the
Government of Bombay under the Scheduled
Districts Act 1874 is not ultra vires. The High
Court of Bombay may therefore take cogni-
zance of any case decided by the Mewas Agent
on the petition of a convicted party and if it
thinks fit send for the proceeding and pass a fresh
decision. EMPEROR v NAZAR MAHOMED (1917)
I L R 41 Bom 657

— IT 8 18—

See AGENCY RULES OF GODAVARI DIS-
TRICT I L R 41 Mad 325

SCHEME

See RELIGIOUS ENDOWMENT

I L R 43 Calc 493

SCHOLARSHIP

See DEKKHAN AGRICULTURISTS RELIEF
ACT s 2 I L R 36 Bom 199

SCHOOLMASTER

— Contract of service—
Termination by notice—Reasonable notice what is
in case of school master—Custom law proved.
One G H W was appointed a teacher at the
Armenian College Calcutta for a period of three
years from the 1st March 1912. After the expiry
of the period he continued in the employ of the
College until July 1916 when he received notice
terminating his service as from the 1st August
and in lieu of a month's notice was paid a month's
salary and a certain sum of money for a month's
board and lodging. Held that he was entitled to
a reasonable notice and that in such a case
in the absence of misconduct either three months
notice or a term's notice would be reasonable
notice. *Toll v Kerich & Erch 151* referred
to. Held further that on the evidence adduced
no custom had been established by virtue of which
the plaintiff's employ at could be terminated
by a month's notice. Usage is proved by the
oral evidence of persons who become conversant
of its existence by reason of their occupation
in the particular trade or business and the evi-
dence establishing custom or usage must be clear
convincing and consistent and to prove an usage
in a particular trade it must be shown that the
usage is constant and reasonable and was univer-
sally acquiesced in and that everybody acknow-
ledged it in the trade and knew of it or might
know of it. *H* he took the pains to enquire.
WITTEBAKER v J C GALSTAIN AND OTHERS
(1917) I L R 44 Calc 917

SCIENCE—

— Gains of—whether partible pro-
perty of a joint family—See HINDU LAW—JOINT FAMILY PRO-
PERTY I L R 2 Lah 40

SCOPE OF AGENCY

See PRINCIPAL AND AGENT

I L R 43 Calc 511

SCREENING OFFENCE

See PENAL CODE (ACT XLV OF 1860)
ss 213 214 I L R 37 Bom 658

SCRIBE

— attestation by—

See EVIDENCE ACT 1872 s 68

I L R 38 All 254

1 Pat L J 129

See MORTGAGE (MISO) 4 Pat L J 511

See MORTGAGE BOND

I L R 46 Calc 522

See TRANSFER OF PROPERTY ACT 1882
s 59 I L R 44 Bom 405

SEA CUSTOMS ACT (VIII OF 1878)

— notifications under—

See CONTRACT ACT (IX OF 1872) s 56
I L R 40 Bom 301

— ss 167 (3) 182 188 191—*Attach-
ment of silver ingots by Police—Inquiry by Customs
clerk in absence of plaintiff—Sentence of confiscation
and fine passed by the Collector of Customs
merely on the report of the clerk—Civil suit by the
plaintiff to recover value of silver confiscated and
amount of fine levied—Jurisdiction of Civil Court
to try the suit.* A Sub Inspector of Police while
conducting a search of the plaintiff's house for a
criminal offence found no incriminating articles
but came across silver ingots which he attached
and sent over to a clerk in the Customs Depart-
ment. The clerk suspected that the silver was
imported into British India without payment of
duty made an inquiry in plaintiff's absence and
submitted a report to the Collector of Customs.
The Collector without taking any evidence him-
self and without hearing the plaintiff passed an
order confiscating the silver under the provision
of s 187 and fining the plaintiff in a sum of
Rs 1,000 under s 167 (3) of the Sea Customs
Act 1878. The plaintiff sued to recover the
value of the silver confiscated and the amount
of the fine levied but the trial Court rejected
the claim on the ground that it had no jurisdic-
tion to hear the suit as the Collector's decision
was final under the provisions of s 182 of the
Act. The plaintiff having appealed—*Held* that
the jurisdiction of the Civil Court to hear the
suit was not ousted if it appeared that there had
been no legal adjudication of the matter by the
Collector in accordance with the provisions of the
Sea Customs Act 1878. GANESH MAHADEV v
THE SECRETARY OF STATE FOR INDIA (1918)
I L R 43 Bom. 221

SEAMAN

See MERCHANT SEAMEN ACT (I OF 1890)
s 43 CL 4 I L R 39 Bom 558

SEARCH

See CRIMINAL PROCEDURE CODE—

89 96-105-

S 103 I L E 42 AN 67

3 165 I L R 38 Ali 14

formalities of—

See RIOTING I L M 41 Calc 836

irregularities in—

See Dacott I L R 41 Calc 350

Search by Police officers

Power to search the house of an accused for specific documents and things—Resisting such search—Criminal Procedure Code (Act V of 1898) ss 94 165—Penal Code (Act XLV of 1860) s 353 Ss 94 and 165 of the Criminal Procedure Code extend to accused persons. The latter section authorizes a search of the house of the accused for specific documents and things necessary to the conduct of an investigation into an offence. *Mahomed Jackiriah & Co v Ahmed Mahomed I L R 15 Cal 109* followed. *Nizam of Hyderabad v Jacob I L R 19 Cal 52* referred to. *Bajrangi Gope v Emperor I L R 33 Cal 304* and *Frankhang v King Emperor 16 C W N 1078* commented on and explained. *Ishwar Chandra Ghoshal v Emperor 12 C W N 1016* distinguished. Where information was laid at the throne of criminal breach of trust by a servant of a particular sum of money and he was arrested and thereafter the sub-inspector of Police proceeded with the informant and searched a house in the joint possession of the suspect and his brothers whereupon they and others resisted the search and assaulted the sub-inspector and confined and assaulted the informant. *Held* that the search was lawful under s 165 of the Criminal Procedure Code and that the conviction therefor must be upheld. **BEJABAR VISSER v EMPEROR (1013)**

SEARCH FOR ARMS

Sec TRESPASS I L R 30 Calc 953

Right of Magistrate
to search for arms—Arms Act (XI of 1879) s 25
Judicial functions—Trespass—Criminal Procedure
Code (Act V of 1898) ss 36 96 105—Act XI III
of 1850 In a writ for trespass against the District
Magistrate instituted by one of the zamindars
whose cutcherry had been searched and no arms
of any kind found *Hell* (reversing the decision
of the first Court and of the majority of the Appel-
late Court and upholding the decision of *Burr*
J) that the search was warranted by the Code
of Criminal Procedure (Act V of 1898) A serious
offence had been committed against the public
tranquillity into which it was the duty of the
District Magistrate to enquire and by virtue
of his superior rank he was at *Jamalore* the
proper person to conduct the enquiry By s 36
Sch III and s 96 of the Code the power of
issuing a search warrant was among his ordinary
powers and therefore under s 10 he had power
to direct a search to be made in his presence if
he thought it advisable to do so That being
so it was unnecessary to decide on the other
defences set up but *a mfe* (agreeing with the
majority of the Court of Appeal) that the District
Magistrate not having complied with the pre-
liminary condition prescribed by s 20 of the Arms

SEARCH FOR ARMS—concl'd

Act (XI of 1878) could not defend his action under that statute. Also (agreeing with Begg J) that the District Magistrate in directing a general search of the plaintiff's cutcherry in view of an enquiry under the Criminal Procedure Code was acting in the discharge of his judicial functions and had it been necessary might have appealed for protection to Act XVIII of 1850.

CLARKE v BRAJENDRA KISHORE POY CHOWDERY
(1912) I L R 39 Cal 553

SEARCH FOR EXPLOSIVES

See MAGISTRATE I L N 39 Calc 119

SEARCH WARRANT

See MAGISTRATE JURISDICTION OF
1 L E 89 Cal 403

See PENAL CODE ACT (V.L.V. of 1900)
65 332 323 I L R 37 All 353

56 PUBLIC GAMBLING ACT (III of 186)
S 5 I L R 34 ALL 59

See UNITED PROVINCES EXCISE ACT (II
OF 1910)—

GO I L R 35 All 5.5
I L R 35 All 858

— Endorsement of warrant by officer
form is used—

to whom is due—

See PUBLIC GAMBLING ACT 1987 ss 34
5 10 AND 11 J L R 42 AIL 395

issue of—

See CRIMINAL PROCEDURE CODE 22 C W N 19

production of a person confined—Form of a warrant
—Use of warrant prescribed in Form VIII Sch
V—Equality of warrant—Criminal Procedure Code
(1st V of 1898) 100 It is immaterial what
form is used for a search warrant under a 100 of
the Criminal Procedure Code provided that the
substance of it complies with the requirements
of the section A search warrant intended to be
issued under a 100 of the Criminal Procedure
Code and drawn up in accordance with Form
VIII Sch V relating to search warrants under
96 but with alterations adapted to meet the
requirements of the former section is legal.
Gurameah v Feroz Emperor 16 C N 48
approved Bism Haller v Emperor 11 C N 4
836 distinguished LEGAL PRINCIPLES v
MOZAN MOZLA (1818) I L R 45 Cal 905

to issue same—Condition of jurisdiction—Existence of enquiry trial or other proceeding—Existence of materials on which he can form an independent opinion as to the necessity of granting it—Opinion of police officer as to such necessity—Insufficiency of Criminal Procedure Code (Act 1 of 1895) s 96 (1) A Magistrate must under s 96 (2) paragraph (3) of the Criminal Procedure Code apply his mind to the question whether the purposes of an enquiry trial or other proceeding under the Code will be served by a general search and unless there are materials before him connecting the person again to whom the warrant is applied for with the offences alleged upon which he can come to an independent decision on the point he has no power to issue a search warrant. He cannot grant such warrant simply because a

SEARCH WARRANT—contd

police officer informs him that it is necessary and asks him to do so. *Per Chaudhury J* A Magistrate has no power to issue a search warrant under paragraph (3) when there is no enquiry trial or other proceeding under the Code pending before him but there is only some investigation into alleged offences being made by the police. *Clarke v Brojendra Kishore Poo Chowdhury* I L R 39 Cal 533 distinguished. *T R Thatt v Emperor* (19-0) I L R 47 Cal 597

Purposes of enquiry trial or other proceeding—Legality of warrant for production of infringing books, plate letters and orders relating thereto to be dealt with under s 10 of the Copyright Act—Order staying execution of warrant on the passing of a bond for the production of infringing book etc in Court—Legality of such order—Criminal Procedure Code (Act I of 1898) s 99—Indian Copyright Act (III of 1914) ss 7-10 The Magistrate has power under s 95 of the Criminal Procedure Code to issue a search warrant for the production of copies of the infringing books, proof plates printed and set up matter together with letters and orders with reference to the book for the purpose of making an order under s 10 of the Indian Copyright Act (III of 1914). Where the person against whom such search warrant was issued prays for the stay thereof and offers and undertaking not to sell copies of the infringing books but to produce them before the Court whenever required the Magistrate has jurisdiction to stay execution of the warrant conditionally on the execution of a bond to produce the copies in Court. *Purna Chandra Bando v. Iyaya v Sasi Bhushan Mullick* "C N A 5" distinguished. *Kishore Mohan Bagchi v. Hapi Das Bysack* (1910) I L R 47 Cal 184

SEARCH WITHOUT WARRANT—

Power of the police to search the house of an absconding offender generally for stolen property on information of dacoity against him—Legality of search—Criminal Procedure Code (Act I of 1898) ss 51 and 165—Proviso—Common object to resist such search—Right of private defence—Penal Code (Act XLV of 1860) ss 99-111 s 303 s 165 of the Criminal Procedure Code does not authorize a general search for stolen property in the house of the absconding offender against whom an information has been laid of having committed a dacoity. It refers only to specific documents or things which may be the subject of a summons or order under s 94 of the Code and the latter does not extend to stolen articles or any incriminating document or thing in the possession of the accused. *Ishwar Chandra Ghosal v. Emperor* 12 C W N 1016 referred to. Where a Sub-Inspector on receiving information of the commission of a dacoity searched the house of one of the alleged offenders accompanied by the complainant and the village officer but without a search warrant whereupon they were beaten by the petitioners who were charged with and convicted of rioting with the common object of resisting the search, assault and causing hurt under ss 147, 303 and 353 of the Penal Code—*Held* that the search was illegal and that the common object having failed the conviction under s 147 was bad. *BAJRAJ GOFER v. EMPEROR* (1910) I L R 58 Cal 304

SEAWORTHINESS

See BILL OF LADING

I L R 38 Mad 941

SEBAIL

See BUSTER LAND I L R 41 Cal 104

See LIMITATION L R 41 I A 267

See SHERAIT

—indemnity to estate of—

See PARTIES I L R 37 Cal 229

SECOND APPEAL

See APPEAL I L R 38 Cal 391

See CIVIL PROCEDURE CODE 1882 ss 384-385 I L R 34 All 579

See CIVIL PROCEDURE CODE 1908—

ss 14, 151 O XIIII r 1 I L R 32 All 71

ss 100 to 104 and O XLII

s 110 O XLV r 5 I L R 42 Bom 609

O XLII rr 1 and 3, I L R 43 All 660

O XLII r 23 and 25 4 Pat L J 645

See COURT FEES ACT 1870 s 17 I L R 36 Bom 628

See CUSTOM OR USAGE

I L R 45 Cal 285

See FASEMENT I L R 1 Lab 206

See ESTOPPEL L R 44 I A 213

See EVIDENCE ACT 1872—

s 3, 3 Pat L J 306

s 3, 3 I L R 39 All 426

See EXECUTION OF DECREE I L R 40 Cal 45

See HOME LEAD I L R 42 Cal 638

See JUDGMENT 2 Pat L J 8

See JURISDICTION L R 46 I A 140

See LIMITATION ACT (I of 1908) s 5 I L R 38 Bom 613

See MADRAS ESTATES LAND ACT (I of 1908) s 192 I L R 38 Mad 655

See OPISSE TENANCY ACT 1913 s 31 3 Pat L J 351

See POSSE ORY SUIT I L R 45 Cal 519

See PRE-EMPTION I L R 37 All 524

See PROVINCIAL SMALL CAUSE COURTS ACT (I of 1887) SCH II ARTS 3 AND 25 I L R 37 Mad 533 538

ART 25 I L R 41 Bom 367

ART 13 I L R 39 Bom 131

See PERNAND I L R 43 Cal 1104 I L R 42 Cal 888

See PENT I L R 38 Cal 278

See PREVIEW I L R 41 Cal 609 I L R 44 Cal 1011

SECOND APPEAL—contd

by both parties to be false. *Held* on second appeal that the High Court should proceed not on the pleadings but on the facts found. **RAM NARESH OJHA v GOURI SHANKAR (1917)**

22 C W N 149

14 *Remand*—whether court will remand in second appeal for admission of Record of Rights which was not in existence at the time of trial. The court will not remand a case for a fresh hearing in order that a Record of Rights which was published after the decision of the first Court might be taken into consideration. **IMTIAZ HUSSAIN KHAN v BENGALI NONTA** 3 Pat L J 564

15 *Decree*—Execution of decree—order setting aside sale on ground of fraud whether second appeal lies from—Code of Civil Procedure (Act V of 1908) ss 2 47 O XXI r 90 and O XLIII. It is not open to a party to impeach a sale under s 47 of the Code of Civil Procedure 1908 on the ground of fraud in conducting the sale. If a Court professing to act under s 47 sets aside a sale on the objection of the judgment debtor the order setting aside the sale is not a decree. O XLIII provides for an appeal from an order setting aside a sale on the ground of irregularity or fraud in publishing or conducting the sale but no second appeal lies from such an order. O XXI r 90 covers a case of fraud committed after the publication of the sale proclamation. Where the decree holder agreed not to hold the sale if payment was made within a certain time and he then fraudulently proceeded to sell the property in contravention of this arrangement. *Held* that this amounted to fraud in the matter of the conduct of the sale. **SHEIKH MAULA BUX v RAGHU DAL GANJHU** 3 Pat L J 645

16 *Findings on facts* of lower Appellate Court should be clear for the High Court in second appeal cannot go behind them. **HARIPADA MUKHERJEE v PADMA BULLAY PAL (1919)** 23 C W N 1048

17 *Filed originally as a revision and allowed by admitting Judge to be converted into an appeal on deposit of Court fees*—whether the order is open to objection at the hearing—Limitation—date on which appeal must be held to have been presented—sufficient cause for extending period—*Ind an Limitation Act IX of 1908 s 6 A c a* was decided by the Lower Appellate Court on the 2nd of March 1915 and an application for revision was filed in the Chief Court on the 4th of June 1915 i.e. within ninety days. When it was pointed out to counsel who filed the revision that an appeal lay he merely stated that he had filed the revision instead of an appeal because he relied mostly on facts and not on law. The application coming on for preliminary hearing before a Judge in chambers he held that no revision lay as the defendant could file a second appeal and directed notice to issue to the opposite party. After hearing respondent a counsel the Judge by his order dated the 7th of February 1916 allowed the petition for revision to be treated as a second appeal subject to the payment of the necessary Court fee within one week. The Court fee was accordingly paid on the 11th of February 1916. The appeal coming on for hearing before a Division Bench it was contended on behalf of the respondent that it was time barred. *Held*

SECOND APPEAL—contd

that the appeal was one which under the rules of the Court had to be heard by a Division Bench, and that the order of the single Judge who admitted it was subject to all just exceptions and to any thing which might be urged at the hearing. The appeal could not be considered to have been presented till the date on which the memorandum of appeal was properly stamped and as there was no sufficient cause for extending the time under s 11 of the Limitation Act the appeal was barred by time. **Ram Tahal Singh v Dhan Pas (I L R 28 All 310)** and **Resal Singh v Shadi (95 P R 1917)** followed. *Per Scott Smith J*. It was argued here that the Judge in Chambers who allowed the petition for revision to be treated as an appeal in reality extended the time for payment of the Court fee within the meaning of s 149, Civil Procedure Code. The appeal however was one which under the rules of the Court has to be heard by a Division Bench and we are of opinion that the Judge who admitted it did not intend to decide any question of limitation. He could not admit the appeal at all until it was properly stamped and his order of admission was of course subject to all just exceptions and to anything which might be urged at the hearing. **UMED ALI v MUNICIPAL COMMITTEE JEANU VAGHIANA** I L R 2 Lah 1

18 *Power of Judicial Commissioner on second appeal to interfere with concurrent findings of fact of the lower Courts*—Omission to decide real question in case or frame issue on it—*Wrong decision on evidence*—Civil Procedure Code (Act V of 1908) s 100. In this case the Judicial Commissioner in a second appeal set aside the concurrent findings of fact of the Courts below in favour of the appellants on the grounds that the real question in the case had not been considered nor had an issue been framed on it and that those Courts had wrongly decided on it and that on the evidence there was fraud on the part of the respondent. The Judicial Commissioner found that there was no evidence to support the finding of fraud and that the real question in the case should on the evidence have been found in favour of the respondent and made a decree in his favour. *Held* that under the circumstances in the case the Judicial Commissioner had on the terms of s 100 of the Civil Procedure Code 1908 power to act as he had done and to decide what was the real question in the case notwithstanding that an issue had not been framed on it. **DANUSA v ABDUL SAMAD (1919)** I L R 47 Cal 107

19 *Court order*—Application to recover deficiency of price from a defaulting purchaser—Civil Procedure Code (Act V of 1908) O XXI r 71—Claim for rupees less than five hundred—Application must be treated as one made in execution of a Small Cause Court decree—No Second Appeal lies. The plaintiff decree-holder applied under O XXI r 71 Civil Procedure Code 1908 to recover deficiency of price from a defaulting purchaser. The claim was made for rupees three hundred and sixty. Both the lower Courts disallowed plaintiff's claim. On appeal to the High Court a preliminary objection was raised that no second appeal lay. It was upheld the objection that the application made by the plaintiff must be treated as one made in execution of a Small Cause Court decree.

SECOND APPEAL—contd

and there was no second appeal from such an application. *RAJACHARIA v CHAKRAVARTY* (19-0)
I L R 45 Bom 223

20 *Held* that a memorandum of second appeal to the High Court must be accompanied by a copy of the judgment of the Court of first instance and if the latter is not presented till after the period of limitation has expired, the appeal should ordinarily be rejected as barred by limitation. *Dhanpal Mal v Uda Mal* (6 P R 191) followed *MOLU VAL v SRI PAM* I L R 2 Lah 227

20 (a) *Misconstruction of a document does not always confer a right of second appeal. It must be shown that there is a question of the legal effect of a document of title or a contract.* *KULDEB NARAIAN PAI v BANWARI RAI* 5 Pat L J 251

20 (b) *Held* that where the question of burden of proof involves a question of custom no second appeal is competent without a certificate. *MUKHI v MAST PUNJI* I L R 2 Lah 348

21 *Held* that although the High Court in second appeal is bound by the findings of the lower Court such findings cannot stand when they have been arrived at on a consideration of the documentary evidence alone and without taking into consideration the oral evidence in the case. *BANKARI RAI v KESHORI NANDIL* 6 Pat L J 72

22 *Findings of fact when can be challenged in—*In a suit for khas possession the defendants pleaded that they held under a lease. The Court of Appeal below found that the lease required to be proved that there was no document evidencing settlement nor in fact any evidence in settlement at all and that though there were two rent receipts they were not properly proved. In the Court of first instance the said rent receipts were admitted in evidence without objection by the plaintiffs. Further as a matter of fact there was evidence both oral and documentary about the settlement. *Held* that the rent receipts having been admitted in evidence without objection in the Court of first instance no objection could be taken in the appellate Court that they were not properly proved. *Held* further that when there was evidence of the settlement in question the finding of fact arrived at by the lower appellate Court on the point could be successfully challenged in second appeal.
25 C W N 881

23 *Finding of fact arrived at on consideration of evidence not admissible.* The Lower Appellate Court in considering the question whether plaintiff had proved that he was a minor when he executed a certain mortgage referred to a judgment which was not admissible in evidence but which he considered could not be wholly ignored in a subsequent case in which plaintiff's age was in issue. *Held* that a finding of fact arrived at on consideration of evidence which is inadmissible and which proceeds partly on such evidence can be assailed in second appeal. *Musammal Sumitra Kuer v Ram Kaur* (17 Indian cases 561) followed *BALWANT SINGH v BALDEV SINGH* I L R 2 Lah 271

SECOND APPEAL—contd

21 *Onus probandi—mortgage—admission by mortgagors before Sub Registrar of receipt of full consideration—onus on them to prove non receipt.* R and others the defendants executed a mortgage in favour of G R the plaintiff for Rs 4580 made up of sums due to previous mortgagee previous debts due on *bahi* account price of buffaloes and payment of debts due to other persons. Before the Sub Registrar the executants admitted receipt of full consideration but at mutation they stated that the whole of the consideration had not been received. Mutation was therefore refused and C R was forced to bring the present suit for possession as mortgagee. The first Court dismissed the suit holding that plaintiff had failed to prove that consideration had passed and the District Judge on appeal confirmed the dismissal. *Held* that the question of *onus probandi* arising in this case was a question of law rendering a second appeal competent. *Held also* that the admission before the Sub Registrar that full consideration had been received was a clear one and the *onus* to show that consideration had not passed in full was therefore upon the defendants who had made the admission. *Kishen Chand v Sohan Lal* (20 Indian cases 913) followed *GANGA PAM v RULIA* I L R 2 Lah 249

SECOND MARRIAGE

See *MAROMEDA v LAW—BIGAMY*
I L R 50 Calo 409

SECOND MORTGAGE

See *MORTGAGE* I L R 45 Calo 702

SECOND MORTGAGEE.

— claim of—
— *See* *MORTGAGE* I L R 37 Calo 907
— Sale by—
— *See* *MORTGAGE* I L R 47 Calo 662
— suit by for surplus proceeds—
— *See* *LIMITATION* I L R 41 Calo 654

SECOND PROBATE

— duty on—
See *PROBATE* I L R 43 Calo 625

SECOND SALE

See *PATNI SALE* I L R 47 Calo 780

SECOND SANCTION

See *SANCTION FOR PROSECUTION*
I L R 40 Calo 564

SECOND TRIAL

See *AUTREFOIS ACQUIT*
I L R 41 Calo 1072

SECONDARY EVIDENCE

See *EVIDENCE* I L R 38 All. 494
See *EVIDENCE ACT*
— of *Parsi marriage—*
See *Parsi MARRIAGE AND DIVORCE ACT*
(XX of 1860) ss. 3, 5, 8 and 9 to 14
I L R 45 Bom. 146

SECRETARY OF STATE FOR INDIA

See CAUSE OF ACTION

I L R 38 Calc 797

See COSTS

I L R 40 Bom 588

See CROWN

See EAST INDIA COMPANY

— delegation of Authority—

See EXECUTION OF DECREE

I L R 38 Calc 754

— if necessary party—

See PUBLIC DEMANDS RECOVERY ACT
(BEN I OF 1895) 14 M W N 606

— liability of for Costs—

See CRIMINAL PROCEDURE CODE = 524

5 Pat L J 321

— non liability of for acts done in
exercise of Sovereign powers—

See TORT I L R 39 Mad 351

— mortgage by—

See BOMBAY CITY LAND REVENUE ACT
(BOM II OF 1876) ss 30 35 39 40

I L R 39 Bom 664

— notice of suit against—

See CIVIL PROCEDURE CODE (ACT V OF
1908) s 80 I L R 37 Mad 113

— status of—

See PARLIAMENT MEMBER OF—

17 C W N 753

— suit against—

See CIVIL PROCEDURE CODE 1882 s 424
I L R 35 Bom 362

See JURISDICTION I L R 40 Calc 308
391

See NOTICE I L R 40 Calc 503

See PUNITIVE POLICE

I L R 40 Calc 452

— suit by—

See BOMBAY DISTRICT MUNICIPALITIES
ACT (BOM III OF 1901) s 42

I L R 40 Bom 166

See PENALTY I L R 43 Calc 230

1 ——— Pay and Pension

— Cause of action—Pensions Act (XXIII of 1871)

s 1 The plaintiff who was in the Educational Department drawing a salary of Rs 150 a month was in 1881 employed by the Government on special duty under an agreement one of the terms being from the 1st September 1881 his pay will be raised during good behaviour to Rs 300 a month. It was assumed that this meant for the term of his natural life. The special duty was completed but the plaintiff in spite of his protests was retained on deputation till 1907 when he was made to revert to the Educational Department and was retired in 1904. Since or from shortly before his retirement he was paid only Rs 150 a month. In an action instituted by the plaintiff against the Secretary of State for a declaration that he was entitled to be paid Rs 300 a month for his natural life and for arrears on the basis of that figure—Held that the plaintiff must be taken to have treated the whole of his service under Government as one service and that anything payable to him after the termination of that service was in the nature of a pension within the meaning of s 4 of the Pensions Act of

SECRETARY OF STATE FOR INDIA—contd

1871 and hence the suit was not maintainable
SARAT CHANDRA DAS v SECRETARY OF STATE FOR
INDIA (1910) I L R 38 Calc 38

2 ——— Suit against in
respect of illegal order of District Magistrate under
Assam Labour Emigration Act (VI of 1901) s 91
and also for alleged defamation in a Government
order—Damage remoteness of—Liability of defendant
under the Government of India Act 1858 not liable
here on the ground that the order was made in the
course of employment nor for acts done by Govern-
ment servants in exercise of statutory powers—Alleged
ratification by the Local Government—Government
order—Absolute privilege Suit by the plaintiff
who represented the Assam Labour Supply
Association in Ganjam and other districts against
the Secretary of State for India in Council for
damages in respect of two orders of the District
Magistrate of Ganjam suspending and dismissing
one T S the local agent of the Association in
Ganjam and closing his depot for recruiting under
the Assam Labour and Emigration Act (VI of
1901) whereby the plaintiff was prevented from
earning from the members of the Association his
commission of seven rupees for each labourer sent
to Assam and for an alleged libel on the plaintiff
in an order passed by the Governor in Council on
appeals by the plaintiff and other against the afore-
said orders in which it was stated that the plaintiff's
own conduct was not altogether above suspicion
under the Notification issued pursuant to s 91
of the aforesaid Act as amended relaxing the provi-
sions of the Act in favour of the Association, the
District Magistrate had power to dismiss the local
agent but not to suspend him or to close his depot
to recruiting under the Act independently of the
Notification. *Semble* That the damage to the
plaintiff by reason of the loss of his commission
was too remote. The defendant's liability to suit
is the same as that of the East India Company
before the passing of the Government of India Act
1858 it can only be altered by Civil Procedure Code
and is not affected by s 19 Civil Procedure Code in
Extent of such liability in respect of acts done in
the exercise of sovereign powers not being acts of
State discussed. It was not sufficient to render
the Company liable that an act of this nature had
been done by its servant in the course of employ-
ment but without previous order or sanction
ratification. Ratification must have been by the
Company and must now be by the Secretary of
State. Essentials of ratification discussed. In the
present case the defendant was not liable for the
act of the District Magistrate on the further ground
that it was done by him in the exercise of statutory
authority and not as an agent of Government.
Further as to the alleged defamation having been public
the Government of Madras having been public
in the execution of its duty and without exceeding
it was absolutely privileged and in any case there
was no evidence of malice. *Dhakeshwar Das v The
East India Company - Mor D J 397 11 Indiar
and Orient Steam Navigation Company v The
Secretary of State 5 Bom H C 2 11 Indiar
Phany v The Secretary of State for India 1 L R
4 Val 344 Shrinipayan v The Secretary of State
for India 1 L R 93 Bom 314 referred to 1 L R
Pijay v The Secretary of State for India 1 L R
7 Val 466 questioned 105 s 37 Mad 85*
STATE FOR INDIA (1913) I L R 37 Mad 85

3 ——— Held by the Court
on appeal (affirming the judgment in 1 L R 37

SECRETARY OF STATE FOR INDIA—*concl'd*

Mad. 55 above) that (i) as the action of the Collector and District Magistrate who was found to have acted without any malice was not directed against the plaintiff but only against others and as the injury to the plaintiff if any was not the direct consequence of the Collector's act but was only very remotely connected with it the plaintiff had no cause of action and (ii) the Governor in Council was not liable for the publication of the defamation and the same was done on a privileged occasion i.e. in the course of its official duties. *Held* further by SADASIVA AYYAR J (a) Even the Collector and District Magistrate was not personally liable as he only did his duty imposed on him by the statute (s 22 Cl (a) of A am Labour and Emigration Act (VI of 1901) and (b) as in doing so he was not the agent of the Government and as the act was not done on Government's behalf the Government could not ratify the same nor can Government be liable even if it had ratified the same. *Held* further by BAKERWELL J that so far as the plaintiff was concerned as he was neither an employer nor his agent he was, according to the Act, carrying on an illegal business and his suit was liable to be dismissed also on this ground. **For THE SECRETARY OF STATE FOR INDIA (1915)** I L R 39 Mad 781

SECRET SOCIETY

See JURY RIGHT OF TRIAL BY
I L P 37 Calc 487

SECURITIES ACT (XIII of 1886)

See GOVERNMENT SECURITIES

ss 3 sub s (2) 6 sub s (1) cl (f)—

See RECEIVER I L R 37 Calc 754

SECURITY

See CIVIL PROCEDURE CODE (ACT V 1908)

O XXXVIII r 5
I L P 39 Mad 903

See CRIMINAL PROCEDURE CODE—

S 123 I L P 35 Bom 271

Ss 39, 1 I L P 37 Bom 178

See EXECUTION 24 M W N 285

See FORFEITURE I L R 47 Calc 190

See JUTE I L P 44 Calc 98

See MORTGAGE I L R 44 Calc 388

See PRESS ACT (I of 1910) ss 3 (1) 4 (1)

17 10 20 AND 27
I L P 39 Mad 1085

See PRIVY COUNCIL 14 C W N 420

See RECEIVER I L R 46 Calc 70

See SURETY 24 C W N 879

See STAY OF EXECUTION I L R 41 Calc 160

See SUCCESSION CERTIFICATE (VII of 1889) ss 7 AND 9

I L R 40 All 81

demand of, by Magistrate—

See PRESS ACT (I of 1910) s 3 (1) 4 (1)

17 10 20 AND 27
I L R 39 Mad 1085

deposit of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XLI r 10 AND 12

I L R 37 Bom 572

See LIMITATION ACT 1909 SCH I ART 161

15 C W N 102

SECURITY—*concl'd*

for production of insolvent debtor—

See FORFEITURE I L R 39 Calc 104

Investing on unauthorized—

See PRESIDENCY BANKS ACT (VI OF 1870) ss 36 37

I L R 30 Mad 101

See TRUSTEE I L R 38 Mad 71

mode of enforcement of—

See CIVIL PROCEDURE CODE (1908) s 14

O XXXVIII r 14

I L P 39 All 327

scope of—

See MORTGAGE I L R 43 Calc 895

SECURITY BOND—

See EXECUTION OF DECREES

I L R 38 Calc 704

I L R 42 All 158

by the Secretary of State for India—

See EXECUTION OF DECREES

I L R 38 Calc 754

for decree holder—

See PROCEDURE I L R 46 I A 228

Discretion of Court—

See CONTRACT ACT (I of 1872) s 74

I L R 45 Bom 1213

SECURITY FOR COSTS

See CIVIL PROCEDURE CODE (1908)

ss 109 110 O XLI r 10

I L R 38 All 325

O XXXVIII r 1 I L R 35 Bom 421

I L R 36 Bom 415

O XLI r 10

See COSTS I L R 46 Calc 156

See IN SOLVENCY I L R 43 Calc 243

See LIMITATION ACT 1909 ss 10 AND 15

M Pat L J 132

See PROCEDURE I L R 48 Calc 481

Failure to comply with order for—

See PROCEDURE

I L R 48 Calc 481

Infant plaintiff—*Civil*

Procedure Code (Act V of 1908) Sch I O XLV

r 1—*Practice* It is not desirable to run any risk

of stopping a suit filed on behalf of an infant which

may be a proper suit to bring merely because of

some inability on the part of the next friend to

give security for costs BHAISSANAP AMBASHAN

KER v. ULJI A HARAN (1910)

I L R 35 Bom 339

12 real in formd pau

peris—*Civil Procedure Code (Act V of 1908)*

O XLI r 10 not applicable to pauper appeals—

Security should not be demanded The plaintiff

having obtained a decree in the lower Court the

defendant appealed and applied for leave to appeal

in formd pauperis The application was granted

The defendant appellant however resided out of

British India and was not possessed of sufficient

immovable property in British India. The plain-

tiff respondent having demanded security for costs

incurred in the lower Court and costs of the appeal

SECURITY FOR COSTS—contd

under O XLI r 10 of the Civil Procedure Code 1908 *Held* that the general provisions relating to appeals in O XII r 10 Civil Procedure Code 1908 did not apply to pauper appeals so as to impose upon the Court the duty of demanding security from a pauper appellant who having been found to be a pauper *ex hypothesi* could not give security *Wille v St John [1910] 1 Ch 701* followed *Kienray Shrinivasadas v Kisan Lalajmal [1917] I L R 42 Bom 5*

In an appeal the Lower Appellate Court called upon the appellant to furnish security for costs under O XLI R 10 and the order not being complied with dismissed the appeal. Against this order an appeal was preferred to the High Court *Held* it was not appealable either as a decree or an order *Romes Chandra Das v Monindra Lal Das*

EU O W N 1020

SECURITY FOR GOOD BEHAVIOUR

See CRIMINAL PROCEDURE CODE 1898—

Ss 108 AND 109

S 110

Ss 118 123 I L R 36 All 495

Ss 119 200 437

I L R 35 Bom 401

Ss 110 437 I L R 36 All 147

S 123 1 Pa' L J 212

S 478 I L R 43 All 180

See PENAL CODE s 225B

I L R 43 All 185

1 ——— Joint inquiry against members of a gang—Admissibility of evidence of association with a gang and of acts by the members thereof—Inquiry into the fitness of Sureties—Rejection on the report of a subordinate Magistrate or police officer—Order of Judge on reference contents of—Criminal Procedure Code (Act I of 1898) ss 117 (4) 122 123 (3) 367 421—Evidence Act (I of 1872) s 11 An order under s 123 (3) of the Criminal Procedure Code should show on the face of it that the Sessions Judge has considered the case of each accused on its own merits and separately from that of the others even if such order need not contain all the details required by s 367 *Jamail Mullick v Emperor I L R 35 Cal 133* referred to A joint inquiry under s 117 of the Criminal Procedure Code against the members of a gang formed for the purpose of habitually cheating in concert is not illegal under sub s (4) though they were not all concerned together in each of the various acts alleged against them. When the question is whether a person is a habitual cheat the fact that he belonged to an organization formed for the purpose of habitually cheating in concert is relevant under s 11 of the Evidence Act and it is open to the prosecution to prove against each person that the members of the gang do cheat. A surety cannot be called upon to state in writing what influence he has over the accused nor can a Magistrate refuse to accept him on his failure to do so *Per Paves J (Coxe J contra)* Under s 122 of the Criminal Procedure Code the Magistrate passing an order for security should himself hold the inquiry into the fitness of the proposed sureties and he can not decide the matter merely on the report of a subordinate Magistrate or of a police officer which

SECURITY FOR COSTS—contd

is not legal evidence *Queen Empress v Prithi Pal Singh (1893) All W N 154* *Emperor v Tola I L R 2, All 272* *Emperor v Balwant I L R 27 All 293* *Re Abdul Khan 10 C W A 1027* and *Suresh Chandra Basu v Emperor 3 C L J 375* followed *KALU MIRZA v EMPEROR (1909)*

I L R 37 Cal 21

2 ——— Evidence of acts committed several years before the proceedings—Offences involving breach of the peace.—Acts of highhandedness not accompanied with actual breaches of the peace—Liability of zemindar for acts of his naib and lathwals committed in his interest—Abetment of offences involving a breach of the peace—Criminal Procedure Code (Act I of 1898) s 110 (e) Evidence of acts falling within the scope of s 110 of the Criminal Procedure Code but committed several years before the date of the institution of the proceedings thereunder is admissible *Wahid Ali Khan v Emperor 11 C W A 789* followed. To bring a case within the section a person must be found to have habitually committed attempted to commit or abetted the commission of offences of which a breach of the peace is an ingredient *Arun Samanta v Emperor I L R 30 Cal 186* followed. Where the only conviction against a zemindar was one under s 180 of the Penal Code and there was evidence that he with his lathwals (or his servants acting under his orders) took articles of food from bazar vendors that he assembled lathwals to enforce the performance of *purva* by his own *purohit* threatened a witness with violence for deposing against him and with his lathwal uprooted some trees cut the crops of his opponent's molested rival fisherman in boats and attempted to stop a marriage procession but no breach of the peace was committed or complaint made by the opposite party. *Held* that such acts did not involve a breach of the peace so as to support a charge of habitually committing offences within claus (e). But where the zemindar and had been several riots in his master's interest and had been convicted in several such cases and there was evidence that certain lathwals were always employed to help his cause *Held* that he had habitually abetted the commission of offences mentioned in that claus *Kari Sunder Roy v Emperor I L R 33 Cal 419* followed. A Magistrate should be careful to see that s 110 is not employed by mistake as per ons to wreck vengeance under the provisions of Crown prosecution *HALL PRASAD Doss v EMPEROR (1910) 2 I L R 38 Cal 158*

3 ——— Ostensible means of subterfuge—Return of absconding suspect home on writ of habeas corpus and residence in his father's house without taking steps to conceal himself to commit an offence—Relevancy of evidence of previous connection with a criminal conspiracy or concealment outside the trying Magistrate's jurisdiction—Support by father possessing a balance—Jurisdiction of Magistrate to require a person to give an account of his presence while in another jurisdiction—Criminal Procedure Code (Act I of 1898) s 109—Criminal Procedure Code (Act I of 1898) s 109 (a) (b) Cl (a) of s 109 of the Criminal Procedure Code should be read in its entirety. The section should be read in its entirety. Where a person view to committing some offence. Where a person against whom a warrant had been issued, absconded from home for two years but returned thereto after its withdrawal and was found living in his father's house without having taken any particular

SECURITY FOR COSTS—contd

steps to conceal him self for the purpose of committing any offence thereafter the fact of previous connection with a criminal conspiracy or of previous correspondence with criminals out side the Magistrate's jurisdiction, is not relevant under s 109 though it might form basis of a substantive proceeding under s 110. A person cannot be called on to furnish security under s 109 in respect of an alleged temporary concealment in his father's house unconnected with any intent to commit an offence nor with any previous concealment out side the Magistrate's jurisdiction. As long as a young man out of employment is staying in the house of his father who is a man of substance and able if necessary to support him he cannot be held to be without a tenable means of subsistence. Where the account a person gives of his presence within the limits of a Magistrate's jurisdiction is satisfactory e.g. that he has returned to and is living in his father's house in strict seclusion on the withdrawal of a warrant against him he cannot be called upon by such Magistrate to give an account of his presence in any other jurisdiction. **SATI H CHANDRA SARKAR v EMPEROR (1912)**

I L R 39 Calc 456

4 — Fair Trial—Proceedings taken and enquiry completed in one day—Introduction of party called upon for security under arrest before the Magistrate in Camp—Right of party to examine his own defence witnesses—Right of opportunity to examine or summon witnesses selected by such party—Criminal Procedure Code (Act I of 1898) s 110 (d) 110 117—Practice. Under s 117 (2) of the Criminal Procedure Code a person called upon to furnish security for good behaviour must be given time as in warrant cases to bring his witnesses and have their evidence recorded. Where a person was produced in custody before a Magistrate in camp while on tour when only a single mukhtar was available and a proceeding under s 110 (d) was drawn up immediately read and explained to him after which prosecution witnesses were examined and cross examined and he was called upon for his defence and some of the spectators who happened to be present were examined on his behalf and the enquiry was completed and the order for security passed on the same day. Held that the order was bad as the person directed to execute a bond had not been given the opportunity of selecting his own witnesses and of producing them or having them summoned and that he did not therefore have a fair trial. **KERAM UDDIN SARKAR v EMPEROR (1914)**

I L R 41 Calc 806

5 — Dissemination of matter likely to promote enmity or hatred—between classes—Necessity of intention—Criminal Procedure Code (Act I of 1898) s 108 (b) Penal Code (Act XLV of 1860) s 153 A. To justify an order under s 108 (b) of the Criminal Procedure Code it is sufficient that the words used are likely to promote feelings of enmity or hatred between different classes and it is not necessary to establish an intention to promote such feelings as it would be on a trial for the offence under s 153A of the Penal Code. **Dharmaloka v Emperor I L R L J 948** cited from **Joy Chander Sarkar v Emperor I L R 38 Calc 913** **Jaavant Das v Ahilavale 5 Cr L J 439 10 Punj Rec** referred to. **SITAL PRASAD v EMPEROR (1915)**

I L R 43 Calc 591

SECURITY FOR COSTS—contd

6 — Jurisdiction—Person within the local limits of the Magistrate's jurisdiction—Presence—Commission of acts complained of within such local limits—Jurisdiction of Magistrate—Criminal Procedure Code (Act I of 1898) s 110. S 110 of the Criminal Procedure Code does not require residence within the local limits of the jurisdiction of the Magistrate who institutes proceedings thereunder. Where the habits of the persons called upon to furnish security for good behaviour were practised and their evil reputation acquired within the local limits of the jurisdiction of the Presidency Magistrate of the Northern Division of the town of Calcutta though they might be occasionally residing elsewhere. Held that the Magistrate was competent to take proceedings against such parties under s 110 of the Code. **Aclabos v Queen Empress I L R 27 Calc 993** distinguished. **EMPEROR v DURGA HALWAI (1915)**

I L R 43 Calc 153

7 — Previous convictions proof of—Central Bureau register of thumb impressions evidentiary value of—Extract from jail register with out proof of identity—Locus parentalis—Criminal Procedure Code (Act I of 1898) s 110. Whenever proof of previous convictions is required whether under s 75 of the Penal Code or Chapter VIII of the Criminal Procedure Code such previous convictions must be proved strictly and in accordance with law and unless so proved no Court can take them into consideration. A register produced from the Central Bureau purporting to contain the thumb impression of the accused that his descriptive roll with a list of his previous convictions when there was no evidence how it came to be made and lodged in the Central Bureau nor from what particulars the previous convictions were recorded and certified was held in sufficient proof of such convictions. An extract from the jail register showing previous convictions of a certain person with aliases and certified copies of previous conviction of the same in the absence of evidence of identity with the present accused held insufficient to prove previous convictions of the latter. A person who has served the period of his imprisonment should be given a chance of reformation and should not be proceeded with under s 110 of the Criminal Procedure Code soon after his emergence from jail. **Junab Ali v Emperor I L R 37 Calc 783** referred to. Although general statement of witnesses e.g. that the accused are all pick pockets and that every one is afraid of them may not be wholly inadmissible in evidence no Court should act on a body of such evidence without testing the statements of the witnesses and obtaining from them some particulars of the facts in which their general statements are made. The case of each accused should be differentiated in the evidence and the order of the Court. **EMPEROR v SURESH ANAND (1916)**

I L R 43 Calc 1128

8 — Menace—Any person within the local limits—Intention to do so on the date of the initiation of proceeding—Disperse and dangerous—Menace to person and property—Association to spread of loyal doctrines—Revolutionary activities and recruitment of members thereof—Connect on of Association with an organization to commit dacoity—Executive security—Criminal Procedure Code (Act I of 1898) s 108 110 111—Admission of evidence of finding of sedition cases and literature in the possession of one conspiracy or against the

SECURITY FOR COSTS—*concl'd*

rest to ascertain the object of the association—*Evidence Act (I of 1872) s 10 Cl (f) of s 110 of the Criminal Procedure Code* is not limited to the case of menace to property but applies also where the security of the person is jeopardized *Ryendra Nara n Singh v Emperor 17 C W N 238* explained and distinguished. A man of desperate and dangerous character means one who has a reckless disregard of the safety of the person or the property of his neighbours. *Wahid Ali Khan v Emperor 11 C W N 789* approved. Where it was found that the petitioners were associated for the purpose of spreading disloyal doctrines among school boys and were conspiring to commit an offence under s 124A of the Penal Code that they were engaged in inculcating ideas of armed revolution in the minds of such persons and were collecting recruits and subjecting them to a course of self discipline and further that they were connected with an organization the object of which was the collection of money by dacoity. *Held* that such facts involved a menace not only to the person but also to the property of the community and brought the case within s 110 cl (f) of the Code though the time for the occurrence of the proposed revolution and dacoities had not been proved. The mere fact that s. 103 of the Code may be applicable to the findings does not necessarily make s 110 applicable. Where the Sessions Judge used the finding of certain seditious literature and essays in the possession of one of the petitioners as evidence against the others under s 10 of the Evidence Act to prove the object of the association and it was contended that he had done so wrongly thereunder as such literature might have been obtained and the essays written before the association was formed. *Held* that the fact of the literature having been bought and the essays written before the formation of the association would not preclude the Court from considering the possession of them as one of the facts in the case independently of s. 10 of the Evidence Act in order to ascertain the object of the association. The words *any person within the local limits* in s 110 of the Code do not imply residence but extend to the case of a person who has left the territorial jurisdiction of the Magistrate and has been brought back within the same in police custody and is in jail under the Defence of India Act on the date of the institution of the proceedings. S 114 of the Code is not limited to arrest within the jurisdiction. *Held* also that under the circumstances the amount of the security was not excessive. *MAHENDRA MOHAN SANYAL v EMPEROR (1918) I L R 48 Cal 215*

SECURITY TO KEEP THE PEACE

See CRIMINAL PROCEDURE CODE 1898 —

Ss 106 AND 107

See 123

I L R 33 All 624

I L R 35 All 103

I L R 37 Mad 125

I L R 39 All 466

I L R 41 All 651

See 20 10 11 119

I L R 32 All 642

See LETTERS PATENT (21 & 22 VICT C 104) cl 1a. I L R 39 Mad 539

SECURITY TO KEEP THE PEACE—*concl'd*

proceedings for—

See TRANSFER I L R 41 Cal 719

1 ———— *Conviction under s 113 of the Penal Code—Absence of finding of acts involving breach of the peace or evident intention of committing the same—Legality of order for security—Criminal Procedure Code (Act V of 1898) s 106* To bring a case within the terms of a 106 of the Criminal Procedure Code the Magistrate should expressly find that the acts of the accused involved a breach of the peace or were done with the evident intention of committing the same or at all events the evidence must be so clear that without an express finding a superior Court is satisfied that such was the case. *Jib Lal Gur v Jagmohan Gur I L R 26 Cal 576* followed. A finding that the common object of the unlawful assembly was by means of criminal force or show thereof to take possession of land cultivated by tenant of the rival land lord and that but for the direction of the latter to the tenants to retire which was carried out there might have been a serious riot and insufficient to bring the case within the purview of s. 106 of the Code. *ABDUL ALI CHOWDHURY v EMPEROR (1915) I L R 43 Cal 61*

2 ———— *Criminal Procedure Code s 107—Nature and quantum of evidence necessary before passing order for security—There must be definite evidence in the case of any and every person charged under s 107 of the Code of Criminal Procedure that there is danger of a breach of the peace by him. It is clearly insufficient against a collective body of persons to suggest that there are indulging in feelings of hostility towards another body of persons. Queen Empress v Abdul Kader I L R 9 All 450 referred in EMPEROR v SHAMBHU NATH (1916) I L R 38 All 468*

SEDITION

See FORFEITURE I L R 47 Cal 180

See HIGH COURT I L R 34 Bom 378

See PENAL CODE—

Ss 107 124A. I L R 34 Bom 394

Ss 124A, 511 I L R 34 Bom 378

See PRESS ACT

See PRINTING PRESSES AND NEWSPAPER ACT

1 ———— *Attempt to publish seditious—Penal Code (Act XLV of 1860) ss 511 514 Under the Indian Penal Code (Act XLV of 1860) all that is necessary to constitute an attempt to commit an offence is some external act something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish seditious is complete as soon as the accused knowingly sells a copy containing the seditious article. It is none the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public. In cases of sedition the question of intention is one of fact. EMPEROR v GANESH BALFANT MONK (1909) I L R 34 Bom 378*

2. ———— *Wholesale imputation of bribery against ministerial and police officers and of neglect on the part of Government*

SEDITION—concl'd

cation of seditious matter transmitted through the post office on a charge under s 124 A of the Penal Code to prove the actual posting nor that it was printed and published under the directions of the accused. If the seditious writing is shown to be in the handwriting of the accused and it is further proved that the contents were in fact printed and published there is sufficient evidence of publication by him. *Regina v Lovett 9 C & P 462* followed. The sending through the post of a packet containing a manuscript copy of a seditious publication with a covering letter requesting the addressee to circulate it among others when the same was intercepted by another person and never reached the addressee constitutes an attempt within the purview of s 124 A of the Penal Code. *SURENDRA NARAYAN ADHICARY v EMPEROR (1911)*

I L R 30 Calc 522

6 ——— Handwriting proof of—Admissibility and value of expert opinion not based on comparison made in Court with admitted or proved handwriting of the person alleged—Penal Code (Act XIV of 1860) s 124 A—Evidence Act (I of 1872) s 45. On a charge under s 124 A of the Penal Code the sending of a pamphlet by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication. It is necessary for the admission of the evidence of a hand writing expert under s 45 of the Evidence Act that the writing with which the comparison is made should be admitted or proved beyond doubt to be that of the person alleged and that the comparison should be made in open Court in the presence of such person. *Cresswell v Jackson 2 F & F 24 Cobbet v Kilmister 11 F & F 490 and Phoodsee Bibes v Gound Chander Poy 22 W R 272* referred to. *SURESH CHANDRA SANYAL v EMPEROR (1912)*

I L R 39 Calc 608

SEDITIONOUS LIBEL

See FORFEITURE I L R 30 Calc 190

SEIGNIORAGE FEES OR ROYALTY

——— right of Government to levy—

See INAM I L R 40 Mad 268

SEIZURE IN CUSTOM HOUSE

See COCAINE IMPORTATION OF
I L R 41 Calc 545

SELF ACQUIRED PROPERTY

See CUSTOM I L R 2 Lah 366

See HINDU LAW—JOINT FAMILY
I L R 32 All 415

See HINDU LAW—PARTITION
I L R 34 Bom 106

See HINDU LAW—SELF ACQUISITION
I L R 32 All 394

——— blending of—

See HINDU LAW—JOINT FAMILY
I L R 45 Calc 733

——— Meaning of—

See CUSTOM (SUCCESSION)
I L R 1 Lah 365

SELF-ACQUISITION

See ALIYASANTANA LAW

I L R 39 Mad 17

See MALABAR LAW I L R 35 Mad 43

SELLER

——— duty of—

See CHUKANI RIGHT
I L R 42 Calc 23

SENATE AND SYNDICATE

——— respective powers of—

See SPECIFIC RELIEF ACT (I OF 1871)
s 45 I L F 40 Mad 123

SENTENCE

See CRIMINAL PROCEDURE CODE 1898—

s 35 s Pat L J 135

s 106 (3) I L R 33 All 48

s 235 s Pat L J 433

ss 397 123 I L R 37 Bom 178

ss 408 415 I L R 37 All 510

s 423 I L R 38 All 485

s 439 I L R 39 All 549

See MURDER I L R 44 Mad 443

See OFFENCE COMMITTED ON THE HIGH

SEAS I L R 38 Calc 484

See PENAL CODE (ACT XLV OF 1860)

s 62 I L R 36 All 345

See PRACTICE I L R 35 Bom 418

I L R 39 Bom 36

——— Alteration of—whether amounting to enhancement—

See CRIMINAL PROCEDURE CODE s 423

I L R 36 All 485

——— enhancement of—

See CRIMINAL PROCEDURE CODE s 443

I L R 36 All 318

See RAILWAY PASSENGER

I L R 44 Calc 249

See CRIMINAL PROCEDURE CODE s 405

25 C W N 210

——— Exceeding Legal Maximum—

See CRIMINAL LAW

I L R 31 Mad 287

——— Conviction and sentence for rioting and for being member of unlawful assembly causing grievous hurt validity of—Penal Code (Act XLV of 1860) s 71 147 149 and 395—Correction for rioting and causing grievous hurt validity of—Where the accused were charged with offences under ss 147 and 395 read with 149 of the Indian Penal Code and were convicted and sentenced on both charges held that the lower appellate Court could not substitute for the convictions under s 395 s 325 read with s 149 convictions under s 303 and that the High Court in revision would not convict the accused of this offence in the absence of any opportunity to plead to a charge in respect of it held that it is illegal to record separate convictions for offences under s 147 and s 303 read with s 149 and that therefore separate sentences in respect of the two offences are also illegal. An accused cannot in addition to being

SENTENCE—*confd*

convicted under s 147 be also convicted under s 323 although it be shown that he him self cau ed grievous hurt to the opposite party. *PALU SINGH v KING EMPEROR* 3 Pat L J 641

SEPARATE CONVICTIONS

See PENAL CODE ACT (XIV OF 1860)
■ 71 147 323 I L R 39 All 623

SEPARATE OFFENCES

See CHARGE I L R 41 Calc 66
See POLICE ACT 1861 29
I L R 42 All 22

SEPARATE SENTENCES

See CRIMINAL PROCEDURE CODE 1898
s 230 3 Pat L J 433
See CUMULATIVE SENTENCES.
I L R 40 Calc 511
See MISJOINDER I L R 38 Calc 453

SEPARATE TRIAL

See EVIDENCE I L R 47 Calc 671

SEPARATION

See HINDU LAW—JOINT FAMILY
I L R 35 All 80
I L R 43 Calc 1031

See HINDU LAW—PARTITION
I L R 39 Mad 159

— evidence of—

See HINDU LAW—INHERITANCE
I L R 42 Calc 1179

SERVAINTS QUARTERS

— acquisition of—

See LAND ACQUISITION
I L R 43 Calc 665

SERVICE INAM

See HINDU LAW—JOINT FAMILY
I L R 44 Mad 179

See MADRAS PROPRIETARY ESTATES VIL
LAGE SERVICE ACT (II OF 1894) s
5 10 CL (2) I L R 39 Mad 930

— resumption of—*Resumption not a fresh grant and does not put an end to prior encumbrances—Foght on—V I of 1831 s 2—Emoluments granted for gadaba service not within regulation Resumption con-lis s in putting an end to the grant remitting the services and requiring the grantee to pay the full assessment It has not the effect of putting an end to prior encumbrances Gadaba or bearer service is of a personal nature and an inam for such service does not fall within Regulation VI of 1831 where the grantee of an inam for gadaba service mortgages the inam and the inam is afterwards resumed by Government such resumption does not extinguish the mortgages.* *SREEYADU YERRANA v DONKIRA KANKAMMA* (1912) I L R 35 Mad 704

SERVICE OF NOTICE

See FOREIGN JUDGMENT
I L R 37 Mad 163

See NOTICE TO QUIT
I L R 46 Calc 458

SERVICE OF NOTICE—*confd*

See TRANSFER OF PROPERTY ACT 1889
s 106

— effect of omission of—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898) ss 439 422 423
I L R 39 Mad 505

— onus of—

See PUBLIC DEMANDS
I L R 38 Calc 496

SERVICE OF SUIT

— on principals out lde jurisdiction—

See FOREIGN JUDGMENT
I L R 37 Mad 163

SERVICE OF SUMMONS

See CIVIL PROCEDURE CODE O 5
See SUMMONS I L R 42 Calc 67
See SUMMONS TO PRODUCE DOCUMENTS
I L R 47 Calc 647

SERVICE TENURE

See GRANT I L R 39 Bom 68
See GRANT OF LAND I L R 43 Bom 37
See MADRAS REGULATION (XIV OF 1802)
s 4 I L R 38 Mad 620

SERVIENT ESTATE

See EASEMENT
— forfeiture of—
See MADRAS IRRIGATION CESS
L R 46 I A 302

SESSIONS JUDGE

— powers of—

See CRIMINAL PROCEDURE CODE s 330
I L P M All 331

— power of to grant bail—

See BAIL I L R 37 Calc 439

SESSIONS TRIAL

See CRIMINAL PROCEDURE CODE s 339
I L R 37 All 331

See CROSS EXAMINATION
I L R 41 Calc 209

— *Refusal to enforce at tendance of defence witness es—Trial if vitiated thereby Where in a Sessions case the Judge refused to enforce the attendance of some defence witnesses who had been summoned by the Committng Magistrate but who did not appear on the ground that the application should have been made at an earlier date the High Court in appeal set aside the conviction and sentence holding that the trial was vitiated* *FOZUDDIN v KING EMPEROR* 24 C W N 527

SET BACK

See BOMBAY MUNICIPAL ACT (BOM ACT
III OF 1888) ss 297 301
I L R 43 Bom 181

SET FORWARD

See BOMBAY CITY MUNICIPAL ACT (BOM.
ACT III OF 1888) ss 297 301
I L R 42 Bom 181

SET-OFF

S. ATTORNEY

I. L. R. 43 Cal. 972

S. CIVIL PROCEDURE CODE 120 III

14 C. W. 170 789

S. CIVIL PROCEDURE CODE (A. V. 07 1905) s. 70 O XXI R. -

I. L. R. 42 Bom. 621

O VIII R. 6

O XXI R. 19 I. L. R. 35 All. 663

O XXI R. 19 20

I. L. R. 33 All. 249

O XXI R. 19 I. L. R. 40 Bom. 60

S. HANDNOTE 2 Pat. L. J. 451

See INSOLVENCY ACT s. 39

I. L. R. 33 Mad. 53 & 45

decree-holder allowed to bid—

Power of Court to allow set-off—

See CIVIL PROCEDURE CODE 1904 O

XXI R. - I. L. R. 44 Bom. 346

equitable—

See MORTGAGE I. L. R. 40 Mad. 633

1. ——— Equitable set-off when to be allowed—Court may impose terms on defendants—Borrowed debt claim of set-off in respect of The right of set-off exists not only in cases of mutual debts and credits but also where cross-demands arise out of the same transaction or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit. *Clark v. Rahnarval* 2 Mad. H. C. R. 296 followed. As the inquiry into the cross-demand made in this case by the defendant would involve gross delay the High Court allowed the inquiry to be made in this suit on certain terms imposed on the defendants. *RANDHARI SINGH v. PERMANUD SINGH* (1913) 19 C. W. N. 1183

2. ——— Limited Company

—Right of shareholder to appropriate paid-up calls towards debt due from him to Company—Joint Stock Companies Friendly Societies and Building Societies—Distinction between as to rule of set-off A shareholder in a Permanent Benefit Fund with limited liability who obtained a loan on execution, a mortgage, to the Fund which subsequently went into liquidation is not entitled to appropriate by way of set-off his paid-up calls towards the mortgage debt but is bound to pay the entire mortgage-debt before he can redeem the property. Principle of set-off in Court laid down in English decisions in the case of Joint Stock Companies and Friendly Societies as distinguished from Building Societies applied. *In re Oriental Gas & Ice Co. (Liquidator)* I. L. R. 1 C. 4 App. 6-9 *In re Parima & Steam Transport Company* I. L. R. 3 C. 4 App. 54 and *In re Hiram Miller & Lamp Company* [1907] 1 C. 70 followed. *Brookline v. Russell* 9 L. C. 45 and *Joshi v. North British Building Society* 11 L. C. 459 distinguished. The *OVERLAND PERMANENT BENEFIT FUND LTD. v. AGROOLSWAMI PHILLAR* (1914) I. L. R. 40 Mad. 1004

3. ——— A barred defence

cannot on equitable grounds be set-off against a defence under section 109 of the Civil Procedure Code. *Chandrasekhar Das* (1917) 21 C. W. N. 114

SET OFF—contd.

4. ——— S. 109 of Civil Procedure Code on joint promissory note—Loan is set off against debt—*Indian Commerce Act* (VII of 1912) s. 2—*Provisional Liquidators Act* (VIII of 1907) s. 11—*Mutual Debt Act* (IX of 1907) s. 11—One of two defendants sued on a joint promissory note by the Liquidators of a bank sought to set off an amount which was due to him from the bank or his own separate deposit account. *H. M.* that under the Indian Commerce Act (VII of 1912) s. 2 the provisions of the Provisional Liquidators Act (VIII of 1907) s. 11 applied, and the fact in question not being "mutual dealings" was the measure of the set-off, the amount claimed could not be set off. As to the fact of a C. of the Indian Commerce Act *Per Macdonald C.J.* "I do not think that the mere fact that a suit could be against one of two joint promissors crucial or the fact that the original Liquidators of defendant No. 2 was interested, nor on his own account only but jointly with another arises from the nature of the set-off which is a whole being set off." *GOSWAMI v. RANCHHURA THAKUR* (1921) I. L. R. 43 Bom. 1079

SETTING ASIDE

S. AWARD I. L. R. 4 Cal. 836

See EXCHANGE DECREE 14 C. W. N. 126

See LIMITATION ACT, 1909 ART. 91

See SALE I. L. R. 43 Cal. 811

See SALE FOR LIABILITIES OF DEBTOR I. L. R. 42 Cal. 76

Court Sale —

See CIVIL PROCEDURE CODE, 1909 O XXI, RR. 90 TO 92

SETTLEMENT

See ASIAN LAND AND REVENUE REGULATORY s. 6 14 C. W. N. 990

See HINDU LAW—ADOPTION I. L. R. 5 Bom. 251

See KROJA JAMUNADAY I. L. R. 38 Bom. 214

See OCCUPANT RENT I. L. R. 40 Cal. 180

See TRANSFER ACT 1901 s. 2 (21) SEC. I. ART. 1 I. L. R. 35 Bom. 444

s. 4 I. L. R. 37 All. 157 25

S. SURVEY AND SETTLEMENT ACT I. L. R. 38 Bom. 220

entry at last Settlement—

See JAMA TRUST ACT 1901 s. 9 I. L. R. 43 All. 615

of family property—

See RESTRAINT I. L. R. 5 All. 105

—construction of—Settlement of malikana or Ikharat payable to maintain in person Allowance as compensation for portions of and taken by Government for the term of an estate of—Set for sums referred to a settlement and account of 1865—Long account in sum filed in 1870 This was a suit in the respondent the Malakara of Darf and the

SETTLEMENT—contd

to be paid an annual sum of Rs 48⁰ odd by the Government of India as *da iurat* or *malikana* an allowance by way of compensation to the proprietors for the loss of their proprietary rights in portions of their land taken by the Government for the creation of jagirs (or revenue free holding) and which until re-emption by Government was payable by the jagirdar but for the payment of which on resuming them the Government themselves became liable. The claim was based upon an order of 10th May 1865 by which the appellant alleged that the annual *malikana* payable to him in respect of land called Mauzah Sahu was permanently fixed at P 48. 03. The defence was that the *malikana* payable in respect of a jagir known as Meherullah Khan of which Mauzah Sahu formed part was settled in 1740 at Rs 796 2 9 and nothing further was recoverable and that the order made in 1865 did not give the right claimed. The sum of Rs 496. 9 had admittedly been paid to the predecessors in title of the appellant since 1780 and was still being paid to the appellant himself but he claimed to be paid the sum of P 48⁰ odd in addition. His contention was that the fixing of the *malikana* in 1780 was not a final ascertaining of the rights of his predecessors in title in respect of it but was merely a temporary fixing of the percentage by which the amount should be ascertained from time to time as it varied together with the variation of the amount of the proceeds of the land. Both Courts in India held that the appellant was entitled to nothing more than the Rs 796 2 9 already paid to him. *Held* (affirming the decisions) that what was done in 1780 amounted to a final settlement of the owner's rights in respect of the *malikana* the payment of which was to be made regularly every year from 1780 no term being fixed. That it was regarded as final by the parties concerned was clear from the fact that the payment was made thenceforward for a century without any suggestion that it was in any way wrong or was subject to revision. The settlement of 1865 only dealt with the method of payment of the *malikana*. It provided neither for any alteration nor for any addition to the *malikana* already fixed in 1780. The account attached to the settlement was made for the purposes of the settlement only and the reference in it to *malikana* was made merely because the *malikana* was an item to be taken into account in fixing the annual *jama* to be paid by the person in whose favour the settlement was made in respect of the *mouzahs* comprised in the settlement. That this was the right view to take of the settlement of 1865 and the account annexed to it was confirmed by the fact that no claim was ever made by the appellant for payment of the *malikana* until 1897 27 years after the date of the permanent settlement and that no such payment had ever been made to him. **RAMESHWAR SINGH v SECRETARY OF STATE FOR INDIA** (1911) I L R 39 Cal 1

SETTLEMENT BY A HINDU WOMAN ON TRUSTS

The Indian Trusts Act (II of 1882) s 83—Trusts failing after settlor's death—Resulting trust in favour of settlor's heirs at the time of her death—The Indian Succession Act (X of 1885) s 191 effect of—The Probate and Administration Act (V of 1833) s 4 effect of—Where by a deed of settlement a Hindu woman conveyed an immoveable property to trustees on

SETTLEMENT BY A HINDU WOMAN ON TRUSTS—contd

certain trust some of which failed after her death (as being in favour of persons unborn at the date of the settlement) *Held* (i) that there was a resulting trust in favour of the settlor (ii) that the persons entitled to the property on the failure of the trusts were the heirs of the settlor to be determined at the time of her death. Where a person dies intestate and no administration is granted to his estate the term legal representative in s 83 of the Trusts Act must include the person or persons beneficially entitled who represent the interests of the deceased by virtue of inheritance. The representative by inheritance is to be found according to law at the moment of the death of the deceased the maxim being *Solus deus habet dem facere potest non homo*. **DWARAKADAS DAMODAR v DWARAKADAS SHAMJI** (1915) I L R 40 Bom 341

SETTLEMENT COURT

order of relating to attached lands—

See DISPUTE CONCERNING LAND I L R 37 Cal 331

SETTLEMENT OFFICER

enquiry by—

See JUDICIAL PROCEEDING I L R 37 Cal 52

order of—

See HIGH COURT JURISDICTION OF I L R 40 Cal 477

See SECOND APPEAL I L R 43 Cal 603

power of—

See BENGAL TENANCY ACT (VIII OF 1885) s 102 I L R 43 Cal 547

SETTLEMENT OF ACCOUNTS

See MITROR I L R 43 Mad 429

SETTLEMENT OF RENT

See RECORD OF RENT I L R 47 Cal 1006

SETTLEMENT REPORTS

See ITMAN I L R 47 Cal 979

SETTLEMENT OF REVENUE

Temporary Settlement—Effect on permanent interest—Entry in settlement records effect of—Certain lands were held under the Government under a temporary settlement during the currency of which the holders granted a permanent sublease to the plaintiffs who before the expiration of the lease granted by Government granted a permanent lease to one of the grantors. Ever since then the sublessee and his successors in interest were in occupation of the land the settlement being from time to time renewed by Government in favour of the original settlement holders or their representatives but in the course of the last settlement the under tenures were not mentioned in the settlement records. Held (in a suit for rent by the plaintiffs) that the mere omission of the settlement authorities to make an entry in the settlement records in respect of the tenures and under tenures cannot affect the rights of the parties and the effect of the resettlement by the Govern-

SETTLEMENT OF REVENUE—contd

ment with the original settlement holders was to keep alive the contractual obligation of the subordinate holders among themselves. The rights and obligations of the parties were mutual the plaintiffs being bound to make good the title of the defendants as soon as by virtue of the resettlement they were placed in a position to continue the lease in favour of the defendants and the defendants being under an obligation to continue as tenants under the plaintiffs on the basis of the lease and to pay rent accordingly. **MOHENDRA NATH BISWAS v. SHYAM LAL BANERJEE** (1912)

18 C W N 997

SETTLEMENT PROCEEDINGSSee **WAJIB UL ARZ**

I L R 45 Calc 793

SEWER PIPE

See **DOMBAY CITY MUNICIPAL ACT** (Bols Act III of 1893) ss 30 and 3 (a) (x) and (y) I L P 43 Bom 122

SHAFI

— right of—

See **MAHOMEDAN LAW—PRE EMPTION**
I L R 41 Calc 943

SHAFEE MAHOMEDANSSee **WAKF** I L P 37 Bom 417**SHAFI KHALIT**See **PRE EMPTION** 4 Pat L J 420**SHAH JOG HUNDI**

See **HUNDI SHAH JOG**
I L R 39 Bom 513

See **NEGOTIABLE INSTRUMENTS ACT 1881**
s 118 I L R 1 Lah 429

SHARE

— suit by a Mahomedan for a definite share of estate of an intestate—

See **LIMITATION ACT 1908** Sec I, Arts 123 and 141 I L R 45 Bom 519

SHARE CAPITAL

See **PROVIDENT INSURANCE**
I L R 42 Calc 300

SHARE CERTIFICATESSee **SHARES** I L R 46 Calc 331 342**SHAREHOLDER**See **COMPANIES ACT 1882—**

ss 23 45 61 I L R 56 Bom 557

s 40 58 I L R 42 Bom 595

s COMPANY I L R 42 Bom 284

s COSTS I L R 39 Bom 383

See **PREEMPTION SHAREHOLDERS**

— petition by—

See **COMPANY** I L R 39 Bom 16**SHARE OF ESTATE**

See **SALE FOR AFRAYS OF FRANCE**
I L P 41 Calc 1072

SHARESSee **EXCESS PROFITS DUTY ACT**
25 C W N 845See **IMPERFECT GIFT**
I L R 48 Calc 298See **PRESIDENCY BANKS ACT** (XI of 1860)
s 23 I L R 45 Bom 133

— allotment of—

See **COMPANY** I L R 36 All 412

— pledge of—

See **ADMINISTRATION**
I L R 45 Calc 600See **COMPANY** I L R 42 Bom 159

— purchaser of at a Court Sale—

See **COMPANIES ACT** (VII of 1913) s 38
I L P 41 Bom 16

— registration of—

See **COMPANIES ACT** (VII of 1913) s 32
I L R 41 All 619

— sale of—

See **COMPANY** I L R 36 All 365See **DAMAGES** I L R 43 Calc 483

1 ———— *Transfer by a person in possession—Judicial possession—Possession for a particular purpose—Contract Act (IX of 1872) s 108—Bond fide purchaser for value—Share certificate with blank transfer deeds whether negotiable—Usage* The defendant Bank bought 100 shares for one of their constituents which consisted of the share certificate and a blank transfer deed signed by the registered holder and a blank transfer deed over by the officer in charge of their Safe Custody Department to the Head Clerk of that Department in usual course. The clerk fraudulently disposed of them to Sham Das Sil who again sold them to other persons. The plaintiff firm bought them from the defendant firm of Bajrath Champalall. Both the plaintiff firm and the defendant firm were bond fide purchasers for value. Held that the Head Clerk was not in possession of the shares within the meaning of s 108 of the Contract Act and that the plaintiffs acquired no title in them. Held also that the share certificates with blank transfer deeds signed by the registered holder were not negotiable instruments. **ROOP CHAND JANKINRAM v. THE NATIONAL BANK OF INDIA LTD** (1918)
I L R 45 Calc 342
22 C W N 1049

2 ———— *Transfer by a person in possession—Contract Act (IX of 1872) s 108—Obtaining possession by fraud—Transfer to a bond fide purchaser for value—Negotiability by custom—Share certificate with blank transfers whether negotiable—Negotiability by estoppel—Goods* meaning of—Remedy of the bond fide purchaser for value—Costs. Share certificates accompanied by transfer deeds endorsed in blank by the registered holder are not negotiable. Before an instrument can be considered negotiable it must be in a form which renders it capable of being sued on by the holder of it pro tempore in his own name and it must be by the custom of trade transferable like cash by delivery. The right principle to adopt with reference to such blank transfers duly signed by the registered holder of the shares is to hold that each prior holder confers upon the bond fide holder for value of the certificate for the time being

SHARES—con d

an authority to fill in the name of the transferee and is estopped from denying such authority and to this extent and in this manner but no further he is estopped from denying the title of such holder for the time being. The plaintiff firm claimed to be the owners of 500 shares which they purchased from the defendant L on the 7th May 1917 and got their names registered in the books of the Company. At the time of the sale the plaintiff obtained possession of the certificate for the said shares and a blank transfer deed signed by the registered holder. The defendant L bought the said shares from one U who fraudulently obtained possession of them from the defendant S who was the owner of the said shares. It was not clear what was the nature of the transaction between the defendants L and U. The purchase by the plaintiff was *bona fide* and for value. *Held* that the plaintiff did not acquire any title to the said shares and were entitled to the value they paid for them from the defendant L with interest. **HAZARI MAL SHOKANLAL v SATIS CHANDRA (MORARJI) (1918)**

I L R 46 Calc 331
22 C W N 1038

' SHAWLS MEANING OF

Meaning of parcel—Railway Administration Act (IX of 1900) s 75 and Sch II (m)—Value of contents of parcel if to be declared—Shewn—Dmng—suit or—Costs
The term shawls in S b III cl (m) of the Railways Act refers to Indian shawls of special value and cannot be taken to apply to articles of inferior value such as *shawls*. **SARAT CHANDRA BOSE v SECRETARY OF STATE FOR INDIA (1919)**

I L R 39 Calc 1029

SHERAIT

See EXECUTION OF DECREE

I L R 39 Calc 298
I L R 42 Calc 440

See HINDU LAW—ENDOWMENT

See HINDU LAW—SHERAIT

See LAND ACQUISITION

I L R 39 Calc 33

See LIMITATION I L R 42 Calc 244

See PARTIES I L R 46 Calc 877

See SHERAIT

appointment of—

See RELIGIOUS TRUST

I L R 40 Calc 251

It may be permitted to reside in house provided for idol—

14 C W N 1026

power of—

See HINDU LAW—ENDOWMENT

I L R 38 Calc 526

power of to grant permanent lease

See HINDU LAW—ENDOWMENT

I L R 40 Mad 709

Removal of—

See RELIGIOUS ENDOWMENT

I L R 48 Calc 1019

title of—

See PROVINCIAL SMALL CAUSE COURTS ACT s. 23 15 C W N 666

SHERAIT—contd

1 *Suit on security bond executed in favour of sherait of idol if maintainable by succeeding sherait—Limitation Act (IX of 1877) Art 132* The Plaintiff as sherait sued the Defendant who was tehsildar of the debutter estate for accounts on a security bond executed by the Defendant in favour of the former sherait. *Held* that the contract entered into between the Defendant and the former sherait did not terminate on the death of the latter but could be sued upon by the present sherait. **DASARATHI CHATTERJI v ASIT MOHAN GHOSH SAULJK 24 C W N 879**

2 *Successor of a sherait when bound by a decree passed against the sherait—Limitation Act (X of 1877) Sch II Art 124—Hereditary office of a sherait—Adverse possession of the office* The widow of a sherait of a certain temple who succeeded her deceased husband in that office mortgaged some land as also her interest in the temple income to one J who obtained a decree on his mortgage on the 24th of September 1880. In execution thereof he put up the temple income for sale purchased it himself and obtained delivery of possession in 1892. The widow and the next reversioner then brought a suit to set aside the sale on the ground that the property sold was not saleable. That suit was withdrawn with liberty to bring a fresh suit. The widow alone then brought another suit which was dismissed on the ground that it was barred by s 214 of the Code of Civil Procedure (Act XIV of 1882). She having died the reversioner brought a suit against the said J on the 3rd of January 1910 for a declaration that he was entitled to the temple income inasmuch as it was not saleable. On objections taken by the defendant that the suit in so far as it related to the temple income was barred by the rule of *res judicata* and by limitation. *Held* that inasmuch as there was no collusion or dishonesty about the former suits and as in one of them the plaintiff himself was a party the decree passed in the suit against the sherait (widow) would bind her successor (the plaintiff) and that therefore the present suit was barred by the rule of *res judicata*. *Held*, further that Art 124 of Sch II of the Limitation Act applied to the case and that as the suit was brought more than twelve years after the date when the defendant obtained possession of the hereditary office by receipt of the temple income it was barred by limitation. **JHARULA DAS v JALANDHAR TRAKET (1911)** I L R 39 Calc 837

3 *Alienation power of—Dedicated property acquisition of—Land Acquisition Act (I of 1894) s 31 cl (2)—Compensation by withdrawal of—The position of a sherait is analogous to that of the manager of an infant. He is entitled to possess and to manage the dedicated property but he has no power of alienation in the general character of his rights. s 31 cl (2) of the Land Acquisition Act applies to a sherait since he is not competent to alienate the land.* **KAMINI DEBI v PROMOTHA NATH MOOKERJEE 13 C L J 597 followed RAMPRASANK NANDI CHOWDHURY v SECRETARY OF STATE OF INDIA (1913)** I L R 40 Calc 895

4 *Lease by a previous sherait in excess of his authority suit for cancellation of by succeeding sherait—New cause of action if accrues to each succeeding sherait—Adverse possession when commences and if interrupted by*

SHEBAIT—contd

death of original shebait—Limitation The effect of a lease granted by a *shebait* in excess of his authority is not to give each succeeding *shebait* a new cause of action for setting aside the alienation and adverse possession commences from the date of the original disposition of the property and is not interrupted by the death of the original *shebait* and the succession of the new *shebait*. Each succeeding *shebait* does not get a new start for the purpose of limitation. *Damodar v Lakhon* L R 37 I A 147 I L R 37 Cal 855 followed. Where the plaintiff as *shebait* of a Thakur to which office he succeeded in 1903 sued for declaration of title to land for recovery of possession and for cancellation of a *pulni* lease granted on the 9th September 1848 by a previous *shebait* who died in 1890 on the ground that the alienation was without legal necessity and in no way beneficial to the endowment and therefore not binding upon the endowed property in his hand. Held that the suit was barred by limitation the title to annul the *pulni* was extinguished in 1867 at the latest. No substantial distinction in principle can be recognised between a *pulni* and a sale. *Madhu Sudan Mandal v Radhika Prasanno Das* (1912)

17 C W N 873

■ *Purchasing debutter property at Court sale in the denami of his son for adequate price—If can keep his purchase—Fiduciary relationship purchase by person standing in valid if full disclosure made to cestui que trust—Secret purchase in another's name invalid* The grounds for removing a *shebait* from his office may not be identical with those upon which a trustee would be removed in England. The close intermingling of duties and personal interest which together make up the office of *shebait* may well prevent the closeness of the analogy but as part of the office it is indisputable that there are duties which must be performed that the estate does need to be safeguarded and kept in proper custody and if it be found that a man in the exercise of his duties has put himself in a position in which the Court thinks that the obligation of his office can no longer be faithfully discharged that is sufficient ground for his removal. A trustee who is not a trustee for sale may acquire from beneficiaries who are *sui juris* an estate in which they are interested but he can only do this if he has made the fullest disclosure to them of all the relevant and material facts within his knowledge affecting or that might affect the value and condition of the estate and the parties are at arm's length the *cestui que* trust knowing that he is dealing with the trustee. Otherwise the purchase is bad and it is bad because any person who occupies a fiduciary relationship may liable to acquire information about the trust estate which he is not permitted to use for his own benefit. *Raja Peara Mohan Mukherji v Monohar Mukherji*

26 C W N 133

6 — *Rights of a shebait of an idol to impose restrictions on the powers of subsequent shebaits—Acceptance of benefits conferred by a gift by the shebait—Effect of such acceptance on the restrictions imposed by the gift* A Hindu governed by the Dayabhaga School established certain family deities but imposed no condition as to their location. His son acquired a piece of land and erected thereon

SHEBAIT—concll

a separate Thakurbari for one of the deities. By a declaration of trust he declared that he his heirs executors representatives and administrators should for ever hold the land to and for the use of the deity that the Thakur should be located and worshipped in the premises and that the Thakur should not on any account be removed therefrom unless and until a similar or better Thakurbari was built. The grandsons of the founder separated and the palas of worship were divided. One of the said grandsons not having got any part of the family house removed elsewhere and built himself a separate residence, where he wanted to remove and worship the Thakur during his turn of worship but was prevented by his co-sharers on the strength of the above declaration. Held that the founder of the idols having imposed no condition as to their location it was not open to any subsequent *shebait* to impose restrictions which would better those who subsequently were heirs of the founder became *shebaits*. The said grandson is therefore entitled to remove the Thakur from the Thakurbari of his own house during his term of worship. *Promotho Nath Mullick v Pradyumna Kumar Mullick* 26 C W N 909

SHEBAITI RIGHTS

See RELIGIOUS ENDOWMENT

3 P.L. L J 307

SHEIKH ANSARIS TRIBE OF

a Custom

I L R 99 Cal 418

SHERIFF'S RIGHT TO POUNDAGE

See POUNDAGE I L R 37 Cal 649

Sheriff's Poundage when payable—Whether it is payable when claim is paid up upon compromise after an attachment before judgment—High Court Rules Ch XLI before judgment—High Court Rules Ch XLII meaning of r 77-28 E.L. Ch 4 Levy meaning of A filed a suit against B for about 8½ lacs and subsequently applied for attachment before judgment of certain moneys belonging to B lying with the Bank of Bengal and got an order for the interim attachment which was effected by the Sheriff. Thereafter a settlement was arrived at and the order was discharged and the interim attachment was by consent withdrawn each party paying his own costs. The present suit was filed by the Sheriff of Calcutta claiming Rs 21,000 as poundage due to him as Sheriff of Calcutta by reason of the interim attachment before judgment under the High Court Rules Ch XLII. Held that the Sheriff was not entitled to any poundage under the said rule. A claim to poundage by a Sheriff must be under the express terms of a Statute or Order. He has no common law right to reward for executing a writ. *A D Pichard v R B Janaki Nath Roy* 26 C W N 613

SHETSANADI LANDS

Rules framed under Act XI of 1872 (Bombay)—Government continuing the shetsanadi lands to the family of the shetsanadi who is discharged by Government without any fault on his part—Continuance on condition of paying full survey assessment on the lands—Subsequent resumption of the lands by Government On the death in 1865 of the then shetsanadi, one B Government

SHETSANADI LANDS—con d

appointed one I as the new *shetsanadi* but under the rules framed under Bombay Act XI of 1802 Government continued the *shetsanadi* lands to the family of B on condition of their paying full survey assessment on the lands. The remuneration of I was made payable out of the extra assessment recovered in 1900. Government resumed the lands and handed them over to I for his services. *Held* that both the order passed in 1860 and the action taken under the rule framed under Bombay Act XI of 1802 had in law the effect of converting the land from a *Shetsanadi* *raita* into a *rayasdari* holding and investing the holder of the land with the rights of an ordinary occupant entitled to III so long as he paid the survey assessment. *Held* also that the proceedings of 1900 were on the supposition that what was done in 1860 on B's death had the effect of continuing the lands in dispute as one reserved for *shetsanadi* service but that was not its effect and the proceedings in question were *ultra vires*. **YELLAPPA v. MARLING GADPA (1910)** I L R 44 Bom 580

SHIAS

See **MAHOMEDAN LAW—GIFT**
I L R 36 All 289
See **MAHOMEDAN LAW—WAF**
I L R 38 All 431
See **MAHOMEDAN LAW—GUARDIAN**
I L R 36 All 466

SHIP

See **ARREST OF SHIP**
I L R 42 Calc 85
See **CONFISCATION** I L R 44 Calc 334
See **PRIZE COURT** I L R 44 Bom 61

SHIPOWNER

—— liability of—

See **CHARTER PARTY**
I L R 41 Bom 119

SHIPPING

See **ARREST OF SHIP**
See **CONFISCATION**
See **MARINE INSURANCE**
See **MERCHANT SEAMAN ACT (I of 1839)**
s 11 CL (d) I L R 40 Bom 558
See **PRIZE**
See **SALE OF GOODS**
I L R 45 Calc 28
See **CONTRACT** I L R 41 Calc 670

SHIPPING DOCUMENTS

See **C I F CONTRACTS**
I L R 42 Bom 473

SHIPPING ORDERS

See **CONTRACT ACT (I of 1872)** ss 56
GJ I L R 40 Bom 529

SHIVARPANA

See **CIVIL PROCEDURE CODE 188** s 539
I L R 36 Bom 29

SHORT DELIVERY

See **CARRIERS** I L R 40 Calc 311
See **RAILWAYS ACT** s 140
14 C W N 863

SHROTRIEMDAR

See **MADRAS ESTATES LAND ACT (I of 1909)** s 8 EXCEP
I L R 38 Mad 843

SHUDRAS

See **HINDU LAW—SUDRAS**
See **HINDU LAW—INHERITANCE**
I L R 44 Bom 321, 553
See **HINDU LAW—LEGITIMACY**
—— Adoption by widow though un-
chaste valid in Bombay—
See **HINDU LAW** I L R 45 Bom 459
—— Succession of illegitimate daughter
to her mother in the absence of any nearer
heir—
See **HINDU LAW** I L R 45 Bom 557

SICCA RUPEES

See **SUIT FOR RENT**
I L R 48 Calc 347

SIGNATURE

See **TRANSFER OF PROPERTY ACT (IV of 1882)** s 59 I L R 41 Bom 384
—— genuineness of—
See **SPECIFIC PERFORMANCE**
I L R 38 Calc 805

SIKKIM

—— Court of the Political Agent of—
See **POLITICAL AGENT SIKKIM**
I L R 38 Calc 859
15 C W N 992

SIMANADARS

—— *Chaukidari Chakaran Land Act (Beng VI of 1870)* s 1 whether appli-
cable—Bengal District Gazette reference in by
High Court The High Court is entitled to use the
Bengal District Gazetteer as a book of reference.
The *Chaukidari Chakaran Land Act* applies to
simanadars as the Gazetteer for Bankura shows
that in thana Indas (where the lands in suit are
situate) the *simanadars* perform those duties
which are described in s 1 of the Act. **LALU**
DOMP v. BEJOY CHAND MAHATAP (1915)
I L R 43 Calc 227

SIMILARITY OF NAMES

See **TRADE NAME** I L R 40 Calc 570

SIMPLE INTEREST

See **PERCENT** I L R 42 Calc 546

SIMPLE MORTGAGE

See **ADVERSE POSSESSION**
I L R 39 Mad 811
I L R 44 Calc 425

SIMULTANEOUS ADOPTION

See **HINDU LAW—ADOPTION**
I L R 38 Calc 694
I L R 39 Calc 582

SINGLE JUDGE

See **HIGH COURTS ACT (21 of 1851)** s 104 ss 29 AND 30
I L R 39 Bom 604
—— judgment of—
See **LETTERS PATENT APPEAL**
I L R 43 Calc 90

SINGLE JUDGE—contd

order by—

See APPEAL I L R 42 Calc 735
I L R 44 Calc 804

revision by—

See SANCTION FOR PROSECUTION
I L R 44 Calc 818

ruling of—

See REGISTRATION ACT 1908 s 17
I L R 1 Lah 25

SIR LAND

See AOTA TENANCY ACT (II OF 1901)—

SS 19 AND 20 I L R 32 ALL 383
S 164 I L R 36 ALL 223

See GROVE LAND I L R 42 ALL 483

mortgage of—

See CENTRAL PROVINCES TENANCY ACT
(XI OF 1898) s 45 SUB S (1) (6)
I L R 45 I A 179

See ESTOPPEL I L R 48 Calc 591

See MORTGAGE I L R 33 ALL 434

Mortgage by proprietor having such land and sale in execution of mortgage decree—A person whose proprietary rights in land comprised Sir land mortgaged his entire interest therein including the right in the Sir land. In the decree for sale instead of including the cultivating rights in Sir should comprise the property with all actual and reputed rights as detailed in the mortgage. Held that in the face of the decree it was not open to the mortgagor to urge that the rights of the mortgagee to sell the Sir lands were taken away by the decree. GULAB SINGH v. DILWAI BHADUR BALLABH DAS
25 C W N 839

SISTER

See BURNESSE LAW—INHERITANCE
I L R 41 Calc 887

See HINDU LAW—SUCCESSION
I L R 39 Calc 319

Succession to self acquired property—

See CUSTOM (SUCCESSION)
I L R 1 Lah 433
I L R 2 Lah 98

Succession of Muhammadan Rajput Jullundar—

See CUSTOM (SUCCESSION)
I L R 1 Lah 1

Whether an heir—

See HINDU LAW (SUCCESSION)
I L R 1 Lah 588 608

SISTER'S SON

See HINDU LAW—SUCCESSION
I L R 30 Calc 319

SLANDER

See DEFAMATION

SLANG TERMS

See MISDICTION I L R 45 Calc 557

SLAUGHTERING FEES

See MADRAS DISTRICT MUNICIPALITIES
ACT 1884 s 191
I L R 38 Mad. 113

SLAVERY BOND

See BOND I L R 42 Calc. 12

SMALL CAUSE CASE

See APPEAL I L R 40 Calc. 537

SMALL CAUSE COURT

See CIVIL AND REVENUE COURTS
I L R 40 AD 51

See CIVIL PROCEDURE CODE (ACT V OF 1903) s 24 I L R 38 Mad. 95

See COMPENSATION I L R 44 Calc. 87

See GENERAL CLAUSES ACT 1897 s 3 (25) I L R 33 ALL 155

See PROVINCIAL SMALL CAUSE COURTS ACT 1897

See VATAN I L R 37 Bom. 100

appeal from order of—

See CRIMINAL PROCEDURE CODE, 1898 s 195 4 Pat L J 609

Decree of—amendment—after ratification to High Court rejected—

See AMENDMENT OF DECREE
I L R. 1 Lah 340

Error by—

See HIGH COURT JURISDICTION OF
I L R 38 Calc 13

jurisdiction of—

See BHADAB 23 C W N 814

new trial—

See PRESIDENT'S SMALL CAUSE COURTS ACT (XV OF 1889) s 39
I L R 38 Bom 59

Suit by Zamindar to recover part of price of trets sold by tenant—

See PROVINCIAL SMALL CAUSE COURTS ACT 1897 SCR II Art 13
I L R 42 ALL 448

suit not cognizable by—

See CIVIL PROCEDURE CODE (ACT V OF 1903) O XXI P 91
I L R 35 Bom. 99

1. Suit by mortgagor against mortgagee for mere profits. A suit by a mortgagor against the mortgagee for the profits for the period during which he held wrongfully possession of the property is maintainable in a Small Cause Court. Art 31 of Sch II of the Provincial Small Cause Courts Act is no bar to a suit being instituted in a Small Cause Court. BHARI DUTT v. SHRIHAI AINUDDY (1910) 14 C W N 1001

2. Provincial Small Cause Court if may decide title. Procedure—Mortgagee of recoverable usufruct profits of mortgagor. What must be proved—Petty case. Pecuniary relief not an unfailing test. In a Small Cause Court the Judge is no doubt competent to decide the question of title upon which the claim depends but if he does so it is incumbent on him to decide the question correctly and according to law. The maxim de minimis non curat lex should not be applied to Small Cause Court suits for damages in respect of immovable property for the importance of the case to the parties is not to be measured by the pecuniary limit of their claim. Panna

SMALL CAUSE COURT—contd

City & Parnit I L R 21 Bom 250 referred to
ELABI BUKH MANDAL & RAM NARAYAN CHOUE
 (1911) 16 C W N 283

8 ————— *Jurisdiction of*
to try suit for specific sum of money involving possible
examination of account—Civil Procedure Code (Act
V of 1908) rr 6 & 7 O XLVI—Circumstances neces-
sitating action under The plaintiff sued to recover
 from the defendant a certain aggregate amount
 made up by sums due on account of salary and
 house rent as also money borrowed by the defend-
 ant. The plaintiff stated that if the correctness of
 the amounts was questioned the amount due may be
 determined on examination of the accounts. The
 suit was filed in the Court of the Munsif who
 returned the plaint for presentation to the Court of
 Small Causes where on being presented the plaint
 was returned on the ground that Court had no
 jurisdiction. The plaint on being again presented
 before the Munsif was returned a second time.
Held that a suit for the recovery of a specific sum
 of money does not assume the character of a suit
 for accounts merely because in the determination
 of the question in controversy accounts may have
 to be examined and the present was not a suit for
 accounts and was cognizable by the Court of Small
 Causes. That the Small Cause Court Judge in-
 stead of returning the plaint should have taken
 action under r 6 or r 7 O XLVI and submitted the
 record to the High Court with a statement of
 his reasons for the doubt as to the nature of the
 suit. **KSHETRA NATH BACHERJI & KALIDAS DASI**
 (1916) 21 C W N 784

SMALL CAUSE COURT DECREE

S & CIVIL PROCEDURE CODE 1908 s 151
I L R 34 Bom 135

See FRATD I L R 48 Calc 298

S & PRESIDENCY SMALL CAUSE COURTS
ACT 1892—

s 43 I L R 45 Bom 1048

s 48 I L R 47 Bom 972

See PROVINCIAL SMALL CAUSE COURTS

ACT 188 s 1 I L R 44 All 438

S & SECOND APPEAL

I L R 45 Bom 223

SMALL CAUSE COURT SUIT

See CIVIL PROCEDURE CODE 1908—

s 24 I L R 39 All 214

I L R 40 All 525

s 110 I L R 39 All 101

See PROVINCIAL SMALL CAUSE COURTS
ACT (IX OF 1887)—

SEC II ART 8 I L R 41 Bom 367

SEC II ART 131

I L R 40 All 142

SS 23 AND 27 I L R 38 Bom 190

S 20 I L R 41 All 42

Dismissed for default—
Application for restoration of suit—Circuit—Civil
Procedure Code (Act V of 1908) O IX rr 4 & 9
O XLVII r 1—Provincial Small Cause Courts
Act (IX of 1887) s 1. Where a Small Cause
 Court suit is dismissed for the plaintiff's default in

SMALL CAUSE COURT SUIT—contd

the presence of the defendant and an application
 made under O IX rr 4 and 9 for the restoration
 of that suit is also dismissed for the plaintiff's
 default in the presence of the defendant's pleader
 and where again an application is made under
 O IX r 9 for the rehearing of the case and an
 other application for treating it as an application
 for review. *Held* that an application under O IX
 r 9 lay. O XLVII r 1 applied to all orders of
 the Court which may be reviewed under certain
 circumstances. *Held* further that the provisions
 of s 17 of the Provincial Small Cause Courts Act
 did not apply to miscellaneous applications.
Dejyan Vichha Bibee & Hemant Kumar Ray 19
C W N 753 followed. **BIRIN BEHARI SHARMA &**
ABDUL BAKIR (1916) I L R 44 Calc 950

SOCIETY

See PROFIT & PREYDRE
2 Pat L J 323

SOHAG GRANT

See BABUANA GRANT
See HINDU LAW—CUSTOM

SOLDIER

—decree against a—
See ARMY ACT (44 & 45 Vic c 58)
ss 145 190 I L R 43 Bom 368

SOLEHNAMA

See LEASE I L R 37 Calc 803
 —construction of—
See LIMITATION I L R 48 Calc 870

SOLICITOR

—duty of—
See GIFT I L R 39 Calc 933

Professional misconduct—Proceeding to strike off from Rolls—Con-
 tempt of Court pursuing remedy in Criminal Court
 when Supreme Court refused civil remedy having
 disbelieved information of amounts to Forgery
 striking out names of witnesses named by solicitor
 after informing responsible officer—Intent to defraud
 if any—Bad faith—Right to be heard on matters
 relating to professional misconduct Where a
 plaintiff who has been refused a warrant for the
 detention of the defendant by a Civil Court straight-
 way starts a criminal process on the same subject
 matter and by means of allegations to which the
 Civil Court attached no credit obtains his warrant
 from a different Court almost as a matter of course
 he undoubtedly runs several risks of a serious
 character. He is not however restricted by law
 to a single form of remedy. He may pursue all
 the legal remedies appropriate to his grievance and
 his conduct does not necessarily involve any pun-
 ishable contempt of the Civil Court whatever may
 be its other consequences. Where in such a case
 the arrest by warrant of the Criminal Court was
 obtained without getting the necessary order of Gov-
 ernment and it was executed but the prisoner was
 then discharged on the ground that the warrant
 was in excess of the Magistrate's jurisdiction and
 it appeared that the Magistrate was not misled
 into issuing the warrant by any concealment or
 deceit on the part of the applicant but that it
 might have been due to the Magistrate's own in-

SOLICITOR—contd

advertence and there was no evidence to show that the applicant did not believe in the justice of his claim and did not so instruct the solicitor who acted for him in the matter. *Held* that the conduct of the solicitor though it might from other points of view be shown to be open to strong animadversion could not in the absence of proof that the proceedings were tainted by his fraud be held to constitute contempt of Court nor did it show bad faith on the part of the solicitor. Where two persons on being served with subpoenas taken out by the solicitor on behalf of certain accused persons stated that they knew nothing of the case and thereupon the solicitor took back the subpoenas and mentioned to a responsible Court officer that he wanted the names of witnesses to be substituted and on his making no objection struck out their names and substituted those of two other persons in their place. *Held* that there being no thing to show that the intent of the solicitor in so doing was to defraud the facts did not establish the charge of forgery brought against him who at most had committed an irregularity and for which adequate punishment. That an order striking the solicitor's name from off the Rolls on account of the said two alleged offences of contempt and for forgery could not in the circumstances be maintained. References in the order to the solicitor's conduct in other professional matters when no such matters were specified in the information before the Court and upon which the solicitor had not been heard could not be relied on against him. *In the matter of TAYLOR* 18 C W N 386

SOLICITOR'S LIEN FOR COSTS

See COSTS

I L R 43 Cal 678
I L R 46 Cal 1070

Practice—Dissolution of partnership—Assess in hands of receiver—Judgment creditor—Charging order—Solicitor's lien for costs. The rule at common law that a solicitor is entitled to a lien for his costs on property recovered or preserved by his exertions has always been followed by this Court and where there are suits in a partnership in the hands of a receiver appointed in a partnership suit the solicitors engaged in that suit are entitled to ask for a charge on those assets in priority to the creditors of the partnership. *Rida v Thorne* [1902] 2 Ch 344 followed. Where a plaintiff has obtained a decree against a partnership firm the available assets of which are in the hands of a receiver appointed in a previous partition against those assets but to ask the Court for a charging order and to undertake to deal with the charge according to the order of the Court. *Kewney v Attrill* (1 Ch D 345) followed. *A HAJI ISMAIL AND CO v RABABAT* (1909) I L R 34 Bom 484

Charge of Solicitor—Inspection of documents—Administration suit. The right to be exercised by a Solicitor claiming a lien largely depends upon the circumstances under which he had ceased to act for his client the test being whether the Solicitor has discharged himself or has been discharged by the client. The obligation on the Solicitor to give inspection of and to produce documents in his possession over which he has a lien in an administration action is confined to those cases where they are essential to the deter-

SOLICITOR'S LIEN FOR COSTS—contd

mination of those questions which arise in the normal administration proceedings when the estate is being actually administered. *Boughton v Boughton* 23 Ch D 169 and *In re Capital Fire Insurance Association* 24 Ch D 408 considered. *AISHABIRI v AHMED BIN ESSI* (1910) I L R 35 Bom 352

SOLVENT COMPANY—

See COMPANY (IN LIQUIDATION)

I L R 1 Lab 368

SON

See HINDU LAW—ADOPTION

I L R 42 Bom 547

after birth—Effect of—

See HINDU LAW I L R 1 Lab 108

See LIMITATION ACT 1908 s 8

I L R 1 Lab 558

birth of subsequent to the execution of the will—

See HINDU LAW—WILL

I L R 38 Mad 369

death of, before the testator—

See HINDU LAW—WILL

I L R 38 Mad 369

liability of—

See HINDU LAW—DEBT

I L R 39 Cal 802

See HINDU LAW—JOINT FAMILY

See HINDU LAW—SURETY

I L R 39 Cal 843

See MALABAR LAW

I L R 38 Mad 527

See MORTGAGE I L R 40 Cal 342

Locus standi of in deceased father's insolvency proceedings—

See INSOLVENCY I L R 38 Cal 87

of a co-obligor (status of)—

See MAHOMEDAL LAW—LEGITIMACY

I L R 48 Cal 259

Succession by—to office and property of granthi Golden Temple, Amritsar—

See CUSTOM (RELIGIOUS INSTITUTIONS) I L R 1 Lab 511 540

SONTAL PARGANAS

See PRADHAN

5 Pat L J 656

See SONTAL PARGANAS ACT

1

High Court Jurisdiction of—Suits exceeding Rs 1000 in value—Sontal Parganas Civil Rules 1905 r 29—Sontal Parganas Act (XVII of 1855) s 1 c (1) and 2—Sontal Parganas Settlement Regulations (III of 1872) s 27—Sontal Parganas Justice Regulation (I of 1893) s 6—Civil Procedure Code (Act I of 1908) s 115—The Charter Act (4 & 25 Vic c 104) s 15. In a suit in which the matter in dispute exceeds Rs 1000 the High Court is not debarred by anything in the local Acts and Regulations of the Sontal Parganas from revising the proceedings of the Subordinate Judge who is subject to the powers of superintendence over the subordinate Courts as contained in the Charter and an order

SONTHAL PARGANAS—contd

by the Subordinate Judge adjoining a mortgage sale pending an enquiry directed to be made by the Deputy Commissioner may be revised by the High Court. The High Court however cannot interfere with an order of the Deputy Commissioner directing an enquiry or with an enquiry by the Sub-divisional Officer. *Dungaram Marwary v Paykashore Deo* 1 L R 18 Cal 133 followed *Taj Ram v Harshulal* 1 L R 1 All 101 referred to *SARDHARI SAR v HUKTM CHAND SAR* (1914)

1 L R 41 Cal 876

2 ———— *Mortgage of land in not completely settled—Suit in Civil Court at Bhagalpur on mortgage of land—Limits of Civil Court's Jurisdiction—Exclusive jurisdiction of special officers appointed by Lieutenant Governor—Stipulation in bond that suit might be instituted at Bhagalpur—Court having jurisdiction in Sonthal Parganas if includes Civil Courts at Bhagalpur—Sonthal Parganas Regulation III of 1870 (read with Act XXXVII of 1885 and Act V of 1887) ss 5-6—Interest—usury rules enforceable by all Courts Sonthal Parganas Justice Regulation (3 of 1893) s 9—Civil Procedure Codes (Act VIII of 1859 Act XIII of 1861 Act V of 1877 Act XIV of 1887) how far applicable in Sonthal Parganas—Civil Courts Acts (Act VI of 1871 and Act VII of 1887) how far apply in Sonthal Parganas—Schedule Districts Act (XII of 1874) if applied to Sonthal Parganas—Jurisdiction objection to taken at a late stage when entertainable Held that on 20th June 1904 the date on which the present suit was instituted in the Subordinate Judge's Court at Bhagalpur to enforce a mortgage of properties two thirds of which was in the Sonthal Parganas no suit could lie in any Court established under the Civil Courts Act of 1871 or 1887 in regard to any land or interest in or arising out of any land or for the rents or profits of any land but such suits must have been brought under s 5 of Sonthal Parganas Regulation of 1872 before the Settlement Officers or Courts of officers appointed by the Lieutenant Governor of Bengal under s 2 of the Sonthal Parganas Act 1870 and the Sonthal Parganas Justice Regulation of 1893 Part II so long as the land had not been settled and the settlement declared by a notification in the Calcutta Gazette to have been completed and concluded. That as it appeared that portions only of the mortgaged land had been settled and notification made prior to the institution of the suit of the completion of the settlement in respect of such portions only the suit came within s 5 of the Sonthal Parganas Regulation of 1872 and the Subordinate Judge of Bhagalpur had no jurisdiction to entertain it. The provision in s 6 of that Regulation which places all contractual stipulation as to compound interest in a position of non enforceability and limits statutorily the total interest which can be decreed on any loan or debt is not one of procedure but of substance and applies to all Courts having jurisdiction in the Sonthal Parganas and acting under and by virtue of such jurisdiction. All Courts having jurisdiction in the Sonthal Parganas in s 11 do not refer only to Courts locally situated in the Sonthal Parganas and dealing with matter purely local. A stipulation in the mortgage bond that the mortgagees might enforce it in the Court at Bhagalpur was inoperative as the parties could not by consent give the Court jurisdiction thereby nullifying the express prohibition of s 5 of the Regulation of 1872. The Civil Procedure Codes of*

SONTHAL PARGANAS—contd

1861 1877 and 1882 applied to suits cognizable in the ordinary Civil Courts and these since the enactment of s 9 of Reg V of 1893 were suits of which the value exceeded Rs 1000 and which were not excluded from their cognizance by amongst others the provisions of s 5 of the Regulation of 1872. *Quare* Whether the Civil Procedure Code was intended by the Notification of 19th August 1867 to apply to Courts held by officers appointed by the Lieutenant Governor of Bengal in those suits in which they were not required to try and determine the case according to the several laws and regulations prevailing in Bengal. *Scoble* The true interpretation of (1) of the Act XXXVII of 1885 (before its operation was modified by subsequent enactments and notifications) was that even suits on which the matter in dispute exceeded Rs 1000 in value were to be tried by the special officers appointed by the Lieutenant Governor but in trying and determining them they were to observe the general laws and regulations obtaining in Bengal. *Sorboji Roy v Ganesh Prasad Misser* 1 L R 10 Cal 761 doubted *MAHA PRASAD SINGH v RAMANI MOHAN SINGH* (1914)

L R 41 I A 197

1 L R 42 Cal 116

15 C W N 994

SONTHAL PARGANAS ACT (XXXVII OF 1885)

See SPECIFIC RELIEF ACT 1877

Pat L J 379

— s 1—

See JURISDICTION 1 L R 41 Cal 915

See SONTHAL PARGANAS

1 L R 41 Cal 876

— s 2—

See JURISDICTION 1 L R 42 Cal 116

SONTHAL PARGANAS JUSTICE REGULATION (V OF 1893)

— part II s 10—

See JURISDICTION 1 L R 41 Cal 116

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872)

See JURISDICTION 1 L R 41 Cal 915

See SPECIFIC RELIEF ACT 1877

Pat L J 379

See SONTHAL PARGANAS

1 L R 41 Cal 876

— s 5-6—

See JURISDICTION 1 L R 42 Cal 116

— s 6—

See EXECUTION OF DECREE

4 Pat L J 49

— ss 10-11—*Sonthal Parganas Settlement Rules No 21—Succession in joint held by Hindu goola—Local Custom if applies to Hindu immigrants—Point incidentally decided in settlement proceeding of res judicata* A finding of the Settlement Officer in a proceeding under the Sonthal Parganas Regulation III of 1872 which was not necessary for the purpose of the proceeding and was arrived at only incidentally does not operate as res judicata. R 27 of the Sonthal Parganas Settlement Rules under which resident relatives who have taken part in the management of the family joint are to be given preference as heirs is only applicable to

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872)—*contd*

ss 10 11—*contd*

suits before Settlement Officers The Pals was intended to meet the peculiar customs of the Sonthals and aborigines in the locality and does not apply to persons governed by the Hindu Law who have settled in the Sonthal Parganas **BASKI MANRIK : SUPHAL MAJHI (1913)**

18 C W N 333

ss 11 14, 25 25A—

1 *Record of rights effect of—Suit challenging record maintainability of—Special limitation—Limitation Act (IX of 1908) s 29 how far affects Regulation III of 1872—Minors how affected by the Regulation* The plaintiffs some of whom were minors sued the defendants for partition of lands held in common but not as joint family property In the record of rights prepared under Reg III of 1872 the defendants had been recorded as proprietor and *mokur aridar* in respect of the lands The suit was brought after three years from the date of the publication of the record. *Held*, that the policy of Regulation III of 1872 was to have a complete record of rights and interests in land in the Sonthal Parganas and to exclude the jurisdiction of Civil Courts except in certain matters provided for in the Regulation That the suit so far as it regarded the proprietary rights in the land was barred by limitation under s 25A of the Regulation That the Limitation Act is applicable to the Sonthal Parganas but s 23 of Act IX of 1908 saves all provisions of local laws as to limitation and does not therefore affect the three years rule under s 25A of the Regulation That the Regulation does not make any exception in favour of minors and the minority provisions of the general Limitation Act has reference to the periods of limitation prescribed in that Act That the notice provided by s 14 is to the people of the village irrespective of age or intelligence and as the law makes the record of rights conclusive proof of the rights and interests therein recorded the defendants could not be called upon to prove the service of the required notices **JANUKI PRASAD JHA v BABU LAL JHA (1914)**

19 W N 499

Effect of the Regulation on the jurisdiction of Civil Courts—Elements necessary for suit to come within s 25A—*Sikma ghatwals khorposh grant share in of a right of a zamindar or other proprietor* The plaintiff brought a suit for declaration of his title to a share in a certain mauza in the Sonthal Parganas which form d the subject of a *sikma ghatwals khorposh* grant and for registration of his name in the settlement records in respect thereof It appeared that rent was payable to the ghatwals and no land revenue was payable direct to the Government in respect of the land which was not free from Government revenue *Held* that the effect of ss 11 14 and 25 of Reg III of 1872 was that the jurisdiction of the Civil Courts was absolutely excluded except in cases specially provided for in s 23 That in order that the plaintiff's case should fall within the provisions of s 25A it was essential for the plaintiff to show that he was a zamindar or other proprietor and the interest in land like that claimed by the plaintiff did not come within the description of a right of a zamindar or other proprietor That the only remedy the plaintiff had was to apply to the Gov-

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872)—*contd*

ss 11 14—

ernment under s 25 of the Regulation to direct the revision of the record of rights **ANNO DEO v PARBATI KUMARI (1914)**

19 C W N 549

ss 11 25 25A—*Entry in record of rights operating as decree—Claim not expressly regulated by Settlement Court if open to investigation in Civil Court—Entry in record set up as plea in bar—What must be proved for entry to operate as res judicata—Proof that entry obtained by fraud* Where in a suit for rent instituted by the plaintiff in part as *remundar* and in part as *mokur aridar*, the defendants objected to the recovery of the rent alleged to be due to the plaintiff as *mokur aridar* on the ground that in the record of rights prepared and finally published under the Sonthal Parganas Regulation III of 1872 the defendants were recorded as *putndars* only *Held* that under s 11 of the Regulation the entry operated as a decree of a Civil Court That it was not open to the plaintiff to urge that as there was no express decision of the Settlement Court upon the question of the *dar mokur ar* status of the defendants the matter was open for investigation in a Civil suit inasmuch as it must be held that there was such a decision by implication *Held* however that it was for the defendant who pleaded the entry as a bar to establish the circumstances in which the decree was made and to prove conclusively that the decree does operate as *res judicata* That the defendants must prove that in the preparation and final publication of the record of rights the requirements of the statute had been fulfilled and it was open to the plaintiff to urge and prove that the entry which was to operate as a decree was obtained by fraud. **Ram Arjun Singh v Ram Runjan Chaudherbatty I L R 13 Calc 245 Nadar Chandkerbatty I L R 13 Calc 245 Singh v Chandra Sitor Sadhu I L R 15 Calc 765 Rajib v Lohani I L R 27 Calc 11 14 765 Rajib v Lohani I L R 30 Calc 369 relid tarini v Nundalal I L R 30 Calc 369 relid on Mozaffar Ali v Kali Prasad Saha (1913)**

13 C W N 271

s 27—

See SONTHAL PARGANAS I L R 41 Calc 578

SOVEREIGN PRINCE

suit against—

See CIVIL PROCEDURE CODE (Act V of 1909) s 60 I L R 88 Mad 635

SOVEREIGN RIGHTS

See ACT OF STATE I L R 30 Calc 615

See ASSUMPTION I L R 43 Calc 973

SPECIAL APPEAL

See SECOND APPEAL

Civil Judge of Ranchur—*Appeal to High Court—Regulation IV of 1872 s 99—Regulation XIII of 1830 s 5—Civil Procedure Code (Act V of 1909) ss 4 and 100* A special appeal on the grounds mentioned in s 100 of the Civil Procedure Code (Act V of 1909) lies to the High Court from the decision of the Civil Judge at Ranchur **RAMCHANDRA ANANDRAO v PATIL (1913)**

I L R 38 Bom. 340

Second Appeal in cases under Madras Rent Recovery Act VIII of 1865 s 69—*Civil Procedure Code (Act VIII of 1859) s 39—*

SPECIAL APPEAL—contd

Civil Procedure Code (Act VII of 1857) s 554—Concurrent findings of fact—High Court ignoring con current findings and deciding contrary to them on second appeal Although § 59 of the Madras Rent Recovery Act (VIII of 1865) only provides for a regular appeal (on law and fact) and there is no further appeal to the High Court from the decision of the District Judge on appeal from the Collector given by the terms of the Act itself yet under s 372 of Act VIII of 1859 which was the Civil Procedure Code in force when Madras Act VIII of 1865 was passed and which regulated the procedure of the Civil Courts in India outside the Presidency towns a special appeal lay to the Sudder Court from all decisions passed in regular appeal by the Courts subordinate to the Sudder Court and when the District Court was substituted for the Zillah Court and the High Court for the Sudder Court a special appeal lay from the District Court to the High Court. The terms of the latter Civil Procedure Code (Act VII of 1857) which was the Code in force when the suits out of which the present appeals arose were instituted are clear on the point that on appeal lies from the order of the District Judge to the High Court unless that right is taken away by express legislation or some express provision of law. And a second or special appeal to the High Court in cases arising under Madras Act VIII of 1865 has been held to lie in *Veeraswami v. Manager Pitapur Estate* 1 L R 45 Mad 518. The practice has been ever since the passing of the Act for such appeals to be preferred to the High Court and their Lordships would not be disposed to interfere with such a long standing practice even if they thought there was an implied rule against second appeals lying from the decisions of the District Judge with respect to adjudications under the Act by the Collector. Section 54 of the Code of Civil Procedure 1882 distinctly prohibits second appeals on questions of fact and confines the competency of the High Court to deal with law and procedure. Where therefore in a suit by landlord under s 9 of the Madras Act VIII of 1865 to enforce acceptance of a patta by his tenants and the sole question was whether on the evidence an arrangement which had been previously come to between the parties was permanent and the Collector and the District Judge concurrently found in the defendant's favour that it was permanent but the High Court on second appeal ignored that finding and held that the landlord was entitled to revert to a system of rates which had existed prior to such arrangement. Held that the High Court had acted in inadvertence of s 54 of the Code and had thereby assumed a jurisdiction which it did not possess and its decision was set aside and the case remitted to India. *Durga Choudhury v. Jewahar Singh Choudhury* 1 L R 18 Cal 23 s c L R 1 I 4 127 followed. *PANJ VEERATAGHAYLU v. VENKATA NARASIMHA NAIDU BAHADUR* (1911) 1 L R 37 Mad 443.

Second appeal in suit under Bengal Tenancy Act (VIII of 1885) s 106 109 4(3)—Civil Procedure Code (Act VII of 1857) s 554—High Court entertaining second appeals where no ground existed within s 554—Reversing evidence and deciding contrary to decision of Special Judge on facts—Disturbing findings of facts—Questions of law and fact S 100A (3) of the

SPECIAL APPEAL—contd

Bengal Tenancy Act makes applicable to an appeal to the High Court from the decision of a Special Judge the provisions of Chapter VIII of the Code of Civil Procedure 1882 and the right of appeal is therefore limited by the provisions regulating the right of appeal to the High Court from a subordinate Court contained in s 584 of that Code. The power as to the regulation of rents being dependent and consequent upon the alteration of the judgment on specified ground and only such grounds are permissible. Where therefore it was found that such an appeal to the High Court was not within any of the grounds in s 581 but that nevertheless the High Court had entertained the appeal reversed the decree of the Special Judge on questions of fact making suggestions of prejudice and unreasonable assumptions on his part for which there was no justification and so reversing the evidence with which it was not competent to deal. Held that the High Court had exceeded its jurisdiction by exercising functions completely circumscribed by the provisions of a statute passed for the express purpose of securing some measure of finality in cases where the balance of evidence verbal and documentary arose for decision and its decree and judgment so made were set aside. Questions of law and of fact are sometimes difficult to disentangle. The proper legal effect of a proved fact is essentially a question of law so also is the question of admissibility of evidence and the question of whether any evidence has been offered on one side or the other but the question whether the fact has been proved when evidence for and against has been properly admitted is necessarily a pure question of fact. *NAFAR CHANDRA PAL CHOWDHURY v. SURESH SINGH* (1919) 1 L R 46 Cal 189.

SPECIAL BENCH

—power of—

See *PARDON* 1 L R 37 Cal 845**SPECIAL CITATION**See *LETTER OF ADMINISTRATION*

1 L R 47 Cal 838

SPECIAL CONSTABLES

Dispute regarding ferry—Proceeding for security to keep the peace drawn up against one party—Appointment of members thereof as special constables—Refusal to act as such—Legality of appointment and of prosecution for such refusal—Police Act (V of 1861) ss 17 19 The only legitimate object of appointing special constables under s 17 of the Police Act (V of 1861) is to strengthen the ordinary police force by the addition of suitable persons. When the appointments are not made with such an object a prosecution under s 19 of the Act for refusal to act as such will not be permitted. When the members of one party to a ferry dispute were appointed as special constables and the circumstances showed that it was never really intended to utilize them as police officers, the High Court quashed the order of the District Magistrate directing their prosecution under s 19 of the Act and the issue of warrants against them. *LAKSHY SINGH v. FARRER* (1915) 1 L R 43 Cal 277.

SPECIAL COURT

When excludes jurisdiction of ordinary Courts Before the jurisdiction of the ordinary Courts of the country can be excluded by a Special Court there must be clear words in the statute excluding such jurisdiction
SASHI BHUSAN HAZRA & SURESH ESHAPAR ALI NAZIR (1915) 19 C W N 636

SPECIAL DAMAGE

See LIMITATION I L R 40 Calc 898
 See TORT I L R 33 All 237

SPECIAL JUDGE

decision of—
 See SECOND APPEAL I L R 46 Calc 189
 order of—
 See APPEAL I L R 45 Calc 638

SPECIAL LEAVE TO APPEAL

See PRIVY COUNCIL PRACTICE OF I L R 41 Calc 568

SPECIAL PROCEDURE

See BAIL I L R 37 Calc 439

SPECIAL TRIBUNAL

See MADRAS CITY MUNICIPAL ACT (III of 1904) s 287 I L R 38 Mad 41
 See RECORDS POWER TO CALL FOR I L R 43 Calc 239

SPECIFIC AREA

See LEASE I L R 37 Calc 293

SPECIFIC MOVEABLE PROPERTY

Specific Relief Act (I of 1877) s 11—Civil Procedure Code (Act V of 1908) O XLI r 31—Pleadings—Suit against a carrier—Non delivery of goods—Compensation—Limitation Act (IX of 1908) Arts 31 49 and 115—*Maxim generalia specialibus non derogant* application of In order to entitle a plaintiff to obtain delivery of specific moveable property by suit and to enforce the decree so obtained by the stringent methods provided in O XLI r 31 of the Code of Civil Procedure it is necessary that he should allege and prove facts which entitle him to compel the delivery of specific moveable under the provisions of s 11 of the Specific Relief Act Where in a suit against a carrier the plaintiff asked for the recovery of one plank of wood that was not delivered to the consignee and also for Rs 21 12 0 being the loss of interest but contained no allegation that the defendant was in possession of the plank in question and it was obvious from the correspondence that he was not in possession of the same Held that in as far as the suit could be regarded as a suit for the return of the specific plank the case did not come within s 11 of the Specific Relief Act and the suit must be dismissed that if the suit was regarded as one for compensation for failure to deliver the plank in breach of the contract under the bill of lading it was governed by Art 31 and not by Art 49 or 115 of the Limitation Act By the amendment in 1899 of Art 71 of the Limitation Act the Legislature clearly indicated its intention that the Article should apply to a claim against a carrier for compensation for non delivery of goods irrespective of the ques-

SPECIFIC MOVEABLE PROPERTY—contd
 tion whether the suit was laid in contract or in tort Art 49 is inapplicable to such a case even if it were applicable its operation would be excluded by the special Art 31 as amended on the principle *generalia specialibus non derogant* The British India Steam Navigation Co v Hajee Mahomed Faach & Co I L R 3 Mad 107 Danmull v British India Steam Navigation Co I L R 17 Calc 477 and Great Indian Peninsula Railway Co v Russell Chandmull I L R 19 Bom 165 referred to VENKATASUBBA RAO : THE ASIATIC STEAM NAVIGATION CO CALCUTTA (1915) I L R 35 Mad 1

SPECIFIC PERFORMANCE

See AGREEMENT TO LEASE I L R 47 Calc 485
 See BENGAL, AGRA AND ASSAM CIVIL COURT ACT 1887 s 18 4 Pat L J 447
 See CHOTA NAGPUR ENCUMBERED ESTATE ACT 1876 s 17 4 Pat L J 680
 See CHOWKIDARI CHAKARAN LANDS I L R 37 Calc 57
 I L R 46 Calc 173
 See CIVIL PROCEDURE CODE (ACT V OF 1908) O II r 2 I L R 28 Mad 698
 See CONTRACT I L R 46 Calc 771
 I L R 45 Bom 110
 See CONTRACT ACT 1872 s 53 I L R 40 Bom 289
 See GUARDIAN AND MINOR I L R 38 All 433
 See HINDU LAW (JOINT FAMILY) 2 Pat L J 513
 See JURISDICTION I L R 48 Calc 652
 I L R 39 Calc 683
 See LEASE I L R 39 Calc 683
 See REGISTRATION ACT 1908 ss 17 and 40 I L R 45 Bom 8
 See SPECIFIC RELIEF ACT 1877 s 30 I L R 34 All 43
 See TRANSFER OF PROPERTY ACT (IV OF 1907) s 54 I L R 41 Bom 438

agreement whether complete and enforceable—

See REGISTRATION ACT 1908 ss 17 and 40 I L R 45 Bom 8

of contract to sell—
 See COURT FEES ACT (VII OF 1880) s 7 CLS (1) and (2) I L R 33 All 290
 partition and possession suit for—
 See CIVIL PROCEDURE CODE (ACT V OF 1908) O I R 3 I L R 40 Mad 385
 suit for—

See EXPECTANCIES I L R 32 Mad 554
 See HINDU LAW—ALLEGATION I L R 38 Mad 118
 See SPECIFIC RELIEF ACT (I OF 1877) s 27 I L R 39 All 154

SPECIFIC PERFORMANCE—*contd*

unstamped agreement for sale partly performed—

See CONTRACT I L R 55 Bom 1170

1 ——— Agreement to lease—Specific performance suit for—Registration of necessary—Indian Registration Act (111 of 1881) s 37 (d) and 49—Transfer of Property Act (11 of 1885) s 31—Present demise—Interest in land—Unilateral agreement to lease certain premises operate as present demise if it does not of itself create any interest in or charge on the property agreed to be demised and can therefore be given in evidence for the purpose of enforcing specific performance of it without its having been registered under the provisions of the Indian Registration Act *Purmananday v Dharey* I L R 10 Bom 101 not followed *Konduri Srinivasa v Gollumullala Venkatasaya* 17 Mad J 238 followed. An unregistered agreement to lease provided for the grant of lease for a period of five years commencing from the day following the day on which the agreement was entered into and also provided that the proposed lessee would get a proper *kabuliyat* granted to him to be registered at his own cost. Held that on the day the agreement was come to there was no present demise and therefore the agreement could be adduced in evidence for the enforcement of specific performance thereof *SATYENDRA NATH BOSE v ANIL CHANDRA CHOI* (1908) 14 C W N 65

2 ——— Sale of immovable property—Marketable title to the satisfaction of the purchaser's solicitors—When a vendor of immovable property desires to enforce a contract for sale with a condition that the title adduced should be to the satisfaction of the purchaser's solicitors he must prove either that the solicitors did approve of the title or that there was such a title tendered as made it unreasonable to approve of it *Clack v Hood* 9 Q B D 276 followed *TREACHER & Co v MAHOMEDALLY ADAMJI PIERBHOY* (1910) I L R 35 Bom 110

3 ——— Denial of execution of agreement by defendant—Conflicting evidence as to genuineness of signature—Consideration as to which story best agrees with admitted facts—Defendant in pecuniary difficulties—Plaintiff in a position to dominate his will—Bargain onerous but not unconscionable—Absence of fraud or misrepresentation by plaintiff—Discretion in granting or refusing specific performance—In a suit to enforce specific performance of an agreement dated 4th April 1906 for the sale of land in which the defendant (appellant) denied that he ever signed the agreement the evidence on that point was conflicting though otherwise there was much unanimity on the general facts. The two lower Courts (of the Chief Court of Lower Burma) differed. The Original Court holding that the defendant's signature was a forgery and the Appellate Court reversing that decision and making a decree for specific performance. Held by the Judicial Committee that the proper courts was to examine the admitted facts and circumstances as furnishing the safest guide to a correct conclusion. On this point their Lordships were of opinion that the plaintiff's (respondents) account of the transaction best fitted in with the admitted facts and that the defendant's was untrue. The defendant when he acquired the land in 1901 was admittedly in pecuniary difficulties and had bought it with money raised by mortgaging it. In

SPECIFIC PERFORMANCE—*contd*

1901, his mortgage was pressing for payment and another creditor had taken out execution. The arrangement he was obliged to make with the plaintiff was therefore necessarily of a somewhat onerous nature. Held that in the absence of any evidence of fraud or misrepresentation on the part of the plaintiff which induced the defendant to enter into the contract or that the plaintiff under the circumstances took an improper advantage of his position or the difficulties of the defendant and having regard to the character of the agreement which in their opinion though onerous was not unconscionable their Lordships saw no reason in the exercise of their discretion for refusing to grant specific performance. The decree of the Appellate Court was therefore upheld *DAVIS v MALING SWE CO* (1911) I L R 33 Cal 805

4 ——— Minor—Right to specific performance of contract entered into on his behalf by his guardian and manager of his estate—Contract for purchase of immovable property and sale of it to minor—Power of guardian and manager—Want of mutuality. In a suit for specific performance by a minor of an agreement for the purchase and sale to him of certain immovable property entered into by the manager of the minor's estate and his guardian on his behalf. Held by the Judicial Committee that it was not within the competence either of the manager of the minor's estate or of the guardian of the minor to bind the minor or the minor's estate by a contract for the purchase of immovable property that as the minor was not bound by the contract there was no mutuality and that consequently the minor could not obtain specific performance of the contract. *MIR SARWARJAN v TAKHTUDDIN MAHOMED CHOWDHURY* (1911) I L R 39 Cal 232

5 ——— Contract executed in exercise of power given by will—If all found false—Enforcement against executant as heir—Delay in suing not amounting to waiver or acquiescence—If bar to relief. The widow of the deceased owner jointly with another who as executor had obtained probate of a will alleged to have been left by the deceased executed an agreement for sale of land the widow purporting thereby to exercise a power given by the will to assent to conveyances executed by the executor. The probate subsequently having been revoked. Held that the contract was specifically enforceable against the widow to the extent of her interest. *HORROCKS v RIGBY* 9 CA D 149 relied on. Delay which did not amount to waiver abandonment or acquiescence and in no way altered the position of the defendant did not disentitle the plaintiff to sue for specific performance. *Kissen Gopal Salaney v Kals Prasanna Sett* I L R 33 Cal 633 followed *Mohani Lal v Chotaly Lal* I L R 10 Cal 1061 referred to. In the special circumstances of the case specific performance of the contract was refused. *KFIR NATH SAMANTA v MANU BIBI* (1911) 15 C W N 247

6 ——— Agreement to renew a lease—When specifically enforceable against a subsequent lessee for value—Duty of subsequent lessee to enquire of terms of previous lease—Specific Relief Act (1 of 1877) s 27. An agreement to renew a lease under certain conditions on the determination of the term of the lease can be specifically enforced against a subsequent lessee for value who has omitted to make an enquiry of the tenant

SPECIFIC PERFORMANCE—contd

in possession about the terms of the lease under which he was holding it. The occupation of property by a tenant ordinarily affects one who would take a transfer of that property with notice of that tenant's rights and if he chooses to make no enquiry of the tenant he cannot claim to be a transferee without notice. **MAHURAM BAO v. MADHAN CHANDRA POLAY (1913)**

I L R 40 Cal 565

7 ——— Purchase with notice of prior contract—Specific Relief Act (I of 1877) s 22 sub s (2)—Compensation for money spent on improvements refused to subsequent purchaser with notice of prior contract—Transfer of Property Act (IV of 1882) s 55 sub s (1) cl (b). On the 22nd April 1910 the first defendant entered into an agreement with the plaintiff to transfer to him a certain house and received Rs 510 as earnest money the transaction to be completed within 3 months. The first defendant also undertook to satisfy the purchaser that she had a valid saleable interest in the property by showing the will of her mother and other papers relating to the property. On 15th July 1910 plaintiff called upon the first defendant to send him the title deeds etc. and on the 21st July (i.e. the day previous to the latest day) plaintiff notified the first defendant that he was ready with the purchase money. A draft will and some of the title deeds only were produced. On the 30th August 1910 the second defendant (who had notice of this prior contract) purchased the property in suit from the first defendant in the name of his wife the third defendant. The Civil Courts were closed from the 2nd October to 3rd November. On the 5th November 1910 plaintiff commenced this action for specific performance after the second defendant had spent nearly Rs 600 on repairs. **Held** that the plaintiff was entitled to have the contract specifically enforced not only against that vendor but also against the transferee who was not a bona fide purchaser for value with out notice. **Held** also that there was no precedent for a delay of one month in the institution of a suit being sufficient to justify a refusal of relief by way of specific performance. **Chowbrook v. Richardson 23 H P (Eng) 51 approved. Held** also that sub s (2) of s 22 of the Specific Relief Act clearly contemplated a case in which the vendor had entered into a contract without full knowledge of the circumstances. But where the hardship had been brought upon the subsequent purchaser by himself the Court would not consider that as a circumstance in favour of the refusal of specific performance. **Kandarpa Nath Ghosh v. Jogindra Nath Ghosh 12 C L J 391 approved. Held** also that the defendant had not established any right to be reimbursed for the improvement made on the property. **Clare Hall v. Harding 6 Hare 273. Monroe v. Taylor & Hare 51 referred to. Held** also that a copy of a compromise petition between the parties to probate proceedings cannot be accepted in lieu of a certified copy of the will (the contract being to allow the will to the purchaser). **Oxford v. Lord and I R 2 P O 135. Lamare v. Dixon L R 6 H L 411 distinguished. Hanabhan Debbarh v. Bhagabati Dasi (1914)**

I L R 41 Cal 552

8 ——— Fraud—Effect of—Specific performance suit—A declaration that certain proceedings in Court filed at plaintiff's instance were fictitious and of no effect—Circumstances entitling plaintiff to protection in Court of equity—

SPECIFIC PERFORMANCE—contd

Circumstances entitling fraudulent confederate to retain property transferred to him in order to effect a fraud—Civil Procedure Code (Act XII of 1859) s 317 if applies where suit fictitious—Agreement by fictitious decree holder purchaser to restore land—Suit for specific performance—Limitation. The plaintiff as tenant held some lands under one K who in 1804 unavowedly sued to eject him as a trespasser. In this litigation the plaintiff was assisted by one J in who a favour he executed a fictitious conveyance in 1808. In 1809 finding that J was unfaithful plaintiff induced K to institute a fictitious suit for rent which was decreed on the 7th November 1809. K took out execution of this decree and at the sale which followed purchased the holding on the 19th March 1800. According to plaintiff's sale a K had agreed to execute a release of the holding in his favour and although possession was formally delivered to K on 5th June 1800 plaintiff continued in occupation of the land. In November 1806 K with the help of the Police took away the crops raised by the plaintiff and on the 15th March 1807 plaintiff brought a suit for declaration that the entire proceedings in the rent suit of 1809 were fictitious and also for confirmation of his possession of the land. **Held** that the suit was not one for specific performance of a contract and was not barred by limitation. That the case fell within the principle of the decision of the High Court in **Jadu Nath Poddar v. Puri Lal Poddar 1 L J 33 Cal 967** and of the Judicial Committee in **Prithvi Chetty v. Munandy Serran 1 L J 5 Cal 501** namely that to enable a fraudulent confederate to retain property transferred to him in order to effect a fraud the contemplated fraud must be effected when and where alone does the fraudulent grantor or giver is at the right to claim the aid of the law to recover the property he has parted with and the plaintiff was not entitled to protection in a Court of equity. That s 317 of the Civil Procedure Code of 1857 did not apply to the Civil Procedure Code of 1857. Civil Procedure Code the present case s 317 Civil Procedure Code contemplates a real sale in execution of a real decree in a real suit. **ARUN TROPHAN v. MATHA NATH KAN (1913)**

9 ——— Agreement to sell decree and rights appertaining thereto and to transfer it—defendant—Limitation and Purchase—Decree becoming barred by limitation before a transfer—Cancellation to keep decree on record—Civil Procedure Code (Act XII of 1859) s 317—Transfer of decree. The plaintiffs (respondents) brought a suit for specific performance of an agreement made between them and the defendant (appellant) by which the latter contracted to purchase a mortgage decree and all rights appertaining thereto which decree was to be duly transferred to the defendant which is provision of s 232 of the Civil Procedure Code 1857 could only be done by an assignment in writing. The decree however before a signment became barred by limitation and the refusal to take it **Held** (reversing the decision of the Appellate High Court) that what the plaintiffs had agreed to assign to the defendant was a decree capable of execution that until an agreement there was an obligation on the plaintiff as vendors to keep the decree alive and that therefore when the decree became barred by limitation the plaintiffs were asking for specific performance of a defendant of an agreement which they had themselves made to perform at 108 C 100

SPECIFIC PERFORMANCE

could be granted. *Henderson v. A. D. W. 16*
Pulley v. L. and A. W. P. 16
Eg 433; *Lord Siller v. M. 16*
NATH B. v. L. EYER D. 16

I L R 43 Cal. 993

10 ——— **Contract to lend or borrow money**—*Suit for balance of money*
Damir—*Procedural Small Cause*
(11 of 188) *Sch 11 cl 1* *16* *17* *18*
Col (1st) of 1884 *213* *11* *11* *11*
 for specific performance of a contract to lend or
 borrow money is not maintainable.
12 *13* *14* *15* *16* *17* *18* *19*
20 *21* *22* *23* *24* *25* *26* *27*
The South African Territories v. Hall *1899*
1 *2* *3* *4* *5* *6* *7* *8* *9* *10* *11* *12* *13* *14* *15* *16* *17* *18* *19* *20* *21* *22* *23* *24* *25* *26* *27* *28* *29* *30* *31* *32* *33* *34* *35* *36* *37* *38* *39* *40* *41* *42* *43* *44* *45* *46* *47* *48* *49* *50* *51* *52* *53* *54* *55* *56* *57* *58* *59* *60* *61* *62* *63* *64* *65* *66* *67* *68* *69* *70* *71* *72* *73* *74* *75* *76* *77* *78* *79* *80* *81* *82* *83* *84* *85* *86* *87* *88* *89* *90* *91* *92* *93* *94* *95* *96* *97* *98* *99* *100*
 the balance of the money lent on a note
 the recitation of the instrument be maintainable
 by a Court of Small Cause. *(11 cl 1, 1891)*
Sch 11 *Procedural Small Cause Courts Act 1887*
 But a suit for damages for breach of contract is
 cognizable by a Court of Small Cause if the
 amount is within its pecuniary jurisdiction.
SURESH GALLIN v. SADARJAN BIRI (1912)

I L R 43 Cal. 59

11 ——— **Contract modified—Specific performance of a contract of sale**—*S. (6) Sp. Rel. Act (1 of 1877)*—*Contract varied—Vendors asked to take out letters of administration and leave to sell—Effect of variation—Contingent contract—Order for sale—Title of purchasers and order of Court—Whether such purchasers are affected with notice of previous agreement—Dealings with purchaser inadvisable—Independent legal advice—Costs—Discretion of the Appeal Court in modifying order for costs made by the Court of first instance*—Two widows defendants Nos 1 and 2 entered into an agreement on the 23rd January 1910 for sale of certain properties for legal necessity with the plaintiffs at Rs 8000 per cotah. The agreement contained the following covenant on the part of the vendors:—We shall at our own expenses do everything which your attorney shall consider necessary for rectifying and clearing the title deeds. The idea of applying for Letters of Administration was not present in the mind of any of the parties at the time of the agreement. Subsequently in order to obviate any objection of the respondents on the score of legal necessity the plaintiffs asked the widows to apply for Letters of Administration with leave to sell to the plaintiffs. The widows obtained Letters of Administration and one of them actually obtained leave to sell to the plaintiffs. Subsequently the widows applied and obtained leave to sell to the defendants Nos 3, 4 and 5 (described as the Nandi defendants) who offered a higher price and the property was conveyed to them. The Nandi defendants had notice of the agreement for sale to the plaintiffs at the time when they took the conveyance. In a suit by the plaintiffs for specific performance of the agreement of sale against all the defendants and in the alternative for damages against the defendants Nos 1 and 2 for breach of contract. Held that the contract was varied by mutual consent became a contingent one and as the contingency had not happened (i.e. leave of the Court had not been obtained in their favour) the plaintiffs were not entitled to claim performance of the contract. *NARA PILLAI v. LUKHOO NARAIN MANNA I L R 12 Cal. 157* and *Sardar Chandra v. Akhetra I L*

SPECIFIC PERFORMANCE

18 *19* *20* *21* *22* *23* *24* *25* *26* *27* *28* *29* *30* *31* *32* *33* *34* *35* *36* *37* *38* *39* *40* *41* *42* *43* *44* *45* *46* *47* *48* *49* *50* *51* *52* *53* *54* *55* *56* *57* *58* *59* *60* *61* *62* *63* *64* *65* *66* *67* *68* *69* *70* *71* *72* *73* *74* *75* *76* *77* *78* *79* *80* *81* *82* *83* *84* *85* *86* *87* *88* *89* *90* *91* *92* *93* *94* *95* *96* *97* *98* *99* *100*

12 ——— **Agreement to sell or lease**
 into writing. *Contract* *11* *12* *13* *14* *15* *16* *17* *18* *19* *20* *21* *22* *23* *24* *25* *26* *27* *28* *29* *30* *31* *32* *33* *34* *35* *36* *37* *38* *39* *40* *41* *42* *43* *44* *45* *46* *47* *48* *49* *50* *51* *52* *53* *54* *55* *56* *57* *58* *59* *60* *61* *62* *63* *64* *65* *66* *67* *68* *69* *70* *71* *72* *73* *74* *75* *76* *77* *78* *79* *80* *81* *82* *83* *84* *85* *86* *87* *88* *89* *90* *91* *92* *93* *94* *95* *96* *97* *98* *99* *100*
 into writing. *Contract* *11* *12* *13* *14* *15* *16* *17* *18* *19* *20* *21* *22* *23* *24* *25* *26* *27* *28* *29* *30* *31* *32* *33* *34* *35* *36* *37* *38* *39* *40* *41* *42* *43* *44* *45* *46* *47* *48* *49* *50* *51* *52* *53* *54* *55* *56* *57* *58* *59* *60* *61* *62* *63* *64* *65* *66* *67* *68* *69* *70* *71* *72* *73* *74* *75* *76* *77* *78* *79* *80* *81* *82* *83* *84* *85* *86* *87* *88* *89* *90* *91* *92* *93* *94* *95* *96* *97* *98* *99* *100*
 into writing. *Contract* *11* *12* *13* *14* *15* *16* *17* *18* *19* *20* *21* *22* *23* *24* *25* *26* *27* *28* *29* *30* *31* *32* *33* *34* *35* *36* *37* *38* *39* *40* *41* *42* *43* *44* *45* *46* *47* *48* *49* *50* *51* *52* *53* *54* *55* *56* *57* *58* *59* *60* *61* *62* *63* *64* *65* *66* *67* *68* *69* *70* *71* *72* *73* *74* *75* *76* *77* *78* *79* *80* *81* *82* *83* *84* *85* *86* *87* *88* *89* *90* *91* *92* *93* *94* *95* *96* *97* *98* *99* *100*
 into writing. *Contract* *11* *12* *13* *14* *15* *16* *17* *18* *19* *20* *21* *22* *23* *24* *25* *26* *27* *28* *29* *30* *31* *32* *33* *34* *35* *36* *37* *38* *39* *40* *41* *42* *43* *44* *45* *46* *47* *48* *49* *50* *51* *52* *53* *54* *55* *56* *57* *58* *59* *60* *61* *62* *63* *64* *65* *66* *67* *68* *69* *70* *71* *72* *73* *74* *75* *76* *77* *78* *79* *80* *81* *82* *83* *84* *85* *86* *87* *88* *89* *90* *91* *92* *93* *94* *95* *96* *97* *98* *99* *100*
 into writing. *Contract* *11* *12* *13* *14* *15* *16* *17* *18* *19* *20* *21* *22* *23* *24* *25* *26* *27* *28* *29* *30* *31* *32* *33* *34* *35* *36* *37* *38* *39* *40* *41* *42* *43* *44* *45* *46* *47* *48* *49* *50* *51* *52* *53* *54* *55* *56* *57* *58* *59* *60* *61* *62* *63* *64* *65* *66* *67* *68* *69* *70* *71* *72* *73* *74* *75* *76* *77* *78* *79* *80* *81* *82* *83* *84* *85* *86* *87* *88* *89* *90* *91* *92* *93* *94* *95* *96* *97* *98* *99* *100*
 into writing. *Contract* *11* *12* *13* *14* *15* *16* *17* *18* *19* *20* *21* *22* *23* *24* *25* *26* *27* *28* *29* *30* *31* *32* *33* *34* *35* *36* *37* *38* *39* *40* *41* *42* *43* *44* *45* *46* *47* *48* *49* *50* *51* *52* *53* *54* *55* *56* *57* *58* *59* *60* *61* *62* *63* *64* *65* *66* *67* *68* *69* *70* *71* *72* *73* *74* *75* *76* *77* *78* *79* *80* *81* *82* *83* *84* *85* *86* *87* *88* *89* *90* *91* *92* *93* *94* *95* *96* *97* *98* *99* *100*
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SPECIFIC PERFORMANCE—contd

question of fact which arises on the documents and oral evidence tendered in support of it. An Appeal Court is not bound to accept the first Court's appreciation of the facts of the case. Both the facts and law are open to the Court of Appeal. But appellant should satisfy the Appeal Court that the judgment appealed against is erroneous. The mere reference to a formal agreement will not prevent a binding bargain. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put into more formal shape does not prevent the existence of a binding contract. The payment of earnest money is itself evidence of a concluded contract. *Per MOOREHEAD J*.—It is well settled that the fact that the parties intended to embody the terms of the contract in a formal written agreement is strong evidence that the negotiations prior to the drawing of such writing are merely preliminary and not intended or understood to be binding. If it is definitely expressed and understood that there is to be no contract until the formal writing is executed there is plainly no binding agreement formed until this provision is complied with. It is also true that if all terms of the agreement have not been settled and it is understood that these unsettled terms are to be determined by the formal contract there is no binding obligation until the writing is executed. But if the oral agreement or written memorandum is complete in itself and embodies all the terms to be inserted in the intended formal writing a binding obligation is fixed on the parties unless it is understood and intended that such contract shall not become operative until reduced to writing. The question is merely one of intention. If the written draft is viewed by the parties merely as a convenient memorial of record of their previous contract its absence does not affect the binding force of the contract. If however it is viewed as the consummation of the negotiations there is no contract until the written draft is finally signed. To determine which view is entertained in any particular case several circumstances may be helpful as for example whether the contract is of that class which are usually found to be in writing whether it is of such a nature as to need a formal writing for its full expression, whether it has few or many details, whether the amount involved is large or small, whether it is a common or usual contract, whether the negotiation itself indicates that a written draft is contemplated as a final conclusion of the negotiation. If a written draft is proposed, suggested or tried during the negotiations it is some evidence that the parties intended it to be the final closing of the contract. The Court should refuse specific performance where there is substantial variance between the pleading and proof. The draft agreement containing terms which were never settled before between the parties, the legitimate inference to be drawn is that the parties intended the written draft to be the consummation of their negotiations which were to be treated as concluded only upon the final execution of the written agreement. Where many terms still remained undetermined it is a sure and true that the contract has not yet been concluded. Where there is ambiguity in any of the conditions of sale in restriction of the rights of the purchaser the condition should be construed more strictly against the vendor. *HALL & M. L. GORDON (1911)* **20 C W N 66**

SPECIFIC PERFORMANCE—contd

13 ——— Unregistered agreement to mortgage on which an advance has been paid—Whether enforceable?—*Swamibhogam v. Venkateswara Rao*. The plaintiff sued for specific performance of an agreement in writing but not registered by which the first defendant agreed to execute a deed of *swamibhogam* in respect of the suit lands to be enjoyed by the plaintiff for twenty years for a consideration of Rs 5,000 which could however be repaid at defendants' option after eight years from its date. The plaintiff had advanced about Rs 4,000 and not having obtained possession or a mortgage-deed sued for specific performance. The first defendant pleaded that the agreement was one to execute a lease and as such required registration and not being registered could not form the basis of a suit for specific performance. He further contended that even if the agreement were one to execute a mortgage no suit for specific performance to enforce an agreement to grant a mortgage was sustainable. Held that the agreement was one to grant a mortgage and as such did not require registration and that a Court will not specifically enforce an agreement to lend or borrow money whether on security or not but where money has been advanced either wholly or in part if the debtor is prepared to pay off the advance at once the Court will not decree specific performance but if the borrower is not prepared to pay off the advance the Court would decree specific performance. *South African Temperance & Wine Co. v. Wallington* [1895] A.C. 309 referred to. *Ashton v. Corrigan* L.P. 13 Eq. 76 and *Perkins v. Hodges* L.R. 16 Eq. 18 followed. **MERRILL SHIVENDARA MEDALIAH v. RAYKHA AMI PHILLAI** (1918) **I L.R. 41 Mad. 859**

14 ——— Oral agreement to grant a lease—Time for payment of premium left open—Whether delay is bar in the suit—Time of the commencement of the lease not specified—Whether the agreement is complete—*Indian Evidence Act (1 of 1872) s. 9* whether a bar to proof of the time of the commencement of the lease—*Transfer of Property Act (IV of 1882) s. 110*. The plaintiffs brought a suit for specific performance of an agreement to grant a permanent lease made orally on the 30th December 1903. The period within which the premium was payable was left open. The premium of Rs. 400 was paid on the day following the agreement but though subsequently the plaintiff tendered the balance the defendant declined to execute the lease. It was contended that the agreement was not complete as the time of the commencement of the lease was not specified and that delay in the payment of the premium was a bar to the suit. Held that in view of s. 110 of the Transfer of Property Act the agreement was complete although the time of the commencement of the lease was not specified. Held that the although delay on the part of a plaintiff in the performance of his part of the contract would be a bar to his claim for specific performance provided that time was originally of the essence of the contract or had been made so by subsequent notice or that the delay had been so great as to be evidence of abandonment of the contract. In the present case was not covered by either of the first two alternatives nor had the delay been so great as to be evidence of abandonment of the contract. The plaintiffs were entitled to succeed on proof that they indicated their willingness to perform the condition precedent with a

SPECIFIC PERFORMANCE—contd

reasonable time. Where there is an oral agreement to grant a lease = 92 of the Indian Evidence Act does not stand in the way of proof that there has been an agreement by implication or inferable from the circumstances as to the time of the commencement of the lease. The Statute of Frauds has no application to this country. **JAI LASH CHANDRA BHOWMIK v. BEJOY KANTO LAHRI (1915)** 23 C W N 190

15 — Agreement to sell in favour of a member (since deceased) of a joint Hindu family personally.—Death of plaintiff—*Applied to by widow to be substituted for her deceased husband—Legal representative of deceased Hindu wife (in the absence of male heirs) represents him in a suit for specific performance of a personal contract made with him notwithstanding the fact that the deceased was a member of a joint Hindu family.* **JAI BALI v. BALDEO SINGH (1919)** I L R 41 All 515

16 — Claim for possession.—In a suit for specific performance of a contract for the sale of land it is open to the plaintiff to join with his prayer for specific performance a claim for delivery of possession unless the contract expressly disempowers him to such relief. The cause of action for delivery of possession may arise both upon the contract and the completed conveyance. If the plaintiff in such a suit omitted to ask for delivery of possession a subsequent suit to obtain delivery of possession might be barred under the provisions of O 11 r 2 of the Code of Civil Procedure 1908. But the Court will decree a claim for a conveyance only in cases where it embodies the substantial part of the agreement and where the Court can direct its execution without regard to the question whether or not its provisions can be specifically enforced. **DEONANDAN PRASAD SINGH v. JANKI SINGH** 5 Pat L J 314

17 — Unregistered Sale deed whether can be regarded as an agreement to sell.—*Suit by wife for specific performance, whether maintainable.* Where a sale deed purporting to be a conveyance of some lands was executed and delivered to the vendee but was not registered and the omission was not due to act of God or fraud on the part of the executant it is not open to the vendor to treat the unregistered document as an agreement to sell and to use for specific performance of such agreement. **Venkatasami v. Krs. Sanyal (1893)** I L R 18 Mad 311 followed. **Surendra Nath Tag Chowdhury v. Gopal Chander Ghosh (1910)** 12 C L J 464 distinguished from **THAYARANATH v. LAKSHMINATHAL (1900)** I L R 43 Mad 822

18 — Agreement by which defendant has benefited. It was not defence to a suit for specific performance of an agreement under which the defendant took benefit to say that the plaintiff had failed to perform an undertaking given by him in reference to the agreement. **RAVI HAMANTO KUMARI v. THE MIDHAPUR ZEMINDARY CO.** 24 C W N 177

19 — Unregistered bairagatras for grant of lease.—*Registration Act.* An unregistered bairagatra for grant of a patta lease acknowledged receipt of part of the consideration money and contained a promise to grant a patta lease again from the date of the bairagatra and to Exchange patta and Khabulyat before the 30th

SPECIFIC PERFORMANCE—contd

Aghran. Held that the bairagatra did not affect a present demise and should be regarded as an agreement creating a right to obtain a patta lease on the performance of certain conditions on or before the 30th Aghran. The document was not an agreement to lease and therefore did not require registration and so was admissible in evidence. **HARIYATH BAIKOPADHYAYA v. PRO. MOTHO NATH ROY CHOWDHURY** 25 C W N 551

20 — of agreement to grant a lease. Specific performance of an agreement to grant a lease cannot be decreed unless that agreement either expressly or impliedly fixes the date from which the terms is to run. **SRIMATI GIRIBALLA DAS v. KALIDAS BHUNJA** 25 C W N 320

SPECIFIC RELIEF ACT (I OF 1877)

See INCOME TAX ACT (VII OF 1918)

s 51 I L R 44 Mad 718

See NOTICE I L R 40 Bom 401

Applicability of to Sonthal Pargana. The Sonthal Parganas Settlement Regulation 1872 read with the Sonthal Parganas Act 1855 merely means that in suits exceeding Rs 1000 in value those laws will apply to the Sonthal Parganas which are *proprio vigore* in force in the whole of India. The Specific Relief Act 1877 is not *proprio vigore* in force in the whole of India and therefore it does not apply to the Scheduled Districts by virtue of s 11 of the Sonthal Parganas Regulation 1872. Declaratory reliefs cannot be granted in a suit instituted in a Court in the Sonthal Parganas. **KUMAR SATYA NARAYAN CHAKRAVARTY v. DWARKA NATH SADRU** 2 Pat L J 379

Suit to recover possession of land previously dealt with under a 145 Criminal Procedure Code. Per **RICHARDSON J.**—When a Magistrate's order is attacked in a collateral proceeding as *ultra vires* it should be shown to have been without jurisdiction in the strict sense of the term and not in the loose sense in which that term is sometimes used in proceedings for the revision of orders under a 145 Criminal Procedure Code under the High Court's powers of superintendence under s 15 of the Charter Act (now s 107 of the Government of India Act of 1915). When an enquiry has been properly entered upon it is not every error which makes the result invalid. Before want of jurisdiction can be established in such a case a vice must be clearly established which infects the whole proceeding. **EM. MAHAMUD SHAH v. HEYAT MAHAMUD SHAH (1917)** 22 C W N 342

s 2—

See COURT FEE I L R 39 Calc 704

s 3—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 40

I L R 40 Bom 498

s 11 illus (g) 12 27—

See TRANSFER OF PROPERTY ACT s 61

I L R 41 Bom 438

s 8 9—Suit for ejectment based on title.—Court not competent in such a suit to grant a decree on the basis merely of previous title and fails to establish his title

SPECIFIC RELIEF ACT (I OF 1877)—contd

ss 8 9—contd

granted a decree for possession under the first paragraph of s 9 of the Specific Relief Act. *Ram Harakh Rai v Sheodihal Joti* 1 L R 15 All 384 and *Mousi v Kashi* All Weekly Notes (1897) 115 overruled. *Ramasami Chetti v Paraman Chetti* 1 L R 25 Mad 448 followed. *Wayid Ali v Ram Saran* All Weekly Notes (1884) 39 and *Chuthan Rai v Sheo Ghulam Rai* All Weekly Notes (1889) 89 referred to. *LACHMAN v SHAMBIH NARAIN* (1910) 1 L R 33 All 174

■ 9—

See CIVIL PROCEDURE CODE—

■ 11 1 L R 39 All 717
O L I R 23 2 Pat L J 61

See POSSESSORY SUIT

1 L R 45 Cal 519

1 — Decree against landlord for khas possession—Ouster of tenants in execution—Tenant's remedy—Civil Procedure Code (Act XI of 1882) s 332 Where in execution of a decree for khas possession obtained against the landlord the plaintiffs who were tenants were dispossessed Held that the plaintiffs were not dispossessed otherwise than in due course of law within the meaning of s 9 of the Specific Relief Act. *KAMINI SUNDARI DASSIA v SAREE SREIKH* (1900) 14 C W N 403

2 — Possessory suits dismissed—Application by plaintiff for revision rejected When the plaintiff's suit under s 9 of the Specific Relief Act 1877 was dismissed the High Court declined to interfere in revision upon the ground that it was open to the plaintiff to take another remedy and bring a regular suit on title. *Juala v Ganga Prasad* 1 L R 30 All 331 followed. *RAM KISHEN DAS v JAI KISHEN DAS* (1911) 1 L R 33 All 647

3 — Tenants dis possession of v dispossession of landlord—Physical possession if must be proved Tenants settled by the plaintiff being dispossessed by the defendant relinquished the land to the plaintiff Held that the plaintiff was in the circumstances entitled to sue under s 9 Specific Relief Act. *Bindubashini v Jahnavi* 13 C W N 303 *Jagannatha v Rama* 1 L R 28 Mad 238 relied on. *Tarini Mohun v Gunga Prasad* 1 L R 14 Cal 649 *Sonolan Shome v Sheikh Helim* 6 C W N 616 distinguished. *NOBIN DAS v KAILASH CHANDRA DEX* (1910) 15 C W N 294

4 — Dispossession in execution of decree obtained against third party in due course of law Where the burgadars of a tenant were dispossessed from their land in execution of a decree against the tenant to which the burgadars were not parties and which was obtained upon a false admission by the tenant himself Held that the dispossession was in due course of law within the meaning of s 9 of the Specific Relief Act. *HARIY CHANDRA PAJ v MADAN MOHAN BANJ KHVA* (1911) 15 C W N 958

5 — Dis possession—Ouster of tenant if dispossession of landlord The ouster of a tenant is an ouster of the landlord for which the landlord can sue under s 9 of the Specific Relief Act. *Bindubashini Chaudhuran v Jahnavi* 13 C W N 303 *Bindubashini Chaudhuran v Janaki Chaudhuran* 1 C W N 307

SPECIFIC RELIEF ACT (I OF 1877)—contd

s 9—contd

Janaki Nath Roy v Dinamon Chaudhuran 13 C W N 305 *Shyama Churn v Mahomed Ali* 13 C W N 835 *Abin Chunder Das v Koylakh Chunder Das* 12 C L J 483 followed. *Sonolan Shome v Sheikh Helim* 6 C W N 616 not followed. *AKHIL CHANDRA DEX v AKHIL CHANDRA BISWAS* (1911) 15 C W N 715

6 — Thicca tenant's ejectment of—Civil Procedure Code (Act I of 1908) s 115—Jurisdiction—Error of law Where in a suit brought within 6 months from the date of dis possession under s 9 of the Specific Relief Act to recover lands from which the plaintiff was dis possessed by the end 1318 B S the Munsif found that the plaintiff was in possession of the lands for the year 1318 B S, as thicca tenant or tenant at will but holding that the said thicca right ceased after 1318 dismissed the plaintiff's suit Held that the tenant was entitled to a decree for possession of those lands Held also that the Munsif's decision was a refusal to exercise jurisdiction vested in him and the High Court could interfere under s 115 of the Civil Procedure Code. *RAMROYAL SHAMANTA v UPENDRANATH SHAMANTA* (1914) 17 C W N 501

7 — Decree stayed pending suit for confirmation of possession—Once as in suit for ejectment Where a decree in a suit under s 9 of the Specific Relief Act is stayed pending a suit by the defendant for declaration of his title and confirmation of possession Held that the plaintiff in the latter suit must affirmatively prove his right to present possession. *MONOHAR PAL v ANANTA MOYEE DASSIA* (1913) 17 C W N 802

8 — Possessory title—Suit for recovery of possession—Plaintiff in actual possession without title ousted by defendant having no title at all Held that the purchasers of a house and site in a village who had actually held possession for some years but who had otherwise no title were entitled to succeed in a suit for recovery of possession as against persons who had in fact ousted them but could show no title at all to the possession of the house or site. *Wah Ahmad Khan v Ayudhia Kundu* 1 L R 13 All 537 and *Lachman v Shambhu Narain* 1 L R 33 All 274 referred to. *UNRAO SINGH v PAMJI DAS* (1913) 1 L R 38 All 51

9 — Adhar status of—If tenant or labourer—Possession as adhar if protected under s 9—Civil Procedure Code (Act I of 1908) s 115 Very largely on proof that an adhar in that part of the country was a labourer the decision of the lower Court protecting his possession under s 9 of the Specific Relief Act was not one which the High Court would reverse under s 115 of the Civil Procedure Code. *DEX NATH DAS BARNAGI v PAM SUNDAR BARNAGI* (1915) 19 C W N 1205

10 — Partition of joint possession—Suit by co-sharer The rule of joint possession—Suit by co-sharer The words of s 9 of the Specific Relief Act refer to exclusive possession and the Court in a suit under that section has no jurisdiction to grant joint possession to the plaintiff No order under this section can be made in favour of the plaintiff who claims an undivided share in the property from

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s. 9—*contd*

which he and his co-sharers have been ousted
HABI NAMA DASS v SHEIKH NAJU (1912)

19 C W N 120

11 — *Joint ownership*

— *Co-owner dispossessed by other co-owners if may sue* Where a co-owner in physical possession of property jointly with other co-owners is dispossessed by the latter he can institute a suit for recovery under s. 9 of the Specific Relief Act
Hari Varan Das v Elemen Bibi 19 C L J 117
 s.c. 19 C W N 190 distinguished **ATIMAN BIRI v SHEIKH REASUR** (1915) 19 C W N 1117

12 — *Suit for recovery*

of possession of immovable property—*Construction of plaintiff—Suit framed as a suit on title but also referring to s. 9 of the Specific Relief Act 1877—Profruct* In a suit for recovery of possession of immovable property from which the plaintiff alleged that his sub-tenants had been ejected by the defendants the plaintiff claimed (i) a declaration of his title to and possession of the land in suit (ii) damages for disposssession and (iii) costs. In the body of the plaint it was mentioned that the suit was under s. 9 of the Specific Relief Act 1877 and therefore the full Court fees had not been paid. At the hearing the plaint was amended by striking out the claim for a declaration of title but the claim for damages was retained. Held on a construction of the plaint that the suit was in substance a suit for possession based on title and should have been tried as such notwithstanding the reference in the plaint to s. 9 of the Specific Relief Act. **Azir Ahmed v Abid Ali** 8 A L J 210 referred to **NARAIN DAS v HET SINGH** (1918)

I L R 40 All 637

13 — *Suit of lien after*

property attached under Criminal Procedure Code (Act V of 1893) s. 146 Where following upon the dispossession by defendant of the plaintiff an order for attachment was made under s. 146 Criminal Procedure Code in a proceeding in respect of the same property under s. 145 Criminal Procedure Code. Held that the plaintiff after this has no right to relief under s. 9 of the Specific Relief Act. **AZIMUDDIN AHMED v ALAUDDIN BEHNA** (1917) 22 C W N 931

14 — *Possessory suit—*

Decree given for land and crops thereon—*Crops removed before execution—Subsequent suit for price of crops—Defendants not competent to raise question of plaintiff's title to the land* The plaintiff brought a suit under s. 9 of the Specific Relief Act for the possession of certain land with crops standing thereon and obtained a decree. Before however he could obtain possession of the land the defendants cut and removed the crops. The plaintiff then brought the present suit for recovery of the value of the crops. The defendants denied his title to the land. Held that the defendants could not by cutting and removing the crops annul the effect of the possessory decree and have the question of the plaintiff's title to the land decided in that suit. **MUNYA SINGH v ACHAN SINGH** (1918) I L R 41 All 108

s. 9 42—*Temple lands possession*

of—*Trustee of temple—Wrongful dismiseal and dispossession by co-trustees—Suit for declaration invalidity of dismiseal and injunction—Consequential relief—No claim to recover possession—Suit*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*ss 9 42—*contd*

so framed not maintainable—*Landlord—Possession by receipt of rent—Dispossession—Interest capable of delivery and possession* When A the trustee of a temple who had been ousted from possession by his co-trustees sued for a declaration that his dismiseal from the trusteeship was invalid and for an injunction restraining his co-trustees and the temple committee from interfering with the exercise of his rights as trustee there being no prayer for consequential relief in the nature of possession against his co-trustees. Held that the suit was not maintainable. That the suit was brought by a trustee is no answer to the objection. That possession should have been sued for and not a mere declaration. An injunction is a discretionary relief and cannot be claimed by a plaintiff out of possession when he does not ask for possession against defendants who are actually in possession. **Kunj Bihari v Keshavlal Hirralal I L R 23 Bom 567** dissented from **Jagadindra Nath Poy v Hemanta Kumari Deb I L R 32 Cal 129** referred to. Held further that notwithstanding the lands belonging to the temple were in the physical possession of tenants yet the plaintiff's right to receive rents was capable of possession which if disturbed entitled him to bring a suit for possession under s. 9. Specific Relief Act. **Jagan Nath Chetty v Pama Rayer I L R 28 Mad 238** followed. **Abdul Kadir v Mahomed I L R 15 Mad 10** followed. **Narayana v Shankunni I L R 15 Mad 255** followed. **RATHNABABA PATEL PHILLAI RAMASAMI AITAN** (1910) I L R 33 Mad 452

s. 11—

See SPECIFIC MOVABLE PROPERTY

I L R 39 Mad 1

s. 12—

See TRANSFER OF PROPERTY ACT s. 54

I L R 41 Bom 438

— *Suit for delivery of cattle*

— *Specific performance of the contract or compensation—Alternative reliefs—Non maintainability of the suit—Art 15 second schedule Provincial Small Cause Courts Act (IX of 1887)—Substantial justice—S. 25 Provincial Small Cause Courts Act* The mortgagors entered into a contract with their mortgagees whereby in consideration of the latter making an endorsement on the back of the mortgage bond crediting Rs. 215 to the mortgagor's account the mortgagors agreed to deliver to the mortgagees certain heads of cattle. The mortgagees performed their part of the contract and then sued the mortgagors in the Small Cause Court for delivery of the cattle promised and in the alternative for damages. The Court having dismissed the suit as being a suit for specific performance of a contract and thus beyond its competence as a Small Cause Court. Held that under s. 12 of the Specific Relief Act no suit for specific performance would lie as unless there was something remarkable about the cattle it was obvious that adequate compensation for the breach of the contract could be given in money. Substantial justice was done by the High Court in the exercise of the powers under s. 25 Provincial Small Cause Courts Act by directing that the plaint be amended by striking out the clause demanding specific performance and the suit dealt with solely as a suit for damages occasioned by a breach of the contract. **SHARAT MAHTO v AIR** (1913) C W N 1020

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 12—*contd*

Mortgage decree satisfied by judgment debtor—subsequent attachment of decree—Objection by another party to the attachment—Objection rejected—Suit by objector for a declaration judgment-debtor was his beneficiary and that the attachment was invalid—Code of Civil Procedure (1st of 1908) O 111 rr 58 and 63 The judgment debtor satisfied a mortgage decree which had been obtained against him. Subsequently in a money suit against the same judgment debtor, another party attached the decree before judgment. The present plaintiff thereupon objected to the attachment under O 111 s 59 of the Code of Civil Procedure 1908. The objection was disallowed and the objector instituted the present suit for a declaration that the judgment debtor was his beneficiary and that he was the real beneficiary entitled to the money deposited in court. He also prayed for a declaration that the attachment was invalid. *Held* that the suit did not offend against the terms of s 42 of the Specific Relief Act, 1877 and the mere fact that the plaintiff did not ask for recovery of the money was no bar to his obtaining the relief sought. Subsequent to the attachment above referred to the decree was also attached by another party in execution of a money decree against the same judgment debtor. That party was made defendant in the present suit. *Held* that no claim with regard to this second attachment having been filed under r 58 the present suit under r 63 was not maintainable against the second attaching decree holder. **MARI LAL SARDI v THE RANCHI MINISTERIAL OFFICERS URBAN CO-OPERATIVE CREDIT SOCIETY** 3 Pat L J 182

■ 14 to 17—Contract entered into by person on his behalf and on behalf of minors—Form of decree in suit for specific performance of such contract when contract found not to be binding on minors Where a contract of sale entered into by a person on his own behalf and on behalf of minors is found not binding on the minors no decree for specific performance can be passed against the interest of such minors in the properties. ■ 14 to 16 of the Specific Relief Act do not enable such contract to be separated as regards the adult person who entered into the contract and s 17 of the Act precludes the passing of a decree against the share of such party alone or a decree for the whole against such person. The purchaser in such a case will be entitled on offering to pay the whole purchase money to a decree directing the adult party to convey all his interest in the properties. **PORAKA SUBBARANI REDDY v VADLAMUDI SESHACHALAM CHETTY** (1909) I L R 33 Mad 359

s 15—

See HINDU LAW—ALIENATION

I L R 33 Mad 1187

Contract by managing member of joint Hindu family under circumstances not binding on the other members—Right to specific performance—Hindu Law Where the managing member of a joint Hindu family consisting of himself and his sons some of whom were minors entered into a contract to sell family lands to the plaintiff under such circumstances that the contract was held not binding on the sons. *Held* in a suit for specific performance against both the father and the sons composing the joint family

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 15—*contd*

that under s 15 of the Specific Relief Act the plaintiff was not entitled to a decree even against the father. ■ 15 applies to a case where a member of an undivided family agrees to sell part of the joint property in which he has only a share and the circumstance that an undivided father has an interest in every portion of the undivided property does not take the case out of the operation of the section. **Kosuri Ramaraju v Ivalury Ramalingam** I L R 36 Mad 74 and **Srinivas Reddi v Suvarama Reddi** I L R 32 Mad 370 not followed. **Poraka Subbarani Reddy v Vadlamudi Seshachalam Chetty** I L R 33 Mad 359. **Corinda Vaschen v Apathahaya Iyer** Mad W 181 and **Barrett v Ling** 2 Sm d Giff 43 s.c. 60 L R 291 referred to. **MAJIAN v KATARAMA SASTRULU** (1912) I L R 37 Mad 357

■ 15 and 17—

Sale by managing member—Sale of family property not for necessity—Suit for specific performance—Specific performance of entire contract whether can be granted—Option of purchase for specific performance as regards share of vendor on date of contract on payment of full consideration—Such share to be specified in decree The managing member of a joint Hindu family who for purposes not binding upon the other coparceners and without their concurrence agrees to convey a specific item of joint family property cannot perform his contract in its entirety and the case falls within the provisions of s 16 of the Specific Relief Act. The purchaser in such a case cannot enforce specific performance of the entire contract. But Courts will grant specific performance by a conveyance of the share which the vendor had in the property at the date of the contract if the purchaser elects to pay the entire consideration and the share should be specified in the decree. **Kosuri Ramaraju v Ivalury Ramalingam** (1903) I L R 26 Mad 74 and **Ramalingam** (1903) I L R 26 Mad 74 and **Srinivas Reddi v Suvarama Reddi** (1909) I L R 32 Mad 370 dissented from. **Poraka Subbarani Reddy v Vadlamudi Seshachalam Chetty** (1910) I L R 33 Mad 359 and **Agathi Venkataratnam Sastrulu** (1913) I L R 37 Mad 387 approved. **BALUSWAMI AITAN v LAKSHMINA AITAN** (1911) I L R 44 Mad (FB) 605

Contract by one co-owner to sell property belonging to him in common with another—Not enforceable—Delay effect of Where one of two divided brothers of a Hindu family agreed to sell immovable property held by them in common and a suit was brought for specific performance of the contract by compelling the vendor to execute a deed of sale in respect of the whole of the property agreed to be sold. *Held* that nonspecific performance could be granted. ■ the execution of a sale deed by the defendant would be ineffectual in respect of the moiety not belonging to him. The Court would not lend its sanction to a transaction devoid of legal effect and improper in itself as calculated to throw a cloud on the title of a third person which would give him a cause of action for a declaratory suit. **Poraka Subbarani Reddy v Vadlamudi Seshachalam Chetty** I L R 33 Mad 359 referred to. **Kosuri Ramaraju v Ivalury Ramalingam** I L R 26 Mad 74. **Srinivas Reddi v Suvarama Reddi** I L R 32 Mad 370 and **Barrett v Ling** 2 Sm

SPECIFIC RELIEF ACT (I OF 1877)—contd

ss. 15 and 17—contd

§ C 43 sc 65 L P 294 distinguished ■
 17 of the Specific Relief Act prohibits the Court from directing specific performance of a part of a contract except in accordance with the preceding sections. Even in a case falling within s 15 the relief by way of a decree for part performance is discretionary and will not be granted where there has been great delay and a consequent change of circumstances. **GOVINDA NAICKER v APATSAHAYA IYER** (1912)

I L R 37 Mad 403

s 18—

See CIVIL PROCEDURE CODE 1882 s
 3254 I L R 36 Bom 510

21—

See ARBITRATION
 I L R 46 Cal 1041

See COMPROMISE DECREE

14 C W N 451

Arbitration—Reference
 to arbitration pleaded in bar of suit—Effect of reference having become unenforceable before suit. *Held* that an agreement to refer to arbitration which has not been acted upon and which has become from lapse of time unenforceable cannot be set up as a bar to a suit respecting matters which had been included in the agreement. **Atma Ras v Sheobaran Ras** All Weekly Notes (1887) 53. **Tahal v Bishehar** I L R 8 All 67 and **Adhibas v Gureandas Nathu** I L R 11 Bom 199. **RAM KUMAR SINGH v JAG MOHAN SINGH** (1910)

I L R 33 All 815

Partners agreement
 amongst to refer disputes to arbitration—Withdrawal of one without cause from arbitration—Suit to recover a share in debt realised by the other partner of his. Where a person has agreed with another that all matters in controversy between them should be referred to arbitration it is not open to that person to renege from the agreement unless for good and sufficient cause. A dispute between partners whose business has come to an end regarding the division of assets can only be finally settled in a proper suit for dissolution of partnership and for adjustment of accounts and it is not proper that each of the parties should proceed by separate suits in order to recover from the other any sums due to the partnership business which he alone may have realised. Where on the termination of a partnership business the partners agreed to refer all matters in dispute between them relating to the partnership to arbitration and then one of the partners withdrew from the arbitration without sufficient cause and instituted a suit in the Small Cause Court to recover a half share of a partnership debt realised by the other partner. *Held* that the debt in suit being one of the matters which the plaintiff had contracted to refer to arbitration s 21 Specific Relief Act was a bar to the continuance of the suit. That the suit was not maintainable at all. **RAM CHANDRA PAI v KRISHNA LAL PAI** (1912)

17 C W N 351

Agreement to arbitrate—
 Suit when demand and refusal not proved of by itself a refusal to arbitrate—Implied refusal. Where two days after concluding an agreement to refer their disputes to arbitration one of the parties instituted a suit and it was urged in defence that

SPECIFIC RELIEF ACT (I OF 1877)—contd

s 21—contd

the suit was barred by s 21 of the Specific Relief Act but there was no allegation in the written statement that the plaintiff refused to perform the contract to refer to arbitration nor was any evidence given to prove such a refusal. *Held per FLITCHER J*—That the filing of the suit was not a refusal within the meaning of s 21 of the Specific Relief Act. **Per SHAMSUL HUDA J**—Neither demand nor refusal need be express and both may be implied. That the institution of the suit in circumstances which showed that plaintiff was determined not to go to arbitration amounted to a refusal to perform the contract to arbitrate. **DINABADHU JANA v DURGA PRASAD JANA** (1918)

22 C W N 362

s 21 (b) 54

See TRUST I L N 41 Cal 19

s 22—

See SPECIFIC PERFORMANCE

I L R 41 Cal 852

Contract for sale of land
 in lieu of hushing up of departmental enquiry against a public servant if enforceable—Court of equity jurisdiction of to refuse specific performance of contract not void or void under the Indian Contract Act. In a suit for specific performance of a contract for sale of land it appeared that in consequence of a charge being laid at the instance of the plaintiffs against one of the defendants who was the record keeper of the Court of the District Judge a departmental enquiry into the matter by a Subordinate Judge was ordered and while this was in progress the two defendants who were father and son were approached by the plaintiffs who promised to hush up the said enquiry if the defendants would execute a conveyance in their favour in respect of certain land and the result was the contract in suit. *Held* that the contract was one of which specific performance ought not to be ordered. That there may be cases which cannot be brought within the four corners of any of the provisions of the Indian Contract Act as to the invalidity or voidability of agreements but in which nevertheless a Court of equity may properly refuse to exercise its jurisdiction under the Specific Relief Act. **GORINDA CHANDRA CHACKERBUTTY v NANDA KUMAR DAS** (1914)

18 C W N 689

Specific performance
 suit for—Sale not completed in time through vendor's non-performance of essential term within time assigned—Vendor if may sell property to another after expiry of time—Delay—Hardship brought on by vendor—Subsequent purchaser with notice making improvement of entitled to compensation. Where a vendor agreed to satisfy the purchaser within a specified time that she had a valid saleable interest in the property by showing a copy of the order of the Collector about the registration or her name in respect of the property the will of her mother and other papers relating thereto but neither the will (which had been filed in Court for probate) nor a certified copy thereof was shown but the vendor produced a compromise petition between the parties to the probate proceeding. *Held* in the circumstances of the case that it was impossible to hold that the production of the will was a non-essential term of the agreement and non-completion of the sale was not due to the default of the purchaser who had refused

SPECIFIC RELIEF ACT (I OF 1877)—contd

s 22—contd

accept the compromise petition in lieu of the will or a certified copy thereof Where property which had been agreed to be sold to plaintiff was sold to defendant on 30th August the conveyance being registered on the following day and the plaintiff sued for specific performance on the 5th November on the re opening of the Civil Courts which was closed for the Pujya holidays from 2nd October to 3rd November *Held*, there was not such a delay in instituting the suit as would justify the Court in refusing specific performance Specific performance will be refused against a vendor on the ground of hardship as contemplated in s 22 (?) of the Specific Relief Act where the vendor has entered into the contract without full knowledge of the circumstances Where a transferee of property buys with notice of a prior agreement to sell it to another and makes improvements in the property without inquiry of the latter *Held* that in a suit by the latter for specific performance he was not entitled to be reimbursed for the costs of the improvements HARADHON DEDYATH v BHAGABATI DASI (1014) 19 C W N 89

s 23—

See CONTRACT I L R 42 Bom 344
I L R 38 Mad 753

s 24—

See SPECIFIC PERFORMANCE
I L R 43 Cal 990

s 27—

See CIVIL PROCEDURE CODE (ACT I OF 1908) O I R 3

I L R 40 Mad 365

See HINDU LAW JOINT FAMILY PROPERTY
I L R 44 Bom 967

See SPECIFIC PERFORMANCE
I L R 40 Cal 565

See TRANSFER OF PROPERTY ACT (I OF 1882) s 54 I L R 39 Mad 462

Sale by unregistered deed

—Subsequent sale by registered deed—Suit by first vendee for registration of deed and for declaration that the subsequent transaction was void The first defendant sold the property in suit to the plaintiff by an unregistered sale deed and subsequently sold the same property to the second defendant by a registered sale deed plaintiff sued both the defendants The reliefs claimed were (1) that the first defendant should be directed to register the first sale deed and (2), that the transaction between the first and second defendants should be declared null and void and possession of the property given to the plaintiff During the pendency of the suit the plaintiff and the first defendant entered into a compromise as a result of which a fresh deed of sale was executed by the first defendant in favour of the plaintiff and registered The suit was contested by the second defendant and was eventually dismissed by the lower Courts *Held* that the suit as framed was a suit for specific performance of the contract *Held* further that the first sale to the plaintiff was a transaction affecting property and that therefore the unregistered sale deed was not admissible in evidence MADHUR BAH v THAG SAH 1 Pat L J 455

Transferee for value from

lessor with constructive notice of agreement for renewal

SPECIFIC RELIEF ACT (I OF 1877)—contd

s 27—contd

in favour of lessee—Constructive notice—Possession of tenant notice of covenants—Specific performance Occupation of property by a tenant ordinarily affects one who would take a transfer of that property with notice of that tenant's rights and if he chooses to make no enquiry of the tenant he cannot claim to be transferee without notice Where on 17 06 during the currency of a jalkar lease for seven years executed by the owners in favour of the defendants on 23 11 01 the plaintiffs took a settlement of the jalkar from the lessor for a term of seven years from 1 08 on payment of a sum of Rs 600 and on the expiry of the defendants term sued them for recovery of possession of the jalkar *Held* that an agreement for renewal of their lease upon certain conditions made between the defendants and their lessors on 13 01 was specifically enforceable by them against the plaintiffs who claimed title under the lessors and were affected with notice of the agreement of 1 01 That plaintiffs could not consequently recover BABURAM BAO v MOHADEB CHANDRA PALLAY (1013) 18 C W N 341

Sale—Suit for specific

performance of a contract to sell defendants being vendees under a registered sale deed—Priority—Registration Act (VII of 1908) s 50 The owners of a village which had already been sold at an auction sale in execution of a decree agreed to sell it to the plaintiff provided that the auction sale should be set aside The auction sale was set aside but subsequently the village was sold by means of a registered sale deed to a third party *Held* on a suit by the plaintiff for specific performance of the contract to sell to him that the defendants vendees registered sale deed did not take priority over the contract in his favour and that it lay on the defendants to rebut the evidence given by the plaintiff that their purchase were the defendants at the time of the contract in favour of the plaintiff NAUBAT RAI v DHANUVAL SINGH (1010) I L R 38 All 184

s 29—Agreement of sale—Specific performance—Alternative relief—Civil Procedure Code (Act I of 1908) O III r 7

Where in an agreement of sale it was stipulated that if the transaction fell through for default of the vendors (defendants) the vendees (plaintiffs) would be free to enforce specific performance at law and would be entitled to be credited with interest on his deposit from the date on which it was made but if it fell through owing to the vendors default then the latter would be entitled to the refund of the bare deposit without interest and the vendors would be at liberty to dispose of the property in any other way they might choose and the Court below refused a decree for the refund of the deposit and gave a decree for the refund of the deposit with interest though the plaintiff (vendee) did not ask for any such alternative relief *Held* that the Court below was in the main right as it did not necessarily follow from the dismissal of a suit for specific performance that an order for the refund of any part payment of the purchase money should also be denied Ibrahimbhai v Fletcher I L R 21 Bom 827 Alokesh Das v Hara Chand Dast I L R 24 Cal 897 Arima Bibi v Udit Narain Misra I L R 31 All 68 Hou v Smith v, CA D 89 referred to The vendee could notwith

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s. 29—*contd*

standing that his suit for specific performance has been dismissed and no matter on what ground it failed have brought a suit for the recovery of his deposit *Parangodan Vair v Perumodula Illot Chata I L R 97 Mad 380* referred to *Held* further that the Subordinate Judge was right in refusing to relegate the parties to fresh litigation as there could have been but one result of another suit on the contract *Hove v Smith 9, Ch D 89* referred to *RAGHU NATH SAHAI v CHANDRA PRATAP SINGH (1912)* 17 C W N 100

s. 30—Specific performance—Award—

Suit to recover money payable under an award—Limitation Act (IX of 1908) Sch I Arts 113 116 120—Limitation By the terms of an award it was provided *inter alia* that the defendants should pay to the plaintiff the sum of Rs 30 on or before the 27th of June 1901 and in default of such payment the plaintiff could recover from the defendants Rs 30 with interest at 12 per cent per annum *Held* that a suit to recover on default of payment by the stipulated date the sum abovesaid with interest was not a suit for specific performance of a contract and as such governed by Art 113 of the First Schedule to the Indian Limitation Act 1908 but was governed by either Art 116 or Art 190 *Sulho Bibi v Ram Sukh Das I L R 5 All 263 Raghubar Dyal v Madan Mohan Lal I L R 16 All 3 Sheo Narain v Beni Madho I L R 21 All 235 Sornarolls Ammal v Muthayya Sastirgal I L R 93 Mad 553 Talewar Singh v Bahori Singh I L R 96 All 497 and Bijahari Saha Banilya v Behary Lal Basal I L R 33 Cal 881 KULDEB DUBEY v MANABU DUBE (1911) I L R 34 All 43*

s. 31—

See EVIDENCE ACT 1872 s 90

I L R 39 Mad 792

In order to justify rectification of a contract or other instrument in writing there must be proof of a common intention different from the expressed intention and a common mistaken supposition that the intention was rightly expressed in the instrument. It matters not by whom the actual error was made. Notice to a purchaser by his title papers in a transaction will not be notice to him in an independent subsequent transaction in which the instruments containing the recitals are not necessary to his title *BIRJA KRISHNA ROY v PRIYA PRATA BOSE* 26 C W N 38

ss 34 and 41—Minors mortgage in favour of—Whether minor entitled to compensation—Contract Act (IX of 1872) ss 41 and 47—Suit for sale of riyat holding maintaining ability of—Res judicata—Dictum in previous suit effect of A mortgage executed in favour of a minor who has advanced the whole of the loan to secure which the mortgage was executed is not void and can be enforced against the mortgagor. But even assuming it to be void s 41 of the Specific Relief Act 1877 could be applied so as to grant compensation to the minor *Held* in a suit on a mortgage of a riyat holding in Manbhumi that the plaintiff was entitled to a mortgage decree and that the lower Courts were wrong in holding that the provisions of the Chota Nagpur Tenancy Act 1908 which was not extended to Manbhumi until 1909 operated before that date to prevent the plaintiff

SPECIFIC RELIEF ACT (I OF 1877)—*contd*ss 34 and 41—*contd*

from obtaining anything but a money decree D the mortgagee a agent received from the mortgagor the interest due on the bond for 1912 and refused to deliver to the mortgagee either the bond or the interest received by him. The plaintiff thereupon instituted a suit against D and the mortgagee claiming from D the interest received by him and delivery of the bond with an alternative prayer that if it should be found that D and the mortgagor were colluding then the whole amount covered by the bond should be adjudged to the plaintiffs. The first Court passed a money decree against both defendants. In an appeal by D the High Court dealt only with the first part of the plaintiff's claim and made a decree for the delivery up of the bond by D and payment by him of the interest received. With reference to the alternative claim the High Court observed that after obtaining possession of the bond it would be open to the plaintiffs to proceed against the mortgagor for enforcing their security but in the judgment there was a dictum to the effect that as the plaintiffs were minors the mortgage would be void. In a subsequent suit on the bond by the plaintiffs the mortgagor pleaded that the dictum of the High Court operated as *res judicata*. *Held* that the dictum did not operate as *res judicata* *MATHAB KOERI v BAIKUNTHA HARMARUP*

4 Pat L J 682

s. 35—

See LESSOR AND LESSEE

I L R 42 B & D 243

s. 36—

See BRIGADARI AND HARWADARI TENURE ACT (BOV V OF 1802) s 3

I L R 39 Bom 358

s. 39—

See COMPROMISE

1 Pat L J 48

Court fees—Suit for avoidance of registered deed of gift—Court fees Act (I of 1870) 7 (4) (c)—Consequential relief In a suit for avoidance of a registered deed of gift the Court is bound if the suit is decided in plaintiff's favour to send a copy of its decree to the officer in whose office the instrument has been registered. The forwarding of the decree is a consequential relief upon which the plaintiff must pay an *ad valorem* court fee *MUSSAMMAT MOOWOODAR OJAIB v SHIDHAR JHA* 3 Pat L J 184

Evidence Act (I of 1872) s 57—Civil Procedure Code (Act I of 1908) s 100 O 11 r 6—Suit to set aside a sale-deed—Specific allegations of coercion made in the plaint—Allegations disbelieved—Different kind of coercion held probable on other circumstances and doubts—Finding not seen *adum allegata et probata*—Substantial error in procedure—Ground for setting aside a sale might otherwise be a conclusion of fact. Plaintiff sued the defendant to set aside a sale-deed on the ground of coercion of a particular kind under s 39 of the Specific Relief Act (I of 1877). Both the lower Courts disbelieved the allegations of coercion made in the plaint but granted relief to the plaintiff on the ground that on a consideration of other circumstances the plaintiff must have been deceitfully decoyed into going quietly and privately to the defendant's *wardap* (open shed) and there through fear of possible violence made to sign the document. On second appeal by the defendant

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 39—*contd*

Held reversing the decree and dismissing the suit that a suspicion of some kind or other undue coercion was not sufficient to support the plea of coercion the plea being not *causum allegata et probata* *Volte Lal Opudhya v Jaggurnath Gurg & B I P C 2a Leshenchun der Singh v Shamachurn Bhutto 11 Moo 1 A 7 and Balaji v Gangadhar 1 L I 32 Bom 255* referred to *Per HAYWARD J*—Where fraud or coercion are alleged detailed particulars must be given in the pleadings and parties must be strictly confined to that state of facts. Where particulars of coercion alleged are wholly rejected and evidence disbelieved and a vague and different kind of coercion is held to have been probable on other circumstances and doubts there is a substantial error in procedure resulting in a finding not *secundum allegata et probata* and not sustainable in law *Per BEAMAN J*—A plaintiff who comes to Court alleging fraud or coercion in respect of which the law requires him to give particulars and he being disbelieved upon every material one of them cannot be given relief. When a finding is absolutely unsupported by any evidence at all that is a ground for setting aside what might otherwise be a conclusion of fact. When the Court has found a case required to be made by the plaintiff not proved and has found another case unsupported in its most essential point by any evidence at all proved and so substituted the latter for the former, there is a substantial error in procedure under s 100 of the Civil Procedure Code (Act V of 1908) *PURUSHOTAM DASI v PANDURAY CHINTAMAN (1914)* 1 L R 39 Bom 149

Conveyance executed by accused in consideration of complainant withdrawing prosecution for non-compoundable offence—Suit to set aside such sale deed if lies—Arises in pari delicto if entitled to declaratory relief—Court's discretion under s 39 The rule of law in England with regard to illegal contracts is that a Court of Law will not aid persons in enforcing the performance of an illegal contract or assist them to recover back property which they have given away under such an illegal contract when the persons and parties to the contract are themselves *pari delicto* in procuring this illegality. The Courts of equity in England have always refused to afford equitable relief in enforcing a contract void in law or restoring property which is based on an illegal contract where the illegality is apparent on the face of the document itself. The principle on which Courts of law and equity have refused to restore property given away under an illegal agreement is equally applicable when the relief prayed for is by way of a declaration after the party seeking such relief has secured to himself the benefit of the agreement. S 39 of the Specific Relief Act in allowing relief to be granted in a proper and fit case even when a contract out of which the right springs is void leaves it entirely in the discretion of the Court to exercise the jurisdiction so conferred upon it. Where *L B*'s agent having purchased property *B* alleged that it was purchased by *L* as *B*'s trustee whilst *L* claimed to have purchased it in his own right and the dispute culminated in civil actions brought by the parties against each other and in *B* instituting criminal proceedings against *L* under ss 408-477 of the Indian Penal Code but at the instance of arbi-

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 39—*contd*

trators appointed by mutual consent the disputes were settled and *B* withdrew the criminal and other proceedings against *L* and in consideration thereof *I* *inter alia* executed a sale deed of the property purchased by him. *Held* in a suit by *L* to have the conveyance declared void and the sale set aside and cancelled that the whole of the contract was illegal as it was not possible to sever the legal from the illegal part. That there being no evidence that there was any undue influence, fraud or duress or that the plaintiff took a more innocent part in the illegal compromise than the defendant the Court would not grant relief under s 39 of the Specific Relief Act. *BYNDESHARI PRASAD v LEXKHAR SANKU (1916)*

20 C W N 780

Mortgage-deed executed and registered—Suit by mortgagor for cancellation on the sole ground of non-payment of consideration—Suit whether maintainable—Contract and deed & conveyance distinction between—Mortgage whether void or voidable Where a mortgage-deed has been executed and registered a suit by the mortgagor for the cancellation of the deed on the mere ground that the consideration for the mortgage has not been paid is not maintainable. When the matter has passed from the state of contract to that of an executed conveyance mere non-payment of consideration will not render the transaction void or voidable within the terms of s 39 of the Specific Relief Act. *Basa Lingappa v Virupannappa 5 Bom L R 39 and Rashik Lal v Puri Narain 1 L R 34 All 0 v* referred to *ABDUL HASHEM SANKU v KHADIR BATCHA SANKU (1918)* 1 L R 42 Mad 20

39 40 43—*Suit for declaration that an endorsement on a document was fraudulently obtained—Consequential relief not asked for—Held that a suit for the cancellation of an endorsement fraudulently obtained on a mortgage deed is maintainable inasmuch as it is a suit of the nature indicated by s 39 of the Specific Relief Act. The endorsement fraudulently obtained is by itself a document and is similar to the several parts of a document indicated in s 40 of the said Act. To such a suit s 42 of the Act does not apply.* *RAM CHANDAR v GANQA SARIN (1916)* 1 L R 111 All 103

ss 39 42—

See CIVIL PROCEDURE CODE 1908 O
XLI p 2. 1 L R 34 All 140

s 41—

See s 34

4 Pat L J 682

Minor—Representation made as major—Estoppel—Sale-deed suit set aside—Restoration of consideration money The plaintiff sued to obtain a declaration that the sale-deed passed by her to her deceased husband's brother was not valid as having been executed during her minority and to recover possession of the property. The defendant contended that the plaintiff was estopped because she represented herself as being a major when she must have known that she was a minor. On these pleadings question that she was a minor (1) whether the plaintiff was estopped arising (2) whether the representation made by her on account of the representation made by her and (2) whether under s 41 of the Specific Relief Act 1877 the Court should have directed the

SPECIFIC RELIEF ACT (I OF 1877)—*contd*— s 41—*contd*

plaintiff to restore the consideration money. *Held* that the plaintiff was not estopped there being evidence that the defendant was not deceived by what she told him inasmuch as he had made enquiries about plaintiff's age from the plaintiff's father and from other sources and beyond that was himself the brother of her deceased husband and therefore a fair presumption arose that he must have known what the plaintiff's age was (?) that there was no equity in favour of the defendant to direct the plaintiff to restore the consideration money. *GERUSHIDSWAMI v PARANA* (1919) I L W 44 Bom 175

— s 42—

See s 12 3 Pat L J 182

See CIVIL PROCEDURE CODE (1908) s 9

I L R 37 All 313

1 Pat L J 381

O II R 2 I L R 118 Mad 1162

O VI R 22 I L R 34 All 140

See COURT FEE I L R 39 Calc 704

I L R 40 Calc 245

I L R 44 Calc 352

See DECLARATORY DECREE SUIT FOR

I L R 43 Calc 694

I L R 45 Calc 510

See ELECTION I L R 41 Calc 384

See HINDU LAW—ADOPTION

2 Pat L J 481

See HINDU LAW—INHERITANCE

I L R 43 Mad 4

See HINDU LAW—WIDOW

I L R 41 All 492

See MADRAS VILLAGE COURT ACT (I OF

1889) s 24 I L R 39 Mad 808

See MINOR I L R 35 All 487

See MUNICIPAL LAW

L R 43 I A 243

See PEVAL ASSESSMENT

I L R 37 Mad 298

See PROFIT A PRENDRE

2 Pat L J 323

See SPECIFIC RELIEF ACT

See USUFRUCTUARY MORTGAGE

3 Pat L J 71

Brother of a lunatic suing in respect of property purchased with income of lunatic's property—

See ADMISSION I L R 1 Lah 137

Illustration (c)—

See DECLARATORY DECREE

I L R 45 Calc 510

1 ————— *Mahomedan Law—Waqf*

—Right of Mahomedans entitled to use such property to sue for a declaration that property is waqf. The plaintiffs Mahomedan residents in the city of Kanauj sued for a declaration that a certain edgah and the land adjoining it situated in a village in pargana Kanauj was waqf property. *Held* that as Mahomedans who had a right to use

SPECIFIC RELIEF ACT (I OF 1877)—*contd*— s 42—*contd*

the edgah they were entitled to use and that no special permission was required to enable them to do so. *Zafaryab Ali v Bakhtwar Singh I L R 5 All 497* and *Jawahra v Akbar Husain I L R 7 All 173* followed. *Wajid Ali Shah v Dhanatullah Beg I L R 8 All 31* distinguished. *MUHAMMAD ALAM v AKBAR HUSAIN* (1910) I L R 32 All 631

2 ————— *Civil Procedure*

Code (Act III of 1859) s 10—15 and 16 Vic c 36 s 50—Sue by plaintiff for mere declaration that the minor defendant was not his son—Investigation of claim without delay. A Talukdar plaintiff brought a suit for a declaration that defendant 2 a minor was not his son and that he was not born to the plaintiff's wife defendant 1 and for an injunction restraining defendant 1 from proclaiming to the world that defendant 2 was plaintiff's son and from claiming maintenance for him as such son. The defendants contended that the suit was not maintainable under the provisions of the Specific Relief Act (I of 1877) and that it was premature. *Held* that the suit was maintainable it being within the provisions of s 42 of the Specific Relief Act (I of 1877). *Held* further that in the interests of justice it was of the highest importance that such claims should be investigated and decided without unnecessary delay and when the controversy had on been brought to trial the decision should ordinarily follow the usual course. *100 v. Ewing Jr Rep I Ch 434* distinguished. *BAI SHRI VAKTUBA v THAKOR AGAR KOTHI RAI SINGHJI* (1910) I L R 24 Bom 678

3 ————— *Rent decrees ob*

tained by defendant against plaintiffs tenants if amounts to dispossession—Throwing cloud on title—Declaratory suit proper remedy. Where the plaintiff sued for declaration of title to certain lands alleging that the same were in possession of his tenant but that the defendant had thrown a cloud of his title by recovering rent decrees against some of the tenants. *Held* that the plaintiff could not in this suit ask for any further relief than a mere declaration of title and was proceeding in the right manner in suing for declaration of the title only. *Loke Nath Surma v Keshab Pam Doss I L R 13 Calc 147*. *Chinnammal v Paradravulu I L R 16 Mad 307*. *Armal Chandra v Mahomed Ali I L R 6 Calc 11* relied on. *SATISH CHANDRA BHATTACHARYA v SATYA CHANDRA BHATTACHARYA* (1910) 14 C W N 526

4 ————— *Suit for enforcement*

of abstract right—Cause of action. *Yashwanthi of 1839 (Succession Certificate Act) s 2*. A Hindu widow applied for a succession certificate to enable her to collect the debts of her deceased husband consisting mainly of a sum of Rs 1000 fixed deposit with a bank. *Held* that the certificate was refused by the bank on the ground that the applicant was not the legal heir of the deceased. *Held* that the applicant was entitled to the certificate and that the bank was liable to pay the sum of Rs 1000. *Held* that the suit was maintainable. *Yashwanthi v Bank of India* (1910) 14 C W N 526

5 ————— *Declaration*

will be given. In *Yashwanthi v Bank of India* (1910) 14 C W N 526

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 42—*contd*

maintainable by reason of the proviso to s 42 of the Specific Relief Act (I of 1877) it must be shown that the defendant was in possession and that as against him the plaintiff could have obtained an order for delivery of possession. *VALATHALA PILLAI v PERUMAL PILLAI* (1913) 1 L R 36 Mad 62

6

Hindu

Law

Reversioner—Suit for declaration of title—Cause of action—Will made by Hindu widow in possession—Limitation D a separated Hindu and his son A died in 1891 on the same day the father dying first & son S A died a week later leaving his mother H and his grandmother M. The property was then recorded in the names of M and H but M got possession and in 1904 executed a will in favour of her daughter S. The reversioners of D brought a suit in 1908 for a declaration that the will would have no effect on their reversionary right & set up her right to the property ignoring that of H. Held that even during the lifetime of H the plaintiffs were entitled to institute a suit for a declaration only under the provisions of s 42 Specific Relief Act. Held further that the suit was not barred by limitation. Mutation of names in M's favour was more or less an equivocal act and might possibly have given a cause of action but when in 1908 M specifically declared that the heir to the property was S and S herself asserted her title the plaintiffs acquired a cause of action sufficient to entitle them to sue. *SHYRABAI v JANIAS PANDR* (1911) 1 L R 33 All 430

7

Declaratory decree

when should be made and when refused—Consequential relief injunctions s 42 of the Specific Act does not sanction every form of declaration but only declaration that the plaintiff is entitled to any legal character or to any right as to any property. Courts in this country should see that plaintiffs which pray for declaratory decrees only conform to the terms of s 42 Specific Relief Act. An injunction is a consequential relief. The limit imposed by s 42 of the Specific Relief Act is on decrees which are merely declaratory and does not expressly extend to decrees in which relief is administered and declarations are embodied as introductory to that relief. For such declarations legislative sanction is not required as they rest on long established practice. But for all that the Court should be circumspect and even chary as to the declarations it makes. It is ordinarily enough that relief should be granted without the declaration. *DPOKALI KOER v KEDAR NATH* (1912) 1 L R 39 Cal 704

16 C W N 538

8

Fabrication of

authority to adopt by widow does not justify suit by reversioner for declaring the authority not genuine. The mere fabrication of an authority to adopt by the widow will not entitle the reversioner to claim a declaration under s 42 of the Specific Relief Act that the authority is not genuine. *SREEPADA VENKATARAMANNA v SREEPADA PANALAPPA MAMMA* (1912) 1 L R 35 Mad 592

9

Joint Hindu family

—Widow alleged to be in possession of part of the joint property under a family agreement—Suit for declaration of rights of other members of the family. Under a deed of compromise the name of the widow of a member of a joint Hindu family was

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 42—*contd*

entered in the place of that of her husband and she was put in possession of the property that stood in his name. On an application being made for partition of one of the villas the widow also applied for partition of the share which stood in her name. The plaintiffs objected on the ground that she was not entitled to partition and they were referred to the Civil Court to have their rights established. They then sued for a declaration that the deceased died while living jointly with them else that the widow was not in possession as the heir of the deceased and that she was not entitled to obtain partition. S 42 of the Specific Relief Act was set up in defence. Held that in as much as the possession of the defendant was clearly admitted and the real dispute between the parties was one of the nature of the possession of the widow. s 42 of the Specific Relief Act did not lay a suit for declaration of title. *PANMADEATH SINGH v DILSAJI KHANWAR* (1913) 1 L R 36 All 196

10

Suit for declaration

of title—Waste land—Plaintiff out of possession. Held that the fact that land was waste land and therefore of no immediate practical use was no bar to the application of s 42 of the Specific Relief Act where the plaintiff being admittedly out of possession, claimed only a declaration of his title. *Pamanuja v Devarayala* 1 L R 8 Mad 361 distinguished. *IHWARI SINGH v NARAYAN DAT* (1914) 1 L R 36 All 312

11

Assent from

tenant if may we landlord for recognition of his tenant rights and declaration of incidents of tenancy—Landlord and tenant. The Court has power to pass a declaratory decree in a suit by a signee of a lease against the landlord to have it declared that the lease is a permanent heritable and transferable one that the rent was fixed in perpetuity and that the landlord was bound to recognize the plaintiff as tenant of the leasehold. The law laid down in earlier rulings to the contrary has been modified by s 42 of the Specific Relief Act. *MOHAMMAD GHOSR v EQUITABLE COAL COMPANY LTD* (1913) 18 C W N 596

12

Declaratory suit

under if maintainable where property not in possession of defendants and plaintiff cannot ask for ejectment. Where the property is not in possession of the defendants and the plaintiff cannot ask for ejectment as against them a declaratory suit is maintainable under s 42 of the Specific Relief Act. *Subramanyam v Paramanathan* 1 L R 11 Mad 116 and *Malayappa v Perumal* 21 Mad 1 J 1022 followed. *PANESWAR MOXDAL v PROVABATI DEBI* (1914) 19 C W N 313

13

Suit for declaration

of title—Property involved in possession of Court of Wards for person entitled thereto—Parties to suit. On the death of a maharaja the right of succession to whose estate was disputed the Court of Wards took possession of the estate and declined to hand it over until some one should establish his right to the maharajahship. Held in a suit for a declaration of his title to the maharajahship brought by a claimant thereto (i) that the Court of Wards was not a necessary party and (ii) that this did not offend against the provisions of s 42 of the Specific Relief Act. *Goswami Ranchor*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 42—*contd*

*Loh v Sri Chandrasekhar I I P 40 All 10 dis-
tinguished JACANNATH CIR v TIPONNA NAD
(1911) I L R 37 All 185*

14 ———— *Declaration suit
for—Legal character or right to property meaning of
—Facts under a contract declaration as to if main-
tainable—S 42 not exhaustive—Ordinary rule—
Exception—Kuri subscriber to—Ignorance from
subscriber—Right of if continue payment—Suit
for declaration by if maintainable S 42 of the
Specific Relief Act does not contemplate a suit
for a declaration that a valid personal contract
subsists between the plaintiff and the defendant
as it is not a suit for a declaration of title to a
legal character on a right to property S 42 of
the Specific Relief Act is not intended to be ex-
haustive as regards the circumstances under which
declaratory suits can be maintained *Robert
Fischer v The Secretary of State for India I L R
27 Mad 210* referred to *Aristaya v Kasiyati
I L R 29 Mad 55* referred to But a declaratory
relief will not be given in respect of rights arising
out of a contract which would affect only the
pecuniary relationship between the parties to the
contract unless there are exceptional circum-
stances in a case to take it out of the ordinary
rule Where the plaintiff who was the purchaser
of the rights of the second defendant who was a
subscriber to a half ticket in a kurn started by
the first defendant as its proprietor sued the latter
for a declaration that he was not a defaulter and
was entitled to continue to pay the subscriptions
to the kurn *Held* that the suit for declaration was
not maintainable *RAMAKRISHNA v NARAYANA
(1914) I L R 39 Mad 80**

11 ———— *Right to play
music in public street—Whether the declaration of
right can be claimed as a right—Civil Court The
plaintiffs trustees of a Hindu temple brought a
suit for a declaration under s 42 of the Specific
Relief Act 1877 that they were entitled to play
music while going in procession past a Mahomedan
mosque situated in a public street *Held* that the
plaintiffs were not entitled to have the right to
play music in a public street claimed and declared
as a right *Per HEATON J*—The right to use a
street as a thoroughfare is a right which a Court
might properly declare but the right to pass along a
street playing music is not a right which the
Courts ought to recognise in that sense *PER
KATESU APPASHEE v ABDUL KADIR (1918)
I L R 42 Bom 438**

10 ———— *Declaratory decree
—Trespasser in possession of property which a
Hindu widow was entitled—Execution of will by
trespasser—Suit by reversionary heirs for declara-
tion of their rights and to set aside will On the
death of the widow of a separated Hindu in
possession as such widow of her husband a property
the daughter of one of her sons who had both
predeceased the husband took possession of
the property to the exclusion of her two daughters
While so in possession of the property the sons
daughter executed a will bequeathing the prop-
erty as if it were her own *Held* on suit by
persons alleging themselves to be the reversionary
heirs for a declaration that the sons daughter
had acquired no adverse or proprietary right to
the property and had no right to make a will in*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 42—*contd*

respect thereof that no such declaration could be
granted *Umrao Kunwar v Badri I L R 37
All 4 and Jaspal Kunwar v Indir Bahadur
Singh I I P 46 All 1938* referred to *GANGA
v KANHAI LAL (1918) I L R 41 All 154*

17 ———— *Hindu Law—
S 42 by a Hindu for a declaration that a will alleged to
have been executed by another member of the family
giving his widow power to adopt is forged—Main-
tainability of A member of a Hindu family can
maintain a suit under s 42 of the Specific Relief
Act for a declaration that a will alleged to have
been executed by another member of the family
giving his widow power to adopt is a forgery
*Bobba Palmanabhadra v Bobba Buelamma 35 M
L J 141* followed *Sreepadam Venkatarammanna
v Sreepadam Ramalakshammamma I L R 35 Mad
559* not followed *SURAYYA v ANAPURNAMMA
(1910) I L R 42 Mad 699**

18 ———— *Suit by a rever-
sioner of Hindu for a declaration that another is
not reversioner maintainability of—Order striking
out defendant as party under O 1 r 10 (2) Civil
Procedure Code and dismissing suit—Appeal from
order maintainability of Though under s 42 of
the Specific Relief Act a Court can in its discre-
tion grant relief by way of declaration it is a
settled rule of practice not to grant such relief
where the only question for decision is which of
two persons (plaintiff or defendant) is the nearest
reversioner or whether the defendant is a rever-
sioner at all to the estate of a deceased Hindu
*Saudagar Singh v Pardip Narayan Singh I L
R 45 Cal 510* referred to An order in a suit
striking out from the array of parties a defendant
as an unnecessary party and dismissing the suit
against him is in effect a decree and is appealable
as such *PAMA RAO v THE RAJA OF PITTAPUR
(1918) I L R 42 Mad. 219**

19 ———— *Person entitled to
a legal character divorced wife if—Mother if can
sue for declaration of legitimacy of child The
plaintiff sued her late husband for a declaration
under s 42 Specific Relief Act for a declaration
as to her marriage and the legitimacy of four
children The lower Court found that the plant-
iff had been divorced some 20 years ago and
refused the declaration about marriage but
decreed it as to the legitimacy of the eldest of
the children who it was found was born shortly
after the divorce *Held* that the plaintiff who
ceased to have the legal character of a wife 20
years ago was not entitled to ask the Court to
make a declaration as to her marriage for there was
no legal character in having been a wife and then
divorced That the decree of the lower Court as
to the legitimacy of one of the children could not
stand for the mother of a child cannot be said to
have a legal character as to whether her child
who is not a party to the suit is or is not legitimate
*LATIFAH MEAN v MOORTI JAYONA (1918)
23 C W N 171**

20 ———— *Trespasser suit
for declaration by The essence of s 42 of the
Specific Relief Act 1877 is a title vesting in the
plaintiff No suit will lie at the instance of a
trespasser for a declaration that he is a trespasser
*SESS LAL SINGH v HALDHAR NARAYAN
1 Pat L J 95**

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 42—*contd*

21 ————— Where through clumsy blundering the plaintiff who have asked for a decree for pre-emption prayed only for a declaration of their right to pre-empt the suit as so framed was not maintainable under s 42 of the Act but the lower Court was right in permitting the plaintiff in the suit to be amended although a fresh suit on the same cause of action would at the time have been barred by limitation the plaintiff's object having undoubtedly been to pre-empt the land so that the cause of action was one and the same whether they sued for possession or not CHANDAN DAS v AMIN KHAN (1920 P C)

25 C W N 269

22 ————— Suit for declaration of right to a certain share of joint family property maintainability of A joint Hindu family of which the parties to the suit were members owned undivided shares in several villages in which there were many co-sharers not connected with the family. The plaintiffs severed themselves from the joint family and a dispute arose as to the extent of their share in the family property. Held that under the circumstances the plaintiffs were entitled to a declaration as to the extent of their share in the family property the provisions of s 42 of the Specific Relief Act notwithstanding ASMAK SINGH v TOLST SINGH

2 Pat L J 221

23 ————— Temple property—Permanent lease—Invalidity of lease—Suit for declaration by worshippers—Maintainability of suit Worshippers of a temple can maintain a suit for a declaration that a permanent lease of temple property granted to the defendants in possession is invalid VEERAMACHANENI RAMASWAMY v SOMA PITCHAYYA (1920) I L R 43 Mad 410

24 ————— Suit for declaration of title to property after it was attached under s 146 Criminal Procedure Code (Act I of 1903)—Effect of Magistrate's attachment on the question of possession—Limitation Act (IX of 1908) s 23 and Arts 120 and 142 period of limitation applicable to the case Plaintiff was dispossessed from some lands by the defendant in April 1904 and in June 1904 the lands were attached under s 146 Cr P Code owing to disputes between the parties Plaintiff brought the present suit for recovery of possession in May 1916 The lower Courts held that plaintiff had title but that the suit was barred by limitation Held that the suit though framed as a suit for possession cannot be treated as such because the possession was not with the defendant but with the Magistrate who was not and could not be a party to the suit The article therefore applicable to the suit was Art 120 of the Limitation Act and not Art 142 The position of the Magistrate was that of a stakeholder and during the continuance of the attachment the property was in legal custody which must be held to be for the benefit of the true owner i.e. the plaintiff And the possession of the Magistrate being in law the possession of the true owner the defendant's possession was determined upon the Magistrate's taking possession under the attachment in other words the plaintiff must be taken to have been restored to possession constructively on the date of the attachment He therefore got a fresh starting point for purposes of limitation and the

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 42—*concld*

case can be treated as one of continuing wrong within the meaning of s 23 of the Limitation Act The suit was therefore not barred by limitation LATTA LAL BISWAS v PANCHU RUI DA

26 C W N 432

25 ————— Held that although the words legal character in s 42 of the Specific Relief Act have been held to be wide enough to include the right of franchise and also a right of being elected as a Municipal Commissioner it was doubtful whether regard being had to the form of the suit and the declaration asked for in this case the case came within the words of the section CHANDAN MUNICIPALITY v KORTUCC v BISSESWAR GHOSH

26 C W N 91

26 ————— Declaratory suit by a mortgagee for declaration of the right of mortgagee I died leaving a widow and two sons and a will by which he appointed his widow as his executrix The two sons mortgaged the property to S and the widow the executrix sold the property under mortgage to P P brought a suit for construction of G's will and for a declaration that the rights of the sons had not been affected by the will and that the widow had no right of property Held that the plaintiff must first of all establish his right as mortgagee and until that is done he has no cause of action for maintaining a suit for a declaration of the title of his mortgagors The plaintiff should not at the appellate stage be allowed to amend the plaint to raise the question of his right as mortgagee as that would involve taking of fresh evidence and a trial de novo SRISH CHANDRA CHATTERJEE v SH GOLAP MOH DAST

25 C W N 552

ss 42 and 54—

See MAHABRAHMAN I L R 43 All 150

s 43—

See CIVIL PROCEDURE CODE 1908 s 11 I L R 44 Mad 778

s 45—

See DESIGN I L R 45 Cal 606

See LAND ACQUISITION I L R 48 Cal 916

See MUNICIPAL CORPORATION I L R 40 Cal 636

See MUNICIPAL ELECTION I L R 39 Cal 593 754

I L R 45 Cal 950

I L P 48 Cal 119

See UNIVERSITY LECTURESHIP I L R 41 Cal 516

ence—High Courts power of interference

See EXCESS PROFITS DUTY ACT (X OF 1919)—

ss 3 15 SCH I I L R 45 Bom 1064

ss 6 (I) (a) and (b) SCH II CL I I L R 45 Bom 891

1 ————— General principle under lying interference by High Court—Municipal election petition—Jurisdiction and discretion of

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s. 45—*contd*

Chief Judge of Small Causes Court—City of Bombay Municipal Act (Act III of 1888 as amended by Bom Act I of 1905) s. 33 (1) & 31. A Municipal election petition having been lodged with the Chief Judge of the Small Causes Court the latter rejected two of the successful candidates and found cause of objection against the candidate in whose favour were recorded the next highest number of valid votes after those returned as elected. He declined to inquire further into the claims of any other candidate or to declare any other candidate elected as on his interpretation of s. 33 (2) of the Bombay Municipal Act (Bom Act III of 1888 as amended by Bom Act V of 1905) he was not able to do so. The two highest of the other unsuccessful candidates thereupon obtained rules against the Chief Judge under s. 45 of the Specific Relief Act (I of 1877) to show cause why he should not proceed to declare them elected under s. 30 (2) above mentioned. *Held* that the case fell within the general principle referred to in *Ex parte Milner (1851) 15 Jur 1037* that where an inferior tribunal improperly refused to enter upon a complaint a mandamus would issue. *S* 33 having been held to empower the Chief Judge to set aside the election of any number of candidates returned as elected there was nothing repugnant in construing the section as empowering the Chief Judge to fill up any number of vacancies so created from the list of unsuccessful candidates subject to the provisions of the section. It was clearly incumbent on the Chief Judge to deal with the question of filling up both the vacancies. He should accordingly proceed to place the unsuccessful candidates in order of valid votes. The two with the highest number of valid votes against whom no cause of objection was found should be declared to be deemed to be elected. If only one qualified or none qualified proceedings for filling the vacancy or vacancies would have to be taken under s. 34. An application under s. 33 (1) should name the persons whose election is objected to. *In the matter of the SPECIFIC RELIEF ACT and In the matter of SARAFALLY MAHOOMI and JAFFER JUSUB (1910)*

I L R 31 Bom 659

2 —Where the Magistrate had refused to furnish such copies to a party the High Court under s. 45 of the Specific Relief Act ordered the records of the case to be brought up to High Court and kept with the Registrar and allowed liberty to the party to take copies. *BEH L MAHOMI BAKSHJI; SAILVEDRA NATH MUKHERJEE (1911)* 15 C W N 770

3 —*University of Madras—Senate and the Syndicate respective powers of—Regulation 64 of the Madras University Regulations providing for protests to Government ultra vires—Refusal of Syndicate to send protest to Government—Application for an order against Syndicate—Syndicate a public officer—protestor an injured person and by law a law for the time being within s. 45—Other specific and adequate remedy in s. 45 meaning of—Substance and not form of protest and resolution to be looked at. In granting an application for an order under s. 45 of the Specific Relief Act filed by a Fellow of the Madras University against the Syndicate thereof for the purpose of compelling the Syndicate to forward to the Government a protest of his under Regulation 64 of the*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s. 45—*contd*

University Regulations against a resolution of the Senate. Held under the Madras University Act of 1857 and the Indian Universities Act of 1904 that the Senate of the Madras University is the legislative and the Syndicate the executive government of the University. The scheme of the Acts in that general rules (called regulations) framed as to matters within the competence of the University are to be made by the Senate in some cases with the sanction of the Government and that the Syndicate's powers are purely executive and limited to the application of those rules to the facts and exigencies of particular cases as they arise. No sanction of Government is required for the Syndicate's application of the general rules made by the Senate and the Syndicate is entitled to make its own standing orders and subject to the Regulations of the University to regulate its business without the sanction of the Senate. The Syndicate can bring forward regulations for adoption by the Senate. Such being the relative powers of these two bodies a power given to the University by s. 3 of the Universities Act VIII of 1904 to appoint University Professors and Lecturers and a specific power given by s. 20 of the Act to the Senate of the University to make regulation subject to the sanction of the Government for the appointment and duties of the University Professors and Lecturers are exercisable only by the Senate and not by the Syndicate. Such a power cannot be included within the administrative or ministerial powers of the Syndicate which it is competent to exercise without the approval of the Senate. A regulation or a proposal brought forward by the Syndicate in respect of such a matter for the approval of the Senate becomes on adoption by the Senate a regulation or a resolution of the Senate itself and as such liable to be submitted for the approval of the Government. Being entitled to make regulations consistent with the Act the Senate has power to make a regulation providing for a protest to Government by a Fellow of the University against any resolution of the Senate in such a matter and if under such a regulation the Syndicate is liable eventually to submit the protest for the consideration and orders of the Government the Syndicate has no power or discretion to refuse to send the protest and the person protesting is on any such refusal entitled to obtain from the High Court an order in the nature of a mandamus compelling the Syndicate to submit the protest to the Government. *Held* further that the Syndicate of the Madras University is a statutory body of persons holding a public office within the meaning of s. 45 of the Specific Relief Act though no emoluments are attached to that office. Where a statute appoints a body of persons to carry out purposes of public benefit the persons constituting such a body *ipso facto* become holders of a public office. The person protesting is entitled to the relief sought for as an injured person within the meaning of s. 45 (a) even though there may be others equally entitled to protest in the same matter. The regulation of the Senate providing for the protest being made under the powers given by the statute has the force of law and it is a law for the time being within s. 45 (b). A regulation of the Senate providing for protests to Government in respect of all its resolutions will be *ultra vires* in respect of those which do not under the Act require the sanction for the Government.

SPECIFIC RELIEF ACT (I OF 1877)—*contd*— 45—*concl*

What in fact and substance is a resolution of the Senate amounting to a regulation passed after due notice must be deemed to be so however differently it may have been described. A document which in form and substance is a protest against a resolution is none the less a protest because it contains arguments against the validity of certain incidental matters leading to the passing of the resolution. The word resolution in Regulation 21 means only regulation. *Per KUMARASWAMI SASTRI* *J*. The proper course in applying for a mandamus against a statutory body is to take proceedings against the body as such in its official designation and not against each of the individuals composing the body. The fact that an applicant for a mandamus has other remedies is no bar to its issue unless they amount to other specific and adequate remedy which means equally convenient speedy beneficial and effectual remedy.

Other specific and adequate remedy in s. 45 (d) relate to a *remedium juris* and not a remedy by the act of party. *In re G. A. VATESA AND K. N. RAMANATHAN* (1916) 1 L R 40 Mad 125

— ss 45 46—

See MANDAMUS 1 L R 38 Cal 553

See PLEADERSHIP EXAMINATION

1 L R 40 Cal 588

The petitioner having obtained a decree in the Court of the Subordinate Judge of Shahabad for recovery of possession against an infant whose estate was with the Court of Wards applied pending defendant's appeal to the High Court for an order under s. 45 of the Specific Relief Act calling upon the Members of the Board to release the estate. *Held* that the failure to implead the infant whose interest would be affected was fatal to the application. In the matter of *KESHO PRASAD SINGH*

16 C W N 503

— ss 52 to 56—

See INJUNCTION 1 L R 47 Cal 733

— s 54—

See GAYAWAL 2 Pat L J 705

See MAHA BRAHMANS

1 L R 43 All 159

See TRUST 1 L R 41 Cal 19

— ss 54 to 57 (Chap X)—

See FOOTINGS 1 L P NE Cal 687

— ss 54 56 (e)—

See INJUNCTION 1 L R 37 Cal 731

— s 55—Injunction—*Suit by Muham*

madans to prevent the Hindu defendants from interfering with the calling of the *azan* at a mosque by blowing conches etc.—Nuisance explained. In a village occupied by about 600 Hindus and a little over 100 Muhammadans there are 2 mosques one just outside the *abadi* unconnected with the present case and one inside the *abadi* erected about 200 years ago. This had fallen out of repair and was repaired within recent years and was then used as a school and for other semi-religious purposes but more recently was used for prayers. The Hindus objected to the calling out of the *azan* and when it was called out and at the time of subsequent prayer the Hindus blew conches beat drums and created noises and disturbances. The Muham

SPECIFIC RELIEF ACT (I OF 1877)—*contd*— 55—*concl*

madans then brought the present suit for an injunction to restrain the Hindus from interfering with the calling out of the *azan* and praying in the mosque. It was found as a fact that the object of the defendants in blowing conches was to stop the calling of the *azan*. *Held* that the Muham *madans* had an inherent right to call out the *azan* from the mosque. *Held* also that the noises made by the defendants collectively and continuously at the time of calling out the *azan* for the sole purpose of frustrating the object of the call constituted a nuisance and it was no answer to the suit that the little noise made by each of the defendants personally did not amount to a nuisance. *Lambton v Mellish* (3 Ch 163) referred to also. *Herr* on Injunction p 158 and 213. *Held* further that plaintiffs were entitled to the injunction prayed for because the nuisance caused by the defendants was not a reasonable exercise of their rights and was an infringement of the rule of give and take live and let live. *Broder v Sailford* (2 Ch D 692) and *Christie v Davey* (L R 1 Ch 316) referred to. *JAWAYD SINGH v MUHAMMAD DAI* 1 L R 1 Lah 140

— s 56 (E)—

See INJUNCTION 1 L R 37 Cal 731

— s 56 III (1)—*Suit for injunction, if lies against trespasser*. A plaintiff who is out of possession should not be allowed to sue the defendant who is alleged to be in possession as a trespasser for an injunction. He ought to sue for recovery of the land. *JAHAR LAL BANDHUI v NANDA LAL CHAUDHURI* (1913)

18 C W N 545

SPECULATIVE PURCHASER

See CERTIFICATE OF SALE
1 L R 37 Cal 107

SPES SUCCESSIONIS

See HINDU LAW—WIDOW
1 L R 10 Bom 224

— transfer of—

See KHOSAS 1 L R 38 Bom 449

SPIRITUAL WELFARE

See HINDU LAW—ALLEGATION
1 L R 43 Cal 574

SPIRITUOUS AND FERMENTED LIQUORS

See EXCISEABLE ARTICLES
1 L R 39 Cal 1053

SPY OR DETECTIVE

See ACCOMPLICE 1 L R 53 Cal 111

SRADH

— offerings to the dead at—

See HINDU LAW—GIFT
14 C W N 1005

STABLES

See NUISANCE 1 L R 40 Bom 401

STAKEHOLDER

— Deposit of money—Valid assignment by depositor to his creditor—Neglect of the creditor to recover—Creditor chargeable with the amount Where money deposited with a

STAKEHOLDER—contd

stakeholder was validly assigned by the depositor to his creditor in satisfaction of his debt and the creditor being able to recover the amount so assigned neglected to do so he was chargeable with the amount. (ANPATRAO BALKRISHNA BHIDE v THE MAHARAJA MADHARAO SINDE (1910) I L R 35 Bom 1)

STAMP

See BENDELKHAND ALIENATION ACT (II OF 1903) I L R 38 All 351

See CIVIL PROCEDURE CODE (ACT V OF 1908) —

s 9 I L R 40 Bom 541

* 107 149 O II R 11 CL (c) I L R 38 Bom 41

See EVIDENCE I L R 38 All 494

See STAMP ACT (II OF 1899) —

Agreement of sale executed on an unstamped paper—Secondary evidence not permissible

See CONTRACT I L R 45 Bom 1170

on a promissory note executed in Hyderabad—

See PROMISSORY NOTE I L R 42 Bom 522

STAMP ACT (II OF 1899)

s 2 (5) — *Attestation what is—A document written by person other than executant is attested by the writer who did not sign as attesting witness. The attestation referred to in s 2 sub s (a) cl (6) of the Indian Stamp Act means attestation on the face of the instrument. BIDHU PANJAN MAJUMDAR v MANOY SARKAR*

26 M W N 585

s 2 (a) arts 15 and 40 of Schedule I Court Fees Act (IV of 1870) Schedule II art 6—*Security bond by receiver binding himself and his properties—Proper stamp—Whether liable under Stamp Act and Court Fees Act. A security bond in favour of a Court executed by a receiver binding himself and his properties for the due discharge of his duties must be stamped both under the Court Fees Act and under art 40 of Schedule I of the Stamp Act. Kulwant v Mahabir Prasad (1889) I L R 11 All 16 (F B) and Referred Case No 10 of 1911 followed. AMRITHAMMAL v PAMALINGA GOUNDAY (1900) I L R 43 Mad (F B) 363*

s 2 cl (a) (b) s 35 (a)—*Shahajogs lands insufficiently stamped and negotiable in evidence—Payment of penalty. The plaintiff sued for recovery of money due on five instruments described as hundis. The documents bore an impressed stamp of 4 annas each were each of them attested by a witness and the money secured thereby was made payable to the respectable holder. Held that the documents in question were neither bills of exchange nor promissory notes but bonds within the meaning of s 2 cl (5) (b) of the Indian Stamp Act and were admissible in evidence on payment of duty and penalty under s 35 (a) of the Indian Stamp Act. KESHAV CHAND SURAYA v ASHARAM MAHATO (1915) 19 C W N 1323*

STAMP ACT (II OF 1899)—contd

s 11 (10) Sch I Art 5 cl (c)—

See HIRE PURCHASE AGREEMENT

I L R 44 Cal 72

s 2 (14) Sch I Art 5—*In instrument—Entry in register as to hiring certain machinery attested by thumb marks of hirers—Memorandum of agreement—Stamp. In a book kept by the owner of certain machinery for the manufacture of sugar which purported to be a register of sums payable with respect to the letting out of wooden machines (charhis) and rollers for pressing sugar cane and iron pans for boiling sugarcane juice was an entry to the following effect—Harkesh son of Kunwar and two others residents of mauza Saleem pur hired a sugarcane pressing machine in consideration of a rent of Rs 15 from the plaintiff through his karni (a named) that they would pay the hire in Cash and in default would pay interest at 2 per cent per mensem. Below this entry were the thumbmarks of the persons who hired the machine. Held that this entry amounted to an instrument as defined in s 2 sub s (14) of the Indian Stamp Act 1899 and was a memorandum of agreement within the terms of article 5 (b) of the first schedule to that Act. Mulchand Lala v Anshidull v Bucas I L R 35 Cal 121 referred to. MUKTASADDI LAL v HARKESH (1913) I L R 40 All 11*

s 2 (15) Sch I Art 45—

*Final decree effecting partition what is—To make an order chargeable with stamp duty under s 2 (15) of the Stamp Act of 1899 it must effect an actual division of the property. An order declaring the rights of the parties and directing further proceedings for the ascertainment of the specific shares is not such an order. Courts ought not to pass interim orders and direct proceedings in execution for the ascertainment of the specific shares. The final order should be passed after the specific shares have been ascertained. A decree reciting a *ra namah* made by consent of parties allotting specific properties to the several parties and directing other parties to deliver possession is chargeable with stamp duty under Art 45 of Sch I as a final order effecting partition within s 2 (15). Being made by consent of parties it is also an instrument whereby co owners have agreed to divide property in severalty and falls within the first part of s 2 (15). THIRUVENKATATHANIAN v MUGOLAI (1911) I L R 35 M d 29*

Stamp—Partition—

Final order for effecting a partition. Held that the words "final order" in s 2 cl (15) and Article 45 (c) of sch I to the Indian Stamp Act 1899 referred to the final order of the lowest Court of original jurisdiction empowered to give an order for effecting a partition at the time it is passed. STAMP REFERENCE BY BOARD OF REVENUE (1914) I L R 36 All 137

s 2 (16)—

See s 23 I L R 41 Mad 466

s 2 (17) and Arts 40 and 64—*Mortgage deed—Hypothecation letter of accompaniment a bill of exchange. Where a document ran as follows—The executant being desirous of carrying on her deceased husband's business of which she is now the owner declares a trust in favour of the Bank of Madras in respect of machinery plant fixture and furniture and stock in trade in con*

STAMP ACT (II OF 1899)—*contd*s 2 (17) and Arts 40 and 64—*contd*

consideration of advances of money to be made by the Bank from time to time not exceeding in all Rs 450,000 for the purpose of financing the business. All such advances carry interest at the rate of 6 per cent per annum. The trustee has got full power to use, employ, sell or exchange or otherwise deal with the trust property in the ordinary course of business but should make good the property that may be sold with other goods of a similar nature and value. Any goods so substituted shall be included in the security. The trustee may retain in his hands the sum of Rs 20,000 annually in trust to pay and apply the same in payment of sums advanced by the Bank. *Held* that the document created a trust in express language in respect of the machinery etc. in or upon the business premises of the firm and that the object of the instrument was to give the Bank some rights by way of security and it was a mortgage deed for the purpose of the Stamp Act. Reference under Stamp Act s 46 I L R 11 Mad 216 referred to. *Semble*. The document is not a letter of hypothecation within the meaning of the exemption in art 40. *Obiter*. A fiscal enactment should be construed strictly and in favour of the subject. THE SECRETARY TO THE COMMISSIONER OF SALT ABBARI AND SEPARATE REVENUE PETTY BOARD MADRAS 1352 ONE (1913) I L R 38 Mad 646

s 2 (21) 60 Sch I Art 43 (g)—*Stamp—Power of attorney—Document authorizing holder to appear and do all acts necessary for execution of decree*. *Held* that a document purporting to authorize the person in whose favour it was executed who was not a certificated mukhtar or pleader to appear and do all acts necessary for the execution of a decree of a foreign court which had been transferred to a court in the United Provinces for execution required to be stamped as a power of attorney with a one rupee stamp and not as a vakalatnamah or mukhtarnamah. PANDEY AND v SAT PRASAD (1911) I L R 99 All 487

s 2 (23)—32 63 *Sirikat—Memorandum of account—Receipt—Several items of over Rs 20 each—Each item to be stamped*. *Held* that a memorandum of account between debtor and creditor which was left in the possession of the debtor and consisted of items entered from time to time of money advanced and repaid was a document which required a separate receipt stamp in respect of each item of over Rs 20. *EXPRESS v TULSHI RAM* (1913) I L R 35 All 290

s 2 (23) Sch I Art 53

See STAMP DUTY

I L R 37 Cal 629 631

s 2 (24) Sch I Art 7—*Instrument declaring trust—Fund composed of two parts—Absence of previous disposition in one part—Settlement—Disposition for charity of the other part—Appointment—Stamp duty*. An instrument was required for the purpose of declaring trusts of certain funds devoted to charity. The funds amounted to about Rs 3,00,000 and came to the hands of the trustees from two sources. About Rs 1,00,000 was the result of appeals to various persons and the rest was provided by the executors of the will of one A. H. The instrument declaring the trusts was engrossed on a stamp paper of Rs 15 and a ques-

STAMP ACT (II OF 1899)—*contd*s 2 (24) Sch I Art 7—*contd*

tion having arisen as to whether the instrument was properly stamped. *Held* that so far as the fund of Rs 1,00,000 was concerned there being no previous disposition in writing of any part of it though some of the contributions were accompanied by letters from the donors expressing their wishes with respect to the funds contributed the instrument was a settlement according to the definition in s 2 (4) of the Indian Stamp Act (II of 1899) and was chargeable with duty on Rs 1,03,500 at the rate of 5 annas per cent. *Held* also that so far as the fund of Rs 90,000 was concerned the provisions of the will of A. B. amounted to a disposition for a charitable purpose and the instrument was an appointment chargeable with a duty of Rs 15 under Sch I Art 7 of the Indian Stamp Act (II of 1899). *In re ABDULLA HAZI DAWOOD BOWLA ORFANAGE* (1911) I L R 35 Bom 444

s 3—

See BUNDKHAND ALLOCATION OF LAND

ACT (II of 1903) s 17

I L R 33 All 351

s 4—

s 4—*Settlement of family property effected by two deeds—one modifying the other—Full duty paid on the first*. Two brothers having come to an agreement as to the settlement of their joint property embodied this agreement in a deed which was duly stamped according to the value of the property dealt with thereby. Subsequently the parties to this deed executed a second deed of settlement which modified provisions of the first in a certain direction but dealt with no property which was not covered by that deed. Both deeds were contingent on the happening of events which at the time of the execution of the second deed were still future events. *Held* that the transaction effected by two deeds fell within the purview of s 4 of the Indian Stamp Act 1899 and the full duty having been paid on the first deed the second required a stamp of one rupee only. STAMP REFERENCE at the Board of REVENUE (1914) I L R 37 All 159

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Stamp—Settlement—Gift of property made by one deed—Agreement to secure expenses of donor entered into by another. Two brothers executed deeds each in favour of the other. One was a deed of gift of all the property of the executant and it was stamped to its full value. The other was a deed coming within no known category but is provided for the expenses during the life time of the executant of the deed of gift and hypothecated certain property to secure the payment thereof. Only a portion of the property thus hypothecated however was included in the deed of gift. The second document bore a stamp of Rs 10. *Held* that the two documents were part of the same transaction and amounted to a settlement within the meaning of s 4 of the Stamp Act and the stamp duty paid was sufficient. STAMP REFERENCE at the Board of REVENUE (1915) I L R 37 All 264

s 5—

Stamp duty—Lease—Multifarious document—One lease with several parties concurring in it—Stamp Act (II of 1899),

STAMP ACT (II OF 1899)—*contd*s. 5—*contd*

ss 5 23 (3) 35 57 (1) The concurrence of several parties to one and the same lease does not make it a multifarious document within the meaning of s 5 of the Stamp Act. The stamp-duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted. *In re PARASZA COLLIERTIES LTD* (1910)

I L R 37 Cal 629

— *Sale—Mortgage for due performance of covenants—Distinct matters meaning of—Stamp payable* A sale deed in which the vendor mortgages lands not included in the sale as security for the due performance of his covenants need not be stamped both as a sale and a mortgage. *Govindan Vambidiri v Moidin* (1918) I L R 41 Mad 469 (F B) overruled. SECRETARY TO THE COMMISSIONER OF SALT ABRARI AND SEPARATE REVENUE MADRAS (REFERRING OFFICES) (1920) I L R 43 Mad (F B) 365

ss 5 6 36 Sch I Arts 5 43—

See STAMP DUTY I L R 37 Cal 629

— s 12 Sch I Arts 1 5—*Stamp—Acknowledgment of a debt—Sarkhat—Stipulation for payment of interest—Agreement—Cancellation of adhesive stamp* In support of a claim to recover money lent with interest an acknowledgment or sarkhat was produced which was in the following terms—Sarkhat executed in favour of Shrotri Ram Teh. by Mahadeo Pam borrowed Rs 200 interest rate Re 1 80 per cent per mensem date Baisakh Sudhi 1st Sawwat 1971. At the top of the document was affixed a one anna stamp on which there was only one horizontal line drawn across it. Held that the sarkhat was not merely an acknowledgment of a debt but contained a stipulation to pay interest within the meaning of art 1 of the first schedule to the Indian Stamp Act 1899 and therefore required to be stamped as an agreement under art 5 (c) of the same schedule. *Udit Upadhyay v Bhaurani Din* I L R 27 All 84 and *Dulmha Kunwar v Lakshmi Prasad* I L R 28 All 436 distinguished. *Laxmibai v Ganesh Rao* unath I I L R 5 Bom 373 and *Mulchand Lala v Hashibullav Biswas* I L R 33 Cal 111 referred to. Held also that a stamp may be effectually cancelled by merely drawing a line across it. S 12 of the Act does not mean that it is necessary to cancel a stamp in such a manner as to make it physically impossible for any dishonest person to make hereafter a fraudulent use of the stamp. *Mohammad Amir Mir a Beg v Babu Kedar Nath* 15 Oudh Cases 58 referred to. *MAHADEO KORI v SHROTRI RAM TEH* (1918) I L R 41 All 169

— s 25—*Marupat—Counterpart of lease*

—Document giving a charge on improvements for arrears of rent—Stamp duty whether payable both as counterpart and as mortgage Where a tenant executed a marupat in favour of a landlord agreeing therein that the arrears of rent if any should be a charge on the improvements that might be made by him. Held that a marupat is the counterpart of a lease or a deed executed by a tenant promising to pay a certain rent and that the document in question must be stamped both as a counterpart and as a mortgage. *GOVINDAN NAMBUDIRI v MOIDIN* (1917) I L R 41 Mad 469

STAMP ACT (II OF 1899)—*contd*— s 25—*contd*

— ss 30 and 35—*Mining lease—claim for royalty in excess of amount covered by stamp main tenability of* The provisions of s 28 of the Stamp Act 1899 are governed by s 35 and therefore a lessee under a mining lease is entitled upon payment of the penalty under the latter section to recover the royalty provided for in the lease even though the amount claimed is in excess of the amount covered by the stamp used in the lease. *KUMAR BRAJ MOHAN SINGH v LACHMI NARAIN AGARWALA* 5 Pat 11 J 660

— ss 27 III (a)—*Execution of document—Not containing statement of facts affecting duty—Stamp* Certain property was sold for Rs 20 000 to one R who paid Rs 1 000 in cash and agreed to give the vendors credit for Rs 19 000 to be drawn against as required. Shortly afterwards the parties agreed to rescind the contract and R resold the property to his vendors giving them a conveyance in which the consideration was stated to be Rs 1 000 in cash no mention being made of the extinction of his liability to pay the remaining Rs 19 000. Held on these facts that R had committed an offence within the purview of s 64 (a) of the Indian Stamp Act 1899. *EXPERON v RAMESH DAS* (1910) I L R 32 All 171

— s 28 (3)—

See STAMP DUTY I L R 37 Cal 629

— s 33 (1)—*Impounding of document insufficiently stamped—Conditions necessary for the application of section—Suit for money on hachittas produced in Court in bound volume containing other hachittas—Juri dictio of Court to impound those other hachittas* In a suit for recovery of money on a hachittas the plaintiff filed along with the plaint the hachittas which was in a bound volume which contained a large number of hachittas executed by other persons in favour of the plaintiffs. The hachittas on which the suit was brought being found to be insufficiently stamped the Munsif examined the other hachittas and impounded them under s 33 of the Stamp Act finding them to be insufficiently stamped. Held that under s 33 the Munsif had no jurisdiction to impound the hachittas other than the one which formed the basis of the suit. Before action can be taken under sub s 1 of s 33 it must be established that the instrument in question was produced or came before the officer mentioned therein in the performance of his functions and having regard to the stage at which the Munsif took action it could not be said that the hachittas were produced or came before the Munsif in the performance of his functions. *SASHI MOHAN SHANAH v KUMUD KUMAR BISWAS* (1916) 21 C W N 246

— s 35—

See s 5

I L R 37 Cal 629

See s 26

5 Pat 11 J 660

— *Civil Procedure Code (Act V of 1908) O XXI r 91—Contract Act (IX of 1872) s 19 cl (3)—Court sale—Discovery that the judgment debtor had no saleable interest—Failure of consideration—Suit by auction-purchaser for possession or return of purchase money—Potions of the judgment-creditor and auction-purchaser—Suit not cognate by Small Causes Court—Unstamped document regarded as non-existent*

STAMP ACT (II OF 1899)—contd

s 35—contd

A Court sale purchaser having discovered that the judgment debtors had no saleable interest in the property sold brought a suit against the judgment creditor for recovery of possession of the property or in the alternative return of the purchase money on the footing of total failure of consideration. A question having arisen as to whether the suit was maintainable *Held* that the suit was maintainable inasmuch as under the Civil Procedure Code (Act V of 1908) there was an implied warranty of some saleable interest when the right title and interest of the judgment debtor was put up for sale and the purchaser's right based on such implied warranty to a return under certain conditions of the purchase money which had been received by the judgment creditor was recognized. The relations of the parties namely the judgment creditor and the Court sale purchaser were also in the nature of contract. *Held* further that such a suit though the subject matter was less than Rs 100 was not cognizable by a Court of Small Causes there being a prayer for possession of immovable property. An unstamped document being inadmissible in evidence must be taken as non-existent. **REXTONJI ARDESHIR IRANI v VINAYAR GANADHAR BHAT (1910)** I L R 35 Bom 29

ss 35 36—Sch. I Art 40 Exempt (2)—Bill of exchange written on several pieces of stamp paper if properly stamped—Hypothecation letter of not stamped but registered if admissible in evidence—Power of Appellate Court to question admissibility on the ground of insufficiency of stamp—Document not duly stamped improperly registered if to be therefore rejected—Registration Act (XII of 1908) s 87. A document which was in fact a bill of exchange though it was loosely described as a *hundis* was properly stamped under r 6 of the Rules of the Governor General in Council when a portion of it appeared to have been written on each of three sheets of stamp paper of the aggregate value required by law. Where a registering officer having examined a document presented to him for registration came rightly or wrongly to the conclusion that being a letter of hypothecation accompanying a bill of exchange it was exempt from duty under Art 40 Exempt (2) of Sch. I of the Stamp Act and accordingly certified on the bill of exchange that it was properly stamped and registered the letter of hypothecation without requiring any further duty to be paid in respect of it. *Held* that an improper registration in view of s 87 of the Registration Act could not possibly affect the validity of the document. That the Court of first instance having admitted the letter of hypothecation in evidence the High Court was precluded from taking exception to it on the ground of its having been insufficiently stamped by s 36 of the Stamp Act. That it did not lie in the mouth of the representatives of the executant of the letter who was responsible for the proper stamping of the document to plead in a suit to enforce it that the contract was not binding upon him because he had succeeded in defrauding the Revenue authorities. **SARADA NATH BHATTACHARJEE v GOVINDA CHANDRA DAS (1919)** 13 C W N 534

s 36—

See SUCCESSION ACT (X OF 1865) s 190
I L R 38 Bom 618

STAMP ACT (II OF 1899)—contd

s 36—contd

See STAMP DUTY I L R 39 Calc 669

Unstamped acknowledgment accepted as evidence by trial Court if may be rejected on appeal. A statement to the effect as follows Rs 211—balance due followed by the date and the debtor's signature is an acknowledgment and should be stamped as such. But under s 36 of the Stamp Act if such a statement though unstamped has been admitted in evidence by the Court of first instance it cannot be rejected by the Appellate Court. **SITARAM v PANA PROSAD RAM (1913)** 18 C W N 697

40 5—Instrument certified by Collector to have been duly stamped—Preference by Chief Controlling Revenue Authority to High Court questioning correctness of Collector's decision—Jurisdiction. *Held* that if a Collector has taken action under s 40 sub s (1) (b) of the Indian Stamp Act 1899 and having received the deficient duty and the penalty imposed has certified under sub s (1) (a) that the instrument before him is duly stamped the effect of sub s (2) is that the jurisdiction of the Chief Controlling Revenue Authority to refer to the High Court under s 57 of the Act the question whether such instrument is in fact sufficiently stamped or not is ousted. Reference under Stamp Act s 57 I L R 95 Mad 5 followed. **STAMP PREFERENCE BY BOARD OF REVENUE (1917)** I L R 40 All 129

s 52—Partition decree—Court fee stamp erroneously used for non judicial stamp or appeal—decree by filing of non judicial stamp or appeal—The Civil Procedure Code (Act V of 1908) s 157. The plaintiff in a suit for partition by mistake filed a Court fee instead of a non judicial stamp in order that a decree might be drawn up thereon in accordance with Art 45 of Sch. I of the Stamp Act and the mistake was not discovered till after some of the defendants had preferred an appeal against the decree so drawn up and others had filed cross objections when the plaintiff having applied for execution of the decree the Subordinate Judge dismissed the application holding that there was no valid decree capable of execution. *Held* on plaintiff's application in the appeal that the High Court could in the exercise of its powers under s 151 of the Civil Procedure Code direct the plaintiff to file a non judicial stamp of the requisite value in the appeal so as to validate the decree with retrospective effect from the date when it was drawn up. **Chhayemannassa Bibi v Baisrar Rahaman I L R 37 Calc 399 s c 11 C L J 95** referred to. The High Court in such a case cannot direct the refund by the revenue authorities of the value of the Court fee stamp thus erroneously used. s 5 of the Indian Stamp Act does not cover a case in which Court fee stamp has been erroneously used where non judicial stamp ought to have been used under the provisions of the Act. Preference under s 57 of Act II of 1899 I L R 93 All 213 referred to. **SHAIKH FAKRUDDIN v LATIF AHMAD (1910)** 14 C W N 1101

s 57—

I L R 37 Calc 699

See s 5
See s 40

I L R 40 All 193

Preference under Act 5
Sch. I—Agreement or memorandum of agreement meaning of—Proposal or offer in writing—Parol

STAMP ACT (II OF 1899)—*contd*s. 57—*contd*

acc plance—Whether proposal or offer in writing requires to be stamped—*Advance of loan or written declaration by a party as to his property*—Entry in register of the declaration—Whether stamp necessary—Where it appeared on the evidence as to course of business of a bank that the bank advanced loans on promissory notes payable on demand or otherwise but before advancing money it required the borrower to make a declaration in the confidential register in the form thereto annexed as to the property in his possession and to sign the same—*Held* that the entry of the declaration in the register was not an agreement or a memorandum of an agreement which required to be stamped under Art 5 of the sch I of the Indian Stamp Act (II of 1899) Assuming that on the signing of the declaration there was a proposal or an offer a written proposal or a written offer does not become subject to stamp duty by reason of subsequent acceptance which is not in writing *Carroll v The Carbolic Smoke Ball Company* [189] 2 Q B 488 *Clapham v Clarke* 3 Ex Rep 403 and *Clay v Crofts* 9 L J C L 361 followed *Quere* Whether the entry in the register amounted to a proposal or offer in writing *SECRETARY TO THE COMMISSIONER OF SALT AND SEPARATE REVENUE v THE SOUTH INDIAN BANK LD* TRINIVELLY (1913)

I L R 38 Mad 349

Reference by Board of Revenue—Document to which reference relates not in existence *Held* that ss 6 and 7 of the Indian Stamp Act empower the High Court to decide questions relating to instrument already in existence and which have been made the subject of action by the Collector acting under ss 31 40 and 41 of the Act They do not empower the Court to give an opinion upon a deed which may or may not come into existence hereafter *STAMP REFERENCE BY THE BOARD OF REVENUE* (1914)

I L R 37 All 125

s. 59—*Undivided brothers—Instruments whereby co owners divide property in severalty*—*Release—Partition—Stamp* Instruments whereby co owners of any property divide or agree to divide it in severalty are instruments of partition One of three undivided brothers agreed to take from eldest brother the manager of the family as his share in the family property moveable and immoveable a certain cash and bonds for debts due to the family and passed to the eldest brother a document in the form of a release Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money A question having arisen as to whether for the purpose of stamp duty the said two documents were to be treated as releases or instruments of partition *Held* that the documents were instruments of partition *In re GOVIND PANDURANGA KAMAT* (1910)

I L R 35 Bom 75

s. 59 Sch I Art 35 cl (a) sub cl. (iii)—*Lease—Lessee agreeing to pay annual rent plus Government a cessment—Whether rent include assessment for purposes of stamp duty* A piece of land was leased for five years whereby the lessee agreed to pay to the lessor Rs 100 as rent

STAMP ACT (II OF 1899)—*contd*

s. 59 Sch I Art 35 cl (a) Sub-cl

(iii)—*contd*

plus Rs 16 8 0 on account of Government assessment The question being referred whether the stamp duty should be levied on Rs 100 or Rs 116 8 0 the total amount of rent and Government assessment *Held* that the Government assessment did not form part of the profit and therefore the stamp duty was leviable only on Rs 100 the annual rent under Sch I Art 35 cl (a) sub cl (iii) of Stamp Act *GANGARAM KARAIANDAS TELI In re* (1910)

I L R 39 Bom 434

s. 60—

See s. 2

I L R 39 All 487

In order to determine whether a document is attested by a witness within the meaning of the Stamp Act it is permissible to look only at the document itself Other evidence can not be referred to *MD SADIK v AMIYA NATH DUTT*

2 Pat L J 688

s. 61 (1) Sch I Arts 15 15 (a)

(1)—

See STAMP DUTY I L R 46 Calc 804

s. 61 (b) (c)—*Proposal for loan in prescribed form of Bank and approval thereof by Manager if constitutes an agreement which should bear eight annas stamp—Intent to defraud Government* A certain local Bank received an application for a loan of Rs 80 in its prescribed form This application contained in the usual column of the form a sort of guarantee of payment by person other than the applicant recommending the granting of the loan on a bond and the Manager of the Bank approved the proposal or the loan and recommended it at a certain rate of interest as to which the Applicant and the guarantor were silent Both the Manager and the Secretary of the Bank were prosecuted and the Manager was convicted under s. 62 (b) and the Secretary under s. 61 (c) of the Stamp Act *Held* that the statements in the proposal made by the Applicant himself and by the Manager did not represent a completed agreement more particularly with regard to the rate of interest At most they represented merely negotiations intended to lead up to the execution of a bond and the payment thereon of the amount of the loan and the conviction of the Manager under s. 62 (b) of the Stamp Act could not be maintained That the conviction of the Secretary under s. 61 (c) was also not sustainable as no intention to defraud Government was made out *RAJESHWAR BAGCHI v KING EMPEROR* (1917)

21 W W N 758

Stamp—Award—

Unstamped award signed by parties to submission—Party signing otherwise than as a witness Where certain parties to an arbitration, who had signed the submission to arbitration, also signed the award not as witnesses but under the heading signature of the heirs and the award was not stamped *Held* that such parties did not fall within the purview of s. 62 cl (1) (b) of the Indian Stamp Act 1899 as persons executing or signing otherwise than as witnesses *EMPEROR v BELI PAL SARAN* (1910)

I L R 32 All.

STAMP ACT (II OF 1899)—contd

ss 62 and 63—

See s 2 (23) I L R 35 All 290

s 62, Sch I Art 5—Stamp—Petition to Court intimating compromise of suit—Agreement The parties to a suit came to terms out of Court and presented a joint petition to the Court stating the terms of compromise arrived at and asking that a consent decree might be given in accordance therewith Held that such petition was to be stamped merely as a petition to the Court and did not require to be engrossed on a general stamp *EMPEROR v RAM SARAY LAL* (1917) I L P 40 All 19

s 62 (b) and Sch I Art 35—Agreement to lease—no rent reserved—whether stamp necessary An agreement for a lease where by no rent is reserved and no premium is paid or money advanced is not included in the schedule to the Stamp Act 1899 and does not require a stamp *SUNDER HATER v ARIO EMPEROR* 1 Pat L J 366

s 64—

See s 27 I L R 32 All 171

ss 64 (c) 65—

See STAMP DUTY L R 44 Calc 321

s 65—Receipt—Money remitted by postal money order and receipt signed on post office form—Further receipt not exigible from payee Where money is remitted by postal money order and the payee has signed the receipt in duplicate on the post office form he cannot legally be compelled to give a further receipt to the payer and his refusal to do so will not render him liable under s 65 of the Indian Stamp Act 1899 *EMPEROR v BALNAKAUND* (1911) I L R 34 All 102

Sch I Art 1—

See ACKNOWLEDGMENT I L R 80 Calc 789

Sch I Arts 1 and 5—

See s 12 I L R 41 All 169

Sch I Art 5—

See s 57 I L R 36 Mad 349

See s 62 I L R 40 All 19

See HIRE PURCHASE AGREEMENT I L R 44 Calc 72

Agreement to hire with option of purchase stamp duty on An instrument was executed between the Linotype and Machinery Ltd and the Wind or Press whereby a machine was hired by the latter for a period on condition that the hirer would pay a fixed amount on execution of the deed and another fixed amount by equal monthly instalment with interest and that on payment of the full sum with interest the machine would become the property of the hirer but that until such payment was made the machinery would continue to be on hire Held (on a reference by the Board of Revenue under s 57 of the Stamp Act) that the document in question was an agreement within the meaning of Art 5 cl (c) of Sch I to the Indian Stamp Act and was therefore liable to a stamp duty of eight annas *In the matter of LINOTYPE AND MACHINERY LTD* (1916) E C W N 1252

STAMP ACT (II OF 1899)—contd

Sch I Arts 5 and III

See STAMP DUTY I L P 39 Calc 669

Submission to arbitration stamp upon Where certain contract notes in addition to the intimation by the broker of the purchase or sale of the goods contained submissions in writing by the buyer and seller to refer disputes to arbitration signed by the broker as the authorized agent of the parties and, being stamped with a one anna stamp according to a practice recognised by the Court for a long series of years, was held by the Trial Judge to be inadmissible in evidence on the ground that the submission to arbitration was chargeable with an eight anna stamp under Sch I Art 3 of the Indian Stamp Act as an agreement not otherwise provided for the Court of Appeal held that the Court was not prepared to question the practice on the materials before it and that the submission should be treated as duly stamped *In the matter of s 11 sub s (2) of the Indian Arbitration Act of 1866 and in the matter of a Petition to Arbitration BAIYNATH v AHMED MUHAMMAD SALEEM* (1917) 17 C W N 395

Sch I Art 7—

See s 2 (24) I L R 35 Bom 444

Sch I Art 15

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 209 I L R 37 Mad 17

See STAMP DUTY I L R 46 Calc 804

Sch I Art 22, Registration Act (III of 1881) s 17 cl (e)—Trusts Act (II of 1852) s 5—

Composition deed—Compounding of debts and Transfer of immovable property—Registration not necessary With the consent of creditors to the extent of Rs 122,000 out of the total number of creditors claiming Rs 1,61,800 of the family firm represented by one B the latter executed a deed making over all the specified assets of the family to certain nominated trustees The creditors agreed that after all the goods and the properties had been made over to the trustees no other claim whatever with regard to the amounts due to them should remain outstanding against B and the minor members of the family but the whole claim should be understood to be written off against them and B and the minors were to make use of the deed as a release passed on their behalf The deed also provided that the trustees were to manage the properties for the benefit of the creditors interested and the monies realized from time to time were to be distributed among such creditors in proportion to their claims The properties comprised in the deed moveable as well as immovable were transferred to the trustees in due course The deed was unregistered Subsequently in a suit brought by the trustees to recover possession of a house comprised in the deed a question having arisen whether the deed was a composition deed Held that the definition of the term composition deed as given in Art 22 Sch I of the Stamp Act (II of 1899) meant the same thing as the term composition deed in s 17 of the Registration Act (III of 1877) that the term so defined covered three classes of instruments (1) An assignment for the benefit of creditors (2) an agreement whereby payment of a composition or dividend was secured to the creditors and (3) an inspectorship deed for

STAMP ACT (II OF 1899)—*contd*

Sch I, Art 22—*contd*
 the purpose of working the debtor's business for the benefit of his creditors—that the inclusion of the term composition deed in s 17 of the Registration Act (III of 1877) showed that it was intended to apply to a transfer of immovable property and not to a mere agreement to take fractional payment of money in settlement of claim—that the effect of a composition deed was that there ought to be a compounding of debts due and that such a deed fell under cl (e) of s 17 of the Registration Act (III of 1877) and did not require registration under that Act nor under the provisions of s 5 of the Transfer Act (II of 1880). *Held* accordingly that the deed in question was a composition deed within the meaning of s 17 cl 2 of the Registration Act (III of 1877) and did not require registration. **CHANDRA HANAR v BAI MAGA** (1914)
 I L R 38 Bom 576

Sch I, Art 35—

See s 59 I L R 39 Bom 434

See s 11 1 Pat L J 366

See STAMP DUTY I L R 46 Calc 864

*Immaterial whether it requires stamp—Conviction under s 62 (b) if maintainable—Schedule of Stamp Act is exhaustive. The schedule attached to the Stamp Act must be treated as exhaustive. An agreement for a lease whereby no rent is reserved and no premium paid or money advanced is not included in the schedule and does not require a stamp. *Held* on a conviction of *omission* which was for a term of seven years but wherein no rent was fixed that the document did not require stamp and on the conviction of executant of the document under s 62 (b) of the Stamp Act was not aside. **SUNDER HUEB v KING EMPEROR** (1916)
 20 C W N 923*

Sch I Art 40—

See s 2 (17) I L R 38 Mad 646

See s 50 23 C W V 534

Sch I Art 45—

See 2 (1v) I L R 33 All 137

I L R 35 Mad 26

Sch I Art 48—

See POWER OF ATTORNEY I L R 36 Mad 124

See s 2 (21) I L R 33 All 487

Sch I Art 53—

See STAMP DUTY I L R 37 Calc 629 634

Sch I Art 55—*Stamp—Release Partition deed* Two persons each of whom claimed the sole right to the property of a deceased relation arrived at a compromise of their respective claims and gave effect thereto by means of two deeds of even date by which deeds each relinquished in favour of the other his (or her) claim to a portion of the estate of the deceased. *Held* that these deeds were releasees as they were stamp duty under Art 55 of the first schedule to the Indian Stamp Act 1899. **Finath S Gowde v Jagannath S Gowde** 1 L P 3 Bom 417 and *Reference under Stamp Act s 46* I L R 18 Mad 233 referred to. *Reference under Stamp Act s 46* I L R 12 Mad 193 distinguished. **JIRAN KUTWAR v GOBIND DAS** (1915)
 I L R 53 All 56

STAMP DUTY**See ACKNOWLEDGMENT**

I L R 39 Calc 789

See ARBITRATION I L R 40 Calc 219

See HIRE PURCHASE AGREEMENT I L R 44 Calc 72

See POWER OF ATTORNEY I L R 33 All 487

See STAMP ACT 1899

See STAMP ACT (II OF 1899) s 62 (1) (b) I L R 32 All 198

on a proper plaint—

See CIVIL PROCEDURE CODE (1908) O XXXIII BR 10 11

I L R 38 All 469

1 — *Acknowledgment—Money received by servant of a firm and handed over to fellow servant—Consideration—Acknowledgment of receipt by fellow servant of a sum larger than Rs 10 is liable to stamp duty—Stamp Act (II of 1899) s 2 (3) Sch I Art 43* Where a sum exceeding Rs 20 was received by an assistant in a mercantile firm from the cashier of the firm as advance made on the firm's behalf and to be expended on the firm's behalf and previous to disbursement of the sum in question a pay order was made out by the Accounts Department of the firm and was sent to the cashier who had paid the sum to the assistant and the assistant at the same time acknowledged receipt by signing his name or initials on the pay order. *Held* that the acknowledgment did not require a receipt stamp by reason of the assistant's signature on the pay order. *Attorney General v Carlton Bank* [1899] 2 Q B 158 distinguished. **JARE BERN & Co** (1910) I L R 37 Calc 634

2 — *Lease—Multifarious Document—One lease with several parties concurring to it—Stamp Act (II of 1899) ss 5 78 (3) 35 57 (1)* The concurrence of several parties to one and the same lease does not make it a multifarious document with the meaning of s 5 of the Stamp Act. The stamp duty on such a lease is the same as on a conveyance for consideration equal to the amount or value of the fine or premium for which the lease is granted. **In re PARASIA COLLIERIES LTD** (1910) I L R 37 Calc 829

3 — *Bought and sold notes—Stamp Act (II of 1899) ss 5 6 and 36 Sch I Arts 5 and 43—Arbitration—Admission by arbitrators of document not duly stamped effect of—Bengal Chamber of Commerce Arbitration by—Rules relating to—Umpire omission to nominate effect of—Dis closure of names of arbitrators if contemplated by the rules—Reference provision for appearance of parties on a contract for or relating to the sale of goods comprised in bought and sold note which contain a provision to refer disputes to arbitration is chargeable with a stamp duty of two annas on each broker's note under Art 43 of the Stamp Act and not with a duty of eight annas. An agreement **Kyd v Mahomed** I L R 15 Mad 150 followed. If a document which is not duly stamped were admitted in evidence by arbitrators on a reference the provisions of s 35 of the Stamp Act would prevent such admission being called into question at any stage of the same suit or proceeding except as provided in s 61 and an application to file the award of the arbitrators would be a stay.*

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of the same proceeding. The arbitration rules of the Bengal Chamber of Commerce grammatically speaking require an umpire to be nominated before the arbitrators enter upon the reference but the omission to so nominate an umpire would not be a ground for setting aside or varying the award having regard to the provisions of rule VI (c). The arbitration rules of the Bengal Chamber of Commerce (rule V) contemplate that the names of the arbitrators shall not be disclosed to the parties. *Chooni Tal v. Madhoram I I 1 36 Calc 355* 13 C H A 29, and *Hurtwary Mill v. Ahmed Musaji Selaji* 13 C H A 63 decided from Rule VI (g) provides that the parties shall not without the express permission of the arbitrator be entitled to appear. The parties have no right to appear or even to ask for such permission. *BOMBAY COMPANY LTD v. THE NATIONAL JUTE MILLS CO LTD* (1912) 1 L R 39 Calc 669

4 ———— **Offences regarding—Mere fact of putting a stamp not of proper value whether an offence—Stamp Act (II of 1899) s 64 cl (c) 65—Intention to defraud.** In construing cl (c) of s 64 of the Indian Stamp Act the words any other act must be taken to mean an act of a like nature to those which are specified in cl (a) and (b) and the mere fact that a person puts a stamp on a document which he knows to be not of proper value would not come within cl (c) of s 64 unless there is an intention to defraud the Government. *Queen Empress v. Somasundaram Chetti* 1 L R 23 Mad 15; referred to *CHITARNAL CHOPRA v. EMPEROR* (1916) 1 L R 44 Calc 321

5 ———— **Lease—Monthly tenancy—Stamp Act (II of 1899) s 61 (1) and Sch I Arts 15 35 (a) (1).** By a letter the defendant agreed to pay Rs 60 per month as rent of certain premises and to pay the said rent at Rs 2 per day to the plaintiff. Held that the tenancy was a monthly tenancy and came within Art 35 cl (a) sub cl (1) of the first Schedule of the Indian Stamp Act and the proper stamp duty was the same duty as for a bond referred to in Art 15 viz eight annas. *AMOLIA v. IBRAHIM ISHAQ* 1 L R 46 Calc 804

STANDARD OF PROOF

See CONTEMPT OF COURT

1 L R 45 Calc 169

See LIMITATION 1 L R 40 Calc 898

——— **Civil and criminal trials—Presumption—English rules.** On the question of the standard of proof there is but one rule of evidence which in India applies to both civil and criminal trials and that is contained in the definition of proved and disproved in s 3 of the Evidence Act. The test in each case is would a prudent man after considering the matters before him (which vary with each case) deem the fact in issue proved or disproved? The Court can never be bound by any rule but that which coming from itself dictates a conscientious and prudent exercise of its judgment. (There is a presumption against crime and misconduct and the more heinous and improbable a crime is the greater is the force of the evidence required to overcome such presumption. The English rule in these matters does not as such apply in India. *Jarat Kumari Dass v. Biswasur Dutt* 1 L P 39 Calc 245 explained *WESTON AND OTHERS v. PEARY MOHAN DASS* (1912) 1 L R 40 Calc 898

STANDARD RENT

——— **Additional charge for supplying light—**

See RENT (WAR RESTRICTION NO 2) ACT (BOM ACT VII OF 1918) s 7 (1)
1 L R 45 Bom 188

STANDING COMMITTEE

See MADRAS CITY MUNICIPAL ACT (III OF 1901) 1 L R 38 Mad 41

STANI

See LIMITATION ACT (IX OF 1908) Sch I Art 124 1 L R 41 Mad 4

——— **Karnavan becoming a—**

See MALABAR TAPWAD 1 L R 39 Mad 918

STAPLE FOOD PRICE OF

——— **how ascertained—**

See LANDLORD AND TENANT 1 L R 37 Calc 742

STARE DECISIS

——— **Principle of —**

See BOMBAY LAND REVENUE CODE 1879 s 216 1 L R 45 Bom 1960

See OCCUPANCY HOLDING 1 L R 48 Calc 164
24 C W N 816

STATEMENT

——— **from a complainant not a confession—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 164 1 L R 39 Mad 97

STATEMENT IN WRITING BY ACCUSED

——— **admissibility of—**

See CONFESSION 1 L R 37 Calc 795

STATEMENT ON INFORMATION AND BELIEF

See CONTEMPT OF COURT 1 L R 41 Calc 173

See POLICE DIARIES AND REPORTS

STATUS OF TENANT

See BENGAL TENANCY ACT s 5 102B
1 L R 45 Calc 805

STATUTE LAW IN ENGLAND

——— **apportionment under—**

See LESSOR AND LESSOR 1 L R 38 Mad 86

STATUTES

——— **II Geo IV and I Will IV c 68—**

See COMMON CARRIERS 1 L R 33 Calc 28
15 C W N 226

——— **I & II Geo V cap LXI—**

——— **s 107—**

See CIVIL PROCEDURE CODE (1908) s 115
1 L R 39 All 254

See LEGAL PRACTITIONERS ACT (XVIII OF 1879) s 36 1 L R 40 All 153

STATUTES—contd

11 & 12 Vict c 21—

See INDIAN INDEMNITY ACT

21 & 22 Vict c 106 ss 39 40

41 42

See EXECUTION OF DECREE

I L R 38 Calc 754

15 C W N 475

24 & 25 Vict c 104—

See LAND ACQUISITION ACT 11

I L R 38 Calc 230

15 C W N 87

Power of Crown to appoint a sixth Puisne Judge—Criminal Procedure Code s 41—Appeal from acquittal—Procedure Held on a construction of ss 1 and 2 of Letters Patent of the High Court for the North Western Provinces that it was competent to the Crown to appoint by means of its Letters Patent a sixth Puisne Judge to the said High Court Held also following the decision of *Queen Empress v Prag Dal* I L R 90 All 45, that in the Code of Criminal Procedure there is no apparent distinction between the right of appeal against an acquittal and the right of appeal against a conviction *Queen Empress v Robinson* I L R 16 All 212 referred to *Emperor v Grupe* (1914) I L R 38 All 168

44 & 45 Vict c LVIII s 138—

See CIVIL PROCEDURE CODE 1908 s 60

I L R 33 All 529

55 & 56 Vict c V s 4—

See CIVIL PROCEDURE CODE 1908

s 60

I L R 33 All 529

STATUTE CONSTRUCTION OF

See BOMBAY CITY MUNICIPAL ACT (BOMBAY ACT III of 1883) s 50

I L R 34 Bom 593

See CIVIL PROCEDURE CODE 1908 s 48

I L R 32 All 499

See CIVIL PROCEDURE CODE (ACT V of 1908) s 111 s 93

I L R 40 Mad 1009

See CONSTRUCTION OF STATUTES

See INTERPRETATION OF STATUTES

See LIMITATION ACT 1908 Art 134

I L R 36 Bom 146

See MADRAS HEREDITARY VILLAGE OFFICES ACT (III of 1895)

I L R 37 Mad 548

See SALE

I L R 43 Calc 790

Contradictory Sections—

See BENGAL TENANCY ACT s 18

25 C W N 9

Represents previous Statute—

See BENGAL TENANCY ACT ss 52

25 C W N 230

1 ——— Not declaratory but amending—No retrospective operation Statutes which are properly of a declaratory character have a retrospective effect But the nature of the statute must be determined from its provisions and the mere fact that the expression 'it is do

STATUTE CONSTRUCTION OF—contd

clared has been used is by no means conclusive as to the true character of the legislation *Joti Ram Khan v Jonaki Nath Ghose* (1914)

20 C W N 258

2 ———

Dombay Land Revenue Code (Bom Act I of 1879) s 48 The *Dombay Land Revenue Code* (Bom Act V of 1879) is a taxing enactment and must be construed strictly in favour of the subject *SECRETARY OF STATE v LALDAS* (1909) I L R 34 Bom 239

3 ———

Civil Procedure Code (Act XII of 1857) s 207A—*Civil Procedure Code* (Act I of 1908) repealing s 257A—Effect of the repeal on s 13 cl (c) of the *Dekkhan Agriculturists Relief Act* (XIII of 1879) s 13 cl (c) of the *Dekkhan Agriculturists Relief Act* (XIII of 1879) not having been expressly repealed is not affected by the repeal of s 207A of the *Civil Procedure Code* 188 by the *Civil Procedure Code* of 1908 *TRINBAK KASHIRAM v ABASI* (1911)

I L R 35 Bom 307

4 ———

Statute—Construction Where a statute creates a right not existing at common law and prescribes a particular remedy for its enforcement then that remedy alone must be followed *CHUNIL VIRCHAND v AHMEDABAD MUNICIPALITY* (1911)

I L R 38 Bom 47

5 ———

Where a later Act of Legislature does not purport or affect to supersede an earlier Act the Court will endeavour to read the two enactments together and to avoid conflict if possible *PANGACHARIA v DASACHARYA* (1912)

I L R 37 Bom 231

6 ———

Change in language if necessarily imports a change of law A change in the wording of a section of an enactment does not necessarily involve a change in the law *SECRETARY OF STATE FOR INDIA v PURVENDU NARAIN FOY* (1917)

17 C W N 1151

7 ———

The express words of an Indian Statute are not to be overridden by reference to equitable principles which may have been adopted in the English Courts *Kurri Jeerareddi v Kurri Bopareddi* I L R 99 Mad 336 followed *TINANGOWDA v BEAVER GOWDA* (1915)

I L R 39 Bom 472

8 ———

Whether a statute codifies or amends the law if its provisions are expressed in clear and unambiguous terms resort should not be had to the pre-existing law although such reference may be useful and legitimate where the provisions are of doubtful import or are couched in language which had previously acquired a technical meaning *NILMANI KAR v RAJA SATI PRASAD GARGA BANADUR*

6 Pat L J 230

STATUTORY OBLIGATION

See MADRAS LOCAL BOARD ACT 1881

S 95 I L R 42 Mad 331

breach of—

See CONTRIBUTORY NEGLIGENCE

I L R 34 Bom 427

I L R 37 Bom 575

STATUTORY PRESUMPTION

See OCCUPANCY HOLDING

I L R 46 Calc 160

STATUTORY RIGHT

See *BENGAL TENANCY*

I L R 48 Calc 473

STAY OF CRIMINAL PROCEEDINGS

Stay of criminal proceedings pending appeal in matter out of which they arise—Application for succession certificate—Allegations false—Enquiry under s 476, Criminal Procedure Code (Act V of 1898)—Order for prosecution under ss 193 and 209 Indian Penal Code (Act XLV of 1860)—Appeal pending in High Court—Stay of criminal proceedings In the course of a proceeding upon an application for revocation of the grant of a succession certificate the District Judge found that *D* the applicant for the certificate was not as he alleged related to the deceased in any way and ordered his prosecution under ss 193 and 209 Indian Penal Code *D* then filed an appeal to the High Court and asked for stay of criminal proceedings pending the hearing of the appeal *Held* that to make a declaration in the rule for stay of proceedings as to the correctness or otherwise of the order of the District Judge would be to prejudice an issue which is likely to come before the Bench who will hear the appeal The proceedings against the appellant under ss 193 and 209 Indian Penal Code were stayed pending the hearing of the appeal *DEBI MAHTO v KING EMPEROR* (1916) 20 C W N 1116

STAY OF EXECUTION

See *APPEAL* I L R 41 Calc 160See *ARBITRATION ACT* s 2

I L R 45 Bom 1

See *CIVIL PROCEDURE CODE* 1908 s 47See *CHOTA NAGPUR TENANCY ACT* 1909 s 215 4 Pat L J 371See *COMPANIES ACT* (VII of 1913) s 207 I L P 38 All 407See *COURT FEES ACT* 1870 s 12 4 Pat L J 417See *EXECUTION*See *EXECUTION OF DECREE*

I L R 38 Calc 754

I L R 35 All 119

See *HIGH COURT JURISDICTION OF*

I L R 40 Calc 955

See *PRIVY COUNCIL PRACTICE OF*

I L R 42 Calc 739

Order not appealable

See *CIVIL PROCEDURE CODE* (Act V of 1908) s 47 I L R 45 Bom 241

Pending appeal—

See *CIVIL PROCEDURE CODE* 1908

O XII P 5

I L R 2 Lah 61

See *PRIVY COUNCIL PRACTICE OF*

I L R 38 Calc 335

Refused by single Judge whether open to appeal under Letters Patent—

See *LETTERS PATENT APPEAL*

I L R 1 Lah 348

Code of Civil Procedure (Act V of 1908) O XLV r 14—Court—Appeal to Privy Council from Decree of High Court—Stay

STAY OF EXECUTION—contd

of execution pending disposal of appeal whether Subordinate Court may grant A Subordinate Court has no power to stay the execution of a decree passed by the High Court pending the disposal of an appeal to the Privy Council The Court referred to in the first paragraph of O XLV, r 13 of the Code of Civil Procedure 1908 is the High Court *RAM BANADUP v THAKUR SRI SAI RADHA KRISHN CHANDERJI* 3 Pat L J 40

Practice—High Court, Original Side—Judge sitting in Chambers—Court which passed the decree—Delay—Civil Procedure Code (Act V of 1908) O XII r 5 An application for stay of execution on the Original Side of the High Court pending an intended appeal must ordinarily be made to the Judge who tried the case and must be made without unreasonable delay *CHATURBHUJ CHANDANVILL v RADEO DAS DAGA* (1921) I L P 48 Calc 798

STAY OF PROCEEDINGS

See *ARBITRATION*

I L R 47 Calc 611 and 1070

See *CIVIL PROCEDURE CODE* (Act V of 1908) O XLIII r 3 Sch II cls 116 2 L N 38 Bom 687

See *RECEIVER SUIT AGAINST* 15 C W N 54

See *STAY OF SUIT* I L R 43 Calc 144

against an insolvent—

See *PRESIDENCY TOWNS INSOLVENCY ACT* (III of 1909) s 18 (3) I L R 41 Bom 319

appeal of preliminary decree—

See *CIVIL PROCEDURE CODE* 1908—O XLV r 13 I L P 42 All 170

STAY OF SUIT

See *ARBITRATION* I L R 47 Calc 849

See *CIVIL PROCEDURE CODE* 1908—

See *HIGH COURT ACT* (24 and 25 Act of 1904) s 29 and 13 I L R 39 Bom 604

See *STAY OF PROCEEDINGS*

Reference to arbitration—Arbitration unwilling to act—

See *CIVIL PROCEDURE CODE* (Act V of 1908) O XVII r 3 Sch II cls 18 and 22 I L R 45 Bom 1181

Submission by three persons to refer—Suit filed by one—

See *ARBITRATION ACT* (IX of 1899) s 25 s 8 s 15 and 19 I L R 35 Bom 1

Jurisdiction—O s 11 Procedure Code (Act V of 1908) s 10—Stay of proceedings in one of two suits in respect of same subject matter in different Courts A who carried on business at Karachi and employed B as his commission agent at Calcutta instituted on 16th February 1915 in the Court of the Judicial Commissioner of Sind at Karachi a suit against B, for an account and the recovery of whatever sum should be found due on the taking of such account On

STAY OF SUIT—contd

10th March 1915 *B* instituted in the High Court at Calcutta the present suit against *A* for the recovery of Rs 20,663 or in the alternative an account. Thereupon *A* applied to have the present suit stayed pending the determination for his suit in the Karachi Court.—*Held* that the only question that required consideration was whether the Karachi Court has jurisdiction to grant the reliefs claimed. The plaint in the Karachi suit sets out allegations that clearly give jurisdiction to that Court to try the case. The present suit must therefore be stayed till the determination of the suit at Karachi. *PADAMSEE NABAINJEE v. LAKHAMSEE RAISEE* (1915)

I L R 43 Calc 144

STEAMSHIP COMPANY

See *CARRIERS* I L R 40 Calc 716

See *RAILWAY COMPANY*

I L R 47 Calc 6

STEP BROTHER

See *HINDU LAW—SUCCESSION*

I L R 37 Calc 803

STEP IN AID OF EXECUTION

See *CIVIL PROCEDURE CODE 1852* s 240

14 C W N 481

See *EXECUTION OF DECREE*

4 Pat L J 35

See *LIMITATION ACT 17* Sec II Art

170 I L R 34 Bom 68

14 C W N 486

See *LIMITATION ACT (IX OF 1909)—*

s 19 Sec I Art 182 Cl 5

I L R 38 Bom 47

See *LIMITATION ACT 170* I L R 38 Mad 695

See *LIMITATION ACT 182*

Proof of service of affidavit—Code of Civil Procedure (Act I of 1908) O XXI r 21 The filing of an affidavit in proof of service of a notice of attachment under O XXI r 21 of the Code of Civil Procedure 1908 is a step in aid of execution. *THAKUR SINGH v. SHRO BHARAT SINGH* 4 Pat L J 521

STEP IN THE PROCEEDINGS

See *ARBITRATION* I L R 47 Calc 611

STEP MOTHER

See *HINDU LAW—SUCCESSION*

I L R 37 Calc 214

I L R 37 Mad 286

STEP SISTER'S SON

See *HINDU LAW—SUCCESSION*

16 C W N 1094

STILL HEAD DUTY

See *ADMINISTRATION*

I L R 45 Calc 653

STIPEND

See *DEKKAN AGRICULTURISTS RELIEF ACT II*

I L R 36 Bom 189

STOCK EXCHANGE

Member—Expulsion
validity of—Interference by the Court The rules

STOCK EXCHANGE—contd

applicable to cases of expulsion of a member of the Stock Exchange are based on the principle that the committee empowered to expel a member must make a fair enquiry into the truth of the alleged fact after giving notice to the member concerned that his conduct is about to be enquired into and giving him an opportunity of stating his case to them. *Labouchere v. Earl of Marncliffe* 13 Ch D 346. *Russell v. Russell* 14 Cl D 411. *Dawkins v. Intobus* 1 Cl D 615 and *Carcl v. Inglis* [1916] 2 Ch 212 referred to. In order to determine whether a tribunal in the exercise of quasi-judicial powers has given a decision which cannot be successfully challenged the Court has to investigate whether they have observed the rules of natural justice and also the particular statutory or other rule if any prescribed for their guidance. *Anonore v. Mitchell* [1905] A C 78 referred to. The rules of natural justice demand that a man is not to be removed from office or membership or otherwise dealt with to his disadvantage without having a fair and sufficient notice of what is alleged against him and an opportunity of making his defence and that the decision whatever it must be arrived at in good faith with a view to the common interest of the society or institution concerned. If these conditions are satisfied a Court of Justice will not interfere with the decision. A broker and member of the Calcutta Stock Exchange Association failed to deliver certain shares within a specified time to the purchaser thereof. The Committee of the Association to whom the conduct of the broker was reported decided after hearing both parties at a meeting held for the purpose of dealing with the case that the broker should deliver to the purchasers the shares within a period of time specified by the committee. Upon the broker failing to deliver the said shares the committee to whom the matter was again reported further decided that the membership of the broker had ceased and he was warned not to enter the rooms of the Association.—*Held* that the action of the committee could not be impugned on the ground that the committee really made a new contract between the parties and that the broker was expelled from the Association not because of his failure to carry out the original contract but because of his failure to carry out the order of the committee. *MARONID KALINIDIN v. A B STEWART* (1920) I L R 47 Calc 623

STOLEN PROPERTY

See *CRIMINAL PROCEDURE CODE* s 520

I L R 45 Bom 253

See *SEARCH WITHOUT WARRANT*

I L R 38 Calc 304

STOPPAGE IN TRANSIT

See *CONTRACT* I L R 46 Calc 831

See *CONTRACT ACT (IX OF 18 2)—*

ss 4 61 103 I L R 28 Bom 255

s 103 I L R 40 Bom 630

Ultimate destination of goods—Duration of transit—Pledgee of bill of lading—Measure of damages—Sale of Goods Act (56 and 57 Vic c 71) ss 45 and 47 The plaintiff a Bombay firm imported hardware goods from M & Co of Manchester for sale on commission the business being carried on and financed in the following

STOPPAGE IN TRANSIT—contd

manner M & Co on shipping the goods handed over the complete shipping documents to B and received from him an advance of 60 per cent of the invoice price B then handed over the shipping documents to the National Bank of India in England and himself received a similar advance by drawing on a credit opened with the Bank by the plaintiffs. The Bank then forwarded the shipping documents to India where they were handed over to the plaintiffs in exchange for a trust receipt the plaintiffs becoming responsible to the Bank for any short fall in the advances made to B. On 12th February 1907 M & Co contracted to purchase from L & Co 200 boxes of tin plates delivery to be F O B Newport in four or five weeks after date. On 26th February M & Co wrote to L & Co enclosing instructions and marks for shipment of the 200 boxes to Bombay and on 2nd March requested them to forward the goods to W & Co at Newport in time for shipment in S S Clan Macleod for Bombay. On 21st March L & Co enclosed to M & Co an invoice for 200 boxes and on 27th March another invoice for the remaining 50 boxes the material part of the invoice in each case being: No claim concerning these goods can be recognized unless made within fifteen days from delivery to Messrs W & Co. Newport for shipment on your account. The 200 boxes were put on board the steamer by W & Co as the agents of L & Co but in obtaining a bill of lading for 500 boxes (including the 200 in question) W & Co acted as the agents of M & Co. The steamer left Newport on 4th April. Following the usual course of business as above described M & Co handed over to B the shipping documents relating to the 500 boxes and obtained an advance of £200 + 2 (being 60 per cent of the invoice value). B on the 6th April obtained a similar advance from the Bank. On the same day M & Co suspended payment and on 9th April L & Co as unpaid vendors of 200 boxes notified the steamship owners the first defendants to stop these goods in transit. The S S Clan Macleod arrived in Bombay on 13th May and the bill of lading which had been duly handed over by the Bank to the plaintiff on 20th April was in due course presented by the latter. They were informed however of the stop put on the 200 boxes and were offered a delivery order for the remaining 250 alone. This they declined refusing to accept anything but the full payment of the advance or the full amount of the goods. On 29th June the plaintiffs repaid the Bank the amount of the advance and the trust receipt of 29th April was duly cancelled. On the plaintiffs subsequently suing the steamship owners and their agents for damages Held that the transit did not cease at Newport and L & Co were entitled to stop the goods after they had started for Bombay. *Ex parte Golding Davis & Co* 13 Ch D 623 followed. Held further that the plaintiffs were after 29th June—On which date they had fulfilled their obligations to the Bank—pledgees for value of the bill of lading if indeed they did not occupy that position from 29th April being transferees of the Bank's rights in respect of the advance as against the defendants. Held further that the plaintiffs were entitled to join both defendants in the suit. The utmost benefit which the defendants were entitled to obtain from the position of L & Co as sureties (as to the plaintiffs for the advance made by the latter to M & Co) was the right to the security of the 200 boxes which they were willing

STOPPAGE IN TRANSIT—concld

from the outset should be received by the plaintiffs. The plaintiffs by refusing to take delivery of the 250 boxes had omitted to do an act which their duty to the surety required them to do and to the extent to which that omission had resulted in loss the surety was discharged. *In re West & thus* 5 B & L 817 discussed. *BARTON SORABJI & THE CLAN LINE STEAMERS LIMITED* (1910) I L R 34 Bom 640

STRAITS SETTLEMENTS BANKRUPTCY ORDINANCE

See BANKRUPTCY I L R 40 Mad 581

STRAITS SETTLEMENTS ORDINANCE (III OF 1893)

See EVIDENCE L R 43 I A 256

STRAITS SETTLEMENTS ORDINANCE (VI OF 1896)

ss 17 22—

See LIMITATION L R 43 I A 113

STRAITS SETTLEMENTS ORDINANCE (XXI OF 1907)

ss 133 186—

See LIMITATION L R 43 I A 113

STRANGER

purchase by—

See COURT SALE I L R 36 Mad 194

See PATENT SALE I L R 47 Mad 337

STREET

See BOMBAY MUNICIPAL ACT—

ss 290 291 I L R 36 Bom 403

I L R 42 Bom 462

ss 297 301 I L R 42 Bom 181

See HIGHWAY

See LAND ACQUISITION I L R 47 Calc 500 604

right of municipality to—

See MUNICIPAL COUNCIL I L R 38 Mad 6

vesting of—

See MUNICIPALITY I L R 44 Calc 669

STRIDHAN

See DAUGHTERS I L R 34 Bom 510

See HINDU LAW—HUSBAND AND WIFE I L R 38 Mad 1036

See HINDU LAW—INHERITANCE I L R 34 All 234

I L R 38 Mad 116

See HINDU LAW—STRIDHAN

See HINDU LAW—SUCCESSION I L R 34 Bom 385

15 C W N 393 1036

I L R 37 Calc 883

I L R 38 Calc 493

I L R 39 Calc 319

non-technical—

See HINDU LAW—STRIDHAN I L R 41 Bom 615

STRIDHAN—cont'd

ch at On the failure of her husband's heirs
the Stridhan of a widow would go to her blood
relations in preference to the Crown. GANPAT
JAMA & SECRETARY OF STATE FOR INDIA (1900)
I L R 45 Bom 1106

— Preferential heir—Hus
and a younger brother or son adopted by father
after mother's death and after marrying a second
wife. GUNAMANT DAS & DEVI PRASAD ROY
(1919) 23 C W N 1038

STRUCTURE (TEMPORARY)

See EASEMENT I L R 37 Mad 527

STUDENT

— disqualified for cheating at examina-
tion—

See UNIVERSITY ACT 1904
I L R 2 Lah 197

SUB-DIVISIONAL MAGISTRATE

— powers of—
See CRIMINAL PROCEDURE CODE ss 106
AND 32, I L R 37 All 230

— subordination of—
See MAGISTRATE JURISDICTION OF
I L R 39 Cal 1041

SUB LEASE

See BUSTEE LAND I L R 41 Cal 164

See NOTICE TO QUIT
I L R 46 Cal 766

— by a fazendar—
See FAZENDARI TENURE
I L R 39 Bom 316

— Permanent lease by a
rasyat not holding at a fixed rate—Ejectment—
Estoppel—Bengal Tenancy Act (1111 of 1885)
ss 49 (b) & 50. Where a lease purporting to be of
a permanent character is granted on the face of
the document by a rasyat (not being a rasyat
holding at fixed rate) to an under rasyat the
lease is not operative as a permanent lease between
the rasyat and the under rasyat. Such a lease is
terminable in the manner provided by s 49 (b)
of the Bengal Tenancy Act. Where a lease
purporting to be of permanent character is granted
by a person who on the face of the document
professes to have a higher status than that of a
rasyat (for example that of a tenure holder or a
rasyat holding at a fixed rate) the grantee when
his title as a permanent lessee is challenged by his
grantor may invoke the aid of the doctrine of
estoppel and plead that the grantor cannot be
permitted to prove the falsity of the recitals in
the document (on the faith of which he took the
lease) so as to enable him to derogate from his
grant. *Bamandas Bhattacharjee v Vishmadhab
Saha* I L R 44 Cal 711 referred to CHANDRA
KANTA NATH & ANJALI ALI HAJI (1900)
I L R 48 Cal 783

SUBMISSION

See ARBITRATION
I L R 47 Cal 1020

See ARBITRATION ACT 1899
s 4 I L R 42 All 525

See CIVIL PROCEDURE CODE 1908, SCH II

SUBMISSION—cont'd

— by three persons to refer dispute to
three arbitrators—

See ARBITRATION ACT (1899)
ss 2 & 89 AND 10
I L R 45 Bom 1

SUB MORTGAGE

See AGRA TENANCY ACT (II OF 1901) s 20
I L R 35 All 405

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 90 I L R 34 All 55

— by sureties—
See MORTGAGE I L R 45 Cal 702

— suit by Sub mortgagee—
See MORTGAGE I L R 47 Cal 770

— Sub mortgage by deposit
by mortgagee of mortgage deed—Discharge of mort-
gage by mortgagee—Indemnity deed of by mort-
gagee to mortgagor—Preliminary decree on sub
mortgage appealed to Privy Council—Appeal
dismissed for non prosecution—Application for
order absolute when barred—Limitation Act (18
of 1877) Sch II Art 179—Payment of decree
more than three years after it covered by deed of
indemnity. The mortgagee of certain properties
after having created an equitable sub mortgage
by depositing the mortgage deeds with a firm
E. K. C. accepted payment of his mortgage dues
and by a deed dated 23rd April 1894 relea-
ed the mortgaged properties from all claims under
the mortgage and covenanted to indemnify the
mortgagor from all losses damages actions
claim etc in respect of the mortgage deeds
or any money owing or due thereunder or other
wise howsoever or for any act done by him the
mortgagor in respect of the mortgage deeds.
The firm of E. K. C. covered a preliminary
mortgage decree *inter alia* against the mortgagor
on their sub mortgage on 6th August 1900
against which the mortgagor appealed to the
Privy Council. But before the appeal was ready
for hearing the mortgagor on 2nd February
1910 made payments to an assignee of the decree
who having acknowledged satisfaction the appeal
to the Privy Council was not further prosecuted
and the appeal was dismissed for want of pro-
secution on 18th April 1910. The mortgagor on
9th September 1912 sued the mortgagee to re-
cover the amount paid to the assignee of the
decree on the basis of the deed of indemnity.
Held that the decree of 6th August 1900 became
unenforceable under Art 179 of Sch II of the
Limitation Act of 1877 by proceedings commene-
ed after 26th August 1908 and time did not run
either from the date when the appeal to the
Privy Council was dismissed for default or from
the expiry of the six months given for redemp-
tion in the decree of 6th August 1900 but from
26th August 1900 the date of the decree. That
the payment of the decree on 2nd February 1910
was voluntary in the sense that the mortgagor
could not have been compelled by any proceed-
ing founded upon the decree to make the payment.
That in view of the wide terms of the deed of
indemnity the fact that the payment was volun-
tary did not preclude the mortgagor from demand-
ing payment from the mortgagee of the amount
which they paid to the decree holder in order to
rid the property of the incumbrance which had

SUB MORTGAGE—contd

been created by the mortgages depositing the title deeds with the firm of S K C SACHINDRA NATH ROY & MAHARAJ BAHADUR SINGH (P.C.)
26 C W N 858

SUBSEQUENTLY ACQUIRED PROPERTY

See UNDISCHARGED BANKRUPT

I L R 47 Calc 861

SUB-TENANCY

annulment of—

See NOTICE TO QUIT

I L R 46 Calc 786

SUB TENANT

claim by—

See POSSESSION I L R 47 Calc 907

SUBORDINATE COURT

See LEGAL PRACTITIONERS ACT (XVIII OF 1870) s. 14 I L R 39 Mad. 1045

jurisdiction of—

See CONTRACT ACT (IX OF 1872) s. 69 AND 70 I L R 39 Mad. 795

SUBORDINATE JUDGE

See MADRAS CIVIL COURTS ACT (III OF 1873) s. 17

I L R. 38 Mad 531

See SANCTION FOR PROSECUTION

I L R 39 Calc 774

jurisdiction of—

See WAKF I L R 43 Calc 467

SUBORDINATE OFFICERS

acts of how far binding on Government—

See MADRAS IRRIGATION CESS ACT (VII OF 1880) s. 1 I L R 38 Mad 997

SUBROGATION

See COMMON CARRIER LIABILITIES OF

I L R 38 Calc 28

See CONTRACT ACT (IX OF 1872) s. 70

I L R 40 Bom 646

See LIMITATION ACT (IX OF 1908) Sch

I Art 120 I L R 45 Bom 597

See MORTGAGE—REDEMPTION

I L R 36 Mad 426

See MORTGAGE—SUBROGATION

See TRANSFER OF PROPERTY ACT s. 92

15 C W N 261

Prior mortgage—

Fraudulent suppression of by vendor If A purchases a property subject to three successive charges X Y and Z with full knowledge of their existence and retains a portion of the purchase money in his hands with a view to satisfy the mortgages Y and Z but subsequently discharges the mortgage X he cannot on satisfaction of the mortgage X use it as a shield against the mortgage Y *Biswas v Prasad v Lala Sarnam Singh* 6 C L J 131 and *Hiam v Vogel* 69 Missouri 679 followed But where the purchaser found on enquiry that there were only two sub existing charges Y and Z to be satisfied but discovered

SUBROGATION—contd

after his purchase that there was a prior charge X which was falsely described as satisfied in the mortgage instrument of Y (in a suit upon bond X) Held that from whatever point of view the case may be considered the purchaser was entitled to priority in respect of the payment made by him to satisfy the first mortgage X *Mohesh Lal v Mohant Bawan Das* I I R 9 Calc 961 L F 10 I A 69, followed Held also that the purchaser was not entitled to priority on the basis of the payment made by him to satisfy the second mortgage Y *HAR SHYAM CHOWDHURY v SHYAM LAL SARKU* (1915) I L R 43 Calc. 88

SUBSEQUENT MORTGAGE

See MORTGAGE I L R 85 Calc 80

SUBSEQUENT PROSECUTION AFTER ACQUITTAL

See ACQUITTAL I L R 37 Calc 604

SUB-SOIL RIGHTS

See LEASE CONSTRUCTION OF I L R 43 Calc 87

SUBSTANTIAL LOSS

See SALE FOR ARREARS OF RENT I L R 37 Calc 40

SUBSTANTIAL QUESTION OF LAW

See CIVIL PROCEDURE CODE 1908—

s. 109 I L R 42 ALL 16

s. 110 I L R 40 ALL 513

SUBSTITUTED SERVICE

See SUMMONS SERVICE OF I L R 43 Calc. 437

Civil Procedure Code (Act I of 1908) O V r 17 O IX r 13—Ex parte decree—Original Court jurisdiction of to set aside an ex parte decree while an appeal is pending—Reside meaning of—Limitation Acts (Act I of 1877) Sch II Art 164 and Act IX of 1908 s. 4 I Art 64—Knowledge of the decree The term residence is not identical with owner's residence In O V r 9 and 17 of the Code of Civil Procedure 1908 it means the place where a person eats drinks and sleeps or where his family or servants eat drink and sleep Under O V r 1, a substituted service can be justified only when it is shown that proper efforts were made to find the defendant Where a defendant was not found in his ancestral family house and there was no one present upon whom a summons could be served (in fact he was working in a different district and living there for some years) a substituted service by affixing a copy of the summons at the outer door of the family house was not justified under the law An Original Court can entertain an application to set aside an ex parte decree though an appeal by the contesting defendants is pending in the Appellate Court *Sarat Chandra Dhal v Damodar Manna* 12 C W N 535 followed The period of limitation under Art 164 of Sch I of the Limitation Act (IX of 1908) runs from the date when the defendant has knowledge of the particular decree which is sought to be set aside *AMRUP NATH ROY CHOWDHURY v JOTINDRA NATH CHOWDHURY* (1911) I L R 38 Calc 504

SUBSTITUTION

See COURT FEE STAMP

I L R 47 Cal 71

See PARTIES I L R 45 Cal 862

See APPEAL TO PRIVY COUNCIL

I L R 38 Mad 403

See CIVIL PROCEDURE CODE 1908

r. 16

6 Pat L J 358

O XII r. 4 I L R 39 All 551

See SPECIFIC PERFORMANCE

6 Pat L J 314

Of Parties.—Execution of decree—Claim against decedent's executor against alleged adopted son represented by decedent's widow as guardian—Adoption set aside before execution—Execution may be had against widow A who had a claim against B on B's death sued C an infant alleged to be the adopted son of B B's widow D being appointed guardian of him of C and of tainted a decree Before execution was taken out it was declared in a separate suit that C had not been validly adopted I then applied for substitution of D in the place of C and for execution against D *Held* that D was not bound by the decree and it was not competent to execute the decree against D **ASHI BHUSAN DAS v. PELAPAM MONDOL** (1913) 18 C W N 173

Patna High Court Rules Chapter VI r. 5.—Partition suit against benamidar—appeal against preliminary decree whether beneficiaries entitled to prefer An *ex parte* preliminary decree having been obtained in a partition suit the defendant during the proceedings taken by the plaintiff to obtain a final decree filed a petition stating that he was only a benamidar for certain beneficial owners The names of the alleged beneficial owners were substituted for the name of the benamidar and the latter presented a memorandum of appeal against the preliminary decree The plaintiff objected on the ground that the alleged beneficiaries were not parties to the decree and that the benamidar was not a trustee within the meaning of Chapter VI r. 5 of the Patna High Court Rules *Held* that the benamidar had not been sued in his capacity of trustee within the meaning of r. 5 and that therefore the alleged beneficial owners were not entitled to prefer the appeal **GOBIND PAM v. BADRI NARAIN** 6 Pat L J 908

Of heirs.—Application for after preliminary decree in mortgage suit made after 6 months of mortgage or a death—Civil Procedure Code (Act V of 1908) Or XII r. 3 death of sole defendant after passing of preliminary decree in a mortgage suit—Application for Substitution of heirs—Appeal from order dismissing application for substitution made after 6 months of the Defendant's death whether to be treated as an appeal from an order or from a decree—Second appeal of heirs—Or XII r. 17 application for substitution after the passing of the preliminary decree it belongs to the category of proceedings in execution of a decree D obtained a preliminary decree in a mortgage suit against T and applied subsequently more than six months after the death of T for order absolute and for substitution of the heirs of T which having been refused an appeal was preferred The appeal was dismissed and a second appeal was preferred to the High Court *Held* that the appeal to the lower Appellate Court was not an appeal from

SUBSTITUTION—contd

an order The order again in which the appeal was preferred was an order rejecting the application to make the mortgage decree absolute That order had the effect of finally dismissing the mortgage suit and was a decree and hence a second appeal lay to the High Court *Held* further that the suit had abated as the application for bringing the heirs of the deceased defendant on the record had not been made within six months from the date of his death **Mohar Bibi v. Lakub Ali** 11 C W N 156 (1906) and **Atariddin v. Ikhra Bism San** 1 L J 40 All 213 (1913) referred to An application following on a preliminary decree for sale is not an application for execution Until the final decree is made the proceedings following the preliminary decree in a mortgage suit must be looked on as a proceeding in a pending suit **Amlool Chind Parreck v. Sarat Chunder Mukherjee** 1 L P 38 Cal 913 (1911) and **Munna Lal Parreck v. Sarat Chunder Mukherjee** 1 L J 1 J Cal 6 s c 19 C W N 561 (P C) (1914) followed **BIJUNATH JANA v. TARA CHAND JANA** 25 B W N 695

Of Property.—Right of purchaser in court auction to substituted properties—Transfer of Property Act (IV of 1882) ss 2(d) 8 36 44 and 50—Contract to the contrary in s 30 of the Transfer of Property Act After a decree for sale on a mortgage the mortgagor who was in possession gave a lease of his properties to the first defendant for one year from July 1907 till July 1908 with a covenant for payment of the rent on 10th January 1908 In ignorance of this lease and the reversion of a rent the mortgage properties and the crops were brought to sale in November 1907 and plaintiff purchased the land together with the crops thereon and the sale was confirmed in December 1907 The crops were harvested in January 1908 by the lessee In a suit by the purchaser for the rent of the whole year from the mortgagor and his lessee *Held* (a) that the purchase of the right title and interest of the mortgagor to the lands and of the standing crops thereon entitled the purchaser to receive the whole rent reserved which was the thing substituted by the mortgagor for the crop (b) that ss 36 and 30 of the Transfer of Property Act (IV of 1882) were inapplicable as the purchase was in Court auction (c) that a stipulation to pay rent of a year's lease at particular date is a contract to the contrary within the meaning of s 30 of the Transfer of Property Act (IV of 1882) which enacts that the right to rent as between the transferor and the transferee ordinarily accrues from day to day and (d) that the creation of a lease for one year after a suit and decree on mortgage is not affected by the doctrine of *lis pendens* enunciated in s 52 of the Transfer of Property Act (IV of 1882) as such a lease is an ordinary incident of the beneficial enjoyment of a mortgagor allowed to remain in possession **SUBBARAJU v. SEETHAPANARAJU** (1914) 1 L R 39 Mad 282

SUCCESSION

See AGRA TENANCY ACT (II OF 1901)—

2.

I L R 32 All 314

I L R 33 All 419 658

I L R 37 All 65

I L R 38 All 187 325

I L R 41 All 6 9

SUCCESSION—contd

- § 9, 167 I L R 36 All 4
S. PARANA CRANT I L R 42 Calc 582
S. BURNES LAW—SISTERS I L R 41 Calc 887
See CUSTOM I L R 39 All 574
 I L R 2 Lah 98 284
S. GHATWALI TENURE
 L R 45 I A 251
 I L R 46 Calc 362
See HINDU LAW—ASTUTIKA STRIDHAN
 I L R 37 Calc 863
See HINDU LAW—ENDOWMENT
 I L R 35 All 283
See HINDU LAW—IMPARTIBLE ESTATE
 I L R 38 All 590
See HINDU LAW—INHERITANCE
 I L R 34 Bom 321 533
 I L R 37 All 604
 I L R 40 All 470
See HINDU LAW—JOINT FAMILY
 I L R 32 All 253
See HINDU LAW—LEITIMACY
 I L R 45 Bom 557
S. HINDU LAW—STRIDHAN
 I L R 39 Calc 319
 I L R 38 Bom 339
 I L R 43 Calc 944
 I L R 41 Bom 618
See HINDU LAW—SUCCESSION
See HINDU LAW—WIDOW
 I L R 39 All 1
 I L R 43 All 463
See HINDU WIDOWS—PEHARIAGE
 Act 1901, ss 2 and 5
 I L R 45 Bom 1247
See KUNJPERA STATE OF
 I L R 39 Calc 711
See MAHOMEDAN LAW
See MAHANT I L R 43 Calc 707
See MATADARS ACT (BOM VI OF 1857)
 ss 9 and 10 I L R 29 Bom 478
See OUDH ESTATES ACT (I OF 1869)
 ss 9 and 10 I L R 38 All 552
 ss 6 and 2, str 3 (11)
 I L R 32 All 599
See SARANJAM I L R 40 Bom 606
See SUCCESSION ACT
See TRENDS ACT (II OF 1841) ss 9
 I L R 43 Bom 173
 ——— attempt to alter mode of—
See HINDU LAW—INHERITANCE
 I L R 38 Calc 603
 ——— custom of in Chota Nagpur—
See JAIGIR I L R 46 Calc. 683
 ——— in direct male line—
See HINDU LAW—INHERITANCE
 I L R 35 Calc 603
 ——— Hindu convert to christianity—
See SUCCESSION ACT 1865 ss 2 & 331
 I L R 43 All 525

SUCCESSION—contd

- First cousins of the propositus take per capita—
See HINDU LAW—SUCCESSION
 I L R 45 Bom 296
 ——— Mitakshara—Bandhus—Mother's sister's son in preference to a brother's daughter—
See HINDU LAW—SUCCESSION
 I L R 45 Bom 253
 ——— Mitakshara—Impartible Estate—
See OUDH ESTATES ACT ss 14
 I L R 43 All 245
 ——— Murder as a disqualification—
See HINDU LAW—SUCCESSION
 I L R 45 Bom. 753
 ——— Oudh Taluqdar holding under a primogeniture Sansad—
See OUDH ESTATES ACT 1869 ss 14 15
 and 22 I L R 43 All 245
 ——— order of according to Mitakshara—
See HINDU LAW—STRIDHAN
 I L R 37 Mad. 293
 ——— Murder as a disqualification to inherit—Succession among Bandhus—
See HINDU LAW—SUCCESSION
 I L R 45 Bom. 763
 ——— Sudras—Illegitimate son—
See HINDU LAW—SUCCESSION
 I L R 44 Bom 163
 ——— Sudras—Illegitimate daughter—
See HINDU LAW—SUCCESSION
 I L R 45 Bom 557
 ——— Memons—Hindus converted to Mahomedanism—Hindu Law of Succession retained—Migration to Momba—Change of custom—Onus of proof—Evidence Memons are a sect of Mahomedans who were converted from Hindu in some four centuries ago but retained their Hindu Law of Succession and are throughout India governed by that law save where a local custom to the contrary is proved. Where however Memons migrate from India and settle among Mahomedans the presumption that they have adopted the Mahomedan custom of succession should be much more readily made. The analogy in the latter case is rather a proof of a change of domicile than a change of custom. A change of domicile than a change of custom. A Memon who a father some fifty years before he had migrated from India and settled with his family among Mahomedans at Momba a lived at that place and died there intestate. Held upon evidence as to the practice among Memons at Momba a and applying the above principle that the succession to the estate of the deceased Memon was governed by Mahomedan and not by Hindu Law. *INDRANATH HAJI IMAI V. HAJI HAJI* I L R 43 I A 35
 ——— Succession Act (I of 1865) ss 331—Precedence and Administration Act (I of 1865) ss 331—Special Marriage Act (III of 1852) ss 331—Whether necessary ceases to be a Hindu—Migration under Act III of 1850 whether upon

SUCCESSION—*continued*

an *alijuration* of *Hinduism* for all purposes—*Different sections of the Brahma Community—Practice* A Hindu by becoming a Brahmo does not need only cease to be a Hindu. Something further than the mere becoming a Brahmo is necessary for a man to cut himself off from Hinduism. A declaration under the Special Marriage Act 187 cannot be taken as an *alijuration* for all purposes of Hinduism but merely a statement for the purposes of the Act itself. In re the goods of JAYENDRA NATH ROY.

28 C W N 800

SUCCESSION ACT (X OF 1885)

See WILL

I L R 35 All 211

Legacy given if a specific uncertain event at all happen no time being mentioned in the will for occurrence of that event—Construction of wills made in India by natives of India A testator made certain legacies in his will in favour of his son and directed that in the event of his dying after the death of the testator without marrying or if married without issue his share should revert equally to his surviving sisters or their heirs. The testator died and claimed to be entitled to the legacies absolutely. Held that the restriction sought to be placed on the inheritance by the said provision of the will was nugatory and that he took an absolute interest in all property bequeathed to him under the will. In constructing a will made in India by a native of India it must be kept in mind that such a will cannot be construed by reference to cases on wills contained in the English Law Reports. *Narendra Nath Sircar v Kamal Basini Dassi* I L P 23 Cal 63 L R 33 I A 18 '96 referred to. *NOWROJI PUDUMJI (SIR) v PUTTLIBAI* (1912) I L R 37 Bom 644

—§ 2—*Indian Succession Act (X of 1885) as to 331—Hindu means if—Hindu convert to Christianity the law applicable to estate of on art estate—Plea—Issue no session not set up in plaint if may be relied on* Where a Hindu was converted to Christianity and died as a Christian the law applicable to his estate is that laid down by the Indian Succession Act. Under s 2 the Act is of universal application and a party who claims to be exempt from its operation must show that he is specifically exempted. *Degree v Pacotti* I L P 19 Bom 783. *De Souza v Secretary of State* 19 B L P 493 followed. To come under the exception in s 331 it is not enough to show that the deceased was born a Hindu but that at the date when the question in issue arises he professed any faith of Brahminical religion or of the religion of the Puranas. *Degree v Pacotti* I L R 19 Bom 783. *Jayendra Chandra Bose v Bhagwan Coomarr* I Punjab Law Report 51. *Bhagwan Koer v J C Bos* I L P 31 Cal 11. *Abraham v Abraham* 9 Moo I A 199. In re Vathiar 7 Mad H C R 11. *Ponnusami v Dorasami* I L P 2 Mad 709. *Alimnator General v Anandachari* I L I 1. *Mal 466*. *Tellis v Saklani* I L R 10 Mad 69. *Bis Baiji v Bas Santik* I L R 70 Bom 53. *Hastings v Gonsalves* I L P 73 Bom 539 referred to. *Francis Gopal v Gabri Ghosal* I L P 31 Bom 25. *Edith Mukerji v George Alfred* 52 P II R 1907 distinguished. *NEPEEN BALA DEBI v SITI KANTA BANNERJEE* (1910) 15 C W N 158

—§ 2 and 331—*Hindu convert to Christianity—Law governing succession—Absence of power to elect—Pardanshin—Undue influence*

SUCCESSION ACT (X OF 1885)—*continued*

Succession to the estate of a Hindu convert to Christianity who dies a Christian and intestate is governed by the Indian Succession Act (X of 1885) since the passing of that Act a person ceasing to be a Hindu cannot elect to continue to be governed by Hindu Law in matters of succession. *Abraham v Abraham* 9 Moo I A 195 distinguished. *Deceased* executed by a *parda ni hindu lady* relinquishing substantially without consideration her right of succession to a share in the estate of a deceased person in favour of one who or whose representative had submitted the prepared document to her and obtained her signature held to be invalid. In such circumstances the onus on those relying on the deed is to prove by the strongest and most satisfactory evidence that the transaction was a real and bona fide one and fully understood by the executant. *Sajjad Hussain v Haider Ali Khan* I L P 31 All 45 L I 531 A 156 applied. Judgment of the High Court reversed. *KAMAWATI v DIGBHAJI SINGH* I L R 43 All 525

—§ 3—

See HINDU LAW—WILL—

I L R 2 Lah 175

See WILL

I L R 38 Cal 327

—§ 7 9 10—*Domicile—Domicile of origin—Domicile of choice—Domicile of origin acquired from parents at birth—Domicile of choice acquired from residence and intention that residence should be permanent—Change of residence for an indefinite period does not effect domicile of choice—Domicile of choice discarded by intention to abandon accompanied by actual abandonment—Declarations of a party abandoning domicile how far relevant—Domicile of origin retaining proprio vigore on abandonment of domicile of choice—Onus of proof* One I P A Native Christian was born in Goa of parents domiciled in Goa in Portuguese Territory. In 1863 at the age of fourteen he came out to Bombay and lived there uninterruptedly with the exception of brief visits to Goa till his death in June 1915 when he was seventy one years old. In 1871 he married his first wife the mother of the defendants Nos 1 to 3 and on her death in 1901 married the plaintiff in 1903. During the whole of his mature life in Bombay he carried on a flourishing coach building business providing himself with a house near his factory. From his conduct and declarations from time to time it appeared that he had settled in Bombay meaning it to be his fixed habitation. It also appeared that sometime after 1913 and shortly before his death he formed an intention of returning to Goa and end his days there. On the 26th July 1909 he made a will in Bombay whereby he gave a legacy of Rs 7 a month to the plaintiff if she chose to live separate from the defendant No 1 a legacy of Rs 500 to the defendant No 3 and the coach building factory to the defendant No 4 the minor son of defendant No 1. He appointed defendant No 1 the sole executor and residuary legatee. The entire movable property belonging to him in his own right was valued by the plaintiff for Rs 1000 and by the defendant No 1 for Rs 19000. The plaintiff disputed the will of her husband and contended that the deceased had Portuguese domicile at the time of his marriage with her in 1903 as well as at his death and that under the Portuguese law she was entitled to a moiety of the estate left by the deceased. The defendant No 1 who supported the plaintiff contended that in 1871 when the deceased

SUCCESSION ACT (X OF 1865)—*contd*ss 7 & 10—*contd*

married his mother the decedent had a Portuguese domicile and that he too became entitled to a share in the estate of the deceased under the Portuguese law. *Held* (i) that at any time between 1865 when the deceased had attained majority and 1913 the deceased had acquired a domicile of choice in Bombay in substitution for the domicile of his origin in Goa (ii) that in spite of the intention of the deceased to return to the domicile of his origin the domicile of choice continued in law to exist at his death as the intention was not accompanied by the actual abandonment of the domicile of choice (iii) that the making of the will and all other matters governed by the Indian law of succession must be determined as though the deceased had all along from the year 1865 to the time of his death been a British subject domiciled in Bombay (iv) that the claim put forward by the plaintiff or the defendant No. 3 was not maintainable as the devolution of the estate of the deceased was not governed by the law of Portugal. The domicile of origin is that which a person acquires at his birth from his parents and follows the domicile of his parents. It is not necessarily in itself local that is to say merely the place of birth. The domicile of origin once ascertained in law clings and adheres to the person until he chooses to divest himself of it by substituting a domicile of choice for the domicile of origin. The domicile of choice is acquired by a combination of fact with intention. The fact is residence and the intention is that the residence should be permanent. The domicile of choice can be discarded as easily as it can be acquired by a fact and an intention namely the fact of abandoning the residence accompanied by the intention that that abandonment shall be final and that upon any such mere abandonment of one domicile of choice without the acquisition of another the domicile of origin revives *proprio vigore* and without the need of any further act or intention on the part of the person. The law leans very strongly in favour of the retention of the domicile of origin. Where there are no declarations of intention either way the Courts would be slow to infer from the mere fact of residence however protracted that residence may be the intention requisite to complete the substitution of domicile of choice for that of origin. The onus being upon the person alleging that a man has acquired a domicile of choice he must prove to the Court that that man had that intention. A man having acquired a domicile of choice may after many years decide to abandon his domicile of choice and again accept his domicile of origin. But if with that intention clear in his mind he should fail actually to abandon his domicile of choice and die before thus far giving effect to his intention the result would be that the domicile of choice would persist and the distribution of his estate would be governed by it. The law of domicile in the Courts of England from the case of *Bruce v Bruce* 11 Bo & P 229 footnote to that of *Huntly v Gaskell* [1906] A C 56 considered *Santos v Pinto* (1916) I L R 41 Bom 687

ss 46 48 50—

See PROBATE I L R 39 Calc 249

s 50—

SUCCESSION ACT (X OF 1865)—*contd*s 50—*contd*

testator Probate granted of a will signed by some other person than the testator in his presence and by his direction *Per Macleod C J*—It does not matter whether there are other words written by that person so long as those words do not destroy the effect of the signature so as to make it appear that the name of the person signing is not to be taken as a signature intended to give effect to the writing as a will. *There is* FRANCIS MESQUITA (1920)

I L R 45 Bom 949

Attestation of will
as to same fact e.g. execution or attestation—Execution—Guiding the hand of the testator in fixing mark It is not necessary that each of the attesting witnesses to a will should prove the same facts. One witness who saw the testator sign the will and another before whom the execution of the will was only acknowledged by the testator may both be good attesting witnesses to the same will. Where on the evidence it appeared that a will had been drawn up in accordance with the wishes of the testatrix as expressed during her lifetime before a reliable witness that it was read over to her when she was in possession of her senses and then being asked by one S whether he would sign the will for her he nodded her assent whereupon S guided her finger to make the mark and then put down the testatrix's name under the mark by his own pen. *Held* that the will was executed by the testatrix as required by s 50 of the Succession Act. That as the execution of the will was complete at the moment the mark was made S became an attesting witness when he wrote his own name after the testatrix. *MUKTAVATH ROY CHOR DAVRY & JIREVDA NATH POX SNOWDEN* (1915) 19 C W N 1295

Execution of will
as proper—Attestation—Indian mode of signature
—Presence of the witnesses at the same time and attestation of identical state of things if necessary
 s 50 of the Indian Succession Act differing from s 3 of the English Act expressly provides that it is not necessary for both attesting witnesses to be present at the same time. The English system of executing the document at the foot does not usually obtain amongst Indians. Their custom is to execute the document at the top. Ordinarily the signature of the executant appears at the top right hand corner and when he executes the document himself and not by an attorney he is accustomed to write by my own pen. Where in a will written on four sheets of paper the signature of the executant appeared at the top left hand corner of the first page as being made by his own pen but his signature only on the next two pages and his signature with date on the last page and the signatures of all four attesting witnesses appeared alongside the signature of the executant on the first page and on each of the other three pages appeared the signatures of two of these four persons. *Held* that the operative signature was the one on the first page and as on the evidence it appeared that at least two of the witnesses whose names appeared on that page subscribed their names *animus attestandi* the will was properly executed as required by s 50 of the Succession Act. Where the testator after having executed

Will signed by some other person in the presence and by the direction of the

SUCCESSION ACT (X OF 1865)—contd**— s 50—contd**

the will in the presence of one attesting witness took it successively to the houses of two other attesting witnesses who on his acknowledgment of his signature attested the document. *Held* that there was valid attestation by all three witnesses within s. 50 of the Succession Act. *SABITTI THAKURAN v. F. A. SARI* (1915).

19 C W N 1297

Will of a mark man—

Mark not affixed by the testator or him self but by another not a due execution—thence of two attesting witnesses besides the person affixing the mark not a due attestation. Where with a view to execute a will the testator who was a mark man touched the pen and gave it to another who affixed to the will a mark and wrote against it the testator's name and added beneath it his own name as the person who affixed the mark and the will did not contain attestation of two other persons besides that of the person so affixing the mark. *Held* that the will was invalid as not complying with the provisions of s. 50 of the Indian Succession Act. *Is a marked will it was invalid as the mark was not affixed by the testator himself as required by the section. Considered as a signed will as it might be it was equally invalid as the testator's signature was put by another and there were not two other attesting besides the one so signing.* *RADHAKRISHNA v. SUBBAYA* (1915).

I L R 40 Mad 550

— s 57—**See HINDU LAW—WILL.**

I L R 38 Mad 369

Will revocation of—

Tearing. When a testator sent for his will wrote the word 'cancelled' thereon and signed in and according to his attorney's direction tore it partially. *Held* that this showed the intention of the testator to revoke the will and the partial tearing constituted a sufficient revocation of the will within the meaning of s. 57 of the Indian Succession Act. *Elms v. Elms* 1 Sw & Tr 165 distinguished. *Bibb v. Thomas* 2 N R 1043 referred to. *JORUR LAL DEY v. DHIRENDRA NATH DEY* (1915).

20 C W N 304

— ss 62 67 68 69—**See WILL.**

I L R 40 Bom 1

— ss 82 187—Will—Bequest to widow how to be construed—S 187 of the Succession Act does not debar a defendant from relying on a will in respect of which no Probate or Letters of Administration have been taken out as he is not seeking to establish a right as executor or legatee. In a case to which the Hindu Wills Act applied a testator made a bequest to his widow in the following terms:—*I give all the remaining properties of every sort which fell to my share to my wife Andalu. Therefore the aforesaid Andalu herself should enjoy all the remaining properties.*—*Held* on the construction of the will that the widow took only a limited estate. The operation of the ordinary rule of Hindu Law that a bequest to a wife without words creating an absolute estate conferred only a limited interest was excluded by s. 8. of the Succession Act. The fact that the donee was a widow the absence of words of inheritance and of words conferring powers of alienation were not sufficient to show that she took only a restrict

SUCCESSION ACT (X OF 1865)—contd**— ss 82 187—contd**

Interest. These circumstances however coupled with the recital in the will that she should enjoy the estate indicated the intention of the testator that she should have no powers of alienation. *CARALAPATHI CHUNNA CUNNIAH v. COTA NAMMALWARIAH* (1909).

I L R 33 Mad 91

— s 84—**See WILL.**

I L R 35 All 211

— ss 88 98 100 to 102—**See HINDU LAW—WILL—**

I L R 38 Calc 168

— s 91—

See INDIAN SUCCESSION ACT (X OF 1865) s 187. I L R 38 Mad 474

— ss 98 100 to 102—**See HINDU LAW—WILL—**

I L R 38 Calc 168

— s 99—**See HINDU LAW—WILL.**

I L R 38 Calc 87

— s 101—

See HINDU LAW—WILL 23 C W N 828

— ss 101 102 111 and 126—**See HINDU LAW—WILL.**

I L R 44 Mad 446

— ss 101 107—**See WILL.**

I L R 48 Calc 465

— ss 105 159—**See WILL.**

I L R 40 Calc 192

— s 107 Part XV—**See HINDU LAW—WILL.**

I L R 41 Calc 642

— ss 107 111—**See HINDU LAW—WILL.**

I L R 43 Calc 432

— s 111—**See HINDU LAW—STIPEND.**

23 C W N 1038

— ss 101 107—**See HINDU LAW—WILL.**

I L R 2 Lah 175

— ss 101 107—**See WILL.**

I L R 40 Calc 274

— ss 101 107—**See WILL.**

I L R 39 Bom 296

— ss 101 107—**See WILL.**

I L R 38 Calc 327

— ss 101 107—**See WILL.**

I L R 44 Calc 181

— ss 101 107—**See WILL.**

I L R 40 Calc 192

— ss 101 107—**See WILL.**

I L R 45 Bom 1038

— ss 101 107—**See WILL.**

I L R 40 Calc 192

— ss 101 107—**See WILL.**

I L R 40 Calc 192

— ss 101 107—**See WILL.**

I L R 40 Calc 192

— ss 101 107—**See WILL.**

I L R 40 Calc 192

— ss 101 107—**See WILL.**

I L R 40 Calc 192

— ss 101 107—**See WILL.**

I L R 40 Calc 192

SUCCESSION ACT (X OF 1885)—*contd*ss 160 130 134—*contd*

to make an annuity perpetual. The Will may indicate an intention in other ways that the sum payable is really not an annuity or at any rate is intended to be perpetual. Where the Will made a sum payable to one of the sons of the testator out of the profits of immovable property allotted to another with a view to equalising their shares. *Held*—That the amount was not intended to be an annuity and was not limited to the life of the legatees but formed part of the properties allotted to him and was absolute and perpetual. Where on the death of the legatee the payment of the amount was stopped in a suit by his heirs for recovery of arrears thereof interest at 12 per cent was properly awarded by the Court ss 130 to 134 of the Succession Act which relate to interest on annuities or legacies payable by the executor not applying to the case. *LAUNCHU GOPAL MUKERJEE : KALIDAS MUKERJEE* 21 C W N 592

■ 184—

See DOCTRINE OF SATISFACTION

I L R 37 Bom 211

■ 187—

See s 11 I L R 33 Mad 91

See MAHOMEDAN LAW—WILL

I L R 37 Cal 539

See WILL I L R 38 Cal 327

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Hindu Wills Act (XXI

of 1870) ss 2 and 5—Indian Succession Act (X of 1885) s 187—Administrator General's Act (II of 1874) s 36—Will made in Bombay—Property worth less than Rs 1000—Probate—Administrator General's certificate A will made in Bombay is subject to the provisions of the Hindu Wills Act (XXI of 1870) and a person claiming as a legatee under the will is not entitled to sue without taking out probate as he would be bound by s 187 of the Indian Succession Act (X of 1885) which is incorporated in the Hindu Wills Act (XXI of 1870). The provision of the Administrator General's Act (II of 1874) is not affected by the incorporation in the Hindu Wills Act (XXI of 1870) of s 187 of the Indian Succession Act (X of 1885). *NARAYAN SURIDHAR : PANDURANG BAPUJI* (1910)

I L R 34 Bom 508

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Scope of—Es

establishment without probate of legatees right—s 91—Legacy vesting of—Executor's assent—Acceptance by legatee necessity of—Disclaimer by legatee. Where on appeal in a partition suit it was contended by the first defendant that the first plaintiff had no title to sue in ejectment as under a will of her mother which was not proved up to the date of the trial such property vested in the second and third plaintiffs. *Held* that s 187 not only affects the establishment of the right to a legacy by legatee himself or some person claiming under him but also debars a person who desires to establish the legatee's right merely as a *jus tertii* for the purpose of his defence. The estate vested in a legatee under s 91 of the Act is not full or absolute but it refers only to an interest in the legacy and not the legacy itself. Until the executor has given his assent to the legacy the legatee has only an inchoate right to it. *Backman v Backman* I L R ■ All 553 and *Doe v Goss* 3 East 170 s c. 162 E R

SUCCESSION ACT (X OF 1885)—*contd*■ 187—*contd*

513 followed. A legacy vested in the legatee under s 91 of the Act is divested by his disclaimer. The rule of English law that no legacy can vest in the legatee against his will may legitimately be adopted in deciding questions under the Indian law. *In re Hotoley Freke v Calarady* 30 C 428 referred to. *LAKSHTAMMA : RATNAMMA* (1913) I L R 38 Mad. 44

3

Conditional order

of Judge for grant of Probate—Non issue of Probate owing to non payment of Court fees—Heir of legatee same as legatee—Probate or Letters of Administration alone evidence of right under s 187. A Hindu executing a will in the town of Madras made a bequest in favour of his son. After the death of the father the son died leaving his mother the plaintiff as his heir. On the application of the executor (defendant) for a Probate the fiat of the Judge was obtained but there was no actual order for the issue of the Probate and the Probate was not issued owing to the failure of the executor to pay the requisite court fees for the same. In a suit by the testator's widow as mother of his deceased son for an order of the Court directing the defendant to apply for probate of the will and for of the estate. *Held* (a) for the purpose of s 187 of the Indian Succession Act which governed the case the plaintiff though only an heir of a legatee was in the position of a legatee (b) that the fiat of the Judge for grant of Probate was only conditional and was not equivalent to an actual grant of the Probate within the meaning of s 187 (c) that in the absence of a grant of Probate or Letters of Administration which was the only proof of right allowed by the section the plaintiff was debarred from claiming any rights flowing from the will and (d) that the mere production and exhibition of the will as an ordinary proof and exhibit in the case were not equivalent to proof of the right by the production of the Probate or the Letters of Administration as required by the section. *Lakshamma v Patnamma* I L R 38 Mad 474 followed. *Manguram Marwa : Guraiah* and I L R 17 Cal 347 distinguished. *ALLAELAMMAL : SRIYAPRAKASARAO* (1913) I L R 38 Mad. 688

■ 190

See RECEIVER

I L R 37 Cal 754

Letters of administration obtained by plaintiff after suit filed but before hearing and decree—Transfer of Property Act (II of 1882) s 130—Order to banker to pay money held to the credit of customer effect of when acted on—Stamp Act (II of 1899) s 6—Resulting trust. One W had a deposit of Rs 10,000 in a bank under a deposit receipt which fell due on the 7th of August 1912. W had a grand nephew H to whom he wished to transfer the money meaning that H should have the benefit of the money but not intending that he should be able to make away with the money in H's life time or to draw the interest without making due provision for H's maintenance. On the 8th of August 1912 W handed to H his deposit receipt duly endorsed and a letter to the following effect—'I hereby state that I have found my Bank Receipt. Herewith I am forwarding the same for the interest now due. I wish it to be handed over to my nephew. I also wish you to hand over the amount of Rs 10,000 which is in fixed deposit to my nephew. *Hilmet Khan*

SUCCESSION ACT (X OF 1865)—*contd*s. 193—*contd*

Harrison to his account. *H* took the documents to the bank and obtained a new deposit receipt for Rs. 10,000 the balance of Rs. 500 in cash and Rs. 420 in cash by way of interest. On the 18th of October 1912 *H* died. On the 5th of August 1913 *A*, a grand niece of *H* filed a suit against *H* as administratrix of the estate of *H* claiming that the sum deposited with the bank in the plaint stated to be Rs. 10,000 formed part of the estate of *H* and that the plaintiff as administratrix of his estate was entitled to the same. At the date of the filing of the suit *A* had not obtained Letters of Administration to *H*'s estate but did obtain them before the hearing of the suit. *Held* that the plaint was defective in that it did not show that the plaintiff had obtained Letters of Administration and should on that account have been rejected on presentation but that as the plaintiff had obtained Letters of Administration before the hearing and the hearing had been allowed to proceed a decree passed in favour of the plaintiff was not contrary to s. 190 of the Indian Succession Act. *Held* further that where money mentioned in a deposit receipt was immediately payable and the receipt was presented duly endorsed together with an order to pay a given individual that individual became the owner of the money upon payment by the banker or upon his promise to hold the money at the disposal of the payee that an order on a banker to pay money which he held to the credit of a customer was not an assignment of a debt but an authority to deliver property which if acted on was equivalent to delivery by the customer and that the letter of the 8th of August 1912 was such an order and had been acted on and though had an objection been taken at the hearing before the lower Court it might have been rejected for want of a stamp that such an objection could not be taken on appeal the letter being on record. *Held* further that the intention of the donor *H* to benefit negated the idea of any resulting trust in his favour. *DEVIKA v. HENNINGWAY* (1914) I L R 86 Bom 618

ss 190 191 and 239—Act VII of 1901—Grant of letters does not vest property of deceased in the administrator as from the date of death—Heirs of intestate Native Christian entitled to deal with their shares until grant of letters. The effect of s. 191 of the Indian Succession Act is not to vest the property of the deceased in the administrator as from the date of death. Subsequent to the passing of Act VII of 1901 which made ss 190 and 239 of the Succession Act inapplicable to Native Christians the heirs of intestate Native Christians have the power to deal with their shares in the property of the deceased until the grant of administration and their transactions in respect of such shares will not be made invalid by the subsequent grant. The property of the deceased vests in the administrator only at the time of the grant though for certain purposes the grant may relate back to the death of the deceased. *ANTONY CRUZ GONZOLVES v. MARIS BOOPALAKAYAN* (1910)

I L R 34 Mad 395

s. 191—

See SETTLEMENT BY A HINDU WOMAN BY TRUSTS I L R 40 Bom 341

s. 244—Civil Procedure Code 1908

s. 2—Will—Probate—Application for probate dismissed—Decree—Order—Appeal *Held*

SUCCESSION ACT (X OF 1865)—*concl'd*s. 244—*contd*

that the order of the District Judge granting or refusing probate of a will on an application made under the provisions of s. 244 of the Indian Succession Act 1865 is a decree within the meaning of s. 2 of the Code of Civil Procedure 1908 and appealable as such. *Held* also that the court fee payable on such an appeal is Rs. 10 under Art. 17 Cl. (vi) of the second schedule to the Court Fees Act 1870. *Umrco Chand v. Bindrahan Chand* I L R 17 All 475. *Esoof Hashim Dooply v. Fatima Bibi* I L R 24 Cal 30 and *Sheikh A. M. v. Chandra Nath Vamdas* S C W A 748 MOUNT STEPHENS v. GARNETT ORME (1913)

I L R 35 All 448

s. 250—Probate and Administration Act (I of 1881) s. 31—Will—Probate—Caveator—Interest possessed by the caveator. The provisions of s. 31 of the Probate and Administration Act 1881 (which correspond with those of s. 250 of the Indian Succession Act 1865) enact that the interest which entitles a person to put in a caveat must be an interest in the estate of the deceased person that is there should be no dispute whatever as to the title of the deceased to the estate but that the person who wishes to come in as the caveator must show some interest in the estate derived from the deceased by inheritance or otherwise. *Abhram Dass v. Gopal Dass* I L R 17 Cal 48 followed. *KROSHIAN BHUKAJI v. PESTONJI MERVANJI* (1910)

I L R 34 Bom 459

ss 264B and 339—Administrator—Directions—District Court cannot but High Court can give directions. A District Court has no power to give directions to an administrator in regard to the estate when Letters of Administration have already been granted. The power vests in the High Court by virtue of s. 264B of the Indian Succession Act (X of 1865). *WILSON v. WILSON* (1910)

I L R 44 Bom 652

ss 311 312—

See WILL

I L R 43 Cal 201

s. 331—

See s. 2

I L R 43 All 525

See SUCCESSION

26 C W N 800

s. 332—Aboriginal tribes in Chota Nagpur—Inheritance—Law applicable—Special notification under s. 332 issued at the appellate stage whether has retrospective effect. Notification dated 2nd May 1913 issued by the Government of India under s. 332 of the Indian Succession Act at the appellate stage of a case did not apply where there had already been a decision of a competent court regarding the rights of parties. In the case of codified law the ordinary practice of the legislature is to make special provision when it thinks fit to do so for the saving of custom, usage and ordinary rights. There is no authority that after customary law has been stereotyped in the form of a statute which contains no provision saving custom it is open to a Court to give effect to custom much less to a custom inconsistent with the statute. As the Indian Succession Act contains no clause saving custom the Courts are not competent to accept custom as a reason for deviating from the provisions of the Act. *TUJI ORAIN v. LEDA ORAIN* (1916)

20 W W N 1082

1 Pat. L J 225

SUCCESSION CERTIFICATE

See LIMITATION ACT (IX OF 1908),
SCH I ART 62 I L R 37 All 434
See RECEIVER I L R 37 Cal 754
See SUCCESSION CERTIFICATE ACT (VII OF 1889)

as lignee suing on an assignment
by heir of debt due to deceased—

See SUCCESSION CERTIFICATE ACT 1839
SS 4 AND 6 I L R 42 All 549

certificate granted *ex parte* with-
out service of notice on opposite party—

See SUCCESSION CERTIFICATE ACT 1889
s 19 I L R 42 All 512

1 Assignee of deceased's representa-
tive whether certificate may be granted to—
A succession certificate may be granted to the
assignee of the representative of a deceased
person RAMCHARITER SARU : RAM NARAYAN
SARU R Pat L J 350

2 Possession of property by Re-
ceiver without Succession Certificate—*Succession*
Certificate Act (VII of 1889) s 4 8 cl (c)—Indian
Securities Act (VIII of 1886) s 3 sub s (2) s 6
sub s (1) In the absence of any provision in the
Hindu Wills Act (XVI of 1870) and in the Probate
and Administration Act (V of 1881) that no right
to the property of an intestate can be established
unless administration had been previously granted
by a competent Court the Receiver appointed by
Court is competent to take possession of the secu-
rities and moneys without a certificate under s 4
of the Succession Certificate Act but regard being
had to the provisions of the Indian Securities Act
1886 and s 3 subs (2) s 6 subs (1) cl (f)
and s 8 cl (c) of the Succession Certificate Act
(VII of 1889) a Succession Certificate would be
needed if a suit was brought to establish a title
to such funds by right of inheritance HARIHAR
MUKERJI v HARENDRA NATH MUKERJI (1910)
I L R 37 Cal 754

3 Mitaksha a Low—Impartible
Estate—Arrears of rent converted to a bond—
Debt due to last holder of impartible estate if effects
of the deceased in the hands of the successor—*Suc-*
cession Certificate Act (VII of 1889) s 4 Wherein
lieu of arrears of rent a bond was given to the
holder of an impartible estate Held that the
debt due was not in the hands of the successor to the
estate a part of the effects of the deceased within
the meaning of s 4 of the Succession Certificate
Act but in its nature a family debt accruing to
him by right of survivorship Jagmohandas
Kilaghai v Allu Maria Dushal I L R 19 Bom
338 Beeraj v Bhyroperaud I L R 23 Cal 912
Bissen Chand Dudhuria Bahadur v Chatrapati Sing
I O W N 32 Katama Naichar v The Rajah of
Shivagunga 9 Moo I A 537 2 W P C 31
Siree Rajah Yanumula Venkayamah v Siree Rajah
Yanumula Boochia Venkondora 13 Moo I A 333
referred to GUR PERSHAD SINGH v DHANI RAI
(1910) I L R 38 Cal 182

4 Debt—Succession Certificate
Act (VII of 1889) s 4—Debt meaning
of—Part of debt if certificate can be granted in
respect of—Appeal A certificate under the Suc-
cession Certificate Act can be granted in respect

SUCCESSION CERTIFICATE—contd

of a part only of a debt due to the deceased The
word debt is a comprehensive term which
should receive a liberal construction. *Re Ghan-*
sham Das, (1893) All W N 84 and *Mahomed*
Abdul Hossain v Sarifan 16 O W N 231
approved and followed. *Albar Khan v Bill-*
kisara Begam (1901) All W N 125 considered
Bibee Boodhun v Jan Khan 13 W R 260 *Afham-*
med Ali Khan v Paltan Bibi I L R 19 All
129 Bismilla Begam v Tawassul Husain I L R
32 All 335 and *Chafur Khan v Kalandari Begam*
I L R 33 All 327 not followed *ANNAPURNA*
DAS v NALINI MOHAN DAS (1914)
I L R 42 Cal 10

5 Suit dismissed for
non production of the certificate—Certificate if may
be filed in Appellate Court See MOOFLALDAH ROY
CHOWDHURY v MOHINI MOHAN KAR (1915)
19 O W N 794

6 Certificate refused
—Matters to be proved to entitle applicant to a cer-
tificate A Government promissory note payable
to one Madho Sahai was assigned by a registered
deed by the legal representative of Madho Sahai
to one Radhika Prasad Upon the assignee
applying for a certificate of succession in respect
of this note it was refused on this ground that it
was not established that the assignor had himself
a good and subsisting title to the note Held
that whether the assignor of the applicant had a
valid title or not or whether the assignment con-
veyed any title to the applicant or whether the
debt secured by the promissory note was recover-
able or not were not matters which the court had
to determine upon an application for a certificate
The only question which the court had to decide
was whether the applicant was the representative
of the person to whom the debt was alleged to
have been due RADHIKA PRASAD BAFUDI v
SECRETARY OF STATE FOR INDIA (1916)
I L R 38 All 438

SUCCESSION CERTIFICATE ACT (VII OF 1889)

See SUCCESSION CERTIFICATE

See LIMITATION ACT (IX OF 1908) SCH I
ART 182 CL (5)
I L R 37 Bom 559

Preference as regards
the granting of a certificate—Childless widowed
daughter—Sons of a deceased daughter The parties
were governed by the Hindu law of the Dayabhaga
School and the question was whether preference
was to be given as regards the granting of a
certificate for the collection of certain debts due
to the father to a widowed childless daughter or
to the sons of a deceased daughter Held that
the latter were to be preferred According to the
Dayabhaga a widowed childless daughter would be
no heir to her father *Sreemutty Bimola v Dangoo*
Kansaree 19 W R C F 189 not followed
Benode Koomaree Dubee v Purnan Gopal Sahre
2 W P C R 176 *Padma Kushen Manjaree v*
Pajah Ram Mundal W R C F 11
and Mokunda Lal Chakravarti v Monmohini
Devi 19 C W N 412 referred to *SRINATHI*
PRAVILA DEVI v CHANDRA SUREKHAR CHATTERJI
I L R 43 All 450

SUCCESSION CERTIFICATE ACT (VII OF 1889)—contd

4—contd

for a portion, if may be granted—Heirs & claims of joint or several—Severance of debt Where one of several heirs of a deceased Mahomedan lady sued her husband for a portion of the share of the deferred dower due by the defendant to the deceased relinquishing the balance Held that an application by the plaintiff for succession certificate in respect of the amount claimed by her in the suit was properly granted E 4 of the Succession Certificate Act does not require that the certificate should cover the whole of the debt if the heirs do not so to realise the whole *Ghufur Khan v Kalandars Begum* I L R 33 All 327 dissented from In respect of deferred dower each of the heirs of the deceased has a distinct right enforceable by himself though all may jointly sue and it is open to each to relinquish a portion of the claim The defendant husband being moreover one of the heirs the debt assuming it to be joint is severed and a certificate cannot in consequence be granted for the whole debt *ABDUL HOSSAIN v SARIFAN* (1911) 16 C W N 231

6 — Assignment—Succession certificate—Assignment of debt covered by certificate—Certificate also made over to assignees—Rights of assignees The widow of a separated Hindu obtained a certificate of succession for the collection of a debt due to her deceased husband She assigned the debt and also handed over the succession certificate to the assignees Held that the assignees were competent to sue and get a decree for the debt The widow could undoubtedly assign the debt and it was not necessary even if it were possible for the assignees to obtain cancellation of the certificate granted to the widow and the issue of a fresh certificate in their favour *Karup pasami v Pitchay*, I L R 15 Mad 419 distinguished *Allahdad Khan v Sant Ram* I L R 36 All 74 not followed *Durga Kunwar v Matu Mal* I L R 35 All 311 referred to *RAO LAL v ANNU LAL* (1913) I L R 36 All 21

7 — Joint interest—Application for certificate—Applicant alleging himself to be joint with deceased and entitled to his estate by survivorship Where an applicant for a succession certificate stated in his application that he was a member of a joint Hindu family with the deceased to whose estate he had succeeded by survivorship Held that a succession certificate was unnecessary and the application must fail *MATHURA PRASAD v DURGAWATI* (1914) I L R 36 All 283

8 — Debt part of certificate in respect of if may be granted—Multiplicity of suits A certificate under Act VII of 1889 (Succession Certificate Act) can be granted in respect of a portion of a debt The principle of law which prohibits multiplicity of suits in no way affected by the grant of certificates in respect of fractional shares of a debt *Bibee Boodhun v Jan Khan* 13 II J 665 *Mulammad Ali Khan v Puttan Bibi* I L R 19 All 199 *Bismilla Begum v Tawassul Hussain* I L R 32 All 330 *Ghufur Khan v Kalandars Begum* I L R 33 All 307 *Aldar Khan v Bulki ara Begum* All W N for 1901 125 In the matter of the petition of *Ghansham Das* All W N for 1893 81 *Mohamed Abdul Hossain v Sarifan* 16 C II N 231 referred to *ANNAFFEEY DASSY v NALINI MOHAN DAS* (1914) 18 C W N 836

SUCCESSION CERTIFICATE ACT (VII OF 1889)—contd

4—concld

9 — Letters of administration—Assignment of debt by holder of letters of administration of debt covered by certificate—Rights of assignee A decree for possession of certain property and for mesne profits was passed in favour of A and his wife The wife died after the date of the decree A obtained letters of administration in respect of the estate of his wife and then transferred his own rights under the decree as also those of his wife to H H applied for execution of the decree The judgment debtors objected *inter alia* that the decree could not be executed without letters of administration or a succession certificate being obtained by transferee Held that H could execute the decree without taking out fresh letters of administration *Per WAZIR* I A person claiming as assignee of a debt which was due to the estate of a deceased person is not claiming the effect of the deceased From the date of assignment the debt due to the deceased ceases to be part of the deceased's effect The claim contemplated by sub (1) of s 4 of the Succession Certificate Act is a claim made by a person in the capacity of and as personal representative of a deceased person *GOSWAMI SRI RAMAN LAL v HARI DAS* (1916) I L R 38 All 414

10 — Preference—Childless widow's daughter—Sons of a deceased daughter The parties were governed by the Hindu Law of the Dayabhaga school and the question was to be given as regards the granting of a certificate for the collection of certain debts due to the father to a widowed childless daughter for to the sons of a deceased daughter Held that the latter were to be preferred According to the Dayabhaga a widowed childless daughter would be no heir to her father *SRIJATI PRASITA DEVI v CHANDRA SHEKHAR CHATTERJEE* I L R 38 All 450

11 — Certificate not to be granted for collection of part only of a debt—Debt in part irrecoverable or extinguished—Muhammadan Law—Dower On the death of a Muhammadan lady to whom her dower was due the heirs were her husband her brother and three daughters The brother applied for a succession certificate in respect only of the share of the dower debt to which he was entitled as an heir On the objection being raised by the daughters that a certificate could not be granted for part only of the debt the District Judge finding that a portion of the debt was satisfied by reason of the husband inheriting it as an heir and that the recovery of one of the daughters' shares was time barred gave the applicant a certificate in respect of the remainder Held that on the reasoning upon which the Full Bench decision in *Ghufur Khan v Kalandars Begum* I L R 33 All 307 was founded it was not competent to the District Judge to grant a certificate except for the whole of the dower debt *Mohamed Aldul Hossain v Sarifan* 16 C II N 123 and *Srinmully Annappurana Das v Anilini Molon Das* dissented from *SUGHRA BEGAM v MUHAMMAD MIR KHAN* I L R 43 All 341

SUCCESSION CERTIFICATE ACT (VII OF 1889)—contd

ss 4 and 6—Assignment by heir of a debt due to a deceased person—Suit by assignee to recover debt.—Certificate necessary before assignee can obtain a decree. If the heir of the deceased person to whom at his death money was due assigns the debt to a third person the assignee cannot realize the debt without obtaining a succession certificate under Act No VII of 1889. A debt due to a deceased person does not cease to be part of the effects of the deceased by reason of such an assignment. *Cesumami Sri Paman Lalji v Hari Das I L R 38 All 414* not followed. *Allah Dad Khan v Santam I L R 35 All 74* *Pang Lal v Annu Lal I L R 36 All 21* and *Padhika Praised Bapudi v The Secretary of State for India in Council I L R 38 All 438* referred to. *Karuppasami v Pichu I L R 15 Mad 419* and *Vancharam Pranjivan v Bai Malati I L R 18 Bom 316* followed. **GRISHAM ALI v ZAKIR ALI** *I L R 42 All 549*

ss 4 7—Certificate not to be given for collection of part only of a debt.—Mahomedan Law.—Dower. *Hild* that no certificate could be granted to one of the heirs of a Mahomedan lady who had died leaving a dower debt unrealized for collection merely of a part of the dower debt of the deceased. *Muhammad Ali Khan v Puttan Bibi I L R 19 All 199* followed. *Albar Khan v Bilkisra Begum Ali W (1911) 125* referred to. **BISILTA BEGAM v TAWASSUL HUSAIN** (1910) *I L R 32 All 335*

ss 4 8 cl (c)—

See SUCCESSION CERTIFICATE—
I L R 37 Cal 764

ss 4 18—Succession certificate.—Holder of certificate not entitled to transfer his rights thereunder. *Hild* that the rights conferred by the grant of a succession certificate under the Succession Certificate Act 1889 are personal to the grantee and cannot be assigned. *Allah Dad Khan v Santam (1912) I L R 35 All 74*

ss 4 (1) 18—Assignment of a debt.—Certificate obtained by assignor after assignment.—Suit by assignee without a certificate in his own name.—Decree whether can be passed. An assignee of a debt from a person to whom succession certificate was granted subsequent to the assignment is entitled to a decree for the debt without obtaining a succession certificate in his own name. *Paman Lalji v Hari Das I L R 38 All 414* followed. *Allah Dad Khan v Santam I L R 35 All 74* dissented from. **ARUNACHALAM v MARHU** (1918) *I L R 42 Mad 130*

ss 7 9—Certificate of succession.—Security.—Application by widow of separated Hindu. Where under s 9 of the Succession Certificate Act 1889 the requiring of security is optional security should not be taken from the widow of a separated Hindu asking for a certificate to enable her to collect debts due to her husband in the absence of special circumstances rendering the taking of security necessary. **NARAIN DEVI v PARVESHWARI** (1917) *I L R 40 All 81*

s 8—

See SPECIFIC RELIEF ACT (I of 1877)
s 42 I L R 53 All 316

SUCCESSION CERTIFICATE ACT (VII OF 1889)—contd

9—

1—Certificate in favour of Hindu widow to realize interests only.—Certificate ultra vires. *Hild* that where a certificate was granted to a Hindu widow for collection of debts due to her late husband it was not competent to the Court in lieu of requiring security from the grantee to give a certificate for realization of interests only without disturbing capital. *Shib Deo v Ajudhia Prasad F A J O No 108 of 1910* decided on the 13th of February 1911 referred to. **JAI DEVI BANWARI LAL** (1913) *I L R 35 All 249*

2—Certificate to a minor can be granted.—s 9 no bar. A succession certificate can be granted to a minor. **PERCURIAM** s 9 of the Succession Certificate Act (VII of 1889) presents no difficulty to the grant in such a case. *Kals Coomer Chatterjee v Tara Prossunno Vookerjee 5 C L P 51* and *Ram Kuar v Sardar Singh I L R 20 All 32* followed. *Ex parte Mahadeo Ganghadhar I L R 98 Bom 311* and *Gulabchand v Moiti I L R 25 Bom 593* considered. **KRISHNAMA CHARLU v VENKANNAT** (1913) *I L R 100 Mad 214*

ss 9 25 28—Civil Procedure Code (Act V of 1908) s 96—Succession Certificate.—Condition of Security.—Appal. An order granting a succession certificate accompanied by a condition that security should be given is appealable. An order directing that a certificate should not be granted unless security is furnished is not appealable. *Bai Dextore v Lalchand Jandas I L R 19 Bom 790* explained. **BAI NANDKORE v SNA MAGANTAL VARAJBHUKHANDAS** (1911) *I L R 38 Bom 272*

ss 16 and 17—

See PRESIDENT OF BANKS ACT (VI of 1876)
s 93 I L R 45 Bom 138

ss 16 18—Certificate of succession.—Suit to set aside certificate and decree passed in favour of holder. A succession certificate granted under the provisions of the Succession Certificate Act 1889 is conclusive as against the debtor under s 16 of the Act and it can be revoked by the District Judge only under s 18 of the Act. No suit will lie to have a succession certificate and a decree obtained by the holder thereof set aside on the mere ground that the certificate was obtained by the use of false evidence. **RUFAN BHAI v BHAGET LAL** (1914) *I L R 36 All 423*

s 18—

See s 4 **I L R 42 Mad 130**

18 and 19—Certificate of succession granted to one creditor for the whole of a debt due to him self and other.—Decree obtained by certificate holder for his share only of the debt.—Remedy open to the other creditors in respect of the proportionate share. Upon the death of a Muhammadan lady her claim for dower devolved upon (1) her husband to the extent of one fourth (2) her brother to the extent of one fourth and (3) her daughter to the extent of one half. The brother applied for a certificate of succession in respect of the whole of the dower debt and this was granted to him. At the time of this application the daughter was a minor and

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd*

s 18—*contd*

notice of the application was served for her on her father, notwithstanding that he was the person who himself was liable for the payment of the dower debt. On obtaining the certificate the brother sued for and obtained a decree for his one quarter share. Thereupon the daughter applied to the court asking either that the certificate granted in favour of the brother should be revoked and a fresh certificate made out in her name or in the alternative that her name should be associated with that of the brother in the same certificate to the extent of the half share claimed by her. The court rejected this application *in toto*. *Held* on appeal from this order (1) that the appeal lay the order being in effect one refusing to grant a certificate to the applicant and (2) that in the circumstances of the case the proper order to pass was one revoking the certificate already granted to the extent of one half and granting a certificate for one half of the dower debt in favour of the applicant. *Ghaffur Khan v Kalandari Begam* I L R 33 All 327 discussed. *SHARIF UN NISA BIBI v MASUM ALI* I L R 42 All 347

s 18 27—Certificate granted by specially empowered Subordinate Judge if may be revoked by District Judge otherwise than in appeal.—Reg V of 1799 jurisdiction under nature of. The fact that no appeal has been preferred against an order of a Subordinate Judge (who has been invested with the powers of a District Court under the Succession Certificate Act) granting a certificate is no bar to its revocation at any time when the circumstances enumerated in s 18 of the Act are proved. The revocation must in such a case be ordinarily made by the Subordinate Judge when he is still exercising that jurisdiction in the district. The District Judge has in such circumstances no jurisdiction to make the revocation except where the case having been instituted and being pending before the Subordinate Judge has been withdrawn by the District Judge. The jurisdiction of the District Judge under Reg V of 1799 is more administrative than judicial. He can act thereunder only when there is no claimant and acting under that Regulation he is bound to respect the order granting a certificate until the same was revoked by a competent authority. *SURHA BEWA : SECRETARY OF STATE FOR INDIA* (1914)

19 C W N 551

s 19—Certificate granted *ex parte* without notice having been served on the opposite party.—Remedy available to the opposite party.—Appeal.—Proof of service of notice. The widow of a Hindu applied for a succession certificate for the collection of certain debts due to her deceased husband. She named amongst others as a party likely to be interested in the proceedings one Radhe Lal a brother of the deceased. Attempts were made to serve notice of the application on Radhe Lal but apparently without success and ultimately the application was heard *ex parte* and a certificate granted to the widow. Radhe Lal then appeared and filed an appeal against the grant alleging that he had in fact received no notice of the application and that he had a good objection to the granting of a certificate to the widow inasmuch as the deceased and himself were members of a joint Hindu family. *Held*

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*concld*

s 19—*concld*

that the appellant was entitled to come to court by way of appeal and was not bound to file an application to revoke the certificate. *Held* also that the fact that a registered notice is returned endorsed 'refused' is not by itself evidence that it was tendered to the person to whom it was addressed. *BINDO v RADHE LAL*

I L R 42 All 512

s 19 26—Munsif invested with functions of District Court—Appeal—Jurisdiction. *Held* that an appeal from an order of a Munsif invested under s 26 of the Succession Certificate Act 1889 with the functions of a District Court lies to the District Judge and cannot be transferred for disposal to any other Court such as the Subordinate Judge or Judge of the Small Cause Court not empowered under s 56. *HUFAN BIR v HIRGAN BIBI* (1911) I L R 34 All 149

s 25 and 26—

Ser s 9 I L R 35 Bom 22

SUCCESSION (PROPERTY PROTECTION) ACT (XIX OF 1841)

See CUPAT PACT 1841

See RECEIVER I L R 37 Cal 754

SUCCESSION DUTY

See PROBATE I L R 43 Cal 695

SUCCESSIVE ADOPTION

See HINDU LAW—ADOPTION I L R 39 Cal 552

SUCCESSOR

Final order by—

See COURT MEANING OF I L R 37 Cal 642

SUDDER DEWANY ADALAT

See CONTEMPT OF COURT I L R 41 Cal 13

SUDDER NIZAMUT ADALAT

See CONTEMPT OF COURT I L R 41 Cal 173

SUDRAS

See HINDU LAW—INHERITANCE I L R 34 Bom 321 553

I L R 40 Cal 543

See YATI I L R 40 Mad 846

Illegitimate sons of—

See HINDU LAW—INHERITANCE I L R 40 Bom 369

See HINDU LAW—SUCCESSION I L R 39 Mad 136

I L R 44 Bom 183

Leva Kunbis of Changdev in the East Khandesh District—

See HINDU LAW—SUCCESSION I L R 44 Bom 166

SUFFICIENT CAUSE

- For allowing appeal out of time
See LIMITATION
 L R 44 I A 218
See LIMITATION ACT (IX OF 1908) SCH I
 ART 15 I L R 43 Bom 376

SUICIDE

- abatement of—
See PENAL CODE (ACT XLV OF 1860)
 s 306 I L R 35 All 25
 — by prison r on bail—
See BAIL BOND 16 C W N 550
See CRIMINAL PROCEDURE CODE (ACT V
 OF 1898) s 114 (5)
 I L R 37 Mad 153

SUIT

- See* ABATEMENT OF SUIT
See BENGAL TENANCY ACT s 188
 I L R 38 Calc 270
See FRAUD I L R 37 All 535
See GUARDIANS AND WARDS ACT (VIII
 OF 1890) ss 12 24 25
 I L R 37 All 515
See INDEMNITY BOND
 I L R 41 All 395
See NOTICE I L R 48 Calc 45
See PARTITION I L R 45 Calc 873
See PRE EMPTION I L R 37 All 529
See RECEIVER I L R 46 Calc 70 352
See RES JUDICATA I L R 37 All 485
See REVIEW APPLICATION FOR
 I L R 40 Calc 541
See SUIT FOR CANCELLATION OF DOCUMENT
 — abatement of—
See CIVIL PROCEDURE CODE (1908)
 O XXII R 4 I L R 41 All 283
See MADRAS CIVIL COURTS ACT s 16
 I L R 43 Mad 342
See PRINCIPAL AND AGENT
 I L R 33 Mad 162
 — above Rs 5000—
See JURISDICTION I L R 33 Calc 926
 — Arrears claimed paid subsequent
 to suit to co-Lessor
See AGRA TENANCY ACT 1901 s 198
 I L R 3 All 448
 — by heir for recovery of her share—
See LIMITATION ACT (IX OF 1908)
 SCH I ART 6 I L R 37 All 434
 — by a Hindu widow competency of
 transferee to continue—
See LIMITATION ACT (IX OF 1908)
 SCH I ARTS 13 75
 I L R 39 Mad 951

SUIT—contd

- by minor for possession—
See MINOR I L R 38 All 154
 — by reversioner—
See HINDU LAW—WILL
 I L R 37 All 422
 — by reversioner to set aside adop-
 tion—
See ADOPTION I L R 37 All 498
 — by zemindar to recover hadd cess
 etc—
See PROVINCIAL SMALL CAUSE COURTS
 ACT 1887 SCH II ART 13
 I L R 40 All 663
 — Against Railway Company for loss
 or damage to goods—
See LIMITATION ACT 1908 ART 31
 I L R 42 All 890
See RAILWAY COMPANY
 I L R 42 All 655
 — by Rent free grantee to recover
 possession—
See JURISDICTION OF CIVIL AND REVENUE
 COURTS I L R 42 All 412
 — dismissal of for Plaintiff's non
 appearance—Inherent power of Court to res-
 torer—
See CIVIL PROCEDURE ACT 1908—
 O IV R 8 I L R 44 Bom 88
 O XVII R 1 I L R 44 Bom 787
 — dismissal of—
See CIVIL PROCEDURE CODE (1908)—
 O V R 3 O IX R 12
 I L R 39 All 476
 O IX R 2 I L R 38 All 357
 O IX RR 3 AND 6
 I L R 40 All 590
 O IX RR 8 AND 9
 I L R 34 All 428
 O IX RR 8 9 O XVII RR 3 9
 I L R 35 All 331
 O XI R 21 I L R 38 All 5
 O XVII R 3 O IX R 4
 I L R 34 All 123
 — for account—
See LIMITATION ACT (IX OF 1908) SCH I
 ART 116 I L R 39 All 355
 — for dissolution of partnership—
See CIVIL PROCEDURE CODE (1908) O
 XVII R 4 I L R 39 All 551
 — for joint possession—
See LIMITATION ACT (IX OF 1908) SCH I
 ARTS 138 144 I L R 39 All 460
 — for judicial separation—
See CIVIL PROCEDURE CODE (1908) s 83
 I L R 39 All 377

SUIT—*contd*

for declaration of title—

See SPECIFIC RELIEF ACT (I of 1877)
s 42 I L R 37 All 185

for ejectment—

See AGRA TENANCY ACT (II of 1901)
ss 38 177 (c) I L R 38 All 465

for money had and received—

See LIMITATION ACT (IX of 1908)
ARTS 29 36 120 I L R 39 All 322
ART 62 I L R 37 All 40 233
I L R 38 All 676

See PROVINCIAL INSOLVENCY ACT (VI of
1907) s 16 (1) I L R 41 Mad 923

for possession and mesne profits—

See LIMITATION ACT 1903 SCH. ART 109
I L R 39 All 200

for possession of land—

See LIMITATION ACT (IX of 1908) s 28
ART 47 I L R 38 Mad 432

for profits—

See CIVIL PROCEDURE CODE (1908)
XXVI RR 9 16 17 18
I L R 39 All 694

See LAMB REAR AND CO SHARER
I L R 41 All 316

for redemption of mortgage—

See COURT FEE I L R 39 All 452
See MORTGAGE I L R 38 All 148

for refund of purchase money—

See CIVIL PROCEDURE CODE (1908) O
XXI RR 92 93
I L R 39 All 114

for rent under registered agree-
ment—

See LIMITATION I L R 38 Mad 101

for damages for ejectment—

See LANDLORD AND TENANT
25 E W N 930

for malicious prosecution—

See MALICIOUS PROSECUTION

for money paid by mistake under
coercion—

See CONTRACT ACT 1872 s 72
I L R 43 All 272

for money due under an award—

See PROVINCIAL SMALL CAUSES ACT
1897 SCH II ART 24
I L R 42 All 169

for profits—

See AGRA TENANCY ACT 1901 s 164
I L R 42 All 414
I L R 43 All 29 177

for possession—

See CIVIL PROCEDURE CODE 1908
s 47 I L R 43 All 170

SUIT—*contd*

for refund of price on account of
short delivery—

See CIVIL PROCEDURE CODE (1908) s 0
I L R 42 All 480

for return of moveable property
deposited for safe custody—

See LIMITATION ACT 1903 SCH I ART 49
I L R 42 All 48

for a sum payable periodically—

See COURT FEES ACT 1870 s 7 (ii)
SCH II ART 17 (iii)
I L R 42 All 353

in forma pauperis—

See PAUPER SUIT I L R 46 Cal 651

institution of in wrong Court—

See LIMITATION I L R 47 Cal 300

maintainability of—

See CIVIL PROCEDURE CODE (1908) s 9
I L R 37 All 313

on a foreign judgment—

See CIVIL PROCEDURE CODE (1908)
s 13 I L R 41 All 421

on lost bond—

See MORTGAGE I L R 37 All 475

place to institution—

See CIVIL PROCEDURE CODE (1908) s 20
I L R 39 All 365

subject matter of—

See CIVIL PROCEDURE CODE (ACT 1 of
1908) O XXIII RR 1 2 AND 6
I L R 34 Bom 638

to enforce payment of money
charged upon immovable property—

See LIMITATION ACT (IX of 1908) s 11
I ART 132 I L R 37 All 400

to recover money deposited with
Bank—

See LIMITATION ACT (IX of 1908) s 11
I ART 60 I L R 37 All 172

to recover property held—

See LIMITATION ACT (IX of 1908) s 11
I ARTS 49 60 AND 145
I L R 42 All 843

to obtain refund of octroi duty—

See U P MUNICIPALITIES ACT 1910
s 376 I L R 42 All 207

to recover revenue paid on an order
revised on appeal—

See LIMITATION ACT 1908 s 11 ART
61 I L R 42 All 61

to enforce an award—

See CIVIL PROCEDURE CODE (1908) s
49 AND 101 (1) (5) SCH II PART
20 AND 21 I L R 43 All 103

SUIT—contd

to establish right of worship and procession in street—

See CIVIL PROCEDURE CODE 1908 s 9
I L R 44 Bom 410

to set aside adoption—

See ADOPTION I L R 37 Cal 860

to set aside decree against minor—

See MINOR I L R 23 All 452

to set aside decree on the ground of fraud—

See CIVIL PROCEDURE CODE (1908) s 30 (c)
I L R 39 All 607

transfer of—

See CIVIL PROCEDURE CODE (1908) s 24
I L R 41 All 381

See PROVINCIAL SMALL CAUSE COURTS ACT (IX of 1887) s 17
I L R 23 All 425

valuation of—

See BENGAL N W P AND ASSAM CIVIL COURTS ACT (XII of 1887) s 21
I L R 32 All 222

See CIVIL PROCEDURE CODE (1908)—
O XXI R 63 I L R 38 All 72

R 60 I L R 40 All 505

See CIVIL PROCEDURE CODE 1908 s 115
I L R 39 All 723

withdrawal of—

See CIVIL PROCEDURE CODE 1908—
O XXIII R 11 I L R 37 All 328

I L R 42 Bom 155

R 1 s 110 I L R 40 All 612

See PARTITION I L R 37 All 155

1 *Bengal Tenancy Act (VIII of 1885) s 30 (b) 37 105 107 109—*
Whether an application under s 105 of the Act a suit—Withdrawal of an application under that section effect of—Subsequent suit for enhancement of rent under s 30 (b) whether maintainable. An application under s 105 of the Bengal Tenancy Act cannot be regarded as a suit. *Upadhyaya Thakur v Perandh Singh* I L R 23 Cal 723 referred to. Therefore although an application under s 105 of the Bengal Tenancy Act was previously withdrawn without liberty to make a fresh application a subsequent suit for enhancement of rent under s 30 (b) of the Act is maintainable. The provisions of either s 37 or 109 of the Act are not applicable to such a case. *Choudhury v Tulsi Singh* (1917) I L R 40 Cal 428

2 *Limitation—*
Bengal Tenancy Act (VIII of 1885) s 104H sub s (2) 181 185—Limitation Act (IX of 1908) s 9 15 applicability of—Civil Procedure Code (Act I of 1908) s 80 A instituted a suit under s 104H of the Bengal Tenancy Act against the Secretary of State for India in Council on the 10th December 1910 in respect of a village the Record of Rights of which was finally published on the 2nd June 1910. A took exception to the latter. Prior to the institution of the suit A served a notice on the defendant as required by s 80 of the Civil Procedure Code. *Held* that the suit was barred by limitation. *Held* also that s 15 sub s

SUIT—contd

() of the Limitation Act which was made applicable to suits appeals and applications mentioned in Sch III annexed to the Bengal Tenancy Act by virtue of s 180 sub s (2) could not possibly apply to suits instituted under s 104H which were not mentioned in Sch III. On a plain reading of the provisions of s 185 of the Bengal Tenancy Act along with s 16 sub s (2) of the Limitation Act the latter could not be applied to extend the period of six months provided for the institution of suits under s 104H of the Bengal Tenancy Act. *Radha shyam Kar v Dinabandhu Biswas* 18 C N N 31 18 C L J 533 *Sharoop Dass Mondal v Jogesur Roy Chowdhry* I L R 36 Cal 664 *Dulhin Mathura Das Koer v Banendhar Singh* 16 C N N 204 *Srinivasa Ayyangar v The Secretary of State for India* I L R 38 Mad 99 referred to. *Dropadi v Hira Lal* I L R 34 All 496 distinguished. SECRETARY OF STATE FOR INDIA v GARGADHAR NANDA (1917) I L R 45 Cal 934

SUIT FOR CANCELLATION OF DOCUMENT

Sale deed—Alleged illegality of transaction—Sale by one deed of fixed rate and occupancy holdings The plaintiff by one and the same sale deed purported to transfer (i) a fixed rate holding and (ii) part of an occupancy holding. *Held* that he was not entitled to a decree setting aside the sale deed merely because part of the property covered by it was by law not transferable. *BAJRANGI LAL v GHURA RAI* (1916) I L R 38 All 232

SUIT FOR DECLARATION OF RIGHT

See HIGHWAY I L R 43 All 692

SUIT FOR LAND

See POSSESSION

See SUIT

See JURISDICTION I L R 42 Cal 942

See JURISDICTION OF HIGH COURT

I L R 39 Cal 739

for recovery of possession and mesne profits—Litigation prolonged by defendant in prosecution appeal and mesne profits swelling to amount exceeding pecuniary jurisdiction of Original Court and = filing of plaint in another Court—Proceedings in latter Court if continuation of original suit—Limitation. Where a person sues for recovery of possession he can in the same suit recover mesne profits which have accrued before the suit and those accruing pending the litigation. The fact that owing to the prosecution of appeal in higher Courts by the Defendant the mesne profits swell up to an amount beyond the limits of the pecuniary jurisdiction of the Court which tried the suit originally thereby necessitating the transfer of the proceedings in the suit to a Court of higher jurisdiction does not amount to an interruption so as to make the subsequent proceeding in the higher Court a different suit. *BAI KUNTHA NATH KUNDU v MOHANAN DO BORAT MODUK* 24 C W N 342

SUIT FOR PROFIT

See AGRICULTURE ACT 1901

s 701 I L R 43 All 697

s 161 I L R 43 All 29 177

SUIT FOR RENT

See AGRA TENANCY ACT 1901 s 196
I L R 43 ALL 448

Rent reserved—Com

pany's Sica rupees ambiguity of expression—Sikka or Sica Rupee and Company's Rupee meaning and history of and difference between In a kabulyat dated the 8th July 1850 the annual rent reserved was stated to be Company's sica rupees 96 Held that the expression Com pany's sica rupees mentioned in that document meant rupees in current coin and not sica rupee Per CURRIE The course of conduct the date of the document the stamp duty and the refer ence to current coin in the sentence referring to the Stamp Act lead us to the conclusion that in this case the rent annually payable is not the equivalent of 96 sica rupees but is 96 rupees in current coin Ram Saran Singh v Gyan Singh 6 C L J 637 Ram Khetum Singh v Kumar Pas 6 C L J 667 Rameswar Koer v Gorderhan Lal 7 C L J 202 Mr Tapurah Hossein v Gopi Narayan 7 C L J 261 and Raja Kamaleswari Pershad Singh v Ramhari Singh 19 C L J 348 referred to MAHARAJ BAHADUR SINGH v JADAB CHANDRA GHOSH HAZRA (1918)

I L R 46 Cal 347

Suit for rent—Claim

for abatement of rent on the ground of eviction from a portion of the land by a person not having a title paramount—Eviction by title paramount mean ing of—Physical dispossession of necessary to amount to eviction—Suit by stranger against tenant and allotment by latter to former in respect of a portion of the tenure under Court's decree—Onus to prove eviction by title paramount is on landlord An execution purchaser of some decretal lands obtained delivery of khas possession of the lands through Court and let out a portion thereof to B Subsequently the Government settled with a third party some lands including a portion of the lands let out by the said execution purcha ser The Government lessee on the strength of the settlement sued B alone for recovery of the said lands and got a decree which provided that being a bona fide tenant B should not be ejected but should pay rent to the Government lessee in respect of the lands of which he was in pos ses sion Subsequently the aforesaid execution purchaser brought a suit for rent against B who claimed proportionate abatement of rent in respect of the said portion Held that in order to be entitled to proportionate abatement of rent forcible expulsion is not necessary nor is it neces sary that the tenant should actually go out of possession and if upon a claim being made by a person with a title paramount he consents by an attornment to such person to change the title under which he holds or enters into a new arrangement for holding under him this will be equivalent to an eviction and a fresh taking But an eviction whether actual or constructive must be by a party with a title paramount The Government lessee had no doubt obtained a decree against B but that was not sufficient to show that he had a title superior to that of the execution purchaser Nor was the onus to prove that the Government lessee had no title shifted on the execution purchaser in consequence of such a decree BANKU BEHARI GHOSH v MADAN MONOH ROY

26 C W N 143

SUIT IN FORMA PAUPERIS

See PAUPER SUIT

SUIT TO SET ASIDE A DECREE

Fraud—Personal serv

—conduct of Plaintiff The mere fact that personal service of a summons has not been effected on a defendant will not render the proceedings against him absolutely abortive But where the non service is due to the fraudulent conduct of the plaintiff in the suit and others acting with him and a decree is thereby obtained such decree may be set aside as fraudulent TIKA PAM v DALPAT RAM I L R 111 ALL 145

Fraud—What consti

tutes fraud—Transfer of Property Act (IV of 1880) s 90—Application for a decree under s 90 without informing Court of previous refusal to grant such a decree Certain mortgagees instituted a suit for sale on a mortgage and also asked in their plaint for a personal decree against the mortgagors under s 90 of the Transfer of Property Act 1880 The Court in that suit granted the plaintiffs decree for sale but refused them the decree asked for under s 90 Some years afterwards the plaintiffs again applied for a decree under s 90 Notice of this application was duly served upon all the judgment debtors They did not appear and the Court granted a decree but limited it to the assets of the deceased mortgagor The judgment debtors then filed a suit to have this decree set aside on the ground of fraud the fraud alleged being mainly that the decree holders had not brought to the notice of the Court the fact that they had once before applied for and been refused a decree under s 90 Held that the neglect to inform the Court of the fact that there had been a previous attempt at another stage of the litigation to get a personal decree even assuming that the neglect was wilful could not amount to fraud which would entitle the plaintiffs to set aside the decree which was obtained by the defendants under s 90 of the Transfer of Property Act PAM RATAN LAL v BIRJI BEGAM I L R 38 ALL 7

SUITS VALUATION ACT (VII OF 1887)—

See MADRAS CIVIL COURTS ACT (III OF 1873) ss 12 13
I L R 39 Mad 447

s 3—

See MADRAS CIVIL COURTS ACT 18 3
s 14 I L R 41 Mad 721

s 4—

See COURT FEES ACT (VII OF 1860) Sec II ART 17 I L R 39 Mad 611

s 8—

See ADMINISTRATION SUIT
I L R 44 Calc 890

See COURT FEE
I L R 40 Calc 215 615

See COURT FEES ACT 18 0 s 7
I L R 44 Bom 331
I L R 45 Bom 567

See JURISDICTION
I L R 38 Mad 795
15 C W N 523

I L R 34 Bom 267
See JURISDICTION OF CIVIL COURTS

SUITS VALUATION ACT (VII OF 1887)—*contd*s 8—*contd*

See LIMITATION ACT SCH I ART 152

I L R 43 Bom 378

See SECOND APPEAL 15 C W N 454

See VALUATION OF SUIT

I L R 43 Bom 507

Court Fees Act (VII of 1887) s 7 sub s X cl (c)—Suits Valuation Act (VII of 1887) s 8—Court fees payable on suit for specific performance of contract of lease A suit for specific performance of a contract to grant a lease was valued at Rs 100 for determining jurisdiction of the Court and at Rs 32 for purpose of payment of Court fees this being the amount of rent annually payable under the contract of tenancy sought to be enforced. A second appeal arising out of the suit was filed in the High Court and valued at Rs 32 only. On a reference under sec 5 of the Court Fees Act Held that the court fees paid were sufficient. The value for the payment of Court fees was correctly assessed at Rs 32 under sec 7 of the Court Fees Act and the value for the purpose of jurisdiction was consequently only Rs 32 under sec 8 of the Suits Valuation Act. The right construction of sec 8 of the Suits Valuation Act is that the valuation for the purpose of jurisdiction should in the cases mentioned there follow and be the same as valuation for Court fees. The procedure to be adopted in cases of this character is to value the suit first for payment of Court fees in accordance with the rule embodied in sec 7 sub sec (X) cl (c) of the Court Fees Act and then to adopt the value so determined for the computation of Court fees as the value for purposes of jurisdiction. *SAILENDRA NATH MITRA v. PAM CHANDRA PAL*

25 C W N 768

s 11—

See BYGONE AGRA AND ASSAM CIVIL COURTS ACT 1887 4 Pat L J 447

See CIVIL PROCEDURE CODE 1908 s 104

O XLIII R 10 (a)

I L R 36 All 58

See PRESTITUTION OF CONJUGAL RIGHTS

I L R 34 Bom 236

See VALUATION OF SUIT

5 Pat L J 397

SUMMARY CESS

See LIMITATION ACT 1877 SCH II ART 144

I L R 36 Bom 174

SUMMARY DISMISSAL

See CIVIL PROCEDURE CODE 1908 O XLI R 11

I L R 36 Bom 116

SUMMARY EVICTION

See LAND REVENUE CODE (BOM ACT I OF 1879) s 79A

I L R 25 Bom 72

SUMMARY JURISDICTION

II

See COMPANIES ACT (VI OF 1882) s 72

I L R 35 All 173

SUMMARY PROCEDURE

See CRIMINAL PROCEDURE ss 200 to 265

On negotiable instruments—

See CIVIL PROCEDURE CODE (1908)

O XXXIII

See ATTORNEY AND CLIENT

I L R 40 Calc 249

SUMMARY PROCEEDINGS

See CONTENT OF COURT

I L R 41 Calc 173

See PROFESSIONAL MISCONDUCT

I L R 41 Calc 113

SUMMARY RELIEF

See COMPANY I L R 47 Calc 901

SUMMARY SETTLEMENT

See INAM LANDS I L R 35 Bom 22

See KADIM INAMDAR

I L R 42 Bom 112

Inam Dharmadaya—Sanads—
Bombay—See POMBAY REVENUE JURISDICTION ACT
(X OF 1866) s 12

I L R 45 Bom 463

SUMMARY SETTLEMENT ACT (BOM ACT VII OF 1863)

See REGULATION XXI OF 1861

I L R 38 Bom 272

Land granted to a mosque—At summary settlement land continued to the mosque on payment of annual quit rent—Alienation of land by mutawals of the mosque—Full assessment cannot be demanded by Government from the alienee At the time of the summary settlement held in 1879 the land in dispute which had been granted to a mosque was continued on payment to Government of an annual quit rent under the Sanad which ran as follows—By Act VII of 1863 of the Bombay Legislative Council it hereby declared that the said land subject to the payment to Government of an annual quit rent of Rs 17 8 0 seven teen and annas eight only shall be continued forever by the British Government as the endowment property of the Jumma Masjid without increase of the said quit rent but on the condition that managers thereof shall continue loyal and faithful subjects of the British Government. Nearly sixty years before suit the then manager of the mosque alienated it was assumed that the alienation was unlawful the land to a stranger. From 1912 onwards the Government levied full assessment on the land in the hands of the alienee. A suit having been brought to recover the extra assessment so levied Held by SHAH and HAYWARD JJ (HATTON J dissenting) that the provisions of the Summary Settlement Act 1863 and the terms of the Sanad pointed to the conclusion that the condition that the land must continue to be the property of the mosque in order that the holder for the time being may have the benefit of the exemption from settlement allowed by the Sanad could not be implied and that the Government did not get any right

SUIT FOR RENT

See AGRA TENANCY ACT 1901, s 198
I L R 43 All 448

Rent reserved—Com

pany's Sica rupees—ambiguity of expression—Sikka or Sica Rupee and Company's Rupee, meaning and history of and difference between. In a *kabuliyat* dated the 8th July 1850 the annual rent reserved was stated to be Company's sica rupees 96. Held that the expression Company's sica rupees mentioned in that document meant rupees in current coin and not sica rupees. *PER CURIAM*. The course of conduct the date of the document the stamp duty and the reference to current coin in the sentence referring to the Stamp Act lead us to the conclusion that in this case the rent annually payable is not the equivalent of 96 sica rupees but is 96 rupees in current coin. *Ram Saran Singh v Gyan Singh* 1 O I J 637. *Ram Ahluwam Singh v Kumar Rai* 6 C L J 667. *Rameswar Aker v Gobar Khan Lal* 7 C L J 202. *Mir Tapurah Hossein v Gopi Narayan* 7 C L J 251 and *Raja Kamaleswari Pershad Singh v Ramhari Singh* 19 C L J 348 referred to. *MAHARAJ BAHADUR SINGH v JADAB CHANDRA GHOSH HAZRA* (1918)

I L R 46 Cal 347

Suit for rent—Claim for abatement of rent on the ground of eviction from a portion of the land by a person not having a title paramount—Eviction by title paramount meaning of—Physical dispossession if necessary to amount to eviction—Suit by stranger against tenant and allotment by latter to former in respect of a portion of the tenure under Court's decree—Onus to prove eviction by title paramount if on landlord. An execution purchaser of some decretal lands obtained delivery of khas possession of the lands through Court and let out a portion thereof to B. Subsequently the Government settled with a third party some lands including a portion of the lands let out by the said execution purchaser. The Government lessee on the strength of the settlement sued B alone for recovery of the said lands and got a decree which provided that being a *bond fide* tenant B should not be ejected but should pay rent to the Government lessee in respect of the lands of which he was in possession. Subsequently the aforeaid execution purchaser brought a suit for rent against B who claimed proportionate abatement of rent in respect of the said portion. Held that in order to be entitled to proportionate abatement of rent forcible expulsion is not necessary nor is it necessary that the tenant should actually go out of possession and if upon a claim being made by a person with a title paramount he consents by an attornment to such person to change the title under which he holds or enters into a new arrangement for holding under him this will be equivalent to an eviction and a fresh taking. But an eviction whether actual or constructive must be by a party with a title paramount. The Government lessee had no doubt obtained a decree against B but that was not sufficient to show that he had a title superior to that of the execution purchaser. Nor was the onus to prove that the Government lessee had no title shifted on the execution purchaser in consequence of such a decree. *BANKU BEHARI GHOSH v MADAN MONOH ROY*

26 C W N 143

SUIT IN FORMA PAUPERIS

See PAUPER SUIT

SUIT TO SET ASIDE A DECREE

Fraud—Personal service

—conduct of Plaintiff. The mere fact that personal service of a summons has not been effected on a defendant will not render the proceedings against him absolutely abortive. But where the personal service is due to the fraudulent conduct of the plaintiff in the suit and others acting with him and a decree is thereby obtained such decree may be set aside as fraudulent. *TIKA RAM v DAULAT RAM*
I L R 111 All 145

Fraud—What constitutes fraud—Transfer of Property Act (IV of 1880)

s 90—Application for a decree under s 90 without informing Court of previous refusal to grant such a decree. Certain mortgagees instituted a suit for sale on a mortgage and also asked in their plaint for a personal decree against the mortgagors under s 90 of the Transfer of Property Act 1880. The Court in that suit granted the plaintiffs decree for sale but refused them the decree asked for under s 90. Some years afterwards the plaintiffs again applied for a decree under s 90. Notice of this application was duly served upon all the judgment debtors. They did not appear and the Court granted a decree but limited it to the assets of the deceased mortgagor. The judgment debtors then filed a suit to have this decree set aside on the ground of fraud. The fraud alleged was being mainly that the decree holders had not brought to the notice of the Court the fact that they had once before applied for and been refused a decree under s 90. Held that the neglect to inform the Court of the fact that there had been a previous attempt at another stage of the litigation to get a personal decree even assuming that the neglect was wilful could not amount to fraud which would entitle the plaintiffs to set aside the decree which was obtained by the defendants under s 90 of the Transfer of Property Act. *PANU RATAN LAL v BHURI BEGUM* (1915)

I L R 38 All 7

SUITS VALUATION ACT (VII OF 1887)—

See MADRAS CIVIL COURTS ACT (III of 1873) ss 12 13
I L R 39 Mad 447

s 3—

See MADRAS CIVIL COURTS ACT s 14
I L R 41 Mad 721

s 4—

See COURT FEES ACT (VII of 180) FCN II ART 17
I L R 39 Mad 612

s 8—

See ADMINISTRATION SUIT
I L R 44 Cal 690

See COURT FEE
I L R 40 Cal 245 615

See COURT FEES ACT 1870 s 7
I L R 41 Bom 331
I L R 45 Bom 567

See JURISDICTION
I L R 38 Mad 795
15 C W N 523
I L R 38 Bom 267

See JURISDICTION OF CIVIL COURTS

SUITS VALUATION ACT (VII OF 1887)—

contd

s. 8—contd.

See LIMITATION ACT SCH I ART 152

I L R 43 Bom 376

See SECOND APPEAL 15 C W N 454

See VALUATION OF SUIT

I L R 43 Bom 507

Court Fees Act (VII of 1870) s. 7 sub s. X cl (c)—Suits Valuation Act (VII of 1887) s. 8—Court fees payable in suit for specific performance of contract of lease A suit for specific performance of a contract to grant a lease was valued at Rs 1 00 for determining jurisdiction of the Court and at Rs 32 for purpose of payment of Court fees this being the amount of rent annually payable under the contract of tenancy sought to be enforced. A second appeal arising out of the suit was filed in the High Court and valued at Rs 32 only. On a reference under sec 5 of the Court Fees Act Held that the court fees paid were sufficient. The value for the payment of Court fees was correctly as set at Rs 32 under sec 7 of the Court Fees Act and the value for the purpose of jurisdiction was consequently only Rs 32 under sec 8 of the Suits Valuation Act. The right construction of sec 8 of the Suits Valuation Act is that the valuation for the purpose of jurisdiction should in the cases mentioned there follow and be the same as valuation for Court fees. The procedure to be adopted in cases of this character is to value the suit first for payment of Court fees in accordance with the rule embodied in sec 7 sub sec (X) cl (c) of the Court Fees Act and then to adopt the value so determined for the computation of Court fees as the value for purposes of jurisdiction. SAILENDRA NATH MITRA v. PAM CHANDRA PAL

25 C W N 768

s. 11—

See BYGONE AGRA AND ASSAM CIVIL COURTS ACT 1887 4 Pat. L J 447

See CIVIL PROCEDURE CODE 1908 s. 104

O XLIII R 10 (a)

I L R 36 All 58

See RESTITUTION OF CONJUGAL RIGHTS

I L R 34 Bom 236

See VALUATION OF SUIT

II Pat. L J 397

SUMMARY CESS

See LIMITATION ACT 1877 SCH II ART 144

I L R 36 Bom 174

SUMMARY DISMISSAL

See CIVIL PROCEDURE CODE 1908 O

XLII R 11

I L R 36 Bom 118

SUMMARY EVICTION

See LAND REVENUE CODE (BOM ACT V OF 1879) s. 79A

I L R 35 Bom 72

SUMMARY JURISDICTION

II

See COMPANIES ACT (VI OF 1882) s. 72

I L R 35 All 173

SUMMARY PROCEDURE

See CRIMINAL PROCEDURE ss 200 to 265

On negotiable instruments—

See CIVIL PROCEDURE CODE (1908)

O XXXVII

See ATTORNEY AND CLIENT

I L R 46 Calc 249

SUMMARY PROCEEDINGS

See CONTENT OF COURT

I L R 41 Calc 173

See PROFESSIONAL MISCONDUCT

I L R 41 Calc 118

SUMMARY RELIEF

See COMPANY

I L R 47 Calc 601

SUMMARY SETTLEMENT

See INAM LANDS I L P III Bom 272

See KADIM INAVDAR

I L R 42 Bom 112

Inam

Dharmadja—Sanads—

Bombay—

See LOMBARD REVENUE JURISDICTION ACT (X OF 1876) s. 12

I L R 45 Bom 463

SUMMARY SETTLEMENT ACT (BOM ACT VII OF 1863)

See PECULATION XXI OF 1871

I L R 38 Bom 272

Land granted to a mosque—At summary settlement land continued to the mosque on payment of annual quit rent. Alienation of land by mutawals of the mosque. Full assessment cannot be demanded by Government from the alienee. At the time of the summary settlement held in 1879 the land in dispute which had been granted to a mosque was continued on payment to Government of an annual quit rent under the Sanad which ran as follows — By Act VII of 1863 of the Bombay Legislative Council it hereby declared that the said land subject to the payment to Government of an annual quit rent of Rs 1780 seven teen and annas eight only shall be continued forever by the British Government as the endowment property of the Jumma Masjid without increase of the said quit rent but on the condition that managers thereof shall continue loyal and faithful subjects of the British Government. Nearly sixty years before suit the then manager of the mosque alienated (it was assumed that the alienation was unlawful) the land to a stranger. From 1912 onwards the Government levied full assessment on the land in the hands of the alienee. A suit having been brought to recover the extra assessment so levied Held by SHAH and HAYWARD JJ (HEATON J dissenting) that the provisions of the Summary Settlement Act 1863 and the terms of the Sanad pointed to the conclusion that the condition that the land must continue to be the property of the mosque in order that the holder for the time being may have the benefit of the exemption from settlement allowed by the Sanad could not be implied and that the Government did not get any right

SUMMARY SETTLEMENT ACT (BOM ACT VII OF 1863)—contd

under the Sanad to levy the full assessment even when the property ceased to be the endowment property otherwise than by a lawful alienation
SHANKAPAL TAPIDAS : THE SECRETARY OF STATE FOR INDIA (1918) I L R 43 Bom 583

SUMMARY TRIAL

See **WORKMAN'S BREACH OF CONTRACT ACT 1859** ■ 2 I L R 43 All 281

— outside British India—

See **EUROPEAN BRITISH SUBJECT**
 I L R 39 Mad 942

1 ————— *Recording of evidence in non appealable cases—Destruction by Magistrate of his notes of the evidence—Criminal Procedure Code (Act V of 1898) ss 263 and 355*
 ss 263 and 355 of the Criminal Procedure Code must be read together. If the Magistrate is unable at the commencement of the trial to determine whether the proper sentence to be passed should be an appealable one or not, he must make a memorandum of the substance of the evidence of each witness as his examination proceeds. But if he can at this stage determine that the sentence will be in any event non appealable, he need not record the evidence. If however he actually does so, the notes of the evidence form part of the record of the case and cannot be destroyed by him. Where the Magistrate had destroyed such record the High Court was unable to form an opinion on the propriety of the conviction and set it aside
Jagdish Prasad Lal v Emperor 21 Cr L J 229
approved SATISH CHANDRA MITRA v MAN MATHA NATH MITRA (1920)
 I L R 48 Calc 280

2 ————— *Charge if should be drawn up in*
 Although in a summary trial the Magistrate need not frame a formal charge, still he must specify the offence charged in such a way as will give sufficient notice to the accused—
JHARU SINGH v KING EMPEROR (1912)
 16 Q W N 696

3 ————— *Warrant Case—Omission to examine the accused—Charge—Accusation of house breaking by night to commit theft—Fixing of different intent—Necessity of charge specifying the same—Criminal Procedure Code (Act V of 1898) ss 263 342*
 ss 263 of the Criminal Procedure Code is governed by s 342 and there must therefore be an examination of the accused in all warrant cases, the words "if any" in cl (g) of the former section not being applicable to such cases. Where the case against the accused is one of theft or house breaking to commit theft and the Magistrate finds that it has broken down but that there is another object apparent on the evidence, it is his duty to give the accused notice of that by drawing up a charge clearly stating what it is that he is accused of doing—
MAHAMED HOSSEIN v EMPEROR (1914)
 I L R 41 Calc 743

SUMMONS

See **CIVIL PROCEDURE CODE 1908—**

O v R L. I L R 35 All 538
 I L R 33 All 649

SUMMONS—contd

See **PEVAL CODE (Act V of 1860)**
 ■ 173 I L R 40 All 577

See **THIRD PARTY NOTICE.**
 I L R 45 Bom 111

— non service of—

See **RIGHT OF SUIT**
 I L R 37 Calc 197

— service of—

See **FRAUD** I L R 33 All 145

See **PRACTICE** I L R 35 Bom 213

— to accused to produce document in thing

See **CRIMINAL PROCEDURE CODE (Act V of 1898)** ■ I L R 37 Mad 119

— *Service of summons—Indian Marine Service—Civil Procedure Code (Act V of 1908) O v R 15 17 and 27—Ex parte decree—Officer or mechanic in the employ of the Indian Marine*
 Under the Civil Procedure Code an officer or mechanic in the employ of the Indian Marine is subject to exactly the same rules as any other person in regards service of summons. They come within the operation of rules 15 and 17 of O v of the Code of Civil Procedure **INTU MEAN MISTRY v DARBESH BHUTAN (1914)** I L R 42 Calc 67

SUMMONS CASE

— Magistrate bound to examine accused before convicting him—

See **CRIMINAL PROCEDURE CODE (Act V of 1898)** ■ 342 I L R 45 Bom 6,2

— procedure that of warrant case—

See **CRIMINAL PROCEDURE CODE (Act V of 1898)** ■ 256
 I L R 39 Mad 503

SUMMONS SERVICE OF

— *Substituted service—Due and reasonable diligence—Practice—Appel from order refusing to set aside ex parte decree—Civil Procedure Code (Act V of 1908) O v R 19*
 Civil Procedure Code (Act V of 1908) O v R 19
 17 O IX ■ 13—Costs For substituted service of summons to be effective it is essential that the requirements of the rules of the Code should be strictly observed. Knowledge of the institution of the suit derived by the defendant alone is not sufficient in the absence of proper service of the summons. Where the serving officer on three separate occasions went to the place of business of the defendant a firm under the erroneous belief that it was his ordinary place of residence and asked for the defendant and on not finding him posted a copy of the writ of summons on the outer door of the premises. Held that this was not sufficient service. Proper enquiries and real and substantial effort should be made to find out when and where the defendant is likely to be found. **Cohen v Nursing Dass Auddy I L R 19 Calc 201** followed **KASSIM ELMARH SALEHI v JOHNMULL AHMEDIA (1915)**
 I L R 43 Calc 417

— Under the Civil Procedure Code an officer or mechanic in the employ

SUMMONS SERVICE OF—contd

of the Indian Marine is subject to the same rules as regards service of summons. They come within rr 16 and 17 of O V Intu Vazha Mistry. ■ DARDLE H BRIDMAN

I L R 42 Calc 67

SUMMONS TO PRODUCE DOCUMENTS

Books of a firm—Materials on which such order may be made—Complaint and subsequent application for summons and examinations of complainant thereon—Improprity of service—Directions to Magistrate to decide what books were necessary for the purpose of the enquiry—Directions as to mode of inspection—Criminal Procedure Code (Act V of 1895) s 94 Where a complaint was made against a certain person before the Chief Presidency Magistrate who examined the complainant and directed a local investigation and an application was made thereafter by the complainant for summons under s 94 of the Criminal Procedure Code and granted after his further examination thereon—*Held* that there were sufficient materials on which an order under s 94 could properly be made and that it was so made. Where in obedience to a previous order of the High Court the Magistrate a head clerk delivered certain books to M who gave a receipt for them as the agent of the petitioner but the latter further appointed Q without the knowledge of the Magistrate to take them over immediately from M—*Held* that the summons under s 94 was properly served on M and even if it was not so that the High Court would not order the return of the books to the petitioner but would direct the issue of an amended summons to be served on him. The High Court directed the Magistrate to inquire and determine in the presence of the petitioner how many and which of the books were necessary for the purposes of the complaint before him taking into consideration any under taking given by the petitioner for production of the books as required but which he now ordered to be returned. The Magistrate was further directed to give definite instructions as to when and where and by which officer the inspection was to be held. The inspection was also directed to be made in the presence of the petitioner. T R PRATT v EXEMOR (1920)

I L R 47 Calc 647

SUNDARBANS

See **BENGAL TENANCY**

I L R 48 Calc 473

Lessee from Government of lands in—Permanent tenure granted by lessee—Condition that rent will not abate in case of diluvion if valid—Onus of proof—Reg III of 1828 s 13 Where tenants took a permanent lease of lands in the Sundarbans stipulating that we shall not object to the payment of rent on the ground of drought inundation death desertion overflow of salt water diluviation by river etc. *Held* that it was for the tenants if they impeached this stipulation as being inconsistent with the provisions of s 52 of the Bengal Tenancy Act to establish that the tenure was not situated in a permanently settled area ■ 13 of Reg III of 1828 does not ignore or invalidate any permanent settlements made by Government before 1828.

SUNDARBANS—contd

It also authorises similar settlements subsequently made by Government. It is therefore erroneous to hold that there could not be a permanent tenure in the Sundarbans. That the stipulation barred not only a plea of reduction of rent in defence but also a suit for abatement of rent. KUTTRANAYI DASI v JIBAN KRISHNA HUNDU (1914) 19 C W N 546

SUNNIS

See **MAHOMEDAN LAW—DIVORCE**

I L R 38 All 458

See **MAHOMEDAN LAW—DOWER**

I L R 41 All 562

See **MAHOMEDAN LAW—GIFT**

I L R 34 All 478

SUPERFLUOUS MATTER

See **COSTS** I L R 47 Calc 415

SUPERINTENDENCE

See **CROSS EXAMINATION**

5 Pat L J 545

See **DEFENCE OF INDIA ACT 1915**

3 Pat L J 581

See **DISMISSAL FOR DEFAULT**

4 Pat L J 277

See **JURISDICTION**

4 Pat L J 154

See **RECEIVER**

4 Pat L J 20

High Court Powers of—

See **GOVERNMENT OF INDIA ACT 1915**
s 107 1 Pat L J 38 465 and 576

Interlocutory order—Interference with—

See **CIVIL PROCEDURE CODE 1908** ■ 32
■ Pat L J 550

SUPERINTENDENT

See **TRUST** I L R 41 Calc 19

SUPERSTITIOUS BELIEF

See **PENAL CODE** ■ 304
25 C W N 676

SUPPLEMENTARY AFFIDAVIT

See **CONTENT OF COURT**
I L R 41 Calc 173

SUPPORT

right of, for a building—

See **EASEMENT** I L R 37 Mad. 527

SUPREME COURT

See **CONTENT OF COURT**
I L R. 41 Calc 173

SURAT DISTRICT

See DESAIGIRY ALLOWANCE

I L R 45 Bom 948

SURETY

See CIVIL PROCEDURE CODE 1908
ss 55 AND 145 5 Pat L J 417■ XXVIII R 5 ss 115 145
I L R 41 Bom 402

See CONTRACT ACT 1872—

■ 126 140 I L R 42 All 70

ss to 128 147

See CRIMINAL PROCEDURE CODE (V OF
1893) s 122 14 C W N 709

See EXECUTION OF DECREE

2 Pat L J 197

See FITNESS OF SURETY GROUNDS OF

I L R 44 Calc 737

See HINDU LAW (MITAKSHARA)

3 Pat L J 396

See MORTGAGE I L R 45 Calc 702

See PROMISSORY NOTE

I L R 38 Mad. 680

— attachment of property —

See CIVIL PROCEDURE CODE (ACT V OF
1903) s 145 O XXII R 6

I L R 41 Mad 40

— discharge of —

See CONTRACT ACT (IX OF 1872) s
134 137 I L R 39 Bom 52

See EXECUTION OF DECREE

I L R 41 Calc 50

— fitness of —

See CRIMINAL PROCEDURE CODE ss
110 120

25 C W N 140

See SECURITY FOR GOOD BEHAVIOUR.

I L R 37 Calc 91 446

— for insolvent's debt whether

"creditor"—

See PROVINCIAL INSOLVENCY ACT (III OF
1907) s 37 I L R 40 Mad. 783

— liability of —

See HINDU LAW—SURETY

I L R 38 Mad 1120

See CRIMINAL PROCEDURE CODE, 1898
s 514 I L R 2 Lah 294

See PRINCIPAL AND SURETY

I L R 44 Calc 978

— rights of, against principal debtor—

See NEGOTIABLE INSTRUMENTS ACT
(XXVI OF 1881) ss 30 47 59 74 94

I L R 39 Mad. 865

SURETY—contd

— application to enforce liability
against—See CIVIL PROCEDURE CODE 1908, s 145.
I L R 44 Bom. 54— security for good behaviour—order
rejecting sureties—See CRIMINAL PROCEDURE CODE s
110 AND 122 I L R 44 Bom. 355— Written agreement by surety that
he would not claim his legal rights—See CONTRACT ACT (IX OF 1872) s 133.
I L R 45 Bom 151

1 ——— Surety to Administration Bond—Right of surety to apply for cancellation of bond on administration being completed A surety to an administration bond cannot when the administration is complete and the bond becomes void and ineffective apply to the Court to have the bond vacated and to be discharged from his suretyship There is nothing in the Indian Succession Act or in the Rules of Practice to authorise such an application In the matter of ARBUTHNOT GERALD DORTON KNIGHT (1909)
I L R 33 Mad. 213

2 ——— Father's liability as surety—Hindu Law—Whether son is liable to pay debt incurred by father as surety Under the Hindu Law a son is liable for a debt incurred by his father as a surety Tukarambhai v Gangaram Mulchand Gujar I L R 20 Bom 451 and Maharaja of Benares v Pankumar Misar I L R 6 All 611 referred to BASTI LAL MANDAL v SINGHESWAR RAI (1912)
I L R 39 Calc 843

3 ——— Promissory note executed by agent after settlement of accounts—Representatives in interests of and surety for deceased agent by principal—Surety if entitled to go behind promissory note and have account taken in his presence—Set off if can be pleaded—Interest when to run from The plaintiffs sued for the recovery of money due on a promissory note executed by their deceased agent S in their favour after settlement of accounts for the sum due to them. The defendants who were the brothers of S were sued both in their character as representatives in interests of S and as sureties for him under a surety bond executed by them in favour of the plaintiffs. The defendants disputed the amount due and claimed as set off the amount payable by the plaintiffs to their brother on account of salary The Court after taking account made a decree in favour of the plaintiffs for a smaller sum than that mentioned in the promissory note Held that the principle that as between a principal and an agent settled accounts will not be reopened unless fraud or undue influence is established is limited in its application only as between a principal and an agent and as the defendants were sued not only as representatives in interest of the deceased agent but also as sureties they were entitled to go behind the promissory note and to have the accounts examined in their presence The defendants were also competent to plead a set off S 111 of the Civil Procedure Code (Act XIV of 1902) does not take away from parties any right to set off whether legal or equitable which they would have independently of that Code

SURETY—contd

and such right exists not only in cases of mutual debts and credits but also when cross demands arise out of the same transaction or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant should be driven to a cross suit. *Held* further that the plaintiffs were entitled to interest by way of damages from the date of the institution of the suit and not merely from the date of the decree of the Court of first instance. **KALAYUND SIKOH v GUN PROSAD DAS** (1913) 17 C W N 1060

4 ——— Surety bond for judgment-debtor's appearance in Court—Death of judgment debtor before time of appearance—Liability of surety Where the decree holder applied to enforce the condition of an undertaking given as surety that the judgment debtor would apply in insolvency within a specified time and that he would appear in Court whenever he was required to do so and the judgment debtor died before the time of appearance had arrived. *Held* that the decree holder lost his remedy against the surety. The event which occurred was not in contemplation of either party and therefore put an end to the obligation that there was under the contract. **NABIN CHANDRA HAZARI v MRITUNJOY BARRIK** (1913) 17 C W N 1241

5 ——— Fitness—Grounds of rejection of sureties—Reasonableness of grounds—Petitionary fitness—Want of control over principal—Criminal Procedure Code (Act V of 1898) s 122 The grounds on which a Magistrate has power to refuse to accept a security under s 122 of the Criminal Procedure Code must be such as are valid and reasonable in the circumstances of each case as it arises. *In re Soobodddhee* 22 W P Cr 27 followed. **Pam Pershad v King Emperor** 6 C W N 593 and **Adam Sheikh v Emperor** 1 C W N 55. **Cale** 400 commented on. **Jahil v Emperor** 13 C W N 80. **Jafar Ali Panjani v Emperor** 13 C W N 37. **Cale** 416 referred to. Where the Magistrate found that the sureties who were the brothers of a person bound down under s 110 of the Code were peculiarly fit but that the latter was a notorious dacoit and that there was a consensus of opinion in the neighbourhood that they would not be able to keep him in control. *Held* that the ground of their rejection was not unreasonable in the circumstances. **EMPEROR v ASIRADDI MANDAL** (1914) 1 C W N 41. **Cale** 764

6 ——— Surety for an administrator of estate may be discharged or substituted—Surety creating charge on his immovable property, release of charge—Surety bond discharge of and substitution—Administration account if may be examined by Court Letters of Administration were granted to the estate of the deceased K a Hindu governed by the Dayabhaga law to R one of his first cousins who for purposes of such administration was also appointed guardian of deceased's infant son and J's two brothers stood surety for the administrator. The estate being a very large one the Court required the sureties to charge their immovable properties in the surety bond besides making them personally liable. The infant having died without issue and intestate his paternal grand mother succeeded to the estate as his heir. R there upon applied to Court stating that he had tendered an account of the estate as

SURETY—contd

administered by him to the lady and that she had the same examined by her constituted attorneys and that they were satisfied with the account and that the residue of the estate had been made over to her and prayed that the sureties be discharged and the charge on their immovable property be also discharged. The Court ordered that on the lady's constituted attorneys filing a verified certificate together with the account or abstract thereof stating that they had examined and found it correct and on the administrator filing the receipts for the debts paid to the satisfaction of the Registrar the surety bond creating a charge on the immovable properties of the sureties would be discharged conditional upon the sureties executing a fresh security bond making themselves personally liable for the administration of the estate by the petitioner. **Raj Narain Mukerjee v Ful Kumari Devi** 1 C W N 29. **Cale** 68 referred to. The account of the administrator need not be investigated by the Court there being no procedure or practice for doing so. **KANAI LAL KHAN In the goods of** (1913)

18 C W N 320

7 ——— Rejection of—only on Police report—without judicial enquiry into their fitness Inquiry to be held by the Magistrate passing the order for security—Criminal Procedure Code (Act V of 1898) ss 118 122 Sureties tendered by a party bound down under s 118 of the Criminal Procedure Code should not be rejected on a police report as to their fitness but only after a judicial inquiry under s 122 and by the Magistrate who has passed the order for security. **AKBAR ALI MAHOMED v EMPEROR** (1914) 1 C W N 42. **Cale** 706

8 ——— Bail bond—Forfeiture on failure of accused to appear—Suit by surety against third person upon promise to indemnify—Contract legality of A bail bond having been forfeited owing to the failure of the accused to appear the surety sued a third person who had agreed to indemnify the surety for recovery of the amount forfeited. *Held* that the contract to indemnify was illegal and could not be enforced. **PRASAD KUMAR CHUCKERBUTTY v PROKASH CH DUTT** (1914) 19 C W N 329

9 ——— Duty of Magistrate to enquire into fitness of—each surety on evidence taken by him—Delegation of enquiry to the police or others—Rejection of sureties on a police report—Ground of rejection—Want of control—Criminal Procedure Code (Act V of 1898) s 120 Under s 122 of the Criminal Procedure Code a Magistrate must personally hold a separate inquiry as to the fitness of each surety and decide the matter on evidence taken for the purpose and he cannot delegate to a police officer or other person the function entrusted by law to him alone. **Suresh Chandra Ba v Emperor** 3 C L J 575. *In re Abdul Khan* 10 C W N 1097. **Albar Ali Mahomed v Emperor** 1 C W N 42. **Cale** 706 and **Kaini Mirza v Emperor** 1 C W N 3. **Cale** 91 followed. **Queen Empress v Perthi Pal Singh** (1898) All W N 154. **Emperor v Tola** 1 C L J 35. **Ali 2 v Emperor v Ghulam Mustafa** 1 C L J 36. **Ali 371 Emperor v Balkant** 1 C L J 27. **Ali 293 Bhawan Singh v King Emperor** 12 C L J 1004. **Ali 459 Emperor v Parmeshwar** 1 C L J 459. **Ramanand Singh v King Emperor** 8 C L J 344. **Jai Gobind v Emperor** 13 C L J 760. **King Emperor v Kaim**

SURETY—conold

Khan, (1906) Punj Rec 18 Emperor v Mahro
10 Cr L J 225 Emperor v Kamal 10 Cr L J
230 Emperor v Allahdino 12 Cr L J 410
Emperor v Haji Usman 11 Cr L J 497 Prsu
Abdulla v Emperor 15 Cr L J 378 Muhammad
Ibrahim v Emperor 16 Cr L J 100 approved
 Want of sufficient control over the person bound
 down is not a valid ground for the rejection of a
 surety *Kalu Mir a v Emperor I L R 37*
Calc 91 Siva Natha v Emperor 16 Bom L R
138 Queen Empress v Rahim Baksh I L R
20 All 206 and Sheikh Zikri v Emperor 12 All
L J 785 referred to RAYAN KHAN v EMPEROR
 (1916) *I L R 43 Calc 1024*

10(a) ——— Money paid by for non-
production of judgment debtor —f to be credit
ed against decree—Judgment debtor arrested in
execution of money decree and released on furnis
ing security bond—Money paid by surety for non
production of judgment debtor u ther to be credit
ed against decree A judgment debtor arrested
and imprisoned in execution of a money decree
was released on furnishing security for a sum of
Rs 500 the surety undertaking to produce the
judgment debtor in Court in the event of his not
applying to be adjudicated in insolvent within
a month The judgment debtor failed to apply
for adjudication as an insolvent and the surety
to produce him Held that the payment of
Rs 500 made by the surety was to be credited
against the decree and was not to be made avail
able to the decree holder orer and above his
decretal amount Koylash Chandra v Christo
phoridi I L R 15 Calc 171 1837 referred to
SURENDRA NATH GHOSH v KESAB LAL GHOSH
 25 C W N 36

10 ——— Grounds of fitness—Pecuniary
sufficiency—Inability of control—Discretionary
power of the Court on the facts of each case—
Propriety of the order—Criminal Procedure Code
(Act V of 1898) s 122 The question as to the
fitness of a surety is one of discretion in each
case and the High Court has only to consider
whether the order of the Magistrate is reasonable
and proper in the circumstances of the particular
case Jali v Emperor 13 C W N 80 Jafar Ali
Panjalia v Emperor I L R 37 Calc 446 and
Emperor v Asiruddi Mandal I L R 41 Calc 764
approved Ram Pershad v King Emperor 6
C W N 593 Adam Sheikh v Emperor I L R
35 Calc 400 and Rayan Khan v Emperor I L R
43 Calc 1024 not followed ABDUL KARIM v
EMPEROR (1916) I L R 44 Calc 737

SURETY BOND

See DECREE I L R 36 Bom. 42

See SURETY

——— **forfeiture of—**

See CRIMINAL PROCEDURE CODE ss 514
 516 *14 C W N 259*

——— *Executed in favour of*
Court if pretis alienation of hypothecated pro
perty—Surety bond how enforceable—Transfer of
Property Act (II of 1881) ss 6, 53—Alienation
for consideration on by vendor known to be indebted
is bat as being in fraud of creditors—Participation
is intent on necessary The execution of a security
bond in favour of a Court has not the effect of

SURETY BOND—conid

avoiding all subsequent alienations The execu
 tant of the bond has a right to transfer the pro
 perties hypothecated in the surety bond subject
 to the lien created by him in favour of the Court
 When property is given in security and the security
 is sought to be enforced that should be done by
 bringing a suit under s 67 of the Tranfer of
 Property Act and it makes no difference whether
 the security bond is in favour of a Court or a
 party to a suit The mere fact that a purchase
 of property which has the effect of defrauding or
 delaying the vendor's creditors was for good con
 sideration is not enough to protect the purchaer
 It must also be shown that he acted in good faith
 But the mere fact of the indebtedness of the
 vendor or knowledge on the part of the purchaser
 that the sale may defeat or delay the creditors
 is not sufficient to negative the bona fides of the
 purchaser If there was good consideration and
 the intention to part with the whole interest is
 proved and it is not shown that the transfer was a
 mere cloak for retaining a benefit to the vendor
 it is valid against the creditors But if the object
 of the transfer is to defeat or delay his creditors
 and that object is known to the transferee and he
 aids and assists in its execution then the transfer
 is not in good faith *KAMINI KUMAR POT v*
HIRA LAL PAL CHOWDHURY (1919)
 23 C W N 789

SURETY FOR GOOD BEHAVIOUR

——— *Fitness of surety—*
Pecuniary qualification but not power of control—
Grounds of rejection—Criminal Procedure Code
(Act V of 1898) s 122 In determining the fine s
of a surety under a 102 of the Criminal Procedure
Code the first matter to be inquired into is his
ability to pay the amount of the bond in case of
default by the principal but there may be other
matters also to be considered as grounds of objec
tion which must be dealt with in each case as
it arises Where a surety is competent in a pecu
niary sense the fact that he is not in a position to
exercise control over the person bound down so as
to ensure his good behaviour in future is not a
sufficient ground for his rejection Ram Pershad
v King Emperor 6 C W N 593 Adam Sheikh v
Emperor I L R 35 Calc 400 and Jali v Emperor
13 C W N 80 referred to JAFAR ALI PANJALIA
v EMPEROR (1910) I L R 37 Calc 446

SURVEY SETTLEMENT

See LAND REVENUE CODE (Bom Act V
 of 1879) s 3 *CL. (70) AND s 77*
I L R 43 Bom 77

SURFACE WATER

See PRESCRIPTION 14 C W N 825

SURPLUS COLLECTIONS

——— *suit for—*
See MORTGAGE I L R 33 All 241

SURPLUS SALE PROCEEDS

See ARREARS OF REVENUE
I L R 47 Calc 331
See LIMITATION ACT 1908 s 31
I L R 44 Mad. 823

SURPRISE

— doctrine of—

See RIGHT OF RETAIL

I L R 38 Calc 426

SURRENDER

See CENTRAL PROVINCES TENANCY ACT
1898 s 35 S Pat L J 88

See EXTRADITION I L R 47 Calc 37

See HINDU LAW—WIDOW

I L R 48 Calc 100

I L R 40 Mad 1035

See PAYATI HOLDINGS

I L R 47 Calc 129

— Occupancy tenancy
transfer of part of—Subsequent surrender of whole
or part of tenancy An occupancy raiyat who
has transferred part of his non transferable holding
is not competent to surrender to his landlord the
portion so transferred either by surrender of that
portion alone or by surrender of the whole inclusive
of such portion SYED MOHSE-UDDIN & BHAGO
BAY CHANDRA SUTRADHAR (1920)

I L R 48 Calc 605

SURRENDER OR ABANDONMENT

— of holding—

See MADRAS ESTATES LAND ACT (I of
1908) s 80 ETC

I L R 38 Mad 608

SURVEY ACT

See BENGAL SURVEY ACT

See BOMBAY SURVEY AND SETTLEMENT
ACT

See MADRAS SURVEY AND BOUNDARIES
ACT

SURVEY MAP

See FOOTINGS I L R 38 Calc 687

See WASTE LANDS ACT

L R 43 I A 303

SURVEY SETTLEMENT

See BOMBAY LAND REVENUE CODE (BOM
ACT 4 OF 1879) ss 3 (11) AND 217

I L R 34 Bom 686

— Growth of sandalwood trees on
occupancy lands subsequent to—

See FOREST ACT (VII OF 1878) s 70
CL (c) R ~ I L R 45 Bom 110

— right of Inamdar to enhance assess-
ment at end of period of settlement—

See BOMBAY LAND REVENUE ACT 1879
s 217 I L R 44 Bom 110

I L R 45 Bom 61

SURVIVING MEMBER OF A COMMITTEE

— suit by—

See RELIGIOUS ENDOWMENT

I L R 39 Calc 304

SURVIVORSHIP

See CIVIL PROCEDURE CODE O
XXVIII R 5

I L R 38 Bom 105

See HINDU LAW—PARTITION

I L R 37 Calc 703

See MARUMAKATAYAM LAW

I L R 40 Mad 387

SUSPENSE ACCOUNT

See INSOLVENCY I L R 34 Mad 125

SUSPENSION

See LEGAL PRACTITIONER

13 C W N 521

See LEGAL PRACTITIONERS ACT s 14

13 C W N 415

15 C W N 269

— of Business—

See COMPANY I L R 47 Calc 654

— of period—

See LIMITATION I L R 48 Calc 65

SUSPENSION OF RENT

See LANDLORD AND TENANT

14 C W N 446

SUSPENDED POLICE OFFICER

See WRONGFUL CONFINEMENT

I L R 47 Calc 618

SUSPICION

See FALSE INFORMATION

I L R 46 Calc 427

SYMBOLICAL POSSESSION

See LIMITATION I L R 38 Bom 373

See POSSESSION I L R 43 Bom 559

See PLOTTING I L R 39 Calc 896

— Effect as between parties
— Presumption of continuance of possession if con-
clusive Delivery of symbolical possession is con-
clusive evidence as between the parties that
possession was delivered but is not in the least
conclusive evidence that the possession so delivered
continued There may be a presumption that such
possession would continue until the contrary was
proved but that is all Where it was found that
the plaintiff to whom symbolical possession was
delivered never got actual possession the finding
can only mean that the possession delivered did
not continue at all so that Art 14^o and not Art
144 of the Limitation Act applied to the case
Where it appeared that the plaintiff had recovered
rent decrees from raiyats within 12 years of the
suit and the decrees were not open to question as
collusive and fraudulent the plaintiff's possession
of the lands held by the raiyats through them
within the statutory period of limitation was
established DEOHANDAN PRASAD & UDIT NARAYAN
SINGH (1914) 15 C W N 940

SYNDICATE AND SENATE

— respective powers of—

See SPECIFIC RELIEF ACT (I of 1877)
s. 45 I L R 40 Mad. 125

T

TACKING OF POSSESSION

Adverse possession—

See EVIDENCE ACT 1872 s 107
I L R 37 Mad 440

One trespasser cannot tack his wrongful possession to that of another—

See LIMITATION ACT (IX OF 1908) ARTS
142 AND 144 I L R 45 Bom 570

TAGAVI ADVANCE

See DEKKHAN AGRICULTURISTS RELIEF
ACT (XVII OF 1879)
I L R 40 Bom 483

TALABI BRAHMOTTAR

See GRANT I L R 44 Calc 585

TALAB-I ISHHAD

See MAHOMEDAN LAW—PRE EMPTION
I L R 41 Bom 636

TALAB I MAWASIBAT

See MAHOMEDAN LAW—PRE EMPTION
I L R 41 Bom 636
See PRE EMPTION I L R 34 All 1

TALAK

See ITNAM I L R 47 Calc 979
See PARTITION I L R 46 Calc 236
See PUTNI REGULATION

delegation of—

See MAHOMEDAN LAW—DIVORCE
I L R 46 Calc 141

power of—

See MAHOMEDAN LAW—DIVORCE
I L R 46 Calc 141

TALAKNAMA

See MAHOMEDAN LAW—DIVORCE
I L R 44 Bom 44

TALUKDAR

See BOMBAY COURT OF WARDS (BOM
ACT VI OF 1888) s 31
I L R 44 Bom 832See GUJARAT TALUKDARS ACT (BOM ACT
VI OF 1888) s 29E
I L R 43 Bom 44See LAND REVENUE CODE (BOM ACT V
OF 1870) ss 144 160
I L R 43 Bom 6See OUDH ESTATES ACT (I OF 1869)
I L R 33 All 344
ss 8 10 I L R 38 All 552ss 8 AND 22 SUBS (II)
I L R 32 All 599

See TALUKDARS (GUJARATH) ACT

mortgage by—

See BROACH AND KAIRA INCUMBERED
ESTATES ACT (XXI OF 1881) s 28
I L R 41 Bom 546

TALUKDAR—contd

transfer by—

See OUDH ESTATES ACT 1869 ss 2 AND
16 I L R 42 All 492

1 ——— Rights of Talukdar—Payment by relative s of talukdar holding sub proprietary rights on his estates—Rules framed by British Indian Association of Oudh for maintenance of such relatives—Basis of calculation of such payments in second and third generations—Jurisdiction of Rent Court. The question between the parties to this appeal was as to the true construction of certain rules framed in 1867 by the British Indian Association of Oudh and agreed to by the talukdars making provision *inter alia* for maintenance for the relatives of the latter holding sub proprietary rights on their estates. The portion of the rules applicable was as follows—This clause will remain in possession of what they actually had at annexation rent free during their lifetime but subject to the payment in the second generation of 25 per cent to the talukdar and in the third 50 per cent and will not have transferable rights. If such persons pay the Government revenue plus 10 per cent to the talukdar they will have heritable rights in addition. *Held* (affirming the decision of the Court of the Judicial Commissioner) that the bulk sum on which the percentages were to be calculated was the assumed rental which formed the basis for the ascertainment of the Government revenue payable by the Talukdar (the Government revenue being half the assumed rental). This construction had the advantage of giving a fixed basis for calculation which was greatly in the interests of the talukdars with reference to the charges on the property and enabled all parties concerned to understand year after year and to forecast their exact financial position. Payments of 25 and 50 per cent respectively on the gross rental demandable in each particular year together with 10 per cent in the case of the talukdar (as contended for by the appellant) was much besides being made on a varying basis but exceeded not only the Government revenue but the entire receipt of rental actually obtained for particular years reducing greatly the rights of the relatives in possession a sub proprietors for maintenance. A procacious their provision for maintenance construction which would bring about such results was not warranted on a sound reading of the terms of the maintenance provisions. The additional sum of 10 per cent payable to the talukdar (at any rate by the third generation) for the provision for maintenance of a heritable character might under the circumstances that the payments to the talukdar might not be regular and that in any view the talukdar's responsibility to the Government for the revenue was full and direct whether he received such payments or not be considered as a reasonable commission or insurance and had accordingly been sanctioned in the rules under construction as well as by the rules regarding sub settlement and other subordinate rights of property in Oudh settled in Act XXVI of 1866. The Court of Wards who represented the appellant during his minority made on account of maintenance certain payments to the respondent to which the appellant objected. The Court of the Judicial Commissioner declined to open up that matter in the present suit holding that it is not within the province of a Rent Court to determine whether the maintenance was or was not payable and their Lordships of the Judicial

TALUKDAR—contd

Committee were of opinion that that was a right decision *NAWAB ALI KHAN v WAHID ALI* (1909)
I L R 32 ALL 92

2 ———— **Settlement of Oudh—Talukdar settled with on terms as to which no evidence could be given—Second summary settlement—Villages included in talukdar's estate and not recovered by payment of money due on account of them—Trustee or lien holder—Redemption barred by Act No 1 of 1869 s 6—Adverse possession** This affair related to certain villages in Oudh which belonged prior to the annexation of that Province to the widow of the predecessor in title of the appellants and were under some arrangement of the exact nature of which there was no evidence included in the estate of the ancestor of the respondent a talukdar in whose possession they were found at the settlement in 1859. The widow at that time applied as owner for the settlement of the villages. Her claim was resisted by the agent of the talukdar on the ground that he was entitled to possession until sums paid by him on account of the villages were paid off and the settlement was made in accordance with possession the widow being directed by the settlement officer to proceed by separate application to get the villages released by payment of the money due by her but she took no steps to get the property released and when in 1867 she applied for regular settlement of the villages her claim was dismissed on 31st October 1868 on the ground that they were included in the sanad granted by Government to the talukdar. In a suit brought in 1903 by representatives of the widow for possession of a share of the property on the ground that the settlement proceedings in 1859 constituted the talukdar either a mortgagee or a trustee on behalf of the widow it was admitted that the claim for redemption was barred by s 6 of Act No 1 of 1869. *Held* (upholding the decision of the Court of the Judicial Commissioner) that there was no warrant for the contention that the correlative obligation that lay on the talukdar to release the villages on payment of the money due on account of them created a trust or constituted him a trustee for the widow who took no steps to comply with the directions of the settlement officer and allowed the talukdar to remain in possession and set up a distinctly adverse title in 1867 when she applied for regular settlement. *Hasan Jafar v Muhammad Askari* I L R 26 Calc 879 L R 26 I A 299 distinguished. From the date of the dismissal of her application in 1868 possession was adverse to her and the suit not having been brought until 1903 was clearly barred by lapse of time. *MUMHAMMAD BAKAR v MUHAMMAD BAKAR ALI KHAN* (1910) I L R 33 ALL 125

3 ———— **Will of Talukdar—Oudh Estates Act (I of 1869)—Sanad executed by talukdar through the medium of family friends—Whether document was testamentary or non testamentary—Registration of document—Indian Registration Act III of 1877 ss 17 and 49—Instrument affecting immovable property—Ground not specially taken in argument in courts below—Costs** A talukdar in 1867 in compliance with the directions issued by the Government made a declaration that I wish to file this application that after my death Umrao Singh the eldest son (sic) my estate should continue in my family undivided in accordance with the custom of the *rajpaddi* and that the younger brothers

TALUKDAR—concld

shall be entitled to get maintenance from the *gaddi nashin*. *Held* (affirming the decision of the Courts in India) that it was a valid testamentary deposition by the talukdar of his estate in favour of his eldest son. The said talukdar having three sons with one of whom he was on bad terms executed in 1864 the following document which he called a sanad —

For Prithpal Singh who is my son I fix Rs 300 annually so that he may maintain himself. Besides this whatever I may give I will give equally to the three sons except provisions which they may take from my Godown (*lofkar*). The marriage and *gawna* expenses of the sons and daughters shall be borne by me. After me the three sons are to divide the property moveable and immovable. This has been settled through the mediation of Thakur Jote Singh of Bihar and Thakur Ratan Singh of Rojsh. *Held* (reversing the decision of the Judicial Commissioner's Court) that it was a non testamentary instrument. It was a family arrangement arrived at by the mediation or arbitration of two gentlemen friends of the family and interested in its honour and it was plainly intended to be operative immediately and to be final and irrevocable. *Held* also that it required to be registered under s 17 of the Registration Act (III of 1877) in order to make it effective as regards immovable property and being unregistered was so far void. On an objection that it was not open to the appellants to contend that the document was not a will the fact that they had throughout the proceedings in the Courts below taken conflicting views as to the nature of the document was held not to preclude their Lordships from considering and determining the real question in the case and that they were bound to give effect to the real character of the document. Neither party had pursued a consistent course in the matter. Their Lordships permitted the appellants therefore to raise that contention but in allowing the appeal on that ground they did so without costs to the appellants on this appeal or in the Courts below. *UMRAO SINGH v LACHMAN SINGH* (1911)

I L R 33 ALL 344

TALUQA

See HINDU LAW—INHERITANCE

I L R 40 ALL 470

See OUDH ESTATES ACT 1869 s 14

I L R 43 ALL 245

See TALAK

TALUQDARI PROPERTY

See COMPROMISE I L R 47 Calc 932

See OUDH ESTATE ACT 1869 s 14

I L R 43 ALL 245

————— **Incumbrance by Talukdar and his son—**

See GUJARAT TALUKDARS ACT (BOM ACT VI of 1868) s 31

I L R 44 Bom. 832

————— **Primogeniture sanad—Construction—Successors** A sanad granted in 1862 to a Muhammadan lady conferred a talukdari estate in Oudh upon her and her heirs for ever subject to the payment of revenue it provided in the event of your dying intestate or any of

TALUQDARI PROPERTY—contd

your successors dying intestate the estate shall descend to the nearest male heir according to the rule of primogeniture but you and all your successors shall have full power to alienate the estate. The *sanad* further made it a condition that the grantee should promote the agricultural prosperity of the estate and maintain all subordinate rights and concluded as long as the above obligations are observed by you and your heirs in good faith so long will the British Government maintain you and your heirs as proprietors. Held that the word 'successors' in the *sanad* meant those designated parties who would succeed under the *sanad* upon an intestacy and that the estate having passed by demise out of the line of succession designated its further devolution was according to Muhammadan law. **GHULAM ABBAS KHAN v ANAT UL FATIMA** I L R 43 All 297

TALUQDARI SETTLEMENT OFFICER

See GUJARAT TALUQDARS ACT (BOM ACT VI OF 1888 AS AMENDED BY BOM ACT II OF 1905) ss 20 29B (1) (2) (3) AND 29F I L R 38 Bom 604

TALUQDARI VILLAGE

Power of district Magistrate to appoint inferior village police—

See BOMBAY VILLAGE POLICE ACT VIII OF 1867 s 9 I L R 44 Bom 377

TANK

See LSTOPFEL I L R 39 Calc 439

TANKHAS

Tankhas granted by the Maharaja of Burdwan are heritable allowances in the nature of property and therefore assignable. **LALA MUKTI PROKASH NAYDE v SRIMATI ISWARI DEVI DEBI** 24 C W N 938

TARWAD

See MALABAR LAW

I L R 36 Mad 591
I L R 40 Mad 317

Presumption as to ownership of property acquired in the name of junior member of tarwad—Presumption of fact and not of law. No presumption of law can be raised as to whether properties acquired in the name of a junior member of a tarwad belong to him or to his tarwad. Any presumption to be raised is one of fact. **GOVINDA PANIKKER v NANI** (1913)

I L R 36 Mad 304

TAULIATNAMAH

testamentary character of—

See MAHOMEDAN LAW—WAKF

I L R 46 Calc 13

TAX.

See ADEY SETTLEMENT REGULATION (VII OF 1900) s 13 I L R 40 Bom 446

See ASSESSMENT I L R 42 Bom 682

See CANTONMENTS ACT 1850 s 22

I L R 38 Bom 293

TAX—contd

See COSTS

I L R 39 Bom 383

I L R 40 Bom 533

to recover money levied as—

See LIMITATION ACT 1877 Sec II Arts

2 61 62 120 I L R 32 All 491

TAXATION OF COSTS

See BOMBAY REGULATION II OF 1897 s 52 I L R 37 Bom 303

See COSTS I L R 40 Bom 533

I L R 45 Bom 1234

Power of High Court to give direction as to how costs should be taxed—

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 12

I L R 45 Bom 1177

TAXING JUDGE

reference by—

See COURT FEES ACT (VII OF 1850) ss 5 AND 7 I L R 33 All 99

TAXING OFFICER

See APPEAL VALUATION OF

I L R 37 Calc 614

See COURT FEES 3 Pat L J 443

See COURT FEES ACT (VII OF 1850) ss 5 AND 12 I L R 33 All 99

TEA

Tea or tea dust which is an article of food or drink. **Calcutta Municipal Act (Beng III of 1899) s 495** Tea or tea dust is an article of human food or drink within the meaning of s 495 of the Calcutta Municipal Act (Beng III of 1899). **Hinde v Allmond** 5 J P 161 explained and distinguished Definition of food in the Sale of Food and Drugs Act (33 & 39 Vic c 63) s 2 as amended by 62 & 63 Vic s 51 s 26 adopted Corporation of Calcutta v PAOLI (1919) I L R 47 Calc 53

TEA GARDEN

See INCOME TAX I L R 48 Calc 161

TEISHKHANA PAPER

Evidence—Official record—Road-cens returns—Bengal Cess Act (IX of 1850) s 95—Road cens return filed by a co-sharer landlord and assessment made on the basis of it—Whether such return is admissible in evidence against the other co-sharers. **Teishkhana** paper is a register kept for the information of the Collector but it is in no sense an official record therefore before it is a *teishkhana* paper could be used in evidence it must be proved that it had been kept in due course by the registered *patwari*. **Fajnaath Singh** v **Sukhu Mahton** I L R 18 Calc 331 and **Samor Dasguthy v Juggul Ashokor Singh** I L R 23 Calc 366 distinguished. Persons interested to the extent of a one fourth share of the superior interest filed a road cens return under the provisions of the Bengal Cess Act and they stated therein as they were bound to do under the law the names of the tenants in occupation of specific lands. The statement which they made was against the interest. No similar return was filed by them.

TEISHKHANA PAPER—contd

persons who represented the remaining three fourths share of the superior interest and the Revenue authorities assessed the road cess as they were entitled to do upon the return filed by the one fourth shareholders *Held* that the return filed by the one fourth shareholders is admissible in evidence as against the remaining shareholders of the superior interest *Ausseerwa v Gouree Sunkur Singh* 13 W R 199 distinguished E 95 of the Bengal Cess Act (IX of 1880) is not exhaustive It was intended to restrict the operation of s 21 of the Evidence Act and a road cess return may be admissible in evidence as against persons other than the one who has made the return *CHALHO SINGH v JHARO SINGH* (1911) 1 L R 80 Calc 995

"TEJI MANDI" TRANSACTIONS

See *WAGERING* 1 L R 37 Bom 264

TELEGRAM FROM COUNSEL

See *BAIL* 1 L R 38 Calc 293

TEMPLE

See *IDOL* 1 L R 86 Bom 135

See *OFFERINGS TO A TEMPLE*

See *RELIGIOUS ENDOWMENTS ACT* (XX of 1863) s 3 1 L R 38 Mad 1176

See *TEMPLE COMMITTEE*

See *TRUSTEES OF A TEMPLE*

— dispute concerning—

See *OFFERINGS TO DEITY* 1 L R 38 Calc 387

— Election of Mahant—

See *HINDU LAW—ENDOWMENT* 1 L R 37 All 298

— Manager of—right to remove idol—

See *HINDU LAW—RELIGIOUS OFFICE* 1 L R 44 Bom 466

— right to worship in and to carry procession into street—

See *CIVIL PROCEDURE CODE* 1908 s 9 1 L R 44 Bom 410

— right to perform festival in a—

See *HINDU LAW—CUSTOM* 1 L R 40 Mad 1108

— right of management of—

See *PARTITION* 1 L R 50 All 651

— Suit by pujaris against guravs to recover offerings made at—

See *CIVIL PROCEDURE CODE* (ACT V OF 1908) ss 9 AND 92 1 L R 45 Bom 683

TEMPLE COMMITTEE

See *CIVIL PROCEDURE CODE* (ACT V OF 1908) s 92 1 L R 40 Mad 212

See *RELIGIOUS ENDOWMENTS ACT* (XX of 1863) s 10 1 L R 38 Mad 594

— powers of—

See *RELIGIOUS ENDOWMENTS ACT* (XX of 1863) s 3 1 L R 38 Mad 1176 1 L R 39 Mad 700

TEMPLE COMMITTEE—contd

— vacancy in—

See *RELIGIOUS ENDOWMENTS ACT* (XX of 1863) s 10 1 L R 40 Mad 793

TEMPLE PROPERTY

See *CIVIL PROCEDURE CODE* (ACT V OF 1908) s 92 1 L R 42 Bom 742

TEMPORARY INJUNCTION

See *CIVIL PROCEDURE CODE* 1908 O 1111

See *INJUNCTION* 19 C W N 442

— Conditions of grant of temporary injunction—Co owners—Building by co owner—Indue advantage—Pension by High Court—*Charter Act* (24 & 25 Vict s 101) s 15 Where plaintiffs who were joint owners with defendants in respect of the property in suit sued them for declaration of title thereto and applied for an injunction to restrain the defendants from building on the land and the lower Appellate Court set aside the temporary injunction granted by the Court of first instance *Held* that sold occupation by one co sharer did not necessarily constitute ouster of the other co owners But a co owner who was with the tacit or express consent of his co sharer in sole occupation of a portion of joint property was not entitled to change the nature of that possession or to use the property in a mode different from that in which it had previously been used *Dusseendra Narain Poy v Purnendu Narain Roy* 11 C L J 189 followed *Held* further that in granting an interim injunction what the Court had to determine was whether there was a fair and substantial question to be decided as to what the rights of the parties were *Moran v Pate Steam Navigation Co* 14 B L R 357 followed The real point was not how these questions ought to be decided at the hearing of the cause but whether the nature and difficulty of the questions was such that it was proper that the injunction should be granted until the time for deciding them should arrive *Walker v Jones* L R 1 P C 50 followed *Held* also that under circumstances like the above the matter for consideration at that stage was where did the balance of convenience lie was it desirable that the status quo should be maintained or was it right that defendants should be allowed to continue to alter the character of the land *Jones v Paganu Rubber and Produce Company Ltd* [1911] 1 K B 455 *Aynsley v Glover* L R 18 Eq 511 *Currier v Company v Corbett Drury & Son* 35 Jenson v Pender 7 Ch D 4 referred to *Held* further that in a case of this description (where a substantial portion of the building had been erected after the defendants had become aware of the institution of the suit and of the application for temporary injunction) the Court would if necessary proceed not only to grant a temporary injunction restraining the further erection of the building but also to direct that the building already erected be taken down *Daniel v Ferguson* [1891] 2 Ch 2 *Von Joel v Harris* [1893] 2 Ch 714 referred to *Held* that the High Court was competent to interfere under s 10 of the Charter Act (24 & 25 Vict c 104) in view of the conduct of the defendants which amounted to a defiance of the authority of the Court *I ELL v SHAMBERG PARMAN* (1913) 1 L R 41 Calc 476

TEMPORARY INJUNCTION—contd

Temporary injunction subsequently dissolved—Order to be obeyed while it lasts—Order binding on party though it prohibits receiving payment from Government and Government authorised to pay by statute—Order operates in personam—Government's duty to ascertain and obey law—Question of construction question for Courts Where in a suit for dissolution of partnership and accounts a Receiver of the partnership assets was appointed and a temporary injunction was granted restraining the defendants *inter alia* from receiving certain payments from Government and the Government which was no party to the suit made payments to one of the defendants in alleged exercise of power reserved to it by statute and subsequently the injunction was dissolved the plaintiff's case having failed. *Held* that an injunction although subsequently discharged because the plaintiff's case failed must be obeyed while it lasts. That although the injunction could not bind the Government not to pay or make the Government responsible for that obedience to the law which the Court was entitled to expect the man who received it breach of the order was guilty of a contempt in no way cured by the payment by Government. The non existence of any right to bring the Crown into Court such as exists in England by petition of right and in many of the Colonies by the appointment of an officer to sue and be sued on behalf of the Crown does not give the Crown immunity from all law or authorise the interference by the Crown with private rights at its own mere will. There is a well established practice in England in certain cases where no petition of right will lie under which the Crown can be sued by the Attorney General. *Dyson v Attorney General* [1911] 1 A. B. 410 and *Burghes v Attorney General* [1912] 1 Ch. 173 referred to. It is the duty of the Crown and of every branch of the Executive to abide by and obey the law. If there is any difficulty in ascertaining it the Courts are open to the Crown to sue and it is the duty of the Executive in cases of doubt to ascertain the law in order to obey it not to disregard it. The Government in this case having made the payment with notice of the Court's order. *Held* that although with regard to the payments made under statutory powers the action of the Executive might be justifiable the question whether any particular sum mentioned in the contract in suit was payable as for labour and supply (so as to be within the Government's power to pay under the statute) was a question of construction and therefore of law for the Courts. That the proper course in the present case for the Executive would have been either to apply to the Court to determine the question of construction of the contract and to pay accordingly or to pay the whole amount over to the Receiver and to obtain an order from the Court on the Receiver to pay the sums properly payable according to the true construction of the contract. *EASTERN TRUST COMPANY v MACKENZIE MANN & Co Ltd* (1916) 20 C. W. N. 457

3 ————— **When may it be granted—Balance of convenience to be considered—Irreparable injury—Claim of right** Upon an application for a *term* injunction it is sufficient if the plaintiff makes out a *prima facie* case in support of the title asserted by him. Where a plaintiff who is out of possession claims posses-

TEMPORARY INJUNCTION—contd

sion the Court will not grant injunction against a defendant in possession under a claim of right unless the threatened injury would be irreparable. It is only in cases where property which it is essential should be kept in its existing condition during the pendency of the suit is in danger of being wasted damaged or alienated that the Court ought to interfere. The plaintiff must show that the interference of the Court is necessary to protect him from irreparable or at least serious injury before the legal right can be established at the trial. By the term irreparable injury however it is not meant that there must be no physical possibility of repairing the injury all that is meant is that the injury would be a material one and one not adequately repairable by damages. Money compensation may not be an appropriate and adequate remedy in every case of injury relating to immovable property and the question of irreparable injury depends upon the circumstances of each case. *Leander v Belle L J 33 Ch. 451 Kesho Prasad Singh v Srinibash Prasad Singh 1 L. P. 38 Cal. 191 The Mogul Steamship Co v M. Gregor Gow & Co 15 Q. B. D. 476 Hilton v The Earl of Granville 1 Cr. & Ph. 253 Baddam v Dhunput Singh 1 C. W. N. 429 Krehl v Burrell 1 L. P. 7 C. D. 851 Hemanta Kumar Roy v Baranagore Jute Factory Co 19 C. W. N. 442 and Israel v S. M. Rahman 1 L. R. 41 Cal. 136 referred to. BEGO DUNLOP & Co v SATISH CHANDRA CHATTERJEE (1919) 1 L. R. 46 Cal. 1001*

TENANCY

See RENT 1 L. R. 41 Cal. 347
See SALE 1 L. R. 45 Cal. 294

determination of—

See LANDLORD AND TENANT 1 L. R. 38 Mad. 710

division of—

See LANDLORD AND TENANT 14 C. W. N. 335

————— **From year to year—Determination of annual tenancy—Notice to quit** Ordinarily unless there is an express agreement for the expiry of a tenancy on a certain day a tenancy from year to year is only determined by a notice to quit. *SITARAM DEBBIJAI v SADHU* (1913) 1 L. R. 88 Bom. 240

————— **Tenancy created by lease—Right of person not party to contract holding under lease to show that purpose of tenancy was different** *Held per D. R. CHATTERJEE J.*—That although where it is shown by a lease unambiguous in its terms that the land was originally acquired by the tenant for cultivating it by himself or by hired servants or by members of his family the character of the tenancy is not altered by the fact that the land was subsequently let out to tenants and although in such a case the land may as between the lessor and the lessee be taken to have been acquired for the purpose as stated in the lease itself it is certainly open to a person who is no party to the contract to show that the real purpose for which the land was acquired by the lessee was other than what was stated in the lease. *PAJANI KANTHA D. TELUKU v YETTY ALI* (1916) 21 C. W. N. 185

TENANCY AT WILL

See LANDLORD AND TENANT

I L R 36 Mad 557

Lease whether by registered instrument only—

Transfer of Property Act (IV of 1882) s 107
Section 107 of the Transfer of Property Act does not lay down that a lease of immoveable property can be made only by a registered instrument but it can be made only by a registered instrument in three cases, viz (i) a lease from year to year (ii) a lease for any term exceeding one year and (iii) a lease reserving a yearly rent. The fact that the rent is reserved at so much a year does not conclusively show that the tenancy is from year to year. The terms of a tenancy which does not come within s 107 of the Transfer of Property Act can be proved by oral evidence—*Lala Surabhi Harain Lal v Catherine Sophia* I C W N 948
Fazil Sheikh v Keramuddi Sheikh 6 C W N 956
Sita Nath Pal v Kartick Ghosh 8 C W N 434 and *Venkatagiri Zamindar v Raghava* I L R 9 Mad 149 referred to *SARAT CHANDRA DUTT v JADAB CHANDRA GOSWAMI* (1916)

I L R 44 Cal 214

TENANT—could

liability of to pay compensation for loss of crops—

See MADRAS ESTATES LAND ACT (MAD ACT I OF 1908) ss 4 27 73 AND 143

I L R 40 Mad 640

right of—

See IRRIGATION CHANNEL

I L R 40 Mad 640

See MALABAR TENANTS IMPROVEMENTS ACT (MADRAS I OF 1900) ss 11 12

I L R 38 Mad 954

status of—

See BENGAL TENANCY ACT 1885 ss 5 103B

I L R 45 Cal 805

suit to recover immoveable property from—

See COUPY FEES ACT (VII OF 1870) s 7
CL (5) SUB CL (2) (cc)

I L R 111 Mad 873

Suit for ejectment of non occupancy tenant—

See AGRA TENANCY ACT 1901 ss 19 AND 53

I L R 43 All 38

surrender by of waste lands—

See MADRAS ESTATES LAND ACT (I OF 1908) s 11

I L R 38 Mad 891

status of—Consolidation of rayati holdings if makes it a tenure—Permanency claimed by tenant—Onus to explain variation of rent extent thereof—Habit on land of tenancy if raises presumption of permanency—Landlord's abstention from enhancing rent or making land khas if ground for inferring permanent grant—Abstention explained—*Pucca* tenant in 24 Ferganas meaning of—*Masfatar* rent receipts grant of if recognition of tenant—Transferability—Onus in case of agricultural and homestead lands respectively—Decree for rent plus drainage charges if rent decree—Bengal Tenancy Act (VIII of 1885) s 1 (5) and Bengal Drainage Act (VI B C of 1880) s 42 (a)—Decree holder expressing intention to buy tenure by rent sale at a given price and buying it at said price without fraud if makes sale a private sale—Bengal Tenancy Act (VIII of 1885) s 167—Adverse possession commencing before creation of tenure if incumbrance—Adverse possession commencing after if in incumbrance and must be annulled—Incumbrance created by sub tenant if to be annulled—Arrest of adverse possession on rent sale—The mere fact of consolidation of a number of separate rayati holdings cannot alter the nature of the tenancies and convert them into a tenure unless the landlord and the tenant agreed at the time that the holdings should thenceforth be a tenure. It is for the tenant defendant who alleges the Court to presume that the tenancy is permanent to explain apparent variations in the rent since the date of the permanent settlement not merely by showing that there was variation in the area but also by showing that the additional rent was assessed at some rates of rent fixed according to the class and quality of the land. The existence of khatn lands the subject of a tenancy does not raise any presumption of permanency. The mere fact that rent has been changed for a long time by itself is not sufficient to show that the original contract was

TENANCY BY SUFFERANCE

See CRANT

I L R 37 Cal 674

TENANCY IN COMMON

See JOINT ESTATE

I L R 45 Cal 163

See TENANT IN COMMON

See WILL

I L R 43 All 600

A tenant in common is entitled to sue for his share of the property demised when a forfeiture has been incurred under the terms of the lease. Forfeiture cannot or hardly be relieved against in the case of a mining lease.
SYED AHMAD SABID BRUTTANI v MACQUESSIE SYNDICATE LIMITED I L R 60 Mad 1049

TENANT

See BOMBAY CITY MUNICIPAL ACT ss 379 379A

I L R 36 Bom 81

See LIMITATION ACT (IX OF 1908) s 8
SCH I ART 47 I L R 111 Mad 432

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 EXCEP

I L R 38 Mad 843

See MADRAS RENT RECOVERY ACT

I L R 34 Mad 179

See TRANSFER OF PROPERTY ACT 1882
ss 105 to 117

holding over suit to eject—

See JURISDICTION

I L R 38 Mad 795

interested in subject of dispute—

See DISPUTE CONCERNING LAND

I L R 37 Cal 285

liability of—

See DRAINS

I L R 38 Cal 268

TENANT—conold

payment of rent by the tenant at a fixed rent for ever. In this case the fact that the landlord did not for a long period make any attempt to enhance the rents of the holdings or turn them *lhas* was held to be sufficiently explained by the fact that the yield of the land to the tenant was until recently quite small. The word *lhas* tenant as used in relation to the tenancies in dispute though they are situated in the 24 Per ganas means interests which are not permanent. Where rent receipts asked for in the name of the purchaser of a holding were expressly refused by the landlord who granted receipts in the name of the old tenant the purchaser being described merely as *marjadar*. Held that there was no recognition of the purchaser as a tenant. It is for the tenant defendant who claims his holding of agricultural land to be transferable to prove it. There is no onus of proving non transferability of the tenure upon the landlord. In the absence of a custom to the contrary the incident of non transferability is common to tenancies from year to year of homestead lands created before the passing of the Transfer of Property Act s 108 cl (j) of the Act not being applicable to them. Where a decree for rent included certain drainage charges it was a rent decree within the meaning of Ch XIV of the Bengal Tenancy Act drainage charges payable under s 42 (a) of the Bengal Drainage Act being money recoverable as rent as defined in s 1 cl (5) of the Bengal Tenancy Act. Where before the sale of a holding in execution of a rent decree the judgment debtor being anxious to procure good prices for the holding at the sale approached the decree holder and the latter expressed his intention to bid up to a certain amount and at the sale the property was knocked down to the decree holder for that amount. Held that in the absence of fraud this circumstance would not deprive the purchaser of the benefit attaching to a sale under the Bengal Tenancy Act or render it a private sale. *Quære* Whether the purchaser of a *pattai* is bound to annul incumbrances created not by the *pattidar* but by the *dorpatidar*. *Quære* Whether the person who may have acquired a statutory title by adverse possession for 12 years against the *pattidar* does not stand in the same position as an unrecorded co sharer of the *pattidar* and whether such right does not pass at the rent sale without the necessity of annulling it as an incumbrance under s 167 of the Bengal Tenancy Act. *MANNOTH NATH MITTAR v ANATH BANDHU PAL* (1916) 23 C W N 201

TENANT IN-COMMON

See CIVIL PROCEDURE CODE 188^o ss 18
462 I L R 36 Bom 53

See HINDU LAW—JOINT FAMILY
I L R 38 Mad 684

See MORTGAGE I L R 47 Cal 175
I L R 35 Bom 371
L R 46 I A 272

See PARTIAL JOINDER OF
I L R 42 Bom 87

See JOINT TENANT I L R 37 All 203

See TENANCY IN COMMON

TENANT IN COMMON—contd

Hindu Law—*Mukh shara*—Daughters inheriting property from their father—*Shares* separate and absolute. When the property so inherited is not physically divided it is held by the daughters as tenants in common and not as joint tenants and there is no survivorship between them. *VITHAPPA v SAVITRI* (1916) I L R 34 Bom 510

Co lessors—Lease by Mahomedan co heirs—Mining lease—Forfeiture clauses—Lease determined by one lessor—Suit by one tenant in common in ejectment maintainability of—Suit for whole or for share maintainability of—Penal provisions strict construction of—Relief against forfeiture—Contract in a mining lease—Exception to rule—English and American law rules of A tenant in common is entitled to sue for his share of the property demised where a forfeiture has been incurred under the terms of the lease. *Sri Rajah Simhadri Appa Peo v Prathipati Ramayya* I L R 29 Mad 99 *Koragala v Narayana* 25 Mad L J 315 and *Ebrahim Pir Mahomed v Cureetji Sorabji Dastur* I L R 11 Bom 644 followed *Gopal Ram Mahurji v Dhaleswar Pershad Narain Singh* I L R 35 Cal 807 dis sented from. Though the aim of law generally is in favour of giving relief against forfeiture in the case of leases in the case of mining leases a provision for re entry should be strictly construed and forfeiture cannot ordinarily be relieved against. English and American law considered. *Doe v Church Warden of Rugby* 6 Q B 107 and *Doe d Lyod v Inghly* 15 M d W 465 153 E R 953 followed. *Balamkhat v Venayal Gangai Pal* I L R 35 Bom 239 referred to. *Syed Ahmad v Macgregor STEINDL CATE LTD* (1916) I L R 38 Pad 1049

TENDER

See CONTRACT ACT 1872 s 38
See INTEREST I L R 34 Mad 320

See JURISDICTION OF CIVIL COURTS
I L R 34 Bom 18

See MORTGAGE I L R 42 All 420

See TRANSFER OF PROPERTY ACT 1880
s 60 I L R 43 All 95 & 633

s 84 I L R 33 Mad 160
I L R 36 All 139

by debtor—
See LIMITATION I L R 38 Mad 374

essentials of a valid—
See MADRAS ESTATES LAND ACT (I of

1909) ss 51 and 78 CL (9)
I L R 33 Mad 699

methods of—
See MADRAS ESTATES LAND ACT (I of

1909) ss 51 and 78 CL (9)
I L R 33 Mad 699

TENEMENTS

sovereignty of—
See EASEMENT I L R 38 Mad 149

TENURE

See BOMBAY CITY LAND REVENUE ACT
(Bom II of 1870) ss 30 31 32 40

I L R 39 Bom 664

See JAGHIR I L R 42 Cal 305

TENURE—contd

1. ————— whether permanent or temporary—Tenancy held by original grantee or his successor in interest for "0 years under four doul kabuliats for terms—Sara ara whether applies to rent only or tenure itself—Fact or law question of—Construction In a suit by the land lord, under s 106 Bengal Tenancy Act for correction of an entry that the tenancy of the defendants was a permanent tenure for doul kabuliats were relied upon to prove the contract of tenancy bearing dates 1250 1^o 7 1285 and 1^o 9 B S All these were for terms of years and they did not contain the words from generation to generation. But the successive settlements were either with the original tenant or his heir the oral evidence being to the effect that the dead man's heir was recognised as having a moral claim to succeed to his rights All the kabuliats bound the tenant to keep the trees intact and restrained him from making transfer of the land the last three adding that he must not partition the land and providing for the landlord's right of re entry in the event of the tenant not entering into a fresh arrangement They also spoke of the tenancy as *sarasars* (temporary) The lower Appellate Court upon the materials held that the tenure was considered by the landlord to be heritable that it was permanent but not transferable and that the rent was liable to enhancement Held on second appeal that the question whether the tenure was permanent or not was not merely one of fact That at any rate it depended to a large extent on the construction of the kabuliats the question for instance whether the word *sarasars* referred to the variability of the rent or the nature of the tenancy being one of construction That the tenure was neither permanent nor heritable *Per WALKSLEY J*—The tenant who claims a hereditary right under a document which does not contain the words from generation to generation has a heavy onus to discharge That the temporary character of the tenancy was not limited only to the amount of rent That repeated renewals of an agreement do not change its character and regard should be had to the later rather than the earlier kabuliats and the fact that during a period of 70 years only four kabuliats were passed and the settlement made again and again with the same man or his successor in interest did not alter the nature of the agreement *PROBYOT KUMAR TAGORE v SARAT CHANDRA DAS* (1917) 21 C W N 809

2. ————— Decree for rent of a tenure against the recorded tenants who are some of the several tenants of the tenure effect of—Unrecorded tenant not a party is bound by rent sale Where a landlord obtained a decree for arrears of rent of a tenure against all the tenants who were the recorded tenants except one who after acquiring title by purchase never got his name registered in the landlord's *shersha* Held that the entire tenure and not merely the interest of the recorded tenants passed by the sale in execution of such a decree and it was not open to the unrecorded tenant though he was not a party to the rent suit to sue for a declaration of his right on the ground that his share in the tenure did not pass by the sale *PROFULLA KUMAR SEN v SALINULLA BANADER* (1918) 23 C W N 590

3. ————— Uniform payment of rent for less than 20 years before final

TENURE—concld

publication of record of rights but for an aggregate period of over 20 years—Presumption of permanency if arises under Bengal Tenancy Act (111 of 1885) as 35 50 115—Natural presumption—Court when may refuse to enhance rent as inequitable Where it appeared that a raiyat had been holding land as tenant on payment of a uniform rent for over 20 years before the institution of the suit but that there having been a record of rights in respect of the holding the period during which before the final publication of the record of rights the rent had been so paid fell short of 20 years Held that the presumption of fixity of tenure under s 50 of the Bengal Tenancy Act did not arise Where a tenancy appeared to have been created only 40 years ago Held that uniform payment of rent during this period did not raise a natural presumption that the tenancy was a permanent one *GURU CHARAN NANDI v SARAB ALI* (1919) 23 C W N 1041

TENURE HOLDERS

———— liability of—
See REVENUE SALE I L R 37 Calc 559

TERMINATION OF SERVICE

See SCHOOL MASTER I L R 44 Calc 917

TERRITORIAL JURISDICTION

See DIVORCE I L R 40 Calc 215

TESTAMENTARY AND INTESTATE JURISDICTION

See PROBATE I L R 37 Calc 387

TESTAMENTARY CAPACITY

See PROBATE I L R 99 Calc 245
See WILL I L R 47 Calc 1043

TESTATOR

———— capacity to execute will—
See WILL I L R 88 Calc 855
———— domiciled abroad—
See LIMITATION L R 43 I A 113
20 C W N 833
———— money belonging to but not known to him—
See WILL I L R 38 Mad 109

THAK MAPS

———— Evidentiary value of—
See PUBLIC NAVIGABLE RIVER 24 C W N 639
See REVENUE SALE LAW S. 37 15 C W N 706
See LAKHESAJ LANDS I L R 45 Calc 574

———— Jungles possession of presumption as to—Ex parte entry in thakbuts records without enquiry value of Certain plots of land were entered in the thakbuts maps as belonging to a certain Pergunnah in which the plaintiff claimed them to be and no question of the do

THAK MAPS—contd

markation of boundary of these lands was raised in any of the many disputes which arose between the parties during the survey proceedings. It was further found that the title to those lands was with the plaintiffs. *Held* that having regard to the nature of the property which was jungle land possession must be presumed to have been all along with the plaintiff. A mouzah appertaining to Pergunnah Pukhuma had not been separately measured or *thaked* in the course of the survey proceedings. On a statement being called for from the person in possession of the mouzah for its non appearance on the *thak* map his agent appeared and stated that the mouzah was wholly covered with jungle that it being situated by the side of Garhgohali which was defendant's property had been measured along with it and that 10 gundas share of Garhgohali should be taken for that mouzah. Proceeding on these allegations the Deputy Collector made an entry to that effect. A petition made by the defendant's Mukhtar denying the allegations of the plaintiff's agent was rejected as the matter had been disposed of. With the help of this disputed entry the Subordinate Judge proceeded to mark off a certain area as belonging to the plaintiff as part of the said mouzah. The High Court set aside that decision. *Held* that as the decision of the Subordinate Judge was based on the entry made *ex parte* and without enquiry and on an allegation of the zemindar's agent which was immediately contradicted the decision of the High Court was correct. **JAGDINDRA NATH ROY v. HEMANTA KUMARI DEBI (1911)** 15 C W N 887

Value of as evidence of title and possession. *Thak* and survey maps may be presumed to have correctly delineated the boundaries of villages and thus to furnish valuable evidence of possession at the time they were made and consequently also of title. But such presumption fails where the maps were promptly challenged and found inaccurate. **MOHENDRA NATH BISWAS v. SHAMSUNNESSA KHATUN (1914)** 19 C W N 1280

Thakbust maps value of as evidence—Condition of land how far affects value of thak maps.—Map prepared by Government on behalf of private proprietor how proved.—What circumstances must be established before using such map against a party.—**Indian Evidence Act (1 of 1872) ss 74 83 90.**—Applicability to private maps made at the instance of Collector.—**Ss 12 13.**—Admissibility to prove ascertainment of title. **S 90** of the Indian Evidence Act only shows that a document was prepared at the time at which it purports to have been made by the officer whose signature it bears but it does not establish the accuracy of the document. The question whether a map is a public document within the meaning of s 74 of the Evidence Act is *prima facie* a question of fact and the fact that a map was treated as a public document in a previous suit to which the plaintiff was not a party would not make it binding as such on the plaintiff. A map prepared at the instance of the Collector when in charge of a private estate is a private document and s 83 of the Evidence Act has an application to such map. So before such a map can be used against a party not only must its accuracy be strictly proved but other circumstances which may affect

THAK MAPS—contd

its evidentiary value such as the purpose for which the map was prepared must be duly considered for a map prepared for one purpose cannot be used for a totally different purpose and in considering the value of such maps the Courts must consider how far the boundaries now in dispute had been in contemplation when the map was prepared. Such a map unless proved to have been prepared with the assent or at any rate the knowledge of a party is of very little value as evidence against such party and in the absence of signature of the parties on the map the mere recital on the map that other persons had notice of the proceedings would not be conclusive. Although the evidentiary value of a *thak* map would be affected by the condition of the lands at the time of the survey the map cannot be ignored merely on a general allegation that the lands were jungle at the time without considering whether it was still capable of being surveyed. Possession of jungle lands is *prima facie* with the person whose title is established. **PRIYA NATH MAJUMDAR v. MAHENDRA KUMAR MITRA (1911)** 16 C W N 817

Value of as evidence.—*Thak maps of 1852 if to be presumed as unreliable.* *Thak* maps have always been considered by Courts as good evidence and although the value of a *Thak* map depends upon its accuracy there is no presumption that *Thak* maps must be inaccurate. Opinion of Captain Hirst in his Notes on the old Revenue Surveys and *Jana dindra Nath Roy v. Secretary of State for India L R 30 I A 44 s c I L R 30 Cal 491 7 C W N 193* referred to. **KRI HNA HALYATI DAS v. R. BRAUNFELD (1915)** 20 C W N 1028

If evidence of conditions at Permanent Settlement—Second appeal. *Chitta of lands escheated to Government if public document.* It cannot be laid down broadly that a *thakbust* map prepared in 1865 is no evidence of the state of things at the Permanent Settlement. Where in deciding whether certain lands in dispute were included within one estate or another at the time of the Permanent Settlement the lower Appellate Court relied on the *thakbust* map. *Held* that the finding could not be questioned in second appeal. A *chitta* prepared by Government of lands which had escheated to it stands on the same footing as a *chitta* prepared in respect of lands in which Government is interested as a proprietor. Such a *chitta* is not a public document. **RAJINI v. NARENDRA KRI HNA POY (1915)** 17 C W N 151

THAK SURVEY

Decision of Survey authorities arrived at in the presence of parties concerned value of as evidence when acquiesced in by parties and made basis of important transactions. Such decision if estoppel. Where the question whether certain lands were included within a *makhat* was in 1849 in the course of a *Thak* survey determined by the Survey authorities in a proceeding in which opportunity had been given to all parties interested of making their claims raising their objections and producing their evidence. *Held* that though the parties were not estopped by the decisions arrived at there were obviously of high authority and when acquiesced in by all the parties interested for a length of time and

THAE SURVEY—contd.

made the basis of important transactions should not be disturbed unless upon the clearest proof that they were erroneous. **SURJA KANTA ACHARYA v SARAT CHANDRA ROY CROWDERY (1914)**
18 C W N 1281

THEATRES

See BYE LAWS I L R 47 Calc 547

THEATRICAL PERFORMANCE.

Keeping open a theatre after prescribed hour—Joint proprietors liability of—Penalty for offence or on offender—Calcutta Municipal Act (Beng III of 1899) s 559 (5a) 561—Bye laws 53 and 55—Liability of bye law 55 Bye law 55 framed under s 559 (5) of the Calcutta Municipal Act (Beng III of 1899) is not ultra vires by reason of s 561 thereof and each of the joint proprietors of a theatre is liable to a fine to the extent of Rs 20 for keeping it open after 1 a.m. in contravention of bye law 55. **Amrita Lal Bose v Corporation of Calcutta 21 C W N 1009** overruled **Peg v Shourdar Ghosar 7 Bom. H C P 99** distinguished **Rex v Clark 2 Crisp 610** **Queen v Littlechild L R 6 Q B 293** referred to **Per MOOKERJEE J**—As a general principle of criminal law all who participate in the commission of an offence are severally responsible as though the offence had been committed by each of them acting alone; consequently each must be separately punished. **AMRITA LAL BOSE v CORPORATION OF CALCUTTA (1917)**
I L R 44 Calc 1025

THEFT

See AGRA TENANCY ACT (II OF 1901)
s 124 I L R 38 All 40

See AUTREFOIS ACQUIT

I L R 45 Calc 727

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 39¹ 123

I L R 37 Bom 178

See CONVICTION 3 Pat L J 354

See LURKING HOUSE TRESPASS
I L R 44 Calc 358

See PENAL CODE ss 378 to 382

Penal Code s 379

1 —Theft—Claim of title by the accused—Conviction for theft illegal unless the Court finds the claim to be a pretence. In a case of alleged theft of fish from a tank which the accused claimed to have been in their possession and not in the complainant's. Held that if the accused asserts a claim to the thing alleged to have been stolen by him he should not be convicted unless the Court is in a position to say that the claim is a mere pretence. **DHIRENDRA MOHAN GOSSAIN v EMPEROR (1909)**
14 C W N 408

Penal Code s 379

2 —Dishonest intention—Retaining passenger's umbrella to make him pay fare. The accused an employee under a Steamer Company who's business it was to check the tickets of passengers asked to see the complainant's tickets but the complainant not having got one the accused took possession of his umbrella as security that he might be compelled to pay his fare. Held that there being no suggestion that the accused intended either to get any wrongful gain to himself by compelling payment of the fare or to cause any wrongful loss to the com-

THEFT—contd

plainant who was bound to pay his fare a conviction for theft was wrong. **MATABBAR SHEIKH v EMPEROR (1910)**
14 W N 936

3. —Thrift of fish in irrigation tank—Fish offence of theft of—Dependent upon power of fish to leave the tank. Although the capture of fish in an ordinary irrigation tank will not of itself amount to theft yet if the water in the tank becomes so low as to permit the fish leaving the tank the offence may be committed. **Subba Peddai v Munoor Ali Sahib I L P 24 Mad 81** explained **Per SUBBIAH SERRAI (1913)**
I L R 36 Mad 472

4. —Penal Code (Act XL of 1860) s 370—Custom plea of—Conviction under s 379 unsustainable without the finding that the accused had no right to the subject matter of the theft. Where the accused is charged with theft he cannot be convicted of the offence of theft or of causing wrongful gain or wrongful loss without a clear finding that he had no right to the subject matter of the theft. **HARENDRA NARAYAN DAS v RAMJAN KHAN (1913)**
I L R 41 Calc 433

5. —Dishonest intention—Bond fide claim of right to property or mere pretence—Proper question for consideration by the Criminal Courts—Criminal trespass—Evidence of complainant's possession illusory—Penal Code (Act XL of 1860) ss 379 447. The removal of property in the assertion of a bond fide claim of right though unfounded in law and fact does not constitute theft. But a mere colourable pretence to obtain or keep possession of property does not avail as a defence. Whether the claim is bond fide or not must be determined upon all the circumstances of the case and a Court ought not to convict unless it holds that the claim is a mere pretence. **Pex v Hall 3 O & P 409** **Rex v Wade 11 Cox 549** **Pex v Jenner L J M C (O S) 79** **Peg v Leppard 4 F & F 51** **Nassib Choudhry v Hannoo Choudhry 15 W P Cr 47** **Ruanoo Singh v Kali Churn Misser 16 W R Cr 18** **Mahomed Jan v Khadi Sheikh 16 W R Cr 75** **Khetter Nath Dut v Indro Jaha 16 W R Cr 78** **Emress v Budh Singh 1 L P 2 All 101** **In re Madhab Hari I L R 15 Calc 390a** **Pandita v Pakimulla Akundo I L R 27 Calc 501** **Emperor v Sabalsang 4 Bom J R 936** **Algarva saumi Teran v Emperor I L R 28 Mad 304** **Hari Bhurmal Emperor 9 C W N 974** followed. Held upon the facts that even if the accused had failed to establish his title and possession to the land it was a case of a bond fide dispute and that the conviction of theft was bad. **ARFAN ALI v EMPEROR (1916)**
I L R 44 Calc 66

THEKADAR

See OUDH RENT ACT (XXII OF 1886)
s 3(10) AND CH VIIA
I L R 40 All 541

See USUFRUCTUARY MORTGAGE
I L R 40 All 429

THIRD JUDGE

—duty of—

See PRINTING PRESS FORFEITURE OF
I L R 38 Calc 202

THIRD PARTY

appearance of—

See Costs

I L R 48 Cal 352

Practice—Third party procedure—Directions refusal to give—Discretion
 The general principle on which a Court will issue third party directions is—(i) That there must be a clear case of contributions or indemnity from the third party (ii) that all the disputes arising out of a transaction as between the plaintiff and the defendant and between the defendant and a third party can be tried and settled in one suit and (iii) that in cases of contract and sub contract it must appear that the contract between the plaintiff and the defendant has been imported into the contract between the defendant and the third party Under the rules now in force the third party cannot be cited so as to be bound by the trial of one particular question which is identical as between the plaintiff and the defendant and as between the defendant and the third party *Baxter v France* (No 2) [1895] 1 Q B 591 followed *W & A GRAHAM & Co v CHUNILAL HARILAL & Co* (1909) I L R 34 Bom 423

THIRD PARTY NOTICE

See LETTERS PATENT 1865 CL 15

I L R 45 Bom 428

High Court Rules Original side Chapter VIII Rules 127 to 133—Defendant claiming to be indemnified by third party—Third party residing out of the Original Jurisdiction of the High Court—Notice served on third party by registered post—Chamber Judge issuing a summons for directions after the issue of third party notice—Summons made absolute and order for directions given—Leave of the Court not obtained—Letters Patent cl 12—Res judicata—Civil Procedure Code (Act V of 1908) s 11 Ex 11—Practice and procedure In a suit filed by the plaintiffs for recovering money due in respect of certain cotton contracts the defendant pleaded that he was entitled to be indemnified by one K. E. S. against the claim made by the plaintiffs The defendant thereupon obtained an order from the Chamber Judge for the issue of third party notice to be served on K. F. S. by registered post to his address at Peshawar Subsequently a Chamber Summons was issued for an order for third party directions K. E. S. put in an affidavit stating that the High Court had no jurisdiction to try the question between him and the defendant The Chamber Judge made the summons absolute and ordered that the third party should file his written statement and the question of liability of the third party to indemnify the defendant should be tried at the trial of the action but subsequent thereto The third party thereafter put in a written statement containing *inter alia* that the High Court had no jurisdiction as between him and the defendant inasmuch as the whole cause of action had arisen outside its jurisdiction and that if part of the cause of action be held to have arisen within its jurisdiction leave to sue under cl 12 of the Letters Patent had not been obtained The trial Court held that it must be assumed from the order made on the summons for directions that the Chamber Judge decided the point of jurisdiction against the third party and that the question was therefore *res judicata* On merits the Court passed a decree against the third party holding

THIRD PARTY NOTICE—contd

that the defendant was entitled to succeed on the contract of indemnity The third party appealed—*Held* reversing the decree of the trial Court (1) that the question of jurisdiction was not *res judicata* inasmuch as the Chamber Judge never in fact decided that the Court had jurisdiction to deal with the third party and that accordingly the question remained to be decided at the hearing of the action (2) that the effect of the order on the summons for directions was that the third party came into the suit as if he was an added party defendant and that it was open to him at the trial to raise any issues which an added defendant was entitled to raise one of which being whether leave ought not to have been given under cl 12 of the Letters Patent as he was residing outside the jurisdiction (3) that it could not be assumed that leave under cl 12 of the Letters Patent was given merely because the order for the issue of third party notice directed that the notice should be served by registered post to the address of the third party at Peshawar (4) that it must be proved that an application was made to the Judge under cl 12 of the Letters Patent and that if the Judge made the order it should appear clearly on the face of it that he was giving leave under cl 12 of the Letters Patent *Per MACLEOD C J*—When a defendant asks the Court to issue a third party notice in a case in which leave has to be obtained under cl 12 of the Letters Patent then an application should be made to the Judge for such leave to be endorsed on the notice in the same way as it is endorsed in a plaint *HARISH ELANI SETHI v SHREE ANAND* (1920) I L R 45 Bom 24

THREATENING LETTER TO COURT

See UNPROFESSIONAL CONDUCT

I L R 43 Cal 685

THUMB IMPRESSIONS

evidentiary value of—

See SECRETS FOR GOOD BEHAVIOUR

I L R 43 Cal 1193

Evidence—Taking of thumb impression out of Court without objection made—Admissibility of such impression in a subsequent trial for giving false evidence—Evidence Act (I of 1872) s 132 and proviso—Penal Code (Act XLV of 1860) s 193 Where a Magistrate believing that the complainant had given false evidence in the course of a trial by denying the fact of a previous conviction had his thumb impression taken out of Court for the purpose of identification in a future prosecution under s 132 of the Penal Code and there was nothing to show that the latter had objected to the taking of it *Held* that the thumb impression was admissible in a subsequent trial for giving false evidence and that the proviso to s 132 of the Evidence Act was not applicable inasmuch as (i) the taking of such an impression was not equivalent to asking a question and receiving an answer (ii) no effect was made to the taking of it and (iii) it was not taken in the course of a trial *Queen v Cephal Doss* I L R 3 Mad 273 and *Shree Krishna v Queen Mary* I L R 71 Cal 3 referred to *TRIVEDI v JAYARAM* (1911) I L R 38 Cal 418

TICCA TE, AYT

See TENANT 23 C W N 201

TIDAL RIVER

See FISHERY I L R 42 Calc 459

TIMBER

— appropriation by tenant—

See CUSTOM 10 C W N 1188

— computation for a land acquisition
How divisible and whether it comprises
bamboos—

See LAND ACQUISITION ACT 1894
6 Pat L J 127

TIME

See ARBITRATION I L R 46 Calc 1059

— computation of—

See LEAVE TO APPEAL TO PRIVY COUNCIL
I L R 42 Calc 35

— essence of contract—

See CONTRACT (IX OF 1872) s 5
I L R 38 Bom 77

— extension of, for paying mortgage
amount

See CIVIL PROCEDURE CODE (ACT V OF
1908) O XXXIV Pt 3 8
I L R 39 Mad 882

— when of the essence of a contract—

See CONTRACT ACT (IX OF 1872) s 55
I L R 40 Bom 289

TIME BARRED DEBT

See CONTRACT ACT (IX OF 1872) ss 126
128 I L R 42 Bom 444

See HINDU LAW—JOINT FAMILY
I L R 41 Bom 347

TITLE

See BOMBAY CITY IMPROVEMENT ACT
1898 I L R 36 Bom 203

See CHAUDHARI CHAKRABARTI LANDS
I L R 44 Calc 841

See FRAUD I L R 37 Bom 217

See GUJARAT TALUKDARS ACT (BOM ACT
VI OF 1888) s 31
I L R 37 Bom 380

See INSTRUMENT OF TITLE
I L R 40 Bom 630

See LAND ACQUISITION
20 C W N 1028

See LANDLORD AND TENANT
I L R 45 Calc 756

See LIMITATION I L R 37 Bom 231

See MADRAS LAND ENCROACHMENTS ACT
(III OF 1905) I L R 38 Mad 674

See PROVINCIAL SMALL CAUSES COURTS
ACT (IX OF 1887) s 10 33
I L R 37 Bom 675

See PUBLIC DRAIN
I L R 44 Calc 669

See REVIEW I L R 40 Calc 140

TITLE—contd

See SMALL CAUSE COURT
10 C W N 288

See TRADE MARK I L R 42 Calc 262

— covenant for—

See SALE DEED I L R 38 Mad 1171

— evidence of—

See REGISTRATION ACT (XXI OF 1908)
s 49 I L R 30 All 728

— impeachment of—

See KHOTI SETTLEMENT ACT (BOM ACT I
OF 1840) s 10
I L R 38 Bom 700

— priority of—

See COMPANY I L R 36 Bom 334

— proof of—

See CRIMINAL PROCEDURE CODE s 14
I L R 34 Mad 138

See FISHERY I L R 42 Calc 489

See VENDOR AND PURCHASER
I L R 41 Bom 300

— question of—

See LIMITATION ACT (V OF 1877) ss 5
AND 7 I L R 34 Bom 589

See PUBLIC NUISANCE
I L R 42 Calc 158

— suit for—

See EVIDENCE ACT (I OF 1877) s 49
I L R 41 All 154

See LIMITATION ACT (IX OF 1908)
SCH I Art 190 I L R 41 All 509

See SPECIFIC RELIEF ACT (I OF 1877)
s 42 I L R 38 All 312

— to Subsequently Acquired Pro
perty—

See UNDISCHARGED BANKRUPT
I L R 47 Calc 961

1 ——— Priority of Title—Mortgagor
and Mortgagee—Deposit of Title Deeds—Right to
decree for Foreclosure—Equity of Redemption—Sale
of right title and interest of Mortgagor at Court
sale in execution of decree. This was a case of con
tested title to two plots of land near Moulmein.
The title of the plaintiff (appellant) was that by
deed of 26th July 1890 (Ex B) the property was
mortgaged to a firm who by deed of transfer
dated 8th November 1894 (Ex A) assigned the
mortgage debt and transferred the security for it
to one A P and he in October 1895 deposited the
title deeds with the plaintiff by way of equitable
mortgage. In 1901 the plaintiff enforced the mort
gage by suit against A R and on 31st December of
that year obtained a decree for sale in default of
payment in pursuance of which the right title
and interest of A R in the property comprised in
the above title deeds were sold by auction and the
plaintiff who had by leave of the Court become the
purchaser a certificate to that effect under the hand
and seal of the Court being endorsed on Ex A.
The other title was set up by a person who was not
one of the original defendants (the mortgagor of
1890) but a person added as a party defendant by
consent subsequently to the filing of the suit. He
stated that after the assignment to A P of the

7443

[illegible]

I have been thinking about you a great deal lately
 and wondering how you are getting on. I hope
 you are well and happy. I am still the same
 old man, but I feel much better now than I did
 some time back. I have been able to get out
 more often and enjoy the fresh air. I wish
 you could see me now. I would like to tell
 you all the news. I am sure you would be
 interested. I will write again soon.
 Your affectionate friend,
 John Smith

1753-

[illegible]

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TITLE—contd

have been dismissed on his admission CHANDRIKA BAKSHI SINGH v. INDAR BIKRAI SINGH (1916) I L R 35 All 440

4 ———— E stoppel—Grantor and Grantee—*E ngal Tenancy Act (1111 of 1855) s 55 sub s (1) construction of—Contravention of the section effect of—E stoppel its application* The title of a grantee who can fall back upon prior possession a tenant or otherwise cannot be defeated by mere proof of contravention of s 53 of the Bengal Tenancy Act and as between grantor and grantee the rule of estoppel applies when the elements essential to attract its operation are proved to exist. The creation of complete relation of landlord and tenant in law estops the tenant from denying the validity of the title which he has admitted to exist in the landlord. The estoppel arises not by reason of some fact agreed or assumed to be true but as the legal effect of carrying the contract into execution of the tenant taking possession of the property from the hand of the lessor *Bhavantha Deva v. Himmata Bidjalar* followed 24 C L J 103. It is no more open to the defendant than to the plaintiff to prove facts contrary to the allegations which formed the basis of the contract after the contract has been carried into execution and the contracting parties have enjoyed benefits thereunder *Madan v. Jai, G C W 377 Gopal Mondal v. Eshun Chund v. Banjee, I L P 99 Calc 143 Tamiyudu v. Angar Houddar I L R 36 Calc 256 Janaki Nath v. Prabhasini 22 C L J 99 Lani v. Muhamad M C W 948 Gonesh v. Thanda 94 C L J 539 referred to DAMAYDAS BHATTACHARJEE v. VILMAHADAB SARA (1916)*

I L R 44 Calc 771

5 ———— Benami purchase—Purchase giving right to get a title but not giving actual title—Transfer by true owner—Action of father making transfer creating estoppel binding son—Conduct causing change of position in transaction—Onus of proof on person asserting minority of transferor The plaintiff (respondent) purchased the village of Badam in the zamindari of the late Raja of Deo from R a dancing girl the natural daughter of the Raja, who was the father of the defendant (appellant). In 1896 the Raja's estate being heavily involved in debt the provisions of the Chota Nagpur Encumbered Estates Act (VI of 1876 as amended by V of 1881) were extended to Deo by a special Act and a manager was appointed who acting under the powers given him by the Act sold the village by public auction and it was purchased by K who it afterwards appeared was a benamidar for the Raja who provided the purchase money. No conveyance of the village was ever made by the manager to K. When the management came to an end in 1896 and the estate was restored to the Raja he caused L the son of A (who had died) to execute a conveyance of Badam in favour of P in order to benefit her and M her mother L merely acting on the command of the Raja. R being then a minor put in through M a petition for registration and mutation of names and the Raja himself assisted her asking that her petition might be granted and her name be inserted on the register and stating that he had no objection whatever to that being done and R's name was accordingly entered on the register as proprietor of the village. In October 1898 the Raja died and his son being a minor the estate

TITLE—contd

came under the Court of Wards whose manager in 1899 summarily ejected I who was in possession and conveyed the village to the surviving widow of the deceased Raja as being *pur* property and descendible from Rani to Pami. An application by her for mutation of names was opposed by R and rejected. The Rani thereupon filed a suit against A and the appellant basing her case on the allegation that A was benamidar for her. But the Subordinate Judge held that he was a benamidar of the late Raja and dismissed the suit a decision which was affirmed by the District Judge. In 1903 P executed the conveyance in favour of the plaintiff who brought the present suit against R and the appellant for declaration of title and for possession. The defence was a denial of R's title to convey and a denial of her power to do so as being a minor. The Subordinate Judge upheld both defences and dismissed the suit. The High Court reversed that decision and gave the plaintiff a decree. *Held* (affirming that decision) that the onus of proving R's minority was on the appellant and he had not established his assertion. *Held* also that the sale by auction though it gave K a right to get a title did not give him an actual title. Both Courts found that K had failed to prove he was a true purchaser for value. When therefore L executed the conveyance in favour of R the late Raja was the true owner. A was a trustee for him and the trusteeship was all that L succeeded to. The late Raja too was proprietor of the estate of which Badam was a part so that if by renunciation or limitation the right of K to get a conveyance became extinct the full right and title were in the late Raja; and not only did he cause I to execute the conveyance but he actually assisted R to get registration of her name as owner. By so doing he caused her to change her position for by such registration she became bound to the Government for all the liabilities attaching to the registered holders of immovable property. If the late Raja had lived and attempted to regain the property that conduct would have estopped him from doing so. The appellant was his son and succeeded by gratuitous title and he could not therefore do what his father would have been unable to do. **RAJA OF DEO v. ABDULLAH (1918)**

I L R 45 All 909

6 ———— Possession inference from as regards title Where plaintiff proves that he is in possession for a number of years and has been paying rent to the admitted landlord the legal inference is that the plaintiff is in possession by virtue of a title derived from the landlord although the plaintiff may have failed to prove the specific title on which he bases his claim. The plaintiff is entitled in such a case to a decree as against a defendant who has no title to possession. **ADHAR CHANDRA PAL v. DIBAKAR BHUIAN (1913)**

I L P 41 C.L. 394

7 ———— Suit for declaration of title—Benami purchase at an execution sale—Asigne of purchaser—Civil Procedure Code (Act I of 1908) s 66 317 In a suit for declaration of title against a purchaser at an execution sale and his assignee where the sale took place and was confirmed before 1st January 1909 but the sale certificate was issued later. *Held* that the suit against the assignee was good and the provision of s 317 of the Civil Procedure Code (Act XIV of 185) and not of s 66 of the Civil

TITLE—contd

Procedure Code (Act V of 1908) would apply *Tanwarbars v Sankar Lal* 7 C L J 351 *Brojo Nath v Jageswar* 9 C L J 316 *Dullada Sundari v Srimanto Joardar* 1 L P 561 95 *Theyyare Iyer v Kochan* 1 L P 21 *Mad 7 Si v Kankun v Bhagat* 1 L P 21 411 196 refused to. In the absence of clear words a statute will not be construed so as to take away a vested right of action acquired before it was passed *Manjhoori v Alal* 17 C L J 316 *Buddha Koir v Hafila* 10 C L J 213 *Gopwar v Jagan Chandra* 1 L P 41 *Cale 11 5 1909* referred to *PROBODHA NATH PAL CHOWDHURI v MONI MOHAI PAL CHOWDHURI* (19-0)

1 L R 47 *Cale*. 1108

8 ——— *Jur Civil Procedure Code (Act V of 1908) s 66—Bani purchase at auction—Old Code (Act XIV of 1859) s 317—A statute whether prima facie prospective. On the 4th or 11th August 1903 the property in suit was purchased in the name of defendant No 1 the plaintiff's son at an auction sale held in execution of a money decree. The sale was confirmed on the 30th July 1906 and a sale certificate issued to defendant No 1 on the 23rd April 1909. In March 1911 defendant No 1 agreed to sell the property to defendant No 2 who commenced a suit for specific performance of the contract on the 9th August 1912 as a result of which defendant No 2 conveyed the property to defendant No 2 in September 1st. The plaintiff brought the present suit for declaration of his title to the property. Both the courts held that the suit was barred by s 66 of Civil Procedure Code. *Held per CREAVES J—If the plaintiff's right of action had accrued prior to the coming into force of the present Code on the 1st January 1909 then having regard to s 6 of the General Clauses Act his right would not have been affected by the wider phraseology of s 66 as compared with s 317 of the old Code. A statute is prima facie prospective and does not interfere with existing rights unless it contains clear words to that effect or unless having regard to its object it necessarily does so. But no right of action accrued prior to March 1911. It is one thing to say that legislation unless expressly made retrospective shall not affect an existing vested right be it of suit or of some other right but it is quite another thing to say that the same principle applies to a possible right of suit which may arise in future which is not a vested right. *Held per TREVOR J—If defendant No 2 took with notice of plaintiff's claim the delay made by defendant No 1 in taking up his sale certificate cannot place defendant No 2 in a better or more advantageous position than he would have occupied under the Code of 1859. PRAMATHA NATH PAL CHOWDHURI v SATEENATH CHATTERJEE* (1919)**

23 C V 4 604

TITLE—contd

The defendant however failed to prove that he had been in adverse possession of the land for more than twelve years. *Held* that the plaintiff was entitled to succeed simply on the strength of the prima facie title as zamindar. It was not necessary for him to go further and prove that he had been in actual possession at some period within twelve years previous to the commencement of the suit. In cases to which art 144 of the first schedule to the Indian Limitation Act 1908 applies, the defence being a title acquired by adverse possession for more than twelve years it is not necessary for the plaintiff as in cases falling under art 142 to prove that he has been in possession at a period within twelve years from the commencement of the suit. It is sufficient if he establish a prima facie title and it is then for the defendant to make good his plea of adverse possession. *Secretary of State for India v Chaitani Pama Pao* 1 L R 39 *Mad 81* followed. *Inayat Hussain v Ali Hussain* 1 L P 20 47 250 distinguished from *JAS CHAND BARADAR v GURWAR SINGH* (1919)

1 L R 41 *ALL* 699**TITLE DEEDS**See LETTERS PATENT (FO-BAY) 1 L R 37 *Bom* 421See MORTGAGE 1 L R 43 *Cale* 1052

—— deposit of—

See MORTGAGE 1 L R 43 *Cale* 895See TRANSFER OF PROPERTY ACT (17 OF 1902) s 59 1 L R 28 *Bom* 372**TITLE OF DONEE.**See CONTRACT ACT s 19 1 L R 25 *Bom* 37**TITLE PARAMOUNT**

—— ademption by—

See RESTITUTION 1 L R 43 *Cale* 454**TODA GIRAS ALLOWANCE.**See PERSONS ACT 1871 ss 6 & 11 1 L R 34 *Bom* 154**TOPT**See CONTRIBUTORY NEGLIGENCE 1 L R 54 *Bom* 429

See EASEMENT 1 L R 53 47 519

See FIDELITY

See LIMITATION 1 L P 40 *Cale* 109See MARRIAGE CONTRACT OF 1 L P 29 *Bom* 622See PRINCIPAL AND AGENT 1 L R 43 *Cale* 511

—— conspiracy to break a contract

See DAMAGE 1 L R 41 *Bom* 157

1 ——— Public nuisance—Care of public to do it properly—Special damage—That a clogging a highway and thereby rendering it necessary for a person to make a detour is such a special damage as would justify a person in bringing a suit for removal of the obstruction. *Hart v Dyett* 13 *Jones* 7 parts 1 *C* and 1 *supra*

TORT—contd

v The Bristol Water Works Company Ltd & 569 referred to **PAN CHANDRA v JOTI PARSAD** (1910) **I L R 53 All 287**

—Overflow of water into plaintiff's land—from tank—Belonging to stranger caused by defendant lowering level of his own land to make it culturable—Plaintiff's right to injunction and damages—Where the defendants with a view to make their land culturable lowered its level with the consequence that water in a tank belonging to a third party passed to that land and subsequently overflowed into lands belonging to the plaintiff *Held* that notwithstanding the plaintiff had been infringed by the act and the plaintiff was not entitled to a mandatory injunction to compel the defendant to raise an embankment in order to prevent this overflow or to damages for harm caused by such overflow *Rylands v Fletcher* **L R 3 H L 330** distinguished *Smith v Kenrick* **7 Q B 515** *Yld v London and W Ry Co* **L R 10 Ex 4** referred to Where the owner of land without wilfulness or negligence uses his land in the ordinary manner though mischief thereby accrues to his neighbour he is not liable for damages but if with a view to use the land in an unusual manner he brings upon the land water which would not naturally have come upon it he will be liable for damages for the escape of the water into the land of his neighbour *Hodgson v Mayor etc of York* **28 L T 836** *Chesmore v Richards* **7 H L Cas 349** relied on **KENABAM ARUNIL v SRINIDHAR CHATTERJEE** (1912) **18 C W L 875**

3 —Negligence of servants of the Public Works Department—Suit against the Secretary of State for India in Council for damages if maintainable—Stacking of gravel on a military road—Making and maintenance of roads—Governmental or Sovereign function—nature of—Non liability of East India Company and Secretary of State for acts done in exercise of Sovereign powers—Exemptions—English and American Law Plaintiff sued the Secretary of State for India in Council for damages in respect of injuries sustained by him in a carriage accident which was alleged to have been due to the negligent stacking of gravel on a road which was stated in the plaint to be a military road maintained by the Public Works Department of the Government The defendant pleaded a general denial of liability *Held* that the plaintiff had in law no cause of action against the Secretary of State for India in Council *Per WALLIS C J*—In respect of acts done by the East India Company in the exercise of its sovereign powers it could not have been made liable for the negligence of its servants in the course of their employment The provision and maintenance of roads especially a military road is one of the functions of Government carried on in the exercise of its sovereign powers and is not an undertaking which might have been carried on by private persons The liability of the Secretary of State for India in Council is similar to that of the East India Company *P & O Co v Secretary of State for India* **5 Bom H C R App 1** followed *Secretary of State for India v Momen* **40 I A 48** referred to and *Vijaya Raghava v Secretary of State for India* **I L R 7 Mad 466** doubted *Per SESHAGIRI AYYAR J*—The analogy of the Crown in England has no application to the Secretary of State for India in Council The principle that the Crown can be sued only for remedies

TORT—contd

contemplated by the Petition of Right is confined in its operation to the United Kingdom and a general liability for torts is dependent upon the law of the particular dominion wherein the action is instituted Under 21 and 22 Vict cap 106 the Secretary of State for India in Council is under the same liability as the East India Company was subject to The East India Company had two distinctive functions which are even to day exercised by the Government of India namely (i) the exercise of sovereign rights and (ii) the carrying on of transactions which could have been carried on by private individuals or trading corporations In the former case the East India Company was generally exempt from liability The distinction between sovereign power and powers exercisable by private individuals is that in the former case no question of consideration comes in whereas the essence of the latter is that some profit is secured or some special injury is inflicted in the exercise of the individual rights The making and maintenance of roads is a Government or sovereign function English and American Law on subject considered **THE SECRETARY OF STATE v COCKEPAFT** (1914) **I L R 89 Mad 351**

4 —Defamation—Suit for damages—Defamatory statement made and published outside British India—Defendant resident in British India—Suit in British India if maintainable—Order of excommunication from caste passed by Raja of Cochin—Communication of to the Karastia of a Temple in British India—Transmission by Karastia to Patamalai—Publication meaning of—Justification A Court in British India has jurisdiction to entertain a suit for damages for a personal tort committed by a person beyond the limits of British India if he resides within the local limits of its jurisdiction at the time of the suit This rule is in accordance with the principles of Private International Law recognized in England and the Code of Civil Procedure (Act 5 of 1908) indicates that the same rule is to be followed by the Courts in British India When the cause of action alleged in a plaint is a personal tort committed outside the local limits of the jurisdiction of the Courts of British India unless the act is wrongful according to the law both of British India and of the place where the act is committed the suit will not be sustainable *The M Mozam* (1876) **P D 107** *The Halley* **L R 2 P C 193** *Phillips v Eyre* **L R 6 Q B 1** and *Carr v Francis Davies & Co* [1902] **A C 116** followed. Publication in regard to libel and slander does not require communication to more persons than one there need not be anything like publication in the common acceptance of the term *King v Burdett* **4 B & Ald 95** and *Pullman v Hill and Co* [1891] **1 Q B 524** referred to Where a subordinate officer received from his superior in the course of his official duty a copy of an order alleged to contain defamatory statements regarding the plaintiff and transmitted the same in his turn (as he was bound to do) to his official subordinate *Held* that he was not liable in damages for defamation against the plaintiff as his action was justified in law **GOVINDAN NAIR v ACHUTHA MENON** (1915) **I L R 39 Mad 433**

5 —Negligence—Municipal liability of—Repair of road—Independent contractor—Heaping of gravel on road without

TORT—cont'd

light—Injury to plaintiff—Dart v. Innes—Statutory bodies liability of—District Municipalities Act (11 of 1881) ss 172 and 173—Madras Motor Vehicles Act (1 of 1907)—Absence of licence effect of—The plaintiff sued the Municipality of Vizagapatam to recover compensation for injuries sustained by him owing to the negligent stacking of gravel in a municipal road which was being repaired by a contractor employed by the municipality. The defendant pleaded non liability under the general law and also on the ground that it had employed an independent contractor for the repair of the road. Held that the municipality was liable to pay damages to the plaintiff for the injuries sustained by him. Per SESAIAH AYYAR J.—In laying and maintaining a road municipalities in this country are not exercising purely sovereign functions and consequently they are liable for malfeasance. The Secretary of State v. Cockcroft 1 L R 39 Mad 321 distinguished. The absence of a provision for payment of damages in the District Municipalities Act which directs the application of the Municipal fund in a particular manner does not affect the right of a person against whom a wrong has been committed by the statutory body to recover compensation for such injury. The fact that the plaintiff did not obtain a licence under the Madras Motor Vehicles Act at the time of the accident did not disentitle him to damages. Although an employer is not ordinarily liable for illegality or neglect on the part of a contractor employed by him there are certain recognized exceptions to the rule namely—(i) Where the employer is aware that the doing of a contract work involved a public danger he ought to see that the contractor so discharges his duty as to avoid such a danger. The Corporation of the Town of Calcutta v. Inneson 1 L R 10 Cal 445 referred to. (ii) Where statutory bodies are entrusted with the performance of a public duty their liability can be shifted to a contractor. Hardakar v. The District Council [1896] 1 Q R 355 referred to. Per Vajpey J.—(i) A statutory body like a municipal council cannot be said to be either the servant or the agent of the Crown unless it is so constituted by the provisions of the Act. (ii) With regard to statutory bodies the liability does not depend on their levying tolls or taxes on account of the work undertaken by them. (iii) S 173 of the District Municipalities Act does not control the provisions of s 172 of the same Act. (iv) Where a statutory authority has power to do something to a road which will make it dangerous while it is being done it is liable for any negligence in the doing of that which has to be done whether the action be that of its own servant or of an independent contractor. MUNICIPAL COUNCIL OF VIZAGAPATAM v. FOSTER (1917) 1 L R 41 Mad 529

6 ———— Trespass—Tree overhanging
of a kind—Right to cut off overhanging branches—
Injunction to remove overhanging branches an
absence of damage. A person is entitled to cut
off the portions of the trees which overhang
his land. He can obtain an injunction to remove
the overhanging portion though he may not be
able to prove any damage. *See* *THE LANCET*
14 SEPTEMBER 1916

Y. L. N. 43 Bom 164
Wrongful assault—Master and
of a Factory Company for
committing it by assault—

TORT—cont'd

The Railway Company not liable for acts of the servants which the Company itself is not authorised to do—*The Indian Railways Act (IX of 1859)* ss 108 121 128 131 132—Arrest of a passenger for pulling the communication chain not authorised by the Indian Railways Act The plaintiff and his wife were third class passengers in one of the defendant Company's trains The plaintiff's compartment which was intended to hold ten passengers became greatly overcrowded at a particular station to the inconvenience and discomfort of the occupants numbering about twenty first After ineffectual efforts to obtain assistance from the guard and the station master at the station the plaintiff stopped the train by pulling the communication chain being afraid that he would be molested by other passengers in the compartment No step was taken to relieve the overcrowdedness of the compartment and the train was re-started When the train had gone some little distance further on its journey the plaintiff again stopped it by pulling the communication chain Thereupon the driver and the guard got down from the train and the driver pulling the plaintiff out of the compartment cuffed and slapped him the guard assisting in the assault The plaintiff was arrested by the driver and the guard at a subsequent station where he was handed over to a station master and after his statement was recorded by the police he was released and allowed to travel to his destination The plaintiff sued the defendant Company in the sum of Rs 3000 as damages for the wilful assault committed by the engine driver and the guard The plaintiff complained that the assault was aggravated having taken place in a public place in the presence of his wife and other passengers in the train in consequence whereof he had to suffer a good deal of public humiliation and mental agony Held (1) that inasmuch as the assault was an incident of the arrest and the defendant Company had no authority under s 109 of the Indian Railways Act to arrest the plaintiff for pulling the communication chain the defendant Company was not liable for asaults committed by its servants (2) that the special provision of s 109 of the Indian Railways Act which expressly provided for a particular kind of obstruction could not be controlled by the more general language of the wider s 121 and 128 of the Act *Foulton v London and South Western Railway Co [1892] 2 Q B 531* followed *Foyl v Great Northern & Sheffield and Lancashire Railway Co [1893] 1 Q B 415* and *Goff v The Great Northern Railway Co [1893] 1 Q B 148* distinguished *Farley v Fyfe [1893] 1 Q B 748* referred to The master is liable where the servant acting in a matter which is within the scope of his authority commits a wrong in the course of his employment committed in a wrongful exercise of the authority vested in him The act itself which constitutes the wrong may be and usually is in excess of the servant's authority but if in that transaction the servant is doing in the master's interests one of the class of acts which the master has authorised him to do then the master is liable *Cresswell v Manchester, Bury, Newton & Oldham Railway Co [1907] 1 L R 43* *Powell v*

7 a _____ Damage in the property
of another caused by the cutting of a hand—

TORT—contd.

tion Where there is a natural outlet for a natural stream no one has power for the safety of his own property to divert or to interfere with its flow and if he does so he is ordinarily liable to pay damages to any one who is injured by his act. The right of a person to protect his land from extraordinary floods extends to the doing of anything which is reasonably necessary to save his property but he cannot actively adopt such a course as might have the effect of diverting the mischief from his own land to the land of another person which would otherwise have been protected. Defendant through fear lest in a season of heavy rainfall the normal outlets to a certain tank on which his land abutted would be insufficient to carry off the surplus water and with the object of saving his own land from possible inundation cut a bund to the maintenance of which the plaintiff had a pre-emptive right and thereby caused certain lands belonging to the plaintiff to be flooded and the crops thereon destroyed. *Held* that the plaintiff had a good cause of action in damages against the defendant. *Malley v Lancashire and Yorkshire Railway* 13 Q B D 131 and *Fam Lal Singh v Jull Dharj Malton I L R 3 Cal 76* referred to. *SANTILLAN v MAESTRO LAL*
I L R 43 All 688

8 ——— **Defamation—Bond fide suspicion by defendant of poisoning—Communication by defendant to his subordinates for inquiry—Privilege absolute or qualified—Absence of actual malice—Liability of defendant** Where the defendant who was the general manager of the estates of the plaintiff's firm under a *bond fide* impression that he had been poisoned at the instigation of the plaintiff expressed his suspicion to two of his subordinates with a view to their making inquiries into the matter. *Held* that the communication was privileged and there being no proof of actual malice the defendant was not liable for defamation in a suit for damages for defamation. *Toogood v Spyring I C M & R 181* followed. Statements made to protect the interest of the speaker and statements made to protect a common interest form distinct heads of privilege. *LESLIE POOTERS v HAJEE FAKIR MOHAMED SAIT (1918)*
I L R 42 Mad 132

9 ——— **Legal Act cannot be—contribution as between joint tortfeasors—False defence whether a tort** An act which is not legally wrongful cannot be treated as a tort. Although the rule of non-contribution between joint tortfeasors exists in India it ought only to apply in cases where the parties are wrongdoers in the sense that they know or ought to have known that they were doing an illegal or wrongful act. The only cases in which it will be enforced are those in which liability arises out of a joint wrong or where the equities of the case demand that the plaintiff shall not recover as where the party sued was merely a formal defendant in the previous suit and not personally interested in the suit. In appropriate cases the liability may be apportioned in unequal shares. There is nothing wrong in a defendant putting the plaintiff to proof of the facts necessary to prove his claim by denying in the written statement the existence of such facts even if such facts are capable of proof to the knowledge of the defendant and the defendant a motive in denying them is malicious. There is a

TORT—contd.

right of contribution between joint defendants in respect to the costs awarded against them and paid by one of them in such a case. *MAHABIR IRASAD v DARBHANGI THAKUR 4 Pat L J 426*

TOUT

See LEGAL PRACTITIONERS ACT s 30
15 C W N 1000
I L R 40 All 153

TOWN NUISANCES

See MADRAS TOWN NUISANCES ACT 1859

TRADE

See HINDU LAW—JOINT FAMILY
I L R 37 Bom 340

See HINDU LAW—MISOP
I L R 34 Bom 72

——— when carried on so as to be a Nuisance—

See CRIMINAL PROCEDURE CODE 1898
s 133
I L R 1 Lah 163

TRADE LICENSE

See LICENSE I L R 47 Cal 809

TRADE MARK

See COUNTERFEITING TRADE MARK
See INJUNCTION 24 C W N 155
——— meaning of—
See PEVAL CODE s 478

1 ——— **Infringement of Trade mark—Essentials necessary to maintain action for** It is a settled law that a dealer in or a manufacturer of a particular article who adopts a name for that article whether the name be a purely fancy name or a descriptive name cannot restrain another dealer from using the same name simply upon and the ground that the article so named has acquired a reputation even though it may be that the public have grown accustomed to buy the article in question only relying on the name and without examining the quality of the article. For a man to be entitled to restrain another from using a particular name with reference to a commodity he must show that the public have grown to associate that particular name with him or as the manufacturer of or dealer in the article. *Barlow v Gobindram I L R 21 Cal 361* referred to. *MOHAMED ESTUR v RAJARATNAM PILLAI (1909)*
I L R 33 Mad 402

2 ——— **Infringement of Trade mark—Registration effect of—Vendor's mark—Passing off action—Injunction variation of** An action for the infringement of a trade mark is maintainable even though the plaintiff be not the manufacturer or selector of the goods but merely a vendor of them. There is no system of registration of trade marks in India which gives a statutory title. In a suit for the infringement of a trade mark the plaintiff claimed the right to be the exclusive user of a flower of a particular design but his evidence was directed to establish that his goods were recognised by the general design of a flower (*ghal warka*) —

TORT—contd

light—Injury to plaintiff—Damages—Statutory bodies liability of—District Municipalities Act (I of 1881) ss 172 and 173—Madras Motor Vehicles Act (I of 1937)—Breach of license effect of The plaintiff sued the Municipality of Vizagapatam to recover compensation for injuries sustained by him owing to the negligent stacking of gravel in a municipal road which was being repaired by a contractor employed by the municipality. The defendant pleaded non liability under the general law and also on the ground that it had employed an independent contractor for the repair of the road. *Held* that the municipality was liable to pay damages to the plaintiff for the injuries sustained by him. *Per SESHAGIRI AYYAR J.*—In laying and maintaining a road municipalities in this country are not exercising purely sovereign functions and consequently they are liable for misfeasance. *The Secretary of State v. Cockerill* [1911] 39 *Mad* 351 distinguished. The absence of a provision for payment of damages in the District Municipalities Act which directs the application of the Municipal fund in a particular manner does not affect the right of a person against whom a wrong has been committed by the statutory body to recover compensation for such injury. The fact that the plaintiff did not obtain a licence under the Madras Motor Vehicles Act at the time of the accident did not entitle him to damages. Although an employer is not ordinarily liable for illegality or neglect on the part of a contractor employed by him there are certain recognized exceptions to the rule namely—(i) Where the employer is aware that the doing of a contract work involved a public danger he ought to see that the contractor so discharges his duty as to avoid such a danger. *The Corporation of the Town of Glasgow v. Inneson* [1910] 10 *Cale* 445 referred to. (ii) Where statutory bodies are entrusted with the performance of a public duty their liability cannot be shifted to a contractor. *Hardaker v. Idle District Council* [1890] 1 *Q B* 33 referred to. *Per Napier J.*—(i) A statutory body like a municipal council cannot be said to be either the servant or the agent of the Crown unless it is so constituted by the provisions of the Act. (ii) With regard to statutory bodies the liability does not depend on their levying tolls or taxes on account of the work undertaken by them. (iii) S 173 of the District Municipalities Act does not control the provisions of s 172 of the same Act. (iv) Where a statutory authority has power to do something to a road which will make it dangerous while it is being done it is liable for any negligence in the doing of that which has to be done whether the action be that of its own servant or of an independent contractor. **MUNICIPAL COUNCIL OF VIZAGAPATAM v. FOSTER** (1917) *I L R* 41 *Mad* 538

■ Trespass—Trees overhanging one's land—Right to cut off overhanging branches—Injunction to remove overhanging branches in absence of damage A person is entitled to cut off those portions of the trees which overhang his land. He can obtain an injunction to remove the overhanging portion though he may not be able to prove any damage. **VISHNU JAGANNATH v. VASUDEO RAGHUNATH** (1918) *I L R* 43 *Bom* 164

7 Wrongful assault—Master and servant—Liability of a Railway Company for wrongful assaults committed by its servants—

TORT—contd

The Railway Company not liable for acts of the servants which the Company itself is not authorised to do—The Indian Railways Act (IX of 1890) ss 108 111 118 131 13—Arrest of a passenger for pulling the communication chain not authorised by the Indian Railways Act The plaintiff and his wife were third class passengers in one of the defendant Company's trains. The plaintiff's compartment which was intended to hold ten passengers became greatly overcrowded at a particular station to the inconvenience and discomfort of the occupants numbering about twenty-five. After ineffectual efforts to obtain assistance from the guard and the station master at the station the plaintiff stopped the train by pulling the communication chain being afraid that he would be molested by other passengers in the compartment. No step was taken to relieve the overcrowding of the compartment and the train was re-started. When the train had gone some little distance further on its journey the plaintiff again stopped it by pulling the communication chain. Thereupon the driver and the guard got down from the train and the driver pulling the plaintiff out of the compartment cuffed and slapped him. The guard assisting in the assault. The plaintiff was arrested by the driver and the guard at a subsequent station where he was handed over to a station master and after his statement was recorded by the police he was released and was allowed to travel to his destination. The plaintiff sued the defendant Company in the sum of Rs. 3,000 as damages for the assault committed by the engine driver and the guard. The plaintiff complained that the assault was a wrongful act having taken place in a public place in the presence of his wife and other passengers in the train in consequence whereof he had to suffer a train in consequence whereof he had to suffer a good deal of public humiliation and mental agony. *Held* (i) that inasmuch as the assault was an incident of the arrest and s 108 of the Indian Railways Act authorised the plaintiff for pulling the communication chain the defendant Company was not liable for as assaults committed by its servants. (ii) that the special provision of s 108 of the Indian Railways Act which expressly provided for a particular kind of obstruct on could not be controlled by the more general language of the Act. *Poulton v. London and South Western Railway Co* [1892] 2 *Q B* 531 followed. *Boyley v. Manchester Sheffield and Lincolnshire Railway Co* [1897] 1 *P 415* and *Coff v. The Great Northern Railway Co* [1898] 1 *Q B* 118 distinguished. *Earle v. Edger* [1898] 1 *A C* 745 referred to. The master is liable where the servant acting in a matter which is within the scope of his authority commits a wrong by exceeding the authority vested in him. The act itself which constitutes the wrong may be and usually is in excess of the servant's authority but if in thus transgressing his authority the servant is doing in the master's interest one of the class of acts which the master has employed him to do then the master is liable. **CHITRA SHANKAR DATASHANKAR v. B. B. and C. I. PATIL** (1917) *I L R* 43 *Bom* 103

7 a Damage to the property of another caused by the cutting of a band—in order to save the tortfeasor from further

TORT—contd

tion Where there is a natural outlet for a natural stream no one has power for the safety of his own property to divert or to interfere with its flow and if he does so he is ordinarily liable to pay damages to any one who is injured by his act. The right of a person to protect his land from extraordinary floods extends to the doing of anything which is reasonably necessary to save his property but he cannot actively adopt such a course as might have the effect of diverting the main chief from his own land to the land of another person which would otherwise have been protected. Defendant through fear lest in a season of heavy rainfall the normal outlets to a certain tank on which his land abutted would be insufficient to carry off the surplus water and with the object of saving his own land from possible inundation cut a bund to the maintenance of which the plaintiff had a prescriptive right and thereby caused certain lands belonging to the plaintiff to be flooded and the crops thereon destroyed. *Held* that the plaintiff had a good cause of action in damages against the defendant. *Willes v Lancashire and Yorkshire Railway* 13 Q B D 131 and *Pam Lal Singh v Lill Dhary Malton* 1 P 3 Cal 76 referred to. **ASHFILLER v MARKED LAL** 1 L R 43 All 688

8 ——— **Defamation—Bond fide suspicion by defendant of poisoning—Communication by defendant to his subordinates for inquiry—Privilege absolute or qualified—Absence of actual malice—Liability of defendant** Where the defendant who was the general manager of the estates of the plaintiff's firm under a bond fide impression that he had been poisoned at the instigation of the plaintiff expressed his suspicion to two of his subordinates with a view to their making inquiries into the matter. *Held* that the communication was privileged and there being no proof of actual malice the defendant was not liable for defamation in a suit for damages for defamation. *Toogood v Spyring* 1 C M D P 181 followed. Statements made to protect the interest of the speaker and statements made to protect a common interest form distinct heads of privilege. **LESLIE ROGERS v HAJEE FAKIR MAHOMED SAIT** (1918) 1 L R 42 Mad 132

9 ——— **Legal Act cannot be—contribution as between joint tortfeasors—False defence whether a tort** An act which is not legally wrongful cannot be treated as a tort. Although the rule of non-contribution between joint tortfeasors exists in India it ought only to apply in cases where the parties are wrongdoers in the sense that they knew or ought to have known that they were doing an illegal or wrongful act. The only cases in which it will be enforced are those in which liability arises out of a joint wrong or where the equities of the case demand that the plaintiff shall not recover as where the party sued was merely a formal defendant in the previous suit and not personally interested in the suit. In appropriate cases the liability may be apportioned in unequal shares. There is nothing wrong in a defendant putting the plaintiff to proof of the facts necessary to prove his claim by denying in the written statement the existence of such fact even if such facts are capable of proof to the knowledge of the defendant and the defendant's motive in denying them is malicious. There is a

TORT—concld

right of contribution between joint defendants in respect to the costs awarded against them and paid by one of them in such a case. **MAHABIR PRASAD v DARBHANGI THAKUR** 4 Pat L J 426

TOUT

See LEGAL PRACTITIONERS ACT 36
15 C W N 1000
1 L R 40 All 153

TOWN NUISANCES

See MADRAS TOWN NUISANCES ACT 1889

TRADE

See HINDU LAW—JOINT FAMILY
1 L R 37 Bom 340

See HINDU LAW—MINOR
1 L R 34 Bom 72

——— when carried on so as to be a Nuisance—

See CRIMINAL PROCEDURE CODE 1898
s 133
1 L R 1 Lah. 163

TRADE LICENSE

See LICENSE 1 L R 47 Cal 809

TRADE MARK

See COUNTERFEITING TRADE MARK
See INJUNCTION 24 C W N 155

——— meaning of—

See PENAL CODE s 479
19 C W N 857

1 ——— **Infringement of Trade mark—Facts etc necessary to maintain action for** It is an established law that a dealer in the manufacture of a particular article who adopts a name for that article whether the name be a purely fancy name or a descriptive name cannot restrain another dealer from using the same name simply upon and the ground that the article so named has acquired a reputation even though it may be that the public have grown accustomed to buy the article in question only relying on the name and without examining the quality of the article. For a man to be entitled to restrain another from using a particular name with reference to a commodity he must show that the public have grown to associate that particular name with him either as the manufacturer of or dealer in the article. *Barlow v Gobindram* 1 L R 91 Cal 361 referred to. **MAHOMED ESTUF v RAJARATNAM PILLAI** (1909) 1 L R 33 Mad. 402

2 ——— **Infringement of Trade mark—Registration effect of—Vendor's mark—Passing off action—Injunction variation of** An action for the infringement of a trade mark is maintainable even though the plaintiff be not the manufacturer or selector of the goods but merely a vendor of them. There is no system of registration of trade marks in India which gives a statutory title. In a suit for the infringement of a trade mark the plaintiff claimed the right to be the exclusive user of a flower of a particular design but his evidence was directed to establish that his goods were recognised by the general design of a flower (ghul varlo) —

TRADE MARK—contd

Held that in the circumstances of the case an assignment had been established between the plaintiff's particular design and the goods sold thereunder and inasmuch as the defendant had adopted the plaintiff's trade mark for his own purposes the plaintiff was entitled to an injunction. Although no specific objection was taken on appeal to the form of the injunction ordered in the Court of first instance which proceeded on the erroneous assumption that the goods sold by the plaintiff were prepared by him a variation should be introduced into the terms of the injunction so as to fit in with the facts as established. *JAMES L. LADD & MURRAY LIL SENOWJEE (1907)*

I L R 37 Calc 204

3 ——— **Assignment—Trade name—Cigarette—Injunction** Where a cigarette manufacturer carrying on only one business and being the proprietor of several trade marks which he sold indiscriminately purported to assign to another person to manufacture all that the trade mark names and label known as the 'St. Dur's' trade mark used upon packets of cigarettes sold and known as 'St. Dur's' cigarettes and the goodwill of his business so far as the same relates thereto and inasmuch as dealing in his cigarettes under the other mark. —*Held* that the assignment was void and inoperative. For the assignment of a trade mark to be operative in law it is not sufficient that an assignment of goodwill should accompany or follow the transfer of the trade mark or as literally to comply with the rule that a trade mark cannot be transferred in gross but the trade mark must continue to be a representation of the truth as warranting the origin of the goods to which it is attached within the limits of deviation sanctioned by the usage of trade and commerce. *Leather Cloth Company v. American Leather Cloth Company* 11 H L 523 *Hall v. Barrett & De G. J. & D. 100 Singer Manufacturing Company v. Wilson* L R 2 Ch D 434 *Singer Manufacturing Company v. Long* L R 8 A C 15 *Pinto v. Padman* 4 I P C 181 and *Edwards v. Dennis* 1 I Ch D 451 referred to. *BRITISH AMERICAN TOBACCO CO. LTD. v. MANOOS BUKSH (1910)*

I L R 38 Calc 110

4 ——— **Imitation—Abandonment—Injunction—Defendants improperly representing that their business to be business carried on by plaintiffs—Injunction—Raising of issues—Practice—Procedure** The plaintiffs had since the year 1847 been importing and selling in India watches manufactured at the St. Imier Factory in Switzerland. These watches bore the name 'Berna' on the dial. In 1907 the plaintiffs complained of the watches supplied by the St. Imier Factory and began to import watches largely from other manufacturers while they ceased giving orders to the St. Imier Factory. In the year 1908 the St. Imier Factory was purchased by the defendants and at the time of purchase the defendants asked the plaintiffs whether the defendants could positively count upon the plaintiffs to be their regular customers for the articles previously taken from the St. Imier Factory. The plaintiffs replied that they were willing in principle to reserve a part of their orders for the defendants but that it would first be necessary for the latter to give an idea of what they were going to manufacture and the improvements they were going to make in the quality of the watches.

TRADE-MARK—contd

In one of their catalogues printed in 1900 the plaintiffs announced — We take this opportunity of informing our customers that the name 'Berna' will be changed to 'Service' as soon as our present stock of these watches is sold out. The trade mark will in other respects remain unaltered. The alteration of the name is done to secure a trade mark which cannot be imitated in India or elsewhere. On the 6th of November 1908 the defendants opened a place of business in Bombay and issued a circular dated February 1909 in which on behalf of the defendant Company they referred to the plaintiffs as the defendants' agents who had sold 100,000 watches made at the St. Imier Factory in 1907 years and proclaimed that 'Berna' Company's watches would no longer be sold by their former sole agents importers (meaning the plaintiffs) as the defendants had decided to get rid of any middle man and to deal directly themselves. The plaintiffs thereupon filed a suit on the 2nd April 1909 against the defendants to restrain them from using and imitating various trade symbols alleged to belong to the plaintiffs and from representing that the defendants' business was the business carried on by the plaintiffs. *Held* that the plaintiffs for the last three years both in their dealings with the supplying factory and with their customers evinced very clear and consequently their intention to abandon the name 'Berna' as a quality mark for their watches and it followed that they could no longer claim any exclusive title to the use of that name either alone or in a trade mark. *Held* further that the plaintiffs were entitled to an injunction restraining the defendants their servants agents travellers and representatives respectively from in any manner representing that the defendant Company had been or were carrying on the business carried on by the plaintiffs or were the successors in business of the plaintiffs. *Per Curiam* — The importer who by advertising and putting the sale of goods under a particular mark secures a wide popularity for the mark in relation to the goods sold by him is entitled to the protection of the Court for that mark in the country of importation even against the producer of the goods. *Demonstrations v. Hormazas Adani (unreported)* *Ajmal & Co. v. Hooper* 1 I L R 8 Cal 149 referred to. The fact that the user of a word or mark always uses it in conjunction with his own name is not conclusive to show that the word or mark cannot be claimed as a trade mark or that the user has waived his rights in it as a trade mark. The question of abandonment is one of intention to be inferred from the facts of the case. *Mousson & Co. v. Boehm* 1 I L R 8 Cal D 398 and *Lacorne v. Hooper* 1 I L R 8 Cal 149 followed. The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is no agreement between the parties is very embarrassing. Issues should be confined to questions of law arising on the pleadings and as to questions of fact as it would be necessary for the judge to frame for decision by the jury in a jury trial at most prior to England. *West End Watch Company v. Berna Watch Co. (1910)* 1 I L R 35 Bom 425

5 ——— **Using a false trade mark—Possession of instruments for counterfeiting a trade mark—Selling umbrellas with counterfeit trade**

TRADE MARK—contd

mark—Trade name use of by rival manufacturer—Using a false trade description—Penal Code (Act XL of 1860) ss 48, 48A and 48B—Merchandise Marks Act (II of 1859) ss 6 and 7 A trade mark must be some visible and concrete device or design affixed to goods to indicate that they are the manufacture of the person who properly the trade mark is. It must consist of a name impressed in some distinctive way. There is a distinction between a trade mark and a trade name. *Singh Manufacturing Co v Loog* L P 8 A C 15 referred to. Where a trade man alleged in his complaint to the Magistrate that his trade mark consisted of a particular device with the name *Bulto Kri to Pal* or *Sri Bulto Kri to Pal* said to be that of his son but at the trial claimed only the name as the trade mark while one of the partners claimed the device except the name and the former's son claimed the name as representing his own trade mark in a separate business and the rest of the prosecution evidence did not establish the possession or use of any specific trade mark. *Held* that the complainant had not proved that he had a trade mark for the satisfaction of which a rival trader using a similar device with the same name could be convicted under ss 48, 48A or 48B of the Penal Code and that the case was of a civil nature. When a mark is not an exclusive right to manufacture a certain article or even articles of a particular kind all that he can claim is that no other manufacturer should so mark such articles as to pass them off as his for marks when they are not. *Sem*. *El* Trade name use of a trade name may fall under s 5 of the Merchandise Marks Act (IV of 1833) and be punishable under s 6 or s 7 as a false trade description. *ANATH NATH DEV v EREKATTA* (1912) 1 L P 49 Cal 281

6 ——— *License Estoppel—Evidence Act (I of 1877) s 117—Licencee's right to question Licensor's title—Public Policy—Assignment of trade mark does not imply standard or quality of manufacture—Inalienability of trade mark—Incoming Partner's liability for obligations of firm—Costs* The licensee of a trade mark is estopped as against his licensor from questioning the latter's title to the trade mark. The fact that the licensee has repudiated his contract with his licensor cannot give him the right to question the licensor's title for the latter's concurrence is necessary to rescind the contract. *Johnstone v Milling* 16 Q B D 489 referred to. Where joint trade marks bearing the name of the original proprietor of those marks have come by usage of trade to indicate not the skill in selecting jute of the original proprietor so as to make those marks personal to him but merely a certain standard, kind quality or mode of manufacture of goods irrespective of the person in whose hands the business might be the assignment of such marks is not a fraud on the public or against public policy. A license for four out of seven trade marks the remaining three having been abandoned is valid. *British American Tobacco Co Ltd v Mahboob Bukh* 1 L P 38 Cal 110 distinguished. As the right to a trade mark might be acquired so it might be abandoned and no length of time is required for acquiring the right or apart from statutory law to constitute an abandonment. *Latourne v Hooper* 1 L P 8 Mod 149 approved. An agreement by an incoming partner to make himself liable to credi-

TRADE MARK—contd

tors of the firm before he joined it may be established by indirect evidence and the Courts lean in favour of such an agreement and are ready to infer it from slight circumstances. *Ex parte Jackson* 1 Ves Jun 131 *Ex parte Peelle* 6 Ves Jun 602 and *Rolle and the Bank of Australia v Flower Salling & Co* L R 1 P C 27 approved. *JAGANNATH & Co v CRESSWELL AND OTHERS* (1913) 1 L R 40 Cal 814

7 ——— *Title—Assignment—Trade mark in selection of natural products as indicating quality—Goodwill—Licensee to use trade marks—Action for royalty—Estoppel—Licensee estopped from questioning validity of license—Evidence Act (I of 1877) s 11*—*Dama's* action for In India the law of trade marks is not governed by statute there being no statutory system of registration. Rights and liabilities in connection with trade marks are determined by reference to the principles of the common law of England. *British American Tobacco Co Ltd v Mahboob Bukh* 1 L P 38 Cal 110 referred to. A trade mark cannot be transferred or descend in gross but only together with the goodwill of the business to which it relates. A trade mark represents the origin of the goods to which it is attached or their trade association the truth of the representation is essential. By usage successors in business may use their predecessors' trade marks where the representation still continues to be substantially true. A selector of natural products like jute may have a trade mark in connection with such selection as indicating good quality. *Major Brothers v Franklin & Son* (1908) 1 K B 712 followed. Measuring of good will explained. *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* (1901) 1 C 917 referred to. In a suit for royalty brought by the licensees of certain jute trade marks against the licensee the defence taken was that the plaintiffs had no title to the marks in question and that the license was void. *Held* that by virtue of s 117 of the Evidence Act the licensees were estopped from questioning their licensors' title or the validity of the license. At any rate s 117 cast on the defendants the burden of proving that the goodwill of the business had not passed to the plaintiffs to support the transfer of the trade marks and the defendants having failed to do so the plaintiffs were entitled to the royalty claimed. Claim to damages by the licensors for depreciation in the value of the trade marks due to the default of the licensees refused on the facts of the case. The Decision of *IMAM J in Jagannath & Co v Cresswell* 1 L R 40 Cal 814 affirmed. *HANNAH v JAGANNATH & Co* (1914)

1 L R 42 Cal 262

8 ——— *Infringement—Action for—Advertisement and circular—Cause of action—Jurisdiction of Court where advertisement is published* A trader is not entitled to pass off his goods as goods of another trader by selling them under a name which is likely to deceive purchasers (whether immediately or ultimately) into the belief that they are buying goods of another trader. The defendant a resident of Caya published advertisements and distributed handbills at Muttra in the Agra Judgeship advertising his medicine known as *Ash Sudha Sindhu*. The plaintiff alleged that *Sudha Sindhu* was his

TRADE MARK—contd

registered trade mark and he brought this suit for an injunction and for damages in the Court of the Subordinate Judge of Muttra. *Held* that a trade mark could be infringed by means of advertisement and as the cause of action arose partly at Muttra the courts there had jurisdiction to entertain the suit. *Jay v Lallier* L R 49 Ch D 619. *Bourne v Swan and Edgar* [1896] L R 1 Ch 211. *Frank Piddarway v George Banham* [1896] L C 199 referred to. **KHESHTRA PAL GUHARMA v PANCHAM SINGH VARMA** (191)

I L P 37 All 446

TRADE-NAME

See INJUNCTION

24 W N 155

See TRADE MARK I L P 38 Calc 110
I L R 40 Calc 281

Similarity of names of Insurance Companies—Oriental—Word known in business—Intention to deceive—Injury to plaintiff—Injunction—Provident Insurance Society—Provident Insurance Societies Act (I of 191) ss 6 and 6—Indian Life Insurance Companies Act (I of 191)—User On an application by the plaintiff company an old large and well known Insurance Company registered in Bombay and having a branch office in Calcutta for a temporary injunction to restrain the defendant company which was incorporated in Calcutta in November 1912 with a small share capital but with the widest powers of doing life and other insurance business though its present rules limited its life insurance business to the issue of policies for sums not exceeding Rs 500 from using or carrying on business under the name it had adopted—*Held* that inasmuch as the term Oriental had become identified with the plaintiff company an injunction should issue restraining the defendant company from using the term Oriental in its name as such user would be likely to deceive the public and the defendant company would be a source of danger to and would be liable to cause damage to the plaintiff company. *Merchant Banking Company of London v Merchants Joint Stock Bank* L R 9 Ch D 560. *Accident Insurance Company Ltd v Accident Disease and General Insurance Corporation Ltd* 51 L J Ch 104. *Guardian Fire and Life Assurance Company v Guardian and General Insurance Company Ltd* 50 L J Ch 251 referred to. The circumstance that the field of operation of the defendant company was in the Orient did not entitle it to the use of the term Oriental. *Hendricks v Montague* L R 17 Ch D 638 followed. *Rugby Portland Cement Co Ltd v Pughy and Newbold Portland Cement Co Ltd* 8 R P C 241 (C A 9 R P C 46 distinguished. *Semble An Insurance Company* incorporated under the Indian Companies Act is not a Provident Insurance Society within the scope of the Provident Insurance Societies Act of 1912. **ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE CO LD v ORIENTAL ASSURANCE CO LD** (1913)

I L R 40 Calc 570

Manufacturers of cloth affixing numbers on pieces sold—Cloth known by the numbers affixed as being of a particular manufacture—Numbers not quality marks—Agents and middlemen ordering out goods by numbers alone—Use of numbers protected when they are parts

TRADE NAME—contd

cular marks of a manufacturer's goods—Numbers when a trade name—Cases of actual deception not necessary The plaintiffs were manufacturers of cloth on a large scale at their Mills in Napore Central Provinces. In the year 1904 they commenced to manufacture a certain quality of black twill and to distinguish this particular cloth from all other cloths of their manufacture stamped on each piece of cloth the No 201 and immediately below that number stamped each piece with the No 10 which denoted the colour and shade of the cloth. There was also on each piece of cloth a woven device of a serpent surrounded by a scroll containing the name of the Empress Mill. This twill had acquired a great reputation in the Indian markets and particularly in Sindh the North West Frontier Province and the Punjab where the plaintiffs had got their selling agents. The dealers Amritsar Peshawar and Karachi. The dealers in these towns and other smaller towns would apply to the selling agents for the plaintiff's cloth and the cloth would be distributed by these dealers to smaller dealers in smaller towns and villages and so on until it ultimately found its way to the consumer. In or about July 1913 the defendants began to manufacture black twill cloth and on every piece of such twill put on the No 101 with the No 10 below in the same position as the No 101 stamped on the plaintiff's cloth. In addition the defendants annexed a label thereto representing an image of the Sun known as the *Soraj* Chap or Sun label and also a white ticket bearing the defendant company's name and other particulars in English Gujarathi and Urdu languages. The plaintiffs alleged that by the year 1913 their No 201 had become identified with their goods and any black twill cloth stamped with the No 201 would be ordinarily taken by purchasers as being the well known No 201 cloth of the plaintiffs and would be very likely passed off by rivals as being the plaintiffs' goods. The companies as being the plaintiffs' goods. The plaintiffs contended that they were entitled solely to the use of the No 201 stamped on their black twill and the use of that number by the defendant on a similar twill constituted an infringement of their rights. The plaintiffs accordingly sought to restrain the defendants by injunction from selling their black twill cloth with the No 201 stamped on it and for an account of their profits made by the defendants by the sale of their black twill with the No 201 stamped on it. The defendants pleaded that the No 201 was merely a quality mark descriptive of goods and was so adopted by several dealers in black twill. They further relied on the fact that they had taken particular care to distinguish their goods from those of the plaintiffs by using different labels and devices. The trial Court decreed an account on appeal claim for injunction and *held* (i) that the plaintiffs having established that the particular No 201 was an invariable indication of the cloth being of their manufacture they were entitled to claim an exclusive right to the user of that number in connection with the black twill which they put on the market. *Barlow v Govindram* I L A C 361 distinguished. *Wotherspoon v Currie* L R 5 H L 508 and *Birmingham & Exeter Brewery Co v Powell* [1897] A C 710 followed. (ii) that it was not necessary for the plaintiffs to prove cases of actual deception if the defendants had put into the hands of middlemen a means whereby ultimate purchasers were likely to be

TRADE NAME—*continued*

defranded, *Singer Manufacturing Company v Loog* 18 Ch D 395 41° and *Liver v Goodwin* 36 Ch D 1 followed *MADHAVJI DIAPHERSY MANUFACTURING Co v THE CENTRAL INDIA SPINNING WEAVING AND MANUFACTURING Co* (1916) 1 L R 41 Bom 49

TRADE USAGE

See *JUTE* 1 L R 44 Calc 98

TRADING LICENSES

granted to hostile firms—

See *CONTRACT WITH ALIEN ENEMY* 1 L R 41 Bom 390

TRADING WITH THE ENEMY

See *BILL OF LACHAR*

1 L R 41 Bom 566
1 L R 46 Calc 84

See *CONTRACT WITH ENEMY*

See *CONTRACT ACT (11 OF 1879) ss 56(2) C* 1 L P 40 Bom 570

See *SALE OF GOODS*

1 L R 40 Bom 11

Acts done and directions given before date of the Ordinance relevancy of—Subsequent ratification—Trading meaning of—Directions to an agent to take delivery of goods lying in London and to sell to German firm against payment—Supply of goods to agent and sale by him to German firm—Destined meaning of—Legal and actual destination—Goods shipped to enemy country before the war but taken up by English firm in London—Exportation of goods to accused agent in Italy refused by such firm because of Royal Proclamation—Abetment of supply to or of trading by the agent—Power of Appellate Court to alter conviction of principal offence to one of abetment—Discretion of Court—Commercial Intercourse with Enemies Ordinance (VI of 1914) s 3—Trading with the Enemy Proclamation No 2 cl 5 (7) (9)—Royal Proclamation of 15th October 1914—Criminal Procedure Code (Act V of 1908) s 43 Where a case of mica was shipped by the accused to a German firm before the war but arrived in London after its outbreak and was taken up by an English firm whereupon he wrote before the date of the Ordinance VI of 1914 on 14th October 1914 to a Bank in London to make over the case to the English firm and also to the latter to take it up and send the same to his agent at Genoa on application by such agent which however the English firm refused to do by reason of the prohibition of the export of mica to Italy by Royal Proclamation and further wrote to the agent to apply to the English firm for the mica and to deliver it to a German purchaser against payment and where after the date of the Ordinance the accused again wrote to his agent informing him of his aforesaid letters and instructions to the Bank and the English firm and directing the agent to apply for the case of mica to the latter and to deliver it to the German purchaser against payment which directions were not in fact carried out on account of the refusal by the English firm to export the mica to Italy—Held that as the Ordinance was not retrospective the only acts and directions which the Court could take into consideration to establish the offence of trading with the enemy

TRADING WITH THE ENEMY—*continued*

were such as were done or given after the date of its enactment unless the previous acts and directions were ratified thereby *Quare* Whether were directions to an agent to apply for goods in the possession of a third person and to deliver the same to an enemy against payment amount to trading within the meaning of the Trading with the Enemy Proclamation No 2 cl 5 () The word destined when used with the term trading in the same sub clause means intended for and not on the way to *Legal destination* must not be confused with actual destination The Court must determine whether the goods were actually destined for an enemy and with reference only to acts done and directions given after the date of the Ordinance VI of 1914 If the English firm had really purchased the good outright they were not in existence so far as any disposition of them by the accused was concerned after the date they were taken up and paid for and could not be destined for an enemy But assuming that the said firm had merely taken over the goods on behalf of the accused and subject to his further instructions a direction to the agent to apply for and deliver them to a German purchaser against payment was insufficient to give the goods an enemy destination in fact as such direction had no operation on receipt thereof by reason of the refusal of the English firm to export the goods to the agent at Genoa *Held* also that as the point was not free from doubt the accused was entitled to the benefit of it It is not a universal rule that in no case can an Appellate Court convict an accused of abetment when he was charged only with the principal offence But it is discretionary with the Appellate Court to allow such fresh charge to be tried on appeal The Court refused under the circumstances of the case to alter the conviction to one of abetment of supply to or of trading by the agent Where the agent of the accused sold and delivered some cases of mica and handed over the shipping documents for certain other cases lying in London to a German firm or its agent in Genoa—*Held per BEACHROFF AND GREAVES JJ* that the accused was guilty of the offence of supplying goods to the enemy within cl 5 (1) of the Trading with the Enemy Ordinance No 2 INDIAN HANDS ENFORCEMENT (1915)

1 L R 42 Calc 1084

Attempting to trade with enemy—Commercial Intercourse with Enemies Ordinance (VI of 1914) s 3 Obtaining in ss 5 (7) and 5 (9) of the Royal Proclamation meaning of—Penal statutes generally not retrospective The accused a trader in Madras dealing in tobacco cabled on 28th July 1914 to one Puppell, a German residing in Germany for certain sales of tobacco In compliance with this order Puppell sent to certain agents of the accused at Amsterdam some bales of tobacco about the end of September 1914 and these agents again shipped them on 7th October 1914 to Messrs Lancelot and Dent the agents of the accused in London Having received the same before the 14th October 1914 the London agents reshipped them to the accused who received the same in Madras between the 21st and 26th November 1914 War was declared between England and Germany on 4th August 1914 A Royal Proclamation prohibiting trade with the enemy was made on 9th September 1914 and an Ordinance

TRADING WITH THE ENEMY—*contd*

(Commercial Intercourse with Enemies Ordinance VI of 1914) to the same effect was passed on 11th October 1914 and it came into force on that day. On these facts the accused was charged and convicted by a Magistrate of the offence of trading with the enemy under s. 3 of the Commercial Intercourse with Enemies Ordinance VI of 1914 on the ground that he obtained in Madras between 21st and 26th November 1914 goods from an enemy and from an enemy country. He was also convicted by the Magistrate of the offence of attempting to trade with the enemy under the same section writing two letters on 26th November 1914, one to a neutral subject in Holland and another to an enemy in Germany requesting them to secure for him his merchandise in Germany. Held on the second charge that the accused was guilty of attempt to trade even if the goods in the enemy's country became his own before the outbreak of the war or even if there were no goods of his share at the time he wrote the letters. *Reg v King* 61 L J (N S) 1106 and *Reg v Oppenheimer and Colbcl* [1915] 1 K B 750 followed. Held on the first charge that the conviction could not be sustained as the charge was not proved as laid. *P v Wallis O J*—The charge of trading is bad for two reasons—(i) the ordering or procuring was before the 14th of October 1914 the date when the Ordinance came into force and (ii) even this procuring was in London by the accused's agents an offence which Courts in India have no jurisdiction to try. *Semble* Trading with the enemy is a Common Law offence in England if not in India also. The Royal Proclamation and the Ordinance have no retrospective effect. The words obtaining goods in their ordinary meaning include procuring or ordering goods as well as taking delivery of them on arrival. *Per Courts Trotter J*—The offence committed if any was one of obtaining goods by way of transmission under the latter part of s. 5 (7) of the Royal Proclamation an offence with which the accused was not charged. *Semble* Trading with the enemy is a Common Law offence both in England and in India. *Obiter* A person may be guilty of illegally obtaining goods twice once through his agents and thereafter by himself. It is no defence to the charge of obtaining goods under the Ordinance that some acts constituting the offence took place before the date of the Ordinance. *Reg v Griffiths* [1921] 2 Q B 145 referred to. The charge of trading having failed their Lordships refused in the circumstances of the case to amend the charge into one of obtaining goods by way of transmission under the latter portion of s. 5 (7) of the Royal Proclamation. *JACOPIUS v KING EMPEROR* (1916) 1 L R 40 Mad 34

TRADING WITH THE ENEMY PROCLAMATION NO 2

— *clis* (7) (9)—

See *TRADING WITH THE ENEMY*

1 L R 42 Cal 1094

TRAFFICKING IN OFFICES

See *CONTRACT* 1 L P 43 Cal 115

TRANSFER

See *CHAUKIDARI CHAKARAN LANDS*

1 L P 45 Cal 765

TRANSFER—*contd*

See *DEKKHA v AGRICULTURISTS RELIEF ACT 1899* s 10 1

1 L R 45 Bom 87

See *FRAUDULENT TRANSFER*

See *HINDU LAW—WIDOW*

18 C W N 108

See *ITIMAN* 1 L P 47 Cal 93

See *MAHOMEDAN LAW ENDOWMENTS*

1 L R 47 Cal 806

See *OCCUPANCY HOLDING*

14 C W N 68

See *PRE EMPTION* 1 L R 38 All 361

See *TRANSFER OF HOLDING*

See *TRANSFER OF SHARES*

See *TRUSTS ACT* s 5

1 L R 106 Bom 396

— by father effect of—

See *TITLE PROOF OF*

1 L R 45 Cal 909

— by lessee—

See *LESSOR AND LESSEE*

1 L R 117 Cal 683

— by mortgage—

See *MORTGAGE BY MINOR*

1 L R 38 Mad 1071

— effect of—

See *CHAUKIDARI CHAKARAN LANDS*

1 L R 45 Cal 515

— fraudulent—

See *PROVINCIAL INSOLVENCY ACT 1907*

s 30 2 Pat L J 101

See *TRANSFER OF PROPERTY ACT 1892*

s 53 2 Pat L J 546

— of application—

See *CIVIL PROCEDURE CODE 1908* s 24

1 L R 34 Bom 411

See *SANCTION FOR PROSECUTION*

1 L R 40 Cal 37

— of decree—

See *EXECUTION OF DECREE*

5 Pat L J 639

1 L R 87 Cal 574

See *HIGH COURT RULES AND ORDERS*

r 161 1 L R 39 Mad 485

See *SPECIFIC PERFORMANCE*

1 L R 43 Cal 690

— of Civil Case—

See *CIVIL PROCEDURE CODE, 1908* s

22 to 24

— to High Court—

See *APPEAL*

1 L R 47 Cal 1104

— of Criminal Case—

See *CRIMINAL PROCEDURE CODE* ss

526 to 528

See *EXTRADITION*

1 L R 46 Cal 11

See *JURISDICTION OF HIGH COURT*

1 L R 44 Cal 595

TRANSFER—*contd*of Criminal Case—*contd*

See PENAL CODE 225
I L R 39 All 234

See SANCTION FOR PROSECUTION
I L R 42 Cal 667

See TRANSFER OF MAGISTRATE
I L R 40 Mad 108

of goods to creditor—Effect of—

See PRESIDENCY TOWNS INSOLVENCY ACT
(III of 1909) s 57
I L R 39 Mad 250

of Magistrate who has written
but not a written judgment—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898) s 367
I L R 40 Mad 108

of Management—

See TRUSTEES OF A TEMPLE
I L R 39 Mad 436

of Proceedings—

See DIVORCE ACT (IV OF 1869) ss 3
16 37 44 I L R 40 Bom 109

of position of joint—

See LANDLORD AND TENANT
I L R 37 Cal 687

of shares—

See COMPANY I L R 36 Bom 334

of suit—

See PROVINCIAL SMALL CAUSE COURTS
ACT (IV OF 1887) ss 23 27
I L R 38 Bom 190

of tenants rights—

See PARTIES 14 C W N 703

of—

See TRANSFER OF PROPERTY ACT (IV OF
1882) ss 118 to 120 54 AND 55 CL 6
(5) I L R 38 Mad 519

to Bona fide purchaser—

See SHARES I L R 46 Cal 331

to landlord—

See CHAUUKIDARI CHAKARAN LANDS
I L R 45 Cal 685

Transferee taking possession before
execution of agreement—

See AGREEMENT TO TRANSFER
24 C W N 463

with consent of reversioner—

See TITLE SUIT FOR DECLARATION OF
I L R 38 All 440

Bona fide transferee for value
without notice of mortgage—

See DEKHAM AGRICULTURISTS RELIEF
ACT s 10A I L R 45 Bom 87

1 ———— Transfer of share
of a claim in respect of property not in possession of
valid A transfer by a person of a share of his

TRANSFER—*contd*

claim with respect to property of which he is not in
possession is valid and operative. An agreement
between the transferor and the transferee that it
shall not be competent for the former to confess
judgment in favour of the defendant or to enter
into compromise or withdraw the claim in respect
of the whole or any part of the subject matter of
the suit in titrated for the recovery of the property
is valid and should be given effect to. *Lal Adal*
Jam v Ka im Hu sin Khan L R 39 I A 113
see 9 C W N 47 followed. In such a suit if the
transferor wants to withdraw he may be permitted
to do so but the suit may proceed at the instance
of the transferee. *RANJHAN PURI v GOSSAIN*
DALNIR PURI (1909) 14 C W N 191

2 ———— Transfer of a suit
under s 90 Civil Procedure Code (Act V of 1908)
from the Court of a District Judge to that of the
Additional District Judge—Authority of Additional
District Judge to try such suit—Civil Courts Act
(VII of 1887) s 8 sub (1)—Convenience. An
Additional District Judge by virtue of the assign-
ment of all the functions of a District Judge under
the provisions of sub s (2) of s 8 of Act VII of
1887 is empowered to exercise the same powers
as the District Judge in suits under s 92 of the
Civil Procedure Code. *Semle*. Any other
Court empowered in that behalf by the Local
Government in s 92 of the Code probably
refers to Courts such as the Subordinate Judges
Courts. Transfer of the suit was ordered in this
case on the ground of convenience the opposite
party being compensated by payment of his
costs. *MOHAMMAD RAHMAN v HAZI ABDUR RAHIM*
(1910) I L R 46 Cal 43

3 ———— Notification by
Local Government empowering a particular Judge to
deal with a particular case pending in another Court
for legal—Civil Procedure Code (Act V of 1908)
s 9—Power of District Judge to transfer a case
from his file by virtue of such notification. A
notification by the Local Government under s 92
of the Civil Procedure Code (Act V of 1908)
directed to a particular Judge and purporting
to deal with a particular litigation which was
already pending in the Court of the District Judge
is ultra vires. A District Judge therefore has
no power to transfer a case brought under s 92
of the Civil Procedure Code which was pending
in his Court to the Court of a particular Subordinate
Judge who was empowered by Local Government
to try it by virtue of such a notification. *ABDUL*
KARIM ABU AHMED KHAN v ABDUS SOBHAN
CROWDERY (1911) I L R 39 Cal 146

4 ———— Appeal—Powers
of Court to whom case is transferred for trial—
Limitation—Practice. When an appeal has been
transferred for trial by a District Judge to a
Subordinate Judge the Subordinate Judge has for
the purpose of disposing of the appeal under the
Bengal North Western Province and Assam Civil
Courts Act all the powers which could be exercised
by the District Judge. Where therefore an appeal
was presented to the District Judge after the
period of limitation owing to a mistake of law
as regards the appealability of the suit and the
District Judge admitted the appeal under s 5 of
the Limitation Act and transferred the appeal
to the Subordinate Judge for disposal the Subor-
dinate Judge has power to consider whether the
appeal was competent or barred by limitation.

TRANSFER—contd

Jhotee Sahoo v Om sh Chunder Sircar 1 I R
Calc 1 not followed **VISMADEV DAS v SITA**
NATH ROY (1912) 1 I L R 40 Calc 259

■ Application for
adjournment to move the High Court for transfer—
Criminal case meaning of—Proceedings for
security to keep the peace—Criminal Procedure Code
(1st of 1898) s 107 576 (b) A proceeding
under s 107 of the Criminal Procedure Code is a
criminal case and is subject to the application
of cl (5) of s 526 **WAZED ALI KHAN v EMPEROR**
(1913) 1 I L P 41 Calc 719

6 Transfer by Dis-
trict Judge of particular case to Additional Judge—
Civil Courts Act (VII of 1884) s 8 sub s (2) 22
sub s (2) Probate and Administration Act (1 of
1881) s 51 53 It is competent to a District
Judge to transfer a particular case to an Additional
Judge under the provisions of sub s (2) of s 9 of
the Civil Courts Act of 1887 **RUP KISHORE LAL**
v NEMAN BIRI (1914) 1 I L R 42 Calc 842

7 No notice to parties—dismissal
for default—application for re hearing—Code of
Civil Procedure (Act 1 of 1908) O LLI v 19
— sufficient cause Where an order of transfer
is made notice should be given to the parties or
their representatives On the 16th July the
hearing of an appeal pending before the District
Judge was postponed until the 21st August
On the 9th August the appeal was transferred
to the Court of the Subordinate Judge and on
the 10th August the Subordinate Judge ordered
the case to be put up on the 21st The order
of transfer was not communicated to the parties
On the 21st neither of the parties appeared before
the Subordinate Judge and he dismissed the
appeal Held that under the circumstances
there was sufficient cause for granting re hearing
of the appeal **RAM SUKHAL PATHAK v MAHARAJA**
KESHO PRASAD SINGH 3 Pat L J 218

■ Criminal case—Grounds for—
Expression of opinion by Judge in counter-case
The basis of all applications for transfer is that
the accused must have a reasonable apprehension
that he will not receive a fair trial But a Judge
is not incompetent to try a case of rioting merely
because he has tried and decided a counter case
and expressed an opinion therein **AMRIT MOYDAL**
v KING EMPEROR 1 Pat L J 399

TRANSFER DEED

See INTEREST GIFT

1 I L R 48 Calc 986

TRANSFER OF APPEAL

When an order of
transfer is made notice should be given to the
parties or their agent **PAN SUKHAL PATHAK**
v MAHARAJA KESHO PRASAD SINGH
3 Pat L J 218

TRANSFER OF HOLDING

See CRIMINAL PROCEDURE CODE s 526

1 I L R 33 All 583

See LANDLORD AND TENANT

1 I L R 49 Calc 870

See PENAL CODE (Act XLV of 1860)
s 182 1 I L P 33 All 163

See TRANSFER

TRANSFER OF HOLDING—contd

Comastha if can bind
landlord by recognising transference of jote ■ question
of fact—Burden of proof of the gomastha s author v
if lies on landlord—Transfer of holding recognition
of what constitutes ■ It cannot be laid down as an
inflexible rule of law that a landlord is not bound
by the act of gomastha in recognising a transference
of an occupancy holding The question of the
gomastha s power to bind his landlord is one which
must be decided on the particular facts of each
case The burden of proof is in the first instance
upon the landlord to prove the extent of the
authority of the gomastha as a matter peculiarly
within his knowledge Where therefore a gomastha
of the landlords accepted rent from a transference
of a jote and the landlords failed to show that
the gomastha acted beyond the scope of his
authority—Held that the facts constituted
sufficient recognition of the transference by the
landlord **SUDUMAN JAMADAR v BEHARI MANTOV**
(1911) 15 C W N 853

TRANSFER OF PROPERTY

See RIGHT OF SUFF

1 I L R 36 Mad 373

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 6 CL (a)

1 I L P 32 All 83

to the jurisdiction of another Court—
See CIVIL PROCEDURE CODE (Act V of
1908) ss 37 38 and 150

1 I L R 37 Mad 482

TRANSFER OF PROPERTY ACT (IV OF 1882)

See MAHOMEDAN LAW—GIFT

1 I L R 38 All 627

See MORTGAGE 1 I L R 43 Bom 703
1 I L R 35 All 48

applicability of to Crown lands—
1 I L R 40 Mad 910

See LEASE

Vendee's right to possess
ion against unpaid vendor—Vendor only entitled
to statutory charge The provisions of the Trans-
fer of Property Act that the vendee after con-
veyance is entitled to possession and that the
vendor has a statutory charge on the property for
unpaid purchase money are clear and it is not
competent to the Courts in a suit for possession
by the vendee to pass a decree for balance of
conditional on the vendee paying the balance of
the purchase money **Bay Vah Singh v Paltu**
1 I L R 30 All 125 not followed **VELAYUTHA**
CHETTY v GOVINDASAWMI NAIR (1910)
1 I L R 31 Mad 543

In the absence of
evidence to the contrary homestead land com-
prised in a tenancy created before the Transfer
of Property Act 1882 was passed must be pre-
sumed to be non transferable **AMERICA PRASAD**
SINGH v BALDEO LAL 1 Pat L J 253

Lease created before—
Holding over—Presumption of a yearly rent—Least
sumption that tenancy one from year to year—Least
before Registration Act (VIII of 1871) reserving
a yearly rent if required registration. Where it
appeared that the tenant took settlement of a

TRANSFER OF PROPERTY ACT (IV OF 1882)

—could

s 3—could

definition of actionable claims can only be transferred together with the security as immovable property and therefore only by a registered instrument. Where however the law still admits of the separate transfer of the mortgage debt as by the endorsement of promissory notes secured by a deposit of title deeds or by attachment and sale in execution of a mortgage debt under the Civil Procedure Code s 8 of the Transfer of Property Act still operates to carry the security with it. Where certain mortgage debts, book debts and promissory notes were transferred by way of gift under an unregistered document the gift of the mortgage debts was invalid under s 123 of the Act but the gift of book debts and promissory notes fell under Chapter VIII of the Act (Transfer of actionable claims) and not under Chapter VII (Gifts) and was valid and took effect. Where there is a gift of immovables and moveables but the former falls owing to want of registration the latter may nevertheless be held good the question to be considered being whether the latter was conditional on the validity of the former. *Godman v Godman* (1920) I L R 261 followed. *Pothu Rajen v Naganna Lawler* (1916) 30 M L J 613 distinguished. *TERUVAL AMMAL v PERUMAL NAICKER* (1921) I L R 44 Mad 196

Bare right to sue

assignment of—Claim for una certain damages—Comparison between the English and Indian law. The Defendants entered into a contract with one B undertaking to take delivery of certain goods in accordance with the contract and on their failure to do so the matter was referred to arbitrators who gave an award to the effect that the Defendants were to pay for and take delivery of the goods. B therefore resold the goods which fetched a lower amount than that contracted for. He then brought a suit against the Defendants for the balance and then assigned to the Plaintiff all his claim in and the right to proceed with the suit and all advantages and benefits of all proceedings thereof. Held that the suit was not maintainable inasmuch as the claim was for unascertained damages for breach of contract and the assignment was an assignment of a mere right to sue. *Clegg v Bromley* (1) referred to. That there were no materials justifying the application of sec 107 of the Contract Act and the resale was not justified by the award so that the claim was one for unascertained damages. That on a true construction of the terms of the assignment the subject matter of the assignment was not property with an incidental right to sue but a mere right to sue for unascertained damages for alleged breach of contract within the meaning of sec 6 (e) of the Transfer of Property Act. *JEVAN RAM v PATAN CHAND IISSEN CHAND* 26 C W N 285

ss 3 and 41—Doctrine of constructive notice—Court sale in execution—Certified purchaser—Benami—Mortgagee of certified purchaser—Civil Procedure Code (Act XIV of 1882) s 317 (Act V of 1908) s 68. The mortgagee of the certified purchaser at a Court sale is entitled to rely upon the title of his mortgagee including such immunity from suit as the law provides in support of the statutory title. S 66 of the Civil Procedure Code (Act V of 1908)—which may be called in aid for

TRANSFER OF PROPERTY ACT (IV OF 1882)

—could

ss 3 and 41—could

the purpose of assisting in the construction of s 31 of the Civil Procedure Code (Act XIV of 1882)—supra s 23 conclusion. *Hari Chand v Ram chandra I L R 31 Bom 61* followed. The doctrine of constructive notice applies in two cases first where the party charged had actual notice that the property in dispute was charged incumbered or in some way affected in which case he is deemed to have notice of the facts and instruments to a knowledge of which he would have been led by an inquiry after the charge or incumbrance of which he actually knew and secondly where the Court has been satisfied from the evidence before it that the party charged had designedly abstained from inquiring for the very purpose of avoiding notice. This does not conflict in any way with the statutory definition of notice in s 3 of the Transfer of Property Act (IV of 1882). A purchaser of property is under no legal obligation to investigate his vendor's title. But in dealing with real property as in other matters of business regard is had to the usual course of business and a purchaser who wilfully departs from it in order to avoid acquiring a knowledge of his vendor's title is not allowed to derive any advantage from his wilful ignorance of defects which would have come to his knowledge if he had transacted his business in the ordinary way. This is what is meant by reasonable care in s 41 of the Transfer of Property Act (IV of 1882). Occupation of property which has not come to the knowledge of the party charged is not constructive notice in any interest in the property. *MAHAR KANWAR v HOOSBAR* (1910) I L R 35 Bom 342

Benami sale—Sale by

denamidar—Estoppel—Notice—Wilful abstention from calling for title-deeds and from making enquiry as to title—Infant if may be estopped by his own fraudulent misrepresentations—Acts and admissions of guardian if bind ward. B executed missions of guardian if bind ward. B executed in favour of P a benami sale deed which as well as the property conveyed (a putni tenure) be kept in his own possession. R subsequently purported to transfer the property to the defendant. Held in a suit by the representative of B against the defendant for recovery that if it was found that the latter made no attempt to take the title-deeds of the property including the sale deed of B in R's favour the wilful or negligent abstention on the part of the defendant to call for the title-deeds would deprive him of the protection which a Court of Equity would extend to a bona fide purchaser for value without notice and the defendant would not be allowed to set up the plea of estoppel against the plaintiff. *Quære* Whether in a case of fraudulent representation an infant may be bound by an estoppel. Held that an infant is not estopped by the acts or admissions of other person in this case his mother and natural guardian. Held further that as the mother of the infant did not place the benamidar of his father P in a position where she knew R would be able to commit a fraud (there being no finding and it being unlikely that she even knew of the existence of the benami conveyance to R) there was no ground for a plea of estoppel as contemplated by s 41 of the Transfer of Property Act. A purchaser is bound to make enquiry into the title and if he does not take reasonable care to do so,

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

— ss 3 and 41—*concl'd*

he takes the chance of his claim being defeated by the real owner *PAM CHARAN DAS & JOY RAM MAJHI* (191.) 17 C W N 10

— ss 3—

See MORTGAGE I L R 43 Cal 1052

— ss 11 and 136—

See LEGAL PRACTITIONER'S ACT (VIII of 1879) s 13 I L R 37 Mad. 238

— s 4—

See DAMDUTAT RULE OF

I L R 42 Cal 826

See MORTGAGE 2 Pat L J 168

— ss 4 and 54—*Unregistered sale deed for*

land of less than Rs 100 in value invalidity of when no previous oral sale—Evidence inadmissibility of to prove adverse possession—Possession change of in cases of oral sale how to be effected
A sale of tangible immovable property of the value of less than Rs 100 effected by an unregistered instrument (without any prior oral sale) followed by delivery of possession is invalid and inoperative to pass the title to the property under s 54 Transfer of Property Act (IV of 1882). A document which affects immovable property and which is required by law to be registered; if it is not registered inadmissible in evidence to prove the nature of possession of the person claiming under it such as the adverse character of the possession. *Per CURTAM* If an oral sale is made of immovable property of the value of less than Rs 100 to a person already in possession of the property it is sufficient to pass title if the vendor converts by appropriate declarations or acts the previous possession into a possession as vendee and it is not necessary that to satisfy the section 54 of the Transfer of Property Act the person in possession should give it up formally and take it afterwards as vendee. *Sibendrapada Banerjee v Secretary of State for India* I L R 35 Cal 407 not followed. *MUTHUKARUPPAN & MUTHU* (1914) I L R 38 Mad 1158

— ss 4 105 107—

See KABILIVAT I L R 39 Cal 1016

— ss 4 and 107—*Indian Registration Act (VIII of 1908) ss 17 and 49—Unregistered lease for six months—Whether admissible to prove tenancy* S 49 of the Registration Act applies only to instruments which are required to be registered by s 17 of that Act and is not applicable to instruments which have to be registered under the provisions of the Transfer of Property Act. Hence an unregistered lease for a period of less than one year which is required to be registered under s 107 of the Transfer of Property Act but not under s 17 of the Registration Act is admissible in evidence to prove the nature of the possession under the instrument. *RAMA SAHU & GOWRO PATHO* (1921)

I L R 44 Mad (FE) 55

— ss 5 6 7 and 12—*Minor—Validity of transfer in favour of a minor* Held that inasmuch as there is nothing in the law to prevent a minor from becoming a transferee of immovable property so a minor in whose favour a valid deed of sale has been executed is competent to

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

— ss 5 6 7 and 127—*concl'd*

sue for possession of the property conveyed there by *Ulfat Bai & Gauri Shankar* I L R 33 All 657 and *Kaghunath Balch & Hajji Sheskh Mulam mad Balch* 13 Oudh Cases 115 referred to *Mohori Bibee & Dharmodas Ghose* I L R 30 Cal 539 and *Varulathi Narayan Chetty & Logalinga Chetty* I L R 33 Mad 317 distinguished. *MUSTAFA KUTUBWAR & MADAN GOPAL* (1915) I L R 38 All 62

— ss 5 54—

See DEPOSIT I L R 35 Bom 403

— s 6—

See s 3 MUO W N 285

See CONTRACT FOR SALE

I L R 36 Bom 129

See EXPECTANCIES

I L R 33 Mad 554

See HINDU LAW—REVERSIONER

I L R 43 Cal 536

See HINDU LAW—WOMAN'S ESTATE

I L R 44 Bom 488

See MAHABHADAN LAW—DOWER

I L R 33 All 457

See MAINTENANCE

I L P 33 Cal 13

See OFFERTINGS TO A TEMPLE

I L R 4 Cal 33

See REVERSIONARY INTEREST

25 C W N 496

— Of a contingent right of inheritance

See MAHABHADAN LAW

I L R 41 Mad 365

1 ——— Transfer of expectancy—*Compromise between Hindu brothers that property of a brother dying without male issue should be divided amongst survivors—Hindu law—Dayabhaga—Administration—Suit to enforce administration bond—Limitation* Held that a provision in a family settlement whereby certain Hindu brothers divided the family property belonging to them amongst themselves and agreed that upon the death of any one of them without male issue his share should pass to the surviving brothers was neither in contravention of Hindu Law nor obnoxious to the provisions of the Transfer of Property Act s 5 (a) as being a transfer of an expectant interest in property. *Ram Narayan Singh & Prayag Singh* I L R 8 Cal 138 followed. Held also that where the assignee of a bond given by an executor for the due administration of the estate sues to enforce the bond time does not begin to run against him necessarily until the death of the obligor. *KANTI CHANDRA MUKHERJI & ALI NAZI* (1911) I L R 33 All 414

2 ——— Compromise of claim to possession of property of deceased person—*Such compromise not a transfer of reversionary rights* B claimed adversely to M the property left by M's deceased father. The claim was compromised, and B for a consideration of Rs 5000 and some immovable property withdrew his claim and recognized the title of M as absolute owner. M died and the property passed to her husband K who sold part of it to S. Held on suit by S to

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—could

recover possession of the property so purchased that the compromise by B of his claim against M was not obnoxious to the prohibition contained in s 6 of the Transfer of Property Act 1882 as being a sale of reversionary rights *Mohammad Hashmat Ali v Kani Fatima* 13 All L J 110 referred to *BARATI LAL v SALIK RAY* (1916)

I L R 38 All 107

3 ——— **Compromise of claim to possession of property of deceased person**—Such compromise not a transfer of reversionary rights. Of four separated Hindu brothers Hazari the second died first leaving a widow Musammatt Mulo who married the eldest brother Iarmal. Next, another brother Pransukh died without issue leaving a widow Musammatt Indo. A question having arisen as to the legal effect of the remarriage of Musammatt Mulo the two surviving brothers Iarmal and Cokul entered into an arrangement by which in consideration of his being allowed to retain the property of Hazari Iarmal agreed to make no claim against Cokul to the property of Pransukh on the death of his widow Musammatt Indo. Held that this was a valid agreement and did not offend against the provisions of s 6 (a) of the Transfer of Property Act 1882 *Rani Meera Kuar v Jami Hulas Kuar* 1 R 11 1 157 *Kanti Chandra Mulraj v Ali Nabi* 1 I R 33 All 318 *Nasir ul Haq v Fayaz ul Pakman* 1 L R 33 All 470 *Mohammad Hashmat Ali v Kani Fatima* 13 A J 110 and *Barali Lal v Sahil Ram* 1 L R 38 All 107 followed *Olavi Pulliah Chetti v Iara darajulu Chetti* 1 L R 31 Mad 474 referred to *Bayrang Singh v Bhagwan Balsh Singh* 11 Oudh Cases 301 referred to by *PICOTT J CHANLU v PARNAL* (1910) I L R 41 All 611

4 ——— **Release by reversioner of his interest**—in certain promissory notes expectant on death of present holder. The reversioner expectant on the death of a Hindu widow executed a document purporting to be a release in favour of the widow of his interest in certain Government promissory notes to which the widow was entitled during her life. Held that this was a transfer of the chance of an heir apparent succeeding to property and therefore void *Sham Sunder Lal v Achhan Kunnir* 1 L P 21 All 71 referred to *MARAWAN MAQAN v BALU NATH DAS* (1909)

I L R 32 All 88

5 ——— **Hindu temple offerings to—Pujari's right to a share of alienable**—*Estoppel*—*Res extra commercium*. The chance that future worshippers will give offerings to a temple is a mere possibility within the meaning of s 6 (a) of the Transfer of Property Act and as such cannot be transferred. Such a transfer being prohibited by statute the transferor is not estopped from questioning its validity *Per SHARFOODIN J*. The right of the pujari of a Hindu temple to take a share of the offerings is a *res extra commercium* *PUNCHA THAKUR v BINDESHRI THAKUR* (1915)

19 W N 580

6 ——— **Hindu law—Adoption**—Postponement of adopted son's estate during the widow's life—Transfer made by adopted son of property forming part of the estate in the widow's life time—Spes successus. An agreement depriving an adopted son of his right to take possession of the property of his adoptive father is not prohibited

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—could

by law *Kali Das Bujar v Shankar* 1 L R 13 All 391 and *Isalalshi Ammal v Sivaraman* 1 L P 27 Mad 577 referred to. Where such an agreement has been entered into for example an agreement giving a life estate to the adoptive mother and the remainder to the adopted son, the interest of the son is not merely that of a contingent collateral Hindu reversioner but he has vested interest in the property of his adoptive father which he is competent to deal with subject only to the previous life estate. He is not barred by the provisions of s 6 (a) of the Transfer of Property Act 1882 from dealing with the property *BALWANT SINGH v JOTI PRA AD* (1918)

I L R 40 All 689

7 ——— **Maha Brahmin—Mortgage by of right to receive dues of office**. There is nothing in the law to prevent a Maha Brahmin mortgaging his right to offerings receivable by him in his professional capacity *Pagloo Pandey v Kashi Parey* 1 L R 10 Cal 13 referred to *SUKH LAL v BISHAMBHAR* (1916)

I L R 30 All 198

8 ——— **Transfer of lessor's interest**—Breach of condition prior to the transfer—Right to enforce forfeiture by the transferee. A mortgagor leaves provided that the lessee was not to alienate the property leased. The lessee committed a breach of the condition by sale of his rights in under the lease to defendant No 2 in 1908. In 1911 the plaintiff purchased the landlord's rights from the lessor who had not given the lessee notice of his intention to enforce the forfeiture before the transfer. The plaintiff having sued to recover possession of the property on breach of the condition defendant No 2 contended that the plaintiff could not take advantage of the breach of condition incurred before the assignment in his favour. Held disallowing the contention that the plaintiff was entitled to recover possession of the property from defendant No 2 *VISHVESHWAR v MAHA BLESHWAR* (1918)

I L R 43 Bom 28

9 ——— **s 6 (a)—Mere right to sue**—Assignment of decree for mesne profits. A and B holders of a decree for (a) possession of immovable property and (b) directing an enquiry as to mesne profits obtained possession through the Court and thereafter sold to C and D their right to recover the mesne profits. All four applied to the Court to ascertain the amount of mesne profits and the Court ordered accordingly. Held that the sale was valid the right of A and B under clause (b) of the decree not being a mere right to sue within the meaning of s 6 (a) of the Transfer of Property Act 1882. Held further that proceedings under a decree directing an enquiry as to mesne profits are proceedings in the suit. C and D acquired a right to carry on the suit on obtaining the leave of the Court under O XX r 10 of the Code of Civil Procedure 1903. They should have applied for leave under that rule but their omission to do so under the circumstances of this case was not fatal to their claim. The order of the Court on the petition presented by A B C and D was equivalent to the grant of leave. *HARJ PRASAD MISHER v KODU MARYA*

1 Pat L J 427

10 ——— **Assignment of a decree passed for immovable property and for a certain part of mesne profits**—Transferee's right to be

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—contd

s. 6 (e)—*contd*

made a party and to mesne profits Where the right to mesne profits has been declared by a decree but the exact amount has been left to be ascertained at a future stage in the same suit a transfer of such right is not invalid under s. 6 (e) of the Transfer of Property Act as the transfer of a right to sue. *VENKATARAMA AYIAR v RAMA SAMI AYIAR (1901)* I L R 44 Mad. 539

Right to sue assignm nt of—Tort—Assignm nt of claim founded on validity of—Damages for negligence of agent assignm nt of claim for A mere right to recover damages for the negligence of an agent in suing to collect rents cannot be transferred. Such a right is nothing more than a right to sue within the meaning of s. 6 (e) of the Transfer of Property Act (IV of 1882). If such a claim is founded on tort it is not assignable. *Dawson v Great Northern and City Railway (1905)* 1 A. B. 960 and *Deft v Mda (1913)* 1 Ch. 93 *referred to*. Held also that the claim is founded on contract was unassignable in law being transferred after breach. *Abu Mahomed v S C Chander* I L R 35 Cal. 34; applied *Shyam Chand Koonoo v The Land Mortgage Bank of India* I L R 9 Cal. 695 *referred to*. *Mahodas v Pany; Palak* I L R 16 All. 986 distinguished. *Dawson v Great Northern and City Railway (1905)* 1 K. B. 260 explained. *VARAHASWAMI v RAMACHANDRA RAJU (1913)* I L R 38 Mad. 138

Transfer of right to past mesne profits illegality of A transfer of a claim for past mesne profits is invalid under clause (e) of s. 6 of the Transfer of Property Act (IV of 1882). *Varahaswami v Ramachandra Raju* 2d Mad. L. J. 998 followed. *King v Victoria Insurance Company (1896)* 4 C. 250 distinguished. *SEETANMA v VENKATARAMANAYYA (1913)* I L R 38 Mad. 308

Settlement for concubinage—Immoral object carried out—Right to annul the settlement It is a well established rule of equity that a person who has transferred a property to another for an illegal or immoral purpose cannot get it annulled if the intended purpose has been carried out and s. 6 (e) of the Transfer of Property Act has not the effect of modifying it. *Ayerst v Jenkins (1873)* L. R. 16 Eq. 275 followed. *Per OLFIELD J.*—It is the sense of the community as a whole that decides whether a certain purpose is immoral the fact that in a certain section of the community concubinage is allowed and it is not regarded as immoral does not make a settlement made by a member of such community in consideration of concubinage any the less immoral. *DEIVATATAGA PADAYACHI v MUTRU REDDI (1921)* I L R 44 Mad. 329

ss. 6 and 7—

See s. 6 I L R 33 All. 62

s. 7—

See MINOR I L R 40 Mad. 308

s. 8—

See s. 3 I L R 44 Mad. 196

See SUBSTITUTION OF PROPERTY AND SECURITY I L R 59 Mad. 283

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—contd

9—

See MORTGAGE I L R 45 Cal. 743

See REGISTRATION ACT 1908 ss. 17 AND

49

I L R 43 All. 1

s. 10—

See LEASE I L R 45 Cal. 940

Hindu Law—Grant

deed of for maintenance and other expenses—Grant by amindar His wife and minor son—*Estate of grantees—Restriction on alienation—Lease for fifteen years by mother as guardian if void or voidable by minor—Repudiation by zamindar as natural guardian mere act of if sufficient—Suit to set aside—Decree in such suit necessary—Suit by guardian—Dismissal for default effect of—Suit by lessee for rent—Objection by tenants as to validity of lease* A zamindar made a grant of certain lands to his wife and his minor son for their maintenance clothing and other expenses. The deed of grant contained a provision that the grantees were not to alienate the properties by sale mortgage etc. The mother of the minor son granted a lease of the lands for fifteen years in favour of the plaintiff and died a few months thereafter. The zamindar the father and natural guardian of the minor sued to set aside the lease but the suit was dismissed in consequence of the zamindar's default in obeying an order of the Court to appear in person. The plaintiff as the lessee of the lands sued to recover mesne profits due to him from the defendants who were the ryots but did not join the minor grantee as a party to the suit. The defendants contended that the lease to the plaintiff was not valid and that the plaintiff was not entitled to recover rent from them. Held (on a construction of the deed) that both the mother and the minor son obtained under the grant an estate in the property and were tenants in common during the life time of the mother after which the son was to hold the whole property. The provisions against alienation contained in the deed of grant were absolute restraints on alienation and were void under s. 10 of the Transfer of Property Act and under the Hindu Law. The lease for fifteen years granted to the plaintiff by the mother acting as guardian of her minor son even if it was beyond the powers of a guardian was not void against the minor but only voidable by him. The party who is entitled to avoid a transaction may do so by an unequivocal act repudiating the transaction or by getting a decree of Court setting it aside. When a guardian (natural or appointed) of a minor has given a lease another guardian cannot set it aside by a mere act of repudiation he can do so only by obtaining a decree of Court in a suit which may be instituted on behalf of the minor during his minority but his action in instituting a suit to set it aside (which was dismissed for his default) has no greater effect than his mere act of repudiation. Held consequently that the plaintiff was entitled to recover rent from the defendants under the lease. *MUTHUKUMARA CHETTI v ANTHONY UDAYAN (1914)* I L R 33 Mad. 867

ss. 10 and 11—

private religious gift to Brahmins—

See HINDU LAW—Gift

I L R 44 Bom. 393

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—confi

π 41—co std

See DEKKHAN AGRICULTURISTS RELIEF
ACT 1879 s 10A

I L R 45 Bom 8.

I L R 48 Calc 359

See MAHOMEDAN LAW—ENDOWMENT

I L R 47 Calc 86b

8 14--

See I RASP I L R 44 Mad 230

pp 14 40 and 45—

See CONTRACT I Pat L J 2.8

35-

See LESSOR AND LESSEE

I L R 38 Mad 88

See PROVINCIAL SMALL CAUSES COURT
Act 1887 SCH II ART 7

I L II 41 Mad 370

■ 36 44, and 52—

See SUBSTITUTION OF PROPERTY AND
SECURITY I L R 39 Mar 283

ss 38 and 108—

See LESSOR AND LESSEE

I L N 38 Med 88

38-

See HINDI LAW - DEBT

I L N 35 Mar 198

§ 40—Specific Relief Act (1 of 1877)

3-Indian Trusts Act (II of 1923) - Subsequent purchaser a trustee Plaintiff sued for a declaration of title to and for possession of immovable property from the defendant He based his title upon a registered sale deed dated the 5th December 1911 from one A Prior to this date the plaintiff had notice of the execution of a contract of sale of the same property by N to the defendant The defendant relied upon his possession under the contract of sale and contended that he had paid to A portion of the purchase money agreed upon and the balance was to be paid after the sale deed was passed Both the lower Courts allowed the plaintiff's claim for possession though it was found that the plaintiff had notice of the defendant's contract of sale and that nearly half the purchase money was in fact received by A from the defendant under the contract The defendant having appealed Held that the plaintiff having purchased with notice of the defendant's contract his suit for possession must fail He stood in the position of a trustee for the defendant of the land purchased by him and could not profit by his conveyance except to stand in the shoes of his vendor and receive the balance of the purchase money due on payment of which he would have to convey to the defendant Lalchand v Lakshman I L R 28 Bom 466 and Kurri Veerareddi v Kurri Rappareddi I L R 29 Mad 336 doubted GARGAN v LAXMAN GANODA (1916) I L R 40 Bom 498

8 41—

Sec 8 3 I L R 2, Rom 340

17 C W N 10

See CIVIL PROCEDURE CODE 1908 § 47

I E II 45 Nom 812

1 _____ Ostensible owner
—Owners of property minors at date of transfer—

*Owners of property minors at date of transfer-
Act (Local) No 11 of 1901 s 201 The owner of
certain zamindari property died leaving him sur-
viving a widow and two minor sons. During the
minority of the sons their mother not only got
herself recorded in respect of one third of the
property left by the husband (her proper share
being one eighth) and the balance being her sons)
but she mortgaged it to one A. V. sold his rights
to R who brought a suit for sale on his mortgage
and having brought the property to sale purchased
it himself. He subsequently transferred it to M.
M brought a suit for profits against the sons and
got an ex parte decree. Held on suit by the sons
for declaration of title to their share in the property
excluding the one eighth belonging to their mother
or in the alternative for possession (i) that the
suit was not barred by the provisions of s 41 of
the Transfer of Property Act 1882 and (ii) that
the proviso to s 201 of the Agra Tenancy Act 1901
protected the present suit. Dattilal v. Gopinath
J L R 26 Bom 43 and Damber Singh v. Sawhney
Kannur J L R 29 All 22, referred to. ADULT
LAW KIAN v. MUSAMMAT BUNDI (1911)
LAW ALL 80*

UNDI (1911)
T L R 04 All 20

2. Findings as to question of fact—Second appeal
Field that the questions whether a person is the
apparent possessor of immovable property is the
ostensible owner with the consent express or
implied of the real owner within the meaning of
s 41 of the Transfer of Property Act 1899 and
whether a transferee from such a person took the
transfer bona fide after taking reasonable care to
ascertain the title of his transferor are questions
of fact the finding on which by the lower Appellate
Court cannot be disturbed in second appeal
JAMNABAI D. S. UMA SANKAR (1914)

ILR 36 All 003

3 _____ Husband & pro
perty sold by wife—Bond fde purchaser for value without notice —His rights —Without notice
significance of the expression—He had a right to redemption Where during the husband's absence on pilgrimage the wife sold a piece of land which had before the husband's departure been mortgaged by her the purchaser who paid off the mortgage having by proper enquiries satisfied himself that the wife was owner Held that the husband could not recover the land nor was he entitled to be allowed to redeem the mortgage

VINAS PURSE v TETTER LESTER [1915]
D.C. W N 183

(1915) 20 C W N 103

transfer by which binds real owner—*Rea judiciala*
In a suit by A to recover from B property the title to which was disputed between A and B in whose favour B had on 14th March 1833 executed a usufructuary mortgage—in lieu whereof on 21st January 1834 another mortgage was executed in his favour by B—was made a defendant apparently on the ground of its being a transfer

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 41—contd

and the mortgage of 14th March 1893. The suit was decreed. In a suit by V to enforce his mortgage of 1st January 1893 which the representative in title of A contested the High Court held that the decision in the previous suit was *res judicata* and also that s 41 of the Transfer of Property Act did not apply to give B a title although B had got his name entered in the Revenue papers as owner because the application for the entry having been opposed by A B could not be said to have been entered as ostensible owner with A's consent and also because if V had made enquiries before he advanced money to B he could have discovered the fact of B's opposition and facts showing B's title. The Judicial Committee on appeal found the judgment of the High Court to be so satisfactory and sufficient that they felt themselves justified in advising the dismissal of the appeal without following the practice of making an elaborate report. **AGESHAR PRASAD PANDY v PATESHRI PARTAB AGARAI SINGH** (1915)

20 C W N 235

5 ————— *Equitable estoppel—Hindu law—Mitakshara—Joint family—Karta's name recorded in survey papers in respect of joint property—Alienation by Karta whether other members of family estopped from challenging—Constructive notice—Suit for partition—Admission of separation by plaintiff effect of.* The mere fact that the name of the Karta of a joint family is entered in survey papers as the owner of the family properties is not sufficient to show that a minor member of the family had held the Karta out to be the ostensible owner of the properties within the meaning of s 41 of the Transfer of Property Act 1882. A person dealing with the Karta of a Hindu family governed by the *Mitakshara* must inquire whether and how far the other members of the family are interested in the family property and is not entitled to rely on entries in collectorate registers and survey papers. The presumption is that all the members of the family are interested in the property. If the person dealing with such a Karta has had previous transactions with him and as a neighbour not only is he bound to enquire as to the interests of other members of the family but he is charged with notice and knowledge of the title of such members. The reasonable care referred to in the proviso to s 41 is the care that is expected of an ordinary man of business. Where a Hindu and his nephew were members of a joint family and the uncle executed a mortgage in the presence of the nephew who attested it held that the mere presence of the nephew did not involve any notice or knowledge that his share of the joint family property was being mortgaged and that he was not estopped from subsequently claiming his share unless it was satisfactorily proved that he was aware that the document dealt with his share of the property and that it was intended that his interest should be effected thereby. **KANHU LAL MARWARI v PALU SAHU**

5 Pat L J 521

6 ————— *Ostensible owner—Duty of transferee to inquire into transferor's title—Transferor in possession as sister's son of last full owner—Duty of transferee to ascertain if any collusive sale existed.* Defendant took a mortgage

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 41—concld

of a house from a person who was the son of a sister of the last full owner (a Hindu). The house was entered in the municipal register as in the possession of the mortgagor but the mortgagee did not appear to have made any inquiry as to the title although there was reason to suppose that he must have been aware of the existence of collaterals of the last owner. Held on suit by the collateral heirs for recovery of possession of the house that the defendant mortgagee not having made proper inquiries as to his mortgagor's title was not entitled to the protection afforded by s 41 of the Transfer of Property Act 1882. **BALLU MAL v RAM KISHAN** I L R 43 All 263

7 ————— *Rights of a mortgage purchaser in execution of a decree upon a mortgage by a widow in whose benami her husband had purchased the property—Rights of a purchaser in execution of a money decree against the husband—such purchaser is estopped from disputing the rights of a mortgagee purchaser—Bona fide transferee for value without notice actual or constructive.* A Hindu husband purchased some lands in the name of his wife who after his death mortgaged them and the mortgagee purchased them at a sale held in execution of the decree obtained upon the mortgage. In the meantime the lands had been sold in execution of a money decree against the husband and taken possession of by the decree holder purchaser. The mortgagee purchaser thereupon sued for a declaration that the lands belonged to the wife and for possession. The *kabulyats* *torjus* counterfoil rent receipts stood in the name of the wife and the mortgagee had taken the mortgage in good faith after making proper inquiry. Held—That so far as there were occasions for doing so the husband held out his wife as the real owner and therefore the purchaser in execution of the money decree against the husband being the successor in interest of the said husband was estopped from disputing the title of the wife and should not be allowed to defeat the rights of the mortgagee who is a transferee in good faith from the ostensible owner without notice actual or constructive of the husband's title. The mortgagee was not bound to inquire into the financial position of the husband at the time when the purchase was made in the name of the wife. **ANYODA MOHAN POY v NEELPHARI LOAN**

26 C W N 436

s 43—

See ADVERSE POSSESSION

I L R 40 Calc 173

See BENAMI TRANSACTION

I L R 46 Calc 566

See CENTRAL PROVINCES TENANCY ACT

1893 s 4 4 Pat L J 505

See CIVIL PROCEDURE CODE 1882

s 317 I L R 33 All 382

s 35A I L R 36 Bom 510

See MADRAS PROPRIETORY ESTATES VIL

LAGE SERVICE ACT 1894 s 4

I L R 39 Mad. 930

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—contd

s 43—contd

1 ——— Held that a permanent lease by fractional co sharers was binding on them when they subsequently acquired the whole property **LULIN MOHAN BANERJEE v RAJ KRISHNA GHOSE** 25 ■ W N 420

2 ——— **Deshgat Vatan—Mortgage—Subsequent enlargement of the mortgagor's estate—Private property—Mortgagee's claim to hold the property against the mortgagor's heir—Reg VI of 1827** A mortgagee of Deshgat Vatan knew that the property which was mortgaged to him was land appurtenant to an hereditary office and inalienable beyond the life time of the incumbent. Subsequently to the mortgage the estate of the mortgagor was enlarged so as to be alienable in the life time of the holder. After the enlargement the mortgagee having claimed to hold the property against the heir of the mortgagor. Held that the mortgagee took only such estate as the holder of the Vatan property was capable of conveying to the mortgagee at the time of the mortgage and that the mortgagee could not claim to retain the property in virtue of the mortgage after the death of the mortgagor. **GANDABAI v BASWANT (1909)** I L R 34 Bom 175

3 ——— **Benefit of action can be claimed only by person who has acted on the erroneous representation of another** The benefit of a 43 of the Transfer of Property Act can be claimed only where the person claiming such benefit has acted on the erroneous representation of the party who subsequently acquired interest he claims. An undivided Hindu father had two sons A and B. A who was entitled only to one third of the family property mortgaged one half of it to C who knew that A was entitled only to one third and did not bargain and pay for a half share. Subsequently A's father died and A having become entitled to a half share C sued on his mortgage seeking to make A's half share liable. Held that he could enforce his mortgage only against the one third share which belonged to A at time of mortgage. **PANDRI BANARJAY v KARUNOORY SUNDARAJU (1910)** I L R 34 Mad 159

4 ——— **Estoppel feeding of by after acquired property when transferor had no title at date of transfer—Principle if applies to Hindu conveyances** The observation in **Dooly Chand v Brij Dookun Lal Awashty** 10 C L R 61 6 C I P 528 that the principle of English law which allows a subsequently acquired interest to feed on estoppel does not apply to Hindu conveyances was treated as obiter and held that when a grantor of a lease by a recital is shown to have stated that he is seized of a specific estate and the Court finds that the parties proceeded upon the assumption that such an estate was passed an estate by estoppel is created between the parties and those claiming under them in respect of any after acquired interest of the grantor the newly acquired title being said to feed the estoppel. The principle is not inapplicable to a case where there was originally no title at all and is not confined in its application to cases where there is an enlargement of an existing interest. **KRISHNA CHANDRA GHOSH v RASIK LAL KHAN (1916)** 21 C W N 218

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—contd

s 43—contd

5 ——— **Permanent lease by fractional co sharers who subsequently acquire title to the whole property effect of—Permanent lease by widow if operative against her sons the reversionary heirs—Legal necessity—Such lease if void or voidable—if the lease has to be avoided before suit for possession—Tenancies of home land or agricultural lands created before the Transfer of Property Act transferability of—Custom and contract** A widowed daughter of a Hindu M and her two male cousins J and S held a property in equal shares. M and S granted a permanent lease of the entire property to the Defendant. Subsequently J died making a testamentary disposition of his properties to M and S in equal shares. On the death of M her sons and J's widow brought a suit to recover the property from the Defendant. Held that the lease was operative in respect of a two third share during the life time of M and S. But the one third share of J having subsequently vested in M and S the provisions of sec 43 of the Transfer of Property Act applied and the share of J became available to perfect their title and consequently the title of the Defendant in the entire property. That the lease did not bind the reversionary heirs of M as she did not execute it for any legal necessity. Abatement by a Hindu widow is not absolutely void but voidable at the election of the reversionary heir. It is not however necessary for him to take steps to avoid the lease before he brings an action for possession. Held further that under the law as it stood before the Transfer of Property Act tenancies whether of homestead or of agricultural lands were not transferable in the absence of a custom to the contrary or of an express contract to that effect. **SULIN MOHAN BANERJEE v PAJ KRISHNA GHOSE** 25 C W N 420

ss 44 52—

See SUBSTITUTION BY PROPERTY AND SECURITY I L R 39 Mad 233

s 45—

See JOINT TENANCY I L R 34 Mad 80

ss 45 and 55—

See CROSS OBJECTION 5 Pat L J 38

s 46—

See CONSTRUCTION OF DOCUMENT I L R 40 Bom 318

51 54 118—

See ESTOPPEL BY CONDUCT I L R 40 Mad 114

s 52—

See CIVIL PROCEDURE CODE 1909 s 47 O VI R 2 I L P 43 Bom 240

See COMPANY I L R 42 Bom 215

See SUBSTITUTION OF PROBATE AND SECURITY I L R 39 Mad 233

See LIS PENDENS I L R 41 Mad 458

1 ——— The rule of lis pendens will operate in favour of a plaintiff who at the time of the transfer was erroneously prosecuting his suit in a Court which from defect of

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—contd—

s 52—contd

jurisdiction was unable to entertain it and in consequence returned it for presentation to the proper Court which Court ultimately decreed the suit on the basis of a lawful compromise. **TANGON MAJHI v JALADHAR DEABI (1909) 14 C W N 322**

2. — *Fresh mortgage pending suit to pay off mesne mortgage—Effect—Subrogation* Where during the pendency of a mortgage suit a fresh mortgage was executed with the object of paying off certain mesne mortgages. *Held* that in so far as the mortgagee under the new mortgage was entitled to be subrogated to the rights of the mesne mortgagees the transfer was not affected by the rule of *lis pendens*. That in the absence of evidence to show an intention to extinguish the mesne mortgages paid off the presumption was that they were intended to be kept alive. **TARA PRASAD MOYDAL v KRISTA PRASAD PANDA (1910) 15 C W N 261**

3. — *Lis pendens—Suit to enforce simple mortgage ending in compromise—Execution sale pending suit—Purchaser of bound by compromise—Contentious suit—Immovable property suit respecting* The mere fact that a suit is terminated by a consent decree does not take the suit out of the operation of the doctrine of *lis pendens* as enunciated in s 52 of the Transfer of Property Act. A suit to be Contentious within the meaning of s 52 need not be contested in all its stages. A contentious suit is one in which a party having difference with another puts the law in motion as against the other. **Akila Chandra v Fuli Chand 8 B L R 474 Jayamunnesu v Vairatna 1 L P 8 Calc 188 distinguished** **Kustory Mohan v Manafar Hussa 1 L P 18 Calc 79** referred to **Fayaz Hussain v Prag Narain L R 34 I A 100** relied on. The doctrine of *lis pendens* applies to a suit to enforce a simple mortgage. **Fayaz Hussain v Prag Narain L P 34 I A 102** referred to. The doctrine applies to a purchaser at an execution sale pending the suit. **Radha Madhub v Monohur L P 10 I A 97 Moti v Kurabuddin L P 24 I A 110** **Fayaz Hussain v Prag Narain L P 34 I A 100** relied on. **TINODHAN CHATTERJEE v TRAI LOBHYA CHAMAN SANYAL (1911) 17 C W N 413**

4. — *Lis pendens—Partition between defendants enter of the property in dispute—Partition affected by lis pendens—Plaintiff's omission to bring partition to the notice of the Court—Practice—Array of parties—Pleading—Change of parties in pending litigation—Procedure* The plaintiff who owned a third share in an equity of redemption obtained a decree to redeem his share of the mortgaged property from his four mortgagees. The plaintiff paid the redemption money in the Court but after the expiry of the period fixed by the Court. The Subordinate Judge held that the payment was validly made and ordered possession of the property to be delivered to the plaintiff. This order was reversed by the District Judge on the 7th January 1907. On the 10th January 1907 the four joint mortgagees effected a partition of the property the subject matter of the suit and the property was divided into four shares and the share of one of them Gopal. The plaintiff

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appellate to the High Court from the District Judge's order on the 14th January 1907. The next day that is on the 15th January 1907 Gopal died leaving him surviving a widow Gangabai. In the High Court appeal the fact of partition dated the 10th January 1907 was not mentioned but Gopal's death was brought to the Court's notice but it was held that the right to sue survived against the other defendants. The High Court reversed the order of the District Judge and remanded the suit for extending the time of payment if any good cause were shown for it. In the District Court Gopal's name was removed from the array of parties and time was extended. The plaintiff paid the money within the time so extended and obtained an order to recover possession of the property. Gopal's widow Gangabai intervened on the ground that as she was no party to the District Judge's order she was not bound by it and could not be dispossessed. The Subordinate Judge granted the application. The plaintiff thereupon brought a suit to establish his right to the possession of the property. The Subordinate Judge decreed the plaintiff's claim but on appeal it was dismissed by the District Judge. On appeal to the High Court the decree was confirmed on the ground that the plaintiff's right was affected by his own negligence in omitting to bring upon the record the representatives of Gopal and his right was not affected by the partition of the 10th January 1907 which did not fall within s 52 of the Transfer of Property Act 1882. On appeal under the Letters Patent. *Held* that the plaintiff could not be defeated on the ground that in an other proceeding he did not communicate to the Court the fact of Gopal's death which he did not know. *Held* further that the partition in question fell within s 52 of the Transfer of Property Act 1882 for it was a transfer or at any rate a dealing with the property in suit. **PER CURIAM**. It is part of any litigant's right so far as the subject matter and conduct of the suit are concerned to know precisely where he stands. He is entitled to know who his opponents are and when that has been definitely and finally ascertained to insist that no dealing on their parts with the property in suit shall compel to go further afield and bring in new parties who but for such dealing could have had no locus standi at all. A complete right needs a person of incidence as well as a person of inherence. No party during the conduct of a suit has any power by dealing with the property to change the person of incidence or inheritance to the detriment of the other. **ISHWAR LINGO v DATTU GOPAL (1913) 1 L R 37 Bom 427**

5. — *Lis pendens—Usance decree—Execution proceedings after a long period—Alienation of property during the period—Act in progress on* In 1900 defendant No 1 obtained a usance decree which had clause a charge in her favour on the family property. In 1906 the judgment debtors sold a portion of the property to plaintiff Defendant No 2. In 1907 to execute the decree in the usance proceeding one of the lands of the family was put up to sale and purchased by defendant No 3 in 1910. The plaintiff's application for the sale to him was not successful. The lower Court

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ground that the sale in plaintiff's favour was affected by *lis pendens*. On appeal *Held* reversing the decree that the doctrine of *lis pendens* had no application to the case for the decree was passed four years earlier and no execution proceedings were taken and it could not be said that the purchase by the plaintiff was made during the active prosecution of a contentious suit or proceeding. *BIROJE MAHADEV PARAB V GANGA BAI* (1913) I L R 37 Bom 621

■ ———— *Lis pendens*—

Contentious suit meaning of—Friendly suit no contest—Plea of *lis pendens* not taken in the written statement—Point of Law—Plea permitted after remand. The words contentious suit in s 52 of the Transfer of Property Act (IV of 1882) are used in contradistinction to a friendly suit in which there is no contest. Every suit other than such a friendly suit by its origin and nature falls within the definition of a contentious suit. *Jogen dra Ghani v Ghose v Fullumari Dasi* I L R 27 Cal 77 followed. *Krishna Kamini Devi v Datto Mony Chouthran* I L R 31 Cal 653 and *Upendra Chandra Singh v Mohri Lal Varma* I L R 31 Cal 745 dissented from. *Faiya Husain Khan v Prag Narain* I L R 29 All 339 referred to. A point of law such as *lis pendens* which was argued before the first court and which required no further facts than those already on record must be considered by the Appellate Court though the defendants did not plead it in the written statement. *KATHIR v MARTHADISA* (1913) I L P 38 Mad 450

7 ———— *Lis pendens*—

Attachment before judgment—Claim to attach property by third party allowed—Sui by decree holder against claimant to establish his right to attach—Sui dismissed—Appeal by decree holder—Judgment not a party to suit or appeal—Sale in execution of another decree by another decree holder pending appeal—Decree on appeal—Subsequent sale in execution—Validity of prior sale. A decree holder had attached the property of his judgment debtor before decree in his suit and while he was seeking to establish his right to attach and sell such property as the property of his judgment debtor by suit against a successful claimant another decree holder attached the same property and brought it to sale during the pendency of the appeal in the claim suit. The judgment debtor was not made a party to the claim proceedings or the subsequent suit or appeal. The property was again sold in execution of the decree of the former decree holder who purchased it and sued to recover possession. *Held* that the auction purchaser in the prior sale was not affected by the doctrine of *lis pendens* and his purchase was valid as against the purchaser in the subsequent auction. *Per WALLIS C J*.—The doctrine of *lis pendens* was inapplicable on the ground that the judgment debtor was not a party to the claim proceedings or the subsequent suit and could not be considered to be represented in that suit by the plaintiff therein. *Lala Mulji Thakar v Kashi Bai* I L R 10 Bom 400 referred to. Even if the judgment debtor was a party thereto there is no *lis pendens* as the doctrine of *lis pendens* applies only to alienations which are inconsistent with the

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right which may be established by the decree in the suit here as the sale in execution proceeded on the very footing that the property belonged to the judgment debtor the doctrine is inapplicable. *Per NAPIER J*.—The doctrine of *lis pendens* does not apply as the judgment debtor was not actually or constructively a party to the claim suit. *Phul Kumari v Ghanshyam Misra* I L R 35 Cal 20th explained. *Krishnappa Chetty v Abdul Khader Sahib* I L P 38 Mad 555 dissented from. *PETRU ATYAR v SANKARANARAYANA PILLAI* (1916) I L R 40 Mad 955

8 ———— *Lis pendens* doc-

trine of—Sui which is compromised and in which a consent decree is passed whether falls within the scope of the doctrine—Contentious suit significance of. In a suit for declaration of title to a certain zemindari certain mortgagees who too were impleaded as Defendants set up their title by purchase in execution of a mortgage decree. After being hotly contested for some time the suit was compromised with the said Defendants but was continued against the other Defendants. The suit was eventually decreed partly in terms of solennam and partly on contest. The purport of the compromise was that the compromising Defendants relinquished in favour of the Plaintiff whatever interest they had in the zemindari for a consideration of a sum of money which was secured by a mortgage on the zemindari as the Plaintiff was unable to pay the amount in cash. The present suit was subsequently brought to enforce a mortgage security executed by the Plaintiff in the previous suit after their institution of the said suit and the above mentioned Defendant who had compromised were also made parties. They set up the mortgage executed in their favour and contended that though subsequent in point of time it had priority over the mortgage in suit by the application of the doctrines of subrogation and *lis pendens*. *Held*—That the compromise and the mortgage executed in the previous suit constituted one entire and indivisible transaction and when the said decree gave effect to the compromise it validated the whole contract between the parties inclusive of the mortgage. The mortgage in suit executed after the institution of the previous suit was affected by virtue of the rule of *lis pendens* by the consent decree in the suit which incorporated and gave effect to the mortgage executed in connection with the said compromise. If a suit is not collusive it is a contentious suit. If it was so in its origin and nature and even if it is subsequently compromised. *Faiya Husain v Prag Narayan* L R 34 I A 10th s c I L R 29 All 339 II C W A 661 (1907) *Bandon v Beecher* [1855] 3 Cl & F 479 *Annamalai v Malayandi* I L R 29 Mad 426 (E B) (1906) and other cases referred to. *Kailash v Fulchand* 9 B L R 474 (1871) considered. Further unless a compromise is collusive the very fact that there is a compromise shows that the suit was in its origin and nature contentious otherwise there would be nothing to compromise. Hence a consent decree falls within the scope of the rule of *lis pendens* enunciated in sec 52 of the Transfer of Property Act. *Landan v Morris* [1857] 2

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— s 52—*contd*

L J Ch 30, Sim 24 and other cases referred to BHARAT RAMANJ DAS MOHANTA & SRI NATH CHANDRA SAHOO

25 C W N 806

9 ————— *Contentious suit*—*Suit decided ex parte but not fraudulent* If a suit is neither fraudulent nor collusive it may be none the less a contentious suit within the meaning of s 52 of the Transfer of Property Act 1882 no withstanding it was decided *ex parte* PAN BHAPORE & PAMPAL SINGH

I L R 42 All 319

— s 52 56 81—

See APPEAL I L R 41 Cal 418

— ss 52 and 91—

S & CIVIL PROCEDURE CODE ACT (V OF 1908) O XXI R 103 and O XXIV R 1 I L R 43 Mad 696

— s 53—

See ATTACHMENT I L R 44 Cal 662

S DECREE ASSIGNMENT OF I L R 37 Mad 227

See FRAUDULENT CONVEYANCE I L R 33 Mad 334 I L R 41 Mad 612

See MORTGAGE BY MISTAKE I L R 38 Mad 1071

1 ————— *Subsequent creditors are within the rule in (1) of the section—* *Presumption in cl 2 of section applies to subsequent creditors* Subsequent creditor are within the rule enunciated in the first clause of s 53 of the Transfer of Property Act and a titlement can be avoided at the instance of subsequent creditors *Husain Bhai v Haji Ismail Sait* 5 P W N 255 referred to. The presumption in cl 3 of the Transfer of Property Act applies in the case of subsequent creditors THOMAS PILLAI & MUTHURAMAN CHETTIAR (1909)

I L R 33 Mad 205

2 ————— *Mortgage in fraud of creditors liability of A being in insolvent circumstances mortgaged certain property to B there having been a failure in payment of part of the consideration money C holding a money decree against A impeached the mortgage as fraudulent* Held that the fact that the mortgage was for an amount larger than was really paid was no reason for not upholding it to the extent that it was supported by a debt existing at the date of the mortgage and that A was entitled to a decree for the amount actually paid by him *Chidambaram Chettiar v Simi Aiyar* I L R 30 Mad 6 distinguished *Islan Chander Das Surcar v Bahu Sardar* I L R 24 Cal 320 followed See CHITRA PITCHAI & PEDAKOTTAH (1913)

I L R 36 Mad 29

3 ————— *Fraudulent transfer*—*Transfer voidable at the option of the person defrauded—Purchaser at Court sale not a subsequent transferee—Person having interest at the property transfers same having interest at the date of the transfer* The plaintiff purchased certain lands in 1906.

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— s 53—*contd*

In execution of a money decree against the vendor the lands were sold at a Court auction and purchased by the defendant in 1909 with full notice of the sale of 1906. The defendant having been put into possession of the land the plaintiff sued to recover possession relying on the sale of 1906. The defendant contended that the sale was not genuine and was not supported by consideration and was made with the object of defeating the creditors of the vendor. The trial court negatived the contentions and decreed the plaintiff's claim. The lower appellate Court held that the sale of 1906 was bad under s 53 of the Transfer of Property Act as the consideration was grossly inadequate the sale was effected with the object of defeating and deluding the creditors of the vendor and the plaintiff participated in the fraud. The plaintiff having appealed—Held that the sale of 1906 could not be avoided under s 53 of the Transfer of Property Act (IV of 1882) at the option of the defendant who was not a creditor of the vendor or a subsequent transferee or a person having an interest in the property within the meaning of the section. Having regard to the presale as well as s 53 of the Transfer of Property Act (IV of 1882) a person who steps in by operation of law and not by any act of the owner is not a subsequent transferee or a person having an interest in the property within the meaning of s 53 means the person who has such interest at the time of the transfer objected to. *VASUDEO PAGHUNATH & JANARDHAN SIDDAGHIV* (1915) I L R 39 Bom 507

4 ————— *Transfer to defraud or defeat single creditor validity of—Bond fide transfer effect of s 53 of the Transfer of Property Act 1882 is not limited in its application to cases where there is an intention to defraud or defeat the general body of creditors. The section is applicable where a debtor disposes of his property with the intention of defeating even a single creditor. But if the property of the debtor is transferred for consideration to a bond fide purchaser then even though such transfer has the effect of putting the debtor's property out of the reach of the creditors the transfer will be effective and the creditors will not be entitled to have the transfer set aside or declared void.* *FAKIRA SINGH & MAHMO SINGH* 2 Pat L J 546

5 ————— *A suit by the purchaser of property sold in execution of a decree for a declaration that a conveyance by the judgment debtor was fraudulent and for possession is not a suit on behalf of all the creditors within the meaning of s 53 of the Transfer of Property Act 1882.* *SRI THAKURJI & NARSINGH NARAY SINGH* 6 Pat L J 43

6 ————— *Fraudulent alienation to defeat and delay creditors—Attachment of alienated property—O XXI r 63 suit under—Plea of attaching creditor as fraudulent nature of alienation validly of In a suit by an alienee who claims to property attached under a decree has been rejected to set aside the order and establish his title it is open to the attaching creditor to plead in defence that the transfer was in fraud of creditors.* *Subramania Aiyar & Muthia Chettiar* (1918) I L R 41 Mad 612 (F B) and *Pala*

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s 53—contd

Mani Chetty v Appar Chettiar (1916) 30 M I J 662 overruled *RAMASWAMI CHETTIAR v MALLAPPA REDDIAR (1920)*

I L R 43 Mad (FB) 760

7 ————— Debtor and

Creditor—Suit to set aside deed as being void as delaying or defeating creditors—Deed made on good consideration—Preference by debtor to one creditor rather than another where debtor retains no benefit for himself In this appeal their Lordships of the Judicial Committee upheld the decision of the High Court which was reported in I L R 34 Cal 999 at page 1003 The transfer which defeats or delays creditors is not an instrument which prefers one creditor to another but an instrument which removes property from the creditors for the benefit of the debtor The debtor must not retain a benefit for himself He may pay one creditor and leave another unpaid In *re Moroney L J 21 Ir 27* and *Uddleton v Pollock L F 2 Ch D 104* followed When it was found that the transfer impeached was made for adequate consideration in satisfaction of genuine debt and without reversion of any benefit to the debtor it followed that no ground for impeaching it lay in the fact that the plaintiff (appellant) who also was a creditor was a loser by payment being made to the preferred creditor—there being in the case no question of bankruptcy *MUSAHAR SARKI v JALAL HAKIM LAL (1915)*

I L R 43 Cal 521

8 ————— Mortgage in

fraud of creditors The first defendant mortgaged two properties 1. a parcel of land and a hut on second parcel to the plaintiff Subsequent to the mortgage the second defendant a creditor of the first defendant purchased the hut in execution of a decree for money obtained by him against the first defendant prior to the mortgage In a suit by the plaintiff to enforce the mortgage security the lower appellate Court made a decree for realisation of the mortgage money by sale of the first property alone although it found that at the date of the mortgage which was for an antecedent loan and an alleged cash payment which was not proved the plaintiff was not aware of the decree obtained by the second defendant nor of its impending execution against the first defendant and that there was no evidence to show that there were other creditors of the mortgagor at the time of the mortgage transaction who were intended to be defrauded or defeated Held that the facts found were not sufficient to bring the case within the scope of s 53 of the Transfer of Property Act That even assuming the mortgage to be within the mischief of s 53 the second defendant was under that section which rendered the transaction only voidable at the option of the person defrauded entitled to question the mortgage only in so far as it affected the property acquired by him and therefore the Court's order directing the sale of the first property was not open to exception That the Court in proceeding to grant relief by way of avoidance of the transaction would do so only on equitable consideration and would apply the principles of justice equity and good conscience and as it appeared that the second defendant acquired the hut subject to the lien of the plaintiff

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he should be granted relief only on condition that he satisfied the lien The plaintiff was therefore entitled to a decree for his dues also as against the second property in the hands of the second defendant *KRISHNA KUMAR NANDY v JAI KISHINA NANDY (1915)* 21 C W N 401

9 ————— Transfer to
strangers for value in fraud of creditors—Knowledge of intention to defraud is sufficient A transferee who is not himself a creditor and who takes the transfer with full knowledge of the fraudulent intention of the transferor to defeat his creditors is not a transferee in good faith and such a transfer is void as against a creditor even if the transferee has paid full value of the property purchased by him Such a transfer cannot be held to be valid on the ground that a portion of the consideration money was applied by the transferor in payment of some debts which he owed to third persons *ATTABUDDIN CHAUDHURY v BANARSA KUMAR SUDHAPADHAYAYA (1916)* 22 C W N 427

10 ————— Transfer made with intent to defeat or delay the creditor—Whether the transfer void in toto or void in so far as there is no consideration One J mortgaged his property with the plaintiff for Rs 4000 in 1911 In the same year the defendant a creditor of J brought a suit against him and obtained a decree in execution of which the property mortgaged to the plaintiff were attached The plaintiff having failed to raise the attachment sued for a declaration that the defendant was not entitled to attach the properties Both the lower Courts found that out of the consideration of Rs 4000 the only sum for which the plaintiff's action was of J at the time of the mortgage transaction was Rs 1000 and dismissed the plaintiff's suit on the ground that the plaintiff and J had an intention to defeat or delay the creditors of J in effecting the transfer On appeal to the High Court it was contended that the plaintiff was entitled to a declaration that he had a lien to the extent of the debt existing at the time of the mortgage Held that it being found that both the transferor J and the transferee plaintiff had the intention of defeating or delaying the creditors of the transferor and the consideration of the mortgage being treated as one and indivisible under s 53 of the Transfer of Property Act the document was set at the option of the person defeated or delayed in the transaction as void in toto and not merely as void in so far as there was no consideration *Ex parte Chaplin In re Sinclair 96 Ch D 319* and *Holm Lal v Mohd Saif Sahu I L R 34 Cal 999* at p 1071, relied on *BRITANNIA MILLINAR v PANACHAND (1918)* I L R 43 Bom 707

11 ————— Transfer in fraud of creditor—Attaching decree holder—Claim resisted by transferee allowed—Right of suit of a decree holder and an ordinary creditor—Form of suit—Whether representative suit on behalf of all creditors necessary—English and Indian Law—Statutory right of suit under O XXI r 63 Civil Procedure Code—Objection to form of suit isgermissible on appeal for the first time An attaching decree holder whose attachment has been raised on the claim petition of a transferee of the attached property is not bound to bring a representative

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suit on behalf of all the creditors of the judgment debtor to set aside the transfer as fraudulent under § 53 of the Transfer of Property Act but is competent to institute a suit to establish his right to proceed against the property under O XXI r 63 of the Civil Procedure Code *Subramania Ayyar v Muthia Chettiar I L R 41 Mad 612* and *Palaniandi Chetty v Ayyaru Chettiar 50 M L J 560* explained and distinguished English and Indian cases reviewed *Quare* Whether an ordinary creditor who seeks to set aside an alienation as fraudulent under § 53 Transfer of Property Act is bound to sue in a representative capacity on behalf of all the creditors of the transferor? *Per MAHESWARAN J* There is no rule either in English or Indian Law justifying the dismissal of a suit brought under § 53 Transfer of Property Act because it is not brought in a representative capacity and objections to the form of the suit should not be allowed to be taken for the first time in appeal Adopting the English rule an attaching decree holder has a personal right to sue by himself to avoid the transfer Further as the defeated party in a claim petition the attaching creditor has a statutory right of suit given to him under O XXI r 63 Civil Procedure Code and that suit must necessarily be one brought by him (if alone and is not a representative suit such right of suit cannot be defeated by any rule of practice which has no statutory basis *POKKEPILLAI v HAMAD (1918)*

I L R 42 Mad 143

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See § 4 I L R 38 Mad 1158

See § 5 I L R 35 Bom 403

See ESTOPPEL IN CONDUCT
I L R 40 Mad 1134See LAND REVENUE CODE (BOM) 18/9
s 74 I L R 41 Bom 170See MORTGAGE I L R 48 Cal 509
I L R 4 Cal 542See OFFICIAL RECEIVER
I L R 46 Cal 887

See PRE-EMPTION I L R 11 Lah 199

See REGISTRATION ACT s 1
25 C W N 985See SALE I L R 41 Cal 148
I L R 43 Cal 790Compromise in suit for land—
whether a sale—See LUNACY (DISTRICT COURT) ACT
1859 I L R 1 Lah 109—oral sale followed by—registered
sale—

See SALE I L R 44 Bom 588

1 — Pre-emption—

Whether sale is complete before registration Defendant No 4 sold the property in dispute to defendant No 2 by a *Kohala* dated the 14th July 1911 The *Kohala* was registered on the 1th At 6 AM

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on the 17th plaintiff heard of the sale At 3 P M he went to the Registration Office and put in a petition praying that the registration of the sale deed might be stayed *Held* that the petition to the Sub Registrar was not a sufficient compliance with the rules of Muhammadan Law with regard to the performance of the *Talabi maua ibat* and the *Talabi mubashad Per MULLICK J* A sale is not complete till legal ownership passes no matter whether there has been payment and delivery and a pre-emptor's title in the case of property worth more than Rs 100 does not arise until after registration *KHEVALI PRASAD v MULLICK NARUL ALUM I Pat L J 174*

2 — Sale of mortgaged property by mortgagor—Institution of suit by mortgagor—Registration of sale deed—Purchase by mortgagor in execution of decree—Suit by mortgagee against vendee for possession whether maintainable Where an instrument which purports to transfer title to property requires to be registered the title does not pass until registration has been effected Therefore where a mortgagee instituted a suit on the mortgagor on the 7th November and the mortgagor had sold the property on the 11th August by a deed which was registered on the 24th November and the mortgagee purchased the property in execution of his decree but was resisted in taking possession by the mortgagor's vendee *held* that in a suit by the mortgagee against the vendee the mortgagee was entitled to decree for possession and not a decree for sale only *TILAKDHARI SINGH v GOUR NARAIN 5 Pat L J 716*

3 — Sale—Compromise—Land worth less than Rs 100—Registration of deed or delivery of possession not necessary The terms of a compromise affecting a claim to land of the value of less than Rs 100 were reduced to writing The document was not registered nor was the transaction accompanied by delivery of possession The material provisions of the deed were as follows—You and we are co-sharers in your and our land Survey No 20 there is a well Therein you and we have a joint share Partition is to be made including it After the said (survey) number is divided we shall give 8 pands more from our share and both of us should put up a bundh (embankment) in the middle of the well and possession and enjoyment should be earned on according to our respective shares According to this condition we should not cause obstruction to each other One who will act in contravention of this agreement will be able to reimburse loss which may be caused The lower Appellate Court regarded the transaction as a sale which under the provisions of the Transfer of Property Act (IV of 1882) required delivery of possession in order to validate it *Held* that the terms of the deed did not bring the transaction within the category of a sale as defined in the Transfer of Property Act (IV of 1882) *Held* further that the document in question merely embodied a compromise between the parties and was in effect an acknowledgment of existing right and that therefore no delivery of possession was necessary *Per VERA KUMAR v PARI HULAS KUMAR I P 11 A 15* followed *KRIHNA TANHAJI v ABA SHETTI PATIL (1909)*

I L R 34 Bom 179

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4 *Indian Registration Act (III of 1877) s 17 (b) (c) and 49—Agreement of sale—Registration—Possession given subsequently—Deed operating as transfer* The plaintiff a guardian executed in favour of the defendants a registered agreement of sale and received Rs 100. The agreement provided that in consideration of the defendants helping the plaintiff a guardian with money to carry on litigation to recover possession of certain property the latter agreed to sell half of the property to the defendants when recovered. The suit was brought the property recovered and the defendants were put in possession of the moiety. No registered conveyance accompanied the delivery of possession. Subsequently the plaintiff brought a suit to eject the defendants alleging that in the absence of a registered conveyance the title to the property was still in him. *Held* dismissing the suit that the transaction was intended to operate as a sale on the recovery of the property and that the deed operated as a transfer on the fulfilment of the condition. **KONDU BIN KANHOJI v. VISHNU MORESHWAR** (1012) **I L R 37 Bom 53**

5 *Sale compulsorily registrable to defendant by unregistered kotala—Part performance—Payment of purchase money and delivery of possession—Subsequent sale by registered kotala to plaintiff with notice of defendant's rights—Plaintiff if may recover—Equity—Specific performance—Registration Act (XVI of 1908) ss 17 and 49* Where a purchaser of immovable property under an unregistered kotala paid Rs 500 the agreed price to his vendor and was placed in possession. *Held* that in the absence of circumstances showing that such purchaser was not entitled to sue his vendor for specific performance a subsequent purchaser of the property under a registered conveyance could not succeed in a suit to recover possession of the property from the former purchaser. The defendant is entitled apart from the provisions of the Registration Act to resist such a suit and to permit such a defence to be taken does not amount to an invasion or evasion of the Registration Act. **Walsh v Lonsdale** **L R 21 Ch D 9** followed. **PUCHHA LAL v. KUNJ BHARY LAL MONDAL** (1913) **18 C W N 445**

6 *Sale—Condition attached to the payment of the purchase money—Public policy* Where a deed purporting to be a sale deed contained a stipulation that the price should be paid within one year provided that possession was obtained within that time if possession was not obtained then the payment of the price should be postponed and further that in the event of the vendee not getting the property the price should not be paid at all. *Held* that the transaction amounted to a sale within the meaning of s 54 of the Transfer of Property Act and the condition postponing the payment of the consideration was not contrary to public policy. **KAULSHAR PRASAD MISRA v. ANADI BIRI** (1915) **I L R 37 All 631**

7 *Sale—Agreement to reconvey—No bar to recovery of possession—Contract on of statute* An agreement by the plaintiff to reconvey the property to the defendant made

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■ 54—contd

contemporaneously with the sale deed cannot be pleaded in bar of plaintiff's right to recover possession under the deed of sale. The provisions of s 54 of the Transfer of Property Act are imperative. The express words of an Indian Statute are not to be overridden by reference to equitable principles which may have been adopted in the English Courts. **Kurri Ferrariddi v. Kurri Bipreddi** **I I R 29 Mad 336** followed. **TRINAGOWDA v. BEVERGOWDA** (1915) **I L R 39 Bom 42**

8 *Agreement to sell land not creating any interest therein—Rule of perpetuities not offending—Specific Relief Act (I of 1877) s 27 (b)—Indian Contract Act (IX of 1872) s 37* A contract to convey or reconvey immovable properties whenever demanded for a certain amount is only a personal contract and does not create any interest in immovable property and is therefore enforceable and not void as contravening the rule against perpetuities. **South Eastern Railway v. Associated Cement Manufacturers Limited** (1910) **1 Ch 12 33** followed. **Kolihis Aygar v. Ranga Vadhvar** **I L R 33 Mad 114** distinguished. **Per CURTAM**—The contract is also enforceable according to s 37 of the Indian Contract Act (IX of 1872) against the representatives of the contracting parties. **CHABAVATI v. RAGHAVULU** (1915) **I L R 39 Mad 462**

9 *Sale deed of property in possession of tenants—Deed should be registered* A house which was in the possession of defendants as tenants was sold to them by the owner in 1909 for Rs 50 by an unregistered deed of sale. It was again sold in 1916 by the owner to the plaintiff by a registered sale deed. The plaintiff having sued to recover possession. *Held* that the defendants were entitled to set up their claim for the sale deed to defeat the plaintiff's claim for the deed though earlier in point of time required registration as the only interest which the vendor had at the date of the sale was a reversion in the house within the meaning of s 54 of the Transfer of Property Act (IV of 1882). **BEHARAN GOPAL v. PADMAN HEMA** (1915) **I L R 40 Bom 313**

10 *Transfer of immovable property of less than Rs 100 in value to mortgagee with possession on failure to pay off mortgage—Oral transfer—Delivery of possession necessary—Formal delivery* Where immovable property of less than Rs 100 in value was first mortgaged to A with possession and then on mortgagee's failure to pay up the mortgage amount the latter on 5th March 1907 orally sold the property to B and at the same time formally delivered possession by pointing out boundaries by endorsement on the back of the mortgage bond the fact of the sale and by handing it over to A and the mortgagee later on on 6th June 1906 sold the property to B by a registered deed. *Held* that every thing that could be done to deliver possession to B gave effect to the sale of 5th March 1906 was done and the requirements of s 54 of the Transfer of Property Act having thus been satisfied title from A must fail. **Sibendrapada Panigrahy v.**

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—contd

—s 54—contd

Secretary of State for India I L R 34 Cal. 87
distinguished SONAI CHUTIA v SONARAH CHUTIA
(1915) 20 C W N 195

11 ——— Agreement for sale of immovable property—Possession taken under the agreement—No registered conveyance—Suit by vendor to recover possession—Agreement for sale which is a valid defence to the suit—Agreement capable of specific enforcement at the date of the suit—Specific Relief Act (II of 1877) s 3 Illustration (g) and s 1 and 2—Indian trusts Act (II of 1882) ss 41-45 Where the plaintiff being the owner of certain immovable property seeks to recover possession of that property and there are no facts operating to his prejudice it is a valid defence to the suit that the plaintiff has agreed to sell the property to the defendant the agreement being at the date of suit still capable of specific enforcement but there being no registered conveyance passing the property to the defendant who has taken possession under the agreement for sale and is willing to perform his part of it with the plaintiff BAPU ARAJI v KASHINATH SADOBA (1917) I L R 41 Bom 438

12 ——— Indian Registration Act (XII of 1908) ss 17-59—Sale of land below Rs 100 in value by unregistered deed of sale and delivery of possession—Sale valid on proof of sale and delivery of possession—Secondary evidence of unregistered deed of sale which is admissible On the 10th May 1899 defendant No 1 sold the land in dispute to the plaintiff's father for Rs 40 and delivered possession thereof to him At the same time defendant No 1 executed a sale deed in favour of the plaintiff's father which was not registered The plaintiffs remained in possession till 1911 when they were dispossessed by defendant No 1 In the suit to recover possession of the lands the plaintiffs having lost the unregistered deed of sale adduced secondary evidence of its contents The lower Courts accepted the evidence and decreed the suit The defendants having appealed Held that the appeal failed inasmuch as the plaintiff's title was based on a contract of sale accompanied by delivery of possession which was proved Per BEAMAN J— I am clearly of opinion that neither the original unregistered deed of sale of 1899 nor secondary evidence of it was admissible in the present case to support the plaintiff's allegation that in 1899 there was a complete and valid sale of the property in suit effectuated by delivery of possession Per MACLEOD J— In my opinion in cases of transfer of property under the value of Rs 100 if the transfer is effected by delivery of possession accompanied by an unregistered document that document can be adduced in evidence in order to show what was the character of the possession given by the vendor of the land to the purchaser DAWALIRANSHAN v DHANVIA RAJAKANI (1917) I L R 41 Bom 553

13 ——— Sale of immovable property of less than Rs 100 in value—Delivery accompanied by an unregistered conveyance—Conveyance if admissible in evidence—Oral evidence to prove sale if admissible When the property sold is less than Rs 100 in value and the sale is effectuated or completed by delivery of possession there is no reason why the transaction should not

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—contd

—s 54—contd

be evidenced by a writing in the terms of a conveyance even though the document is not registered The document does not confer title and is merely evidentiary but having regard to s 91 of the Evidence Act it may be the only admissible evidence of the nature and terms of the transaction though that section would not exclude proof of the fact of delivery of possession JUMAN SNEIKH v MOHAMMAD NOBHOODAT (1917) 21 C W N 1149

14 ——— Effect of section on doctrine of part performance where vendor has paid full purchase money and obtained possession The plaintiff sued to recover possession of land which originally belonged to him and was purchased by D at a sale in execution of a decree for money against him Symbolical possession was taken by D who agreed to convey the lands to the plaintiff in consideration of a certain sum and actually executed a conveyance which however was not registered for non payment of the whole of the consideration money Thereafter the land was sold in execution of another money decree against the plaintiff who remained in possession and purchased by the defendant Subsequent to this the plaintiff obtained a second *khobla* from D which was duly registered It was found that the whole of the purchase money was paid by the plaintiff to D before the purchase by the defendant and he was in possession at that time Held that the plaintiff at the date of the purchase by the defendant had acquired a right to the property and as D could not at that date enforce any right against the plaintiff he could not contend that he had no interest in the property which could be purchased by the defendant that in *Maung Su Koh v Maung Lwin* I L R 41 Cal 54 21 C W N 700 the Privy Council only pointed out that s 54 of the Transfer of Property Act differs from the rule of English law to this extent that it expressly lays down that a contract for the sale of immovable property does not of itself create any interest in or charge on such property The question whether the equitable doctrine of part performance which arises from the fact that the vendor has paid the full purchase money and has obtained possession of the property agreed to be sold is inapplicable by reason of the provisions of s 54 of the Transfer of Property Act was not considered nor decided by their Lordships JYAN CHANDRA DAS v HARI MOHAN SEN (1917) 22 C W N 522

15 ——— Sale of equity of redemption by unregistered document—Admissibility of document to show satisfaction of mortgage Two plots of land were mortgaged to the defendant stipulating that he should keep possession of them for a fixed period in satisfaction of the debt and interest Subsequently the mortgagor sold one plot to the defendant and thus paid off the mortgage and took back the other plot The conveyance of sale was by an unregistered document In a suit by the mortgagor for recovering possession of the plot sold Held per CHITTY J That the property being in the possession of the mortgagor the sale was of the equity of redemption and being a sale of an intangible thing could under s 54 Transfer of Property Act only be effected by a registered document The conveyance was therefore inadmissible to prove the sale or to show

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—contd.

53 54 55—ca 10' d

to be a lien let into possession if on a sale directed by it for enforcement of his lien the property is found unsaleable at an adequate price. The right of the purchaser to obtain possession under s 55 (1) (f) of the Transfer of Property Act and the right of the vendor to realise the unpaid balance of the purchase money under s 55 (4) (b) may be enforced in one action. In this suit by the purchaser for recovery of the land sold he was directed to depout in Court the unpaid balance of the purchase money within a time specified failing which the suit was directed to be dismissed. Certain persons to whom the vendor had again sold the property for consideration having been joined as parties to the suit were given liberty to withdraw the unpaid balance of the purchase money to be deposited by the purchaser. The purchaser/plaintiff was made liable for the costs of the litigation as he had come to Court with a false plea that the whole of the purchase money had been paid to the vendor. NIRMALDEB PARIKHA
HARA PRASAD PARIKHA (1913)

HARA PROSLAD PABRI (1913) 17 C W N 1161

-- ss 54 and 118--Unfructuary Mortgage
--Oral arrangement that mortgagee should give up possession of the mortgaged property in part--Sale or reconveyance of the equity of redemption in part--*Sole or Exchange* -- Price meaning of--*Evid nce Act (I of 1872) s 92--Adverse possession by mortgagee A 1872* + 92--Adverse possession by mortgagee A had been redeemed item 4 alleging that item B had been previously redeemed by him The defendant pleaded that more than 12 years prior to suit the mortgage had been extinguished by an oral arrangement by which the mortgagor orally sold item A to the mortgagee in consideration for the latter surrendering item B to the mortgagor freed from the mortgage lien The defendant also contended that the possession of the mortgage became adverse from the date of the arrangement and that the suit was barred by limitation Per *CURRIE* Held that the transaction pleaded was not merely a compromise in acknowledgment of existing right but amounted to an exchange of property within s 118 of the Transfer of Property Act if it was not a sale and was invalid for want of a registered instrument Per *MILLER J* The transaction could not be proved for showing the change of the mortgagee's possession into adverse possession since the intention to make certain transfers involved the intention to discharge the mortgages and it could not be said that if those transfers failed both the parties nevertheless intended to discharge the mortgages Per *KAR SIVA AYYAR J* All transfers by conveyance if they are not settlements or declarations of trust were intended by the Legislature to come within the scope of the Sales Exchange or Gift Acts of 1896 and 1908 and the Transfer of Property Act 1882 *Thiruvengadam v Ranganatha Aiyangar 13 Mad L J 500* dissented from Price means not only money in current coin but includes money due on debt and the words price paid will cover uses when the vendor's claim to the receipt of the price is satisfied by giving him what he accepts in tantamount to such payment A mortgagee in possession as such cannot by mere assertion of his position as owner under an invalid sale convert himself into adverse possessor so as to

See ■ 118 I L R 48 Md 519

See MINOR I L R 38 All 154

See SALE OF LAND
I L R 43 Md 712

Purchase money non
payment of portion—Sale of nevertheless complete—
Registration of complete conveyance—Non delivery
to purchaser—Intention—Vendor a lien if may be
given effect to in purchaser's suit for possession—
Equities—Subsequent purchaser's rights—Cos s—
False allegations in plaint Where it was found
that there was no intention on the part of the
vendor or the purchaser to postpone the operation
of a conveyance till consideration had been actually
paid and the conveyance was executed and regis-
tered but not delivered to the purchaser and a
part of the purchase money remained unpaid
Held that the conveyance was completed and title
in the property passed to the purchaser That
the vendor had a lien on the land for the unpaid
balance of the purchase money and though the
lien does not entitle him after execution of the
conveyance to resume possession of the land sold,
it gives him the right to keep the title deeds until
payment A Court of equity can direct it to vendor

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—*contd.*ss 111 and 118—*contd.*

pre-cribe for a title under the Limitation Act
Bhai v Pottanna I I R 14 Mad 30 Bhagyan
Gownd v Kordirajad Vahadu I I P 14 Bom
219 Pamunni v Kerala Varma Vala Raja I L R
15 Mad 106 and Khairiyah v Dam I L R
37 Cal 96 applied. A mortgage created by a
registered instrument may be proved to have been
discharged by a lawful evidence (including oral
evidence) of payment of the mortgage amount
or by admission of evidence of any other transaction
which operates as mode of payment. Pamaralar
v Tulu Prosad Singh I L R 517 Kattika
Expansamma v Kallala Krishnamma I L R 30
Mad 231 Karampalli Unni Arup v Tellich
Patil Mulhoralatti I L R 26 Mad 195 and
Gosai Suba Pow v Varagonda Narayanaiah I I
P 27 Mad 373 referred to. But oral evidence of
an invalid oral conveyance (of which evidence is
legally inadmissible) of the equity of redemption
in a portion of the mortgaged property in dis
charge of the mortgage debt is inadmissible.
ANIRAPUTHIPPA v MUTHUKOMARASWAMI (1912)
I L R 37 Mad 423

Mutual sales of property effected by registered deeds—Subsequent agree
ments to exchange portions of the property sold—
Agreement acted upon but without execution of
so often instrument—Legal position of parties. In
1901, A by means of a duly registered deed sold
property X with other property to B and B simi
larly sold property Y with other property to A.
Possession of items X and Y was however not
transferred and shortly afterwards A and B
agreed to exchange the two properties. No deed
of exchange was ever executed but the parties
remained in possession of the properties in ques
tion from 1901 onwards. In 1913 some of the heirs
of B sued to recover property X from A in virtue
of the sale deed of 1901. Held that in the cir
cumstances the plaintiffs were not entitled to
recover. A. v. V. v. V. v. V. v. V. v. V. v. V. v. V.
I L R 29 Mad 337 and Chidambaram Chettiar
v Vaidyanatha I L R 38 Mad 519
discussed from. Mahomed Musa v Agbore Kumar
Ganguli I L P 40 Cal 501 Maddison v Alther
301 S 4 C 467. Sumudra Choolara Hussein v
Abdul Hussein Kalimuddin I L R 31 Bom 165
Karalia Danutha Mohamedh v Mansultram
1 Lakshmi I L R 94 Bom 400 Ravi Baksh v
Vughlani Khanam I L P 96 All 966 Begam
v Mhammed Yakub I L R 16 All 344 Muham
med Talib Hussain v Inayat Jan I I R 33 All
613 Jhampal v Kutramani I L R 39 All 696
and Maung Shwe v Maung Inn I L P 14 Cal
512 referred to. SALAMAT LEZAMIN BEGAM v
MASHA ALI KHAN (1913)

I L R 40 All 187

s 55—

See (1) K. v. FIGHT

R 42 Cal 28

See VENDOR AND PURCHASER.

I L R 1 Lah 350

Lender's lien for unpaid
purchase money—Consideration paid in part—
Bond executed by vend promising to pay balance
of purchase money by instalments. The acceptance
by a vendor of immovable property of a separate
bond given by the vendee to secure payment

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—*contd.*s 55—*contd.*

by instalments of the balance of the purchase
 money does not in any way imply an intention
 on the part of the vendor to relinquish the lien
 given to him by s 55 of the Transfer of Property
 Act 1882. *Hebb v Macpherson I L R 31 Cal*
9 referred to. BASHIR AHMAD KHAN v NAZIR
ABDUL KHAN I L R 43 All 544

Sale of land—Covenant
of title—Failure of consideration—Warranty
implied—Absence of express covenant to the contrary
—Mortgage for balance of unpaid purchase money
if may be enforced on failure of consideration for
sale—Idem claim compromised by purchaser—
Vendor of bound—Notice of compromise. A con
veyed a property to D and D executed a mortgage
bond for a part of the purchase money yet remain
ing due. At the time of the sale there was some
dispute between A and some other persons relating
to some part of the lands sold. Subsequently
after D's purchase a suit was instituted by one
P for a part of these lands and the suit was ulti
mately decreed in the first Court. Against that
decree D appealed to the High Court where it was
compromised on terms by which D gave away 133
bighas of the lands. Held that A's legal repre
sentative who required in the decision of the
original Court could not contest the validity of the
compromise made in the appeal Court in her pre
sence and without any protest on her part that it
was improvident. The law relating to compromise
of an adverse claim by the purchaser with or with
out notice to the vendor as affecting the vendor's
covenant of title discussed. That the purchaser
was entitled to a reduction of the price settled
because the vendor had failed to convey all that he
had agreed to sell and the consideration for the
mortgage being unpaid purchase money the
liability under it could be reduced pro tanto
That D was entitled to the benefit of s 55 of the
Transfer of Property Act although there was no
active fraud on the part of A as there had been a
failure of consideration with reference to 133
bighas. Any express covenant to the contrary
relied on as a bar to the plaintiff's claim to be
indemnified under s 55 of the Transfer of Property
Act must be in plain and unambiguous language.
DIGAMBAR DAS v NISHIBALA DEBI (1910)

15 C W N 655

s 55 Sub s (1) cl (b)—

See SPECIFIC PERFORMANCE.

I L R 41 Cal 852

s 55 (1) (g)—

See VENDOR AND PURCHASER.

I L R 38 Cal 458

Sale free from incum
brances of property subject to mortgage charges—
Incumbrances discharged by purchaser—Right of
purchaser to be indemnified—Payment of incum
brances by purchaser if voluntary—Ind on Contract
Act (IX of 1882) sec 69—Arrangement by vendor
with a third party to pay off incumbrances if en
forced by purchaser when not so created. Where
a deed of sale of properties which in fact were
subject to mortgage charges contained an express
declaration that the property was sold free from
incumbrance the vendor was under sec 51
(1) (g) sub cl (2) of the Transfer of Property

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—*concl'd*s 55 (1) (g)—*concl'd*

Act liable to the purchaser for moneys paid by the purchaser either for redemption of the mortgages existing on the property purchased at the date of the purchase or for purchase of the properties on sales under such mortgages or to prevent such sales. *Semle*—It is difficult to accept the view that purchasers of a property are not compelled to pay off mortgagees who have obtained decrees for sale even though a sale is not immediately threatened. Where after the sale the vendor sold another item of property to a third person and it was agreed between them that the latter should discharge the incumbrances on the property which the vendor had sold to the first purchaser free from incumbrances. *Held*—That a suit by the first purchaser against the second purchaser for recovery of the amount of incumbrances was misconceived the former being no party to the latter's purchase deed and no trust having been thereby created in his favour. **NATHU KHAN v. THAKUR BURTONATH SINGH (P O)** **22 C W N 514**

s 55 (2)—

See CONTRACT ACT (IX OF 1872) s 73

I L R 40 Mad 338

See CROSS OBJECTION 5 Pat L J 328

See SALE DEED I L R 38 Mad 1171

s 55 (4) (b)—

See DRBT I L R 42 Cal 849

Vendor has no a solute title to interest in all cases irrespective of equities—Right of vendor in possession to interest s 55 cl (4) of the Transfer of Property Act does not give the vendor an absolute title to interest in all cases irrespective of equities. It only provides that the vendor shall have a lien for interest when it is payable. Interest on the purchase money cannot be claimed so long as the vendor remains in possession of the property sold. **MUTHIA CHETTI v. SINNA VELLIAN CHETTI (1912)** **I L R 35 Mad 625**

Sale of land—Vendor and purchaser—Vendor's direction to pay purchase money to a third party on his behalf—Existence of vendor's lien in spite of a contract to forego the vendor's charge for unpaid purchase money is not to be necessarily inferred when the whole or part of the consideration for the purchase of immoveable property is agreed to be paid by the purchaser to a third party on behalf of the vendor. **Abdulla Beary v. Mammali Beary I L R 33 Mad 416 and Sivabramania Mudal v. Gnana Sambanda Pandaraj Sannadhi 21 Mad L J 359 overruled. Webb v. Macpherson I L R 31 Cal 57 referred to. Sivabramania Ayyar v. Subramania Ayyar (1916)** **I L R 39 Mad 997**

Sale—Consideration therefor—Covenant by purchaser to discharge liabilities of seller—Breach of covenant gives rise to action for damages only—Statutory charge under cl 4 (b) negated by contract to the contrary arising by implication. When a purchaser of immoveable property covenants in consideration of the transfer on such property to him to discharge certain liabilities of the seller and further stipulate that upon his

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—*concl'd*s 55 (4) (b)—*concl'd*

failure to do so he shall be liable for any damage resulting from such default. *Held* that upon breach of such a covenant the seller is entitled to be compensated in damages but has no charge upon the property in the hands of the purchaser under s 55 cl 4 (b) of Act IV of 1882. To negative the statutory charge afforded by s 55 it is sufficient if a contract to the contrary arises by implication. **Webb v. Macpherson I L R 30 I A 438** referred to. **In re Albert Life Assurance Company v. Western Life Assurance Society 11 Eq 164** followed. **Pamakrishna Ayyar v. Subramania Ayyar I L R 29 Mad 305** distinguished. **Abdulla Beary v. Mammali Beary (1910)** **I L R 33 Mad. 446**

Sale—Vendor's lien—

Lien not enforceable against subsequent purchaser without notice. The vendor's lien for unpaid purchase money provided for by s 55 (4) (b) of the Transfer of Property Act 1882 cannot be enforced against the property in the hands of subsequent transferees for value without notice of the lien. **Webb v. Macpherson I L R 31 Cal 57** distinguished. **GUR DAYAL SINGH v. KARAN SINGH (1916)** **I L R 38 All 254**

On a sale of immoveable

property a suit for preemption was brought and succeeded. At the time of the sale part of the purchase money had been left in the hands of the purchasers to pay off incumbrance of which the preemptors had notice. As a matter of fact however owing to a suit for preemption the incumbrance was not paid off. *Held* that the vendor had a lien on the property in the hands of the preemptors to the extent of the unpaid purchase money. **RAMA NAIDU LUANTI v. SINDO DAS** **I L R 43 All 314**

s 55 (6) (b) 123—Registration Act (III of 1877) s 17—Exemption of assessment in lieu of services rendered or to be rendered—Document granting exemption not stamped or registered—*Gift—Hindu Law—Mandha*. In consideration of services already rendered or thereafter to be rendered by the defendant to the predecessor in title of the plaintiff the latter executed two documents whereby he released the defendant from payment to him of the assessment on certain land. Those documents were not stamped or registered. The plaintiff sued to recover arrears of assessment from the defendant who pleaded exemption under the two documents. The lower Appellate Court found the transaction to be one of sale and applied s 55 (6) (b) of the Transfer of Property Act 1882. The plaintiff paid to the defendant what the Court calculated to be the equivalent of purchase money before he (the plaintiff) could recover the assessment. *Held* that the transaction evidenced by the documents could not be regarded as a sale for the consideration could not be regarded as price and even if it could be assessed in money value it was vitiated by the fact that it was vague and uncertain as to future services. *Held* further that the transaction must be regarded as one of gift. It was a gift of the grantee a right to assessment and such a right is regarded as *mandha* in Hindu Law and therefore immoveable property. The documents not having been registered the gift did not operate. *Held* also that the plaintiff

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—contd—

§ 55 (6) (b) 123—contd

been no registered instrument in support of the defendant's title the right set up in defence must be negatived. *MADHAVRAO v KASHINATH* (1909)

I L R 34 Bom 287

§ 55 58 100—

S e RATES AND TAXES

I L R 42 Calc. 625

§ 56—Marshalling—Application of

doctrine as between purchasers of different properties subject to the same mortgage—Act No III of 1907 (Provincial Insolvency Act) ss 16 and 34—Insolvency—Property of applicant sold in execution of decree before order of adjudication but after filing of application. The rule of equity stated in s 56 of the Transfer of Property Act 1899 does not apply to a case between purchaser and purchaser the section being limited in its operation to the case in which the party claiming marshalling is a purchaser and the party against whom it is claimed is the original mortgagor. *Magniram v Mehd. Hosein Khan* I L R 31 Calc 95 followed. Held also that s 16 cl. (6) of the Provincial Insolvency Act 1907 does not control s 34 cl. (1) of the Act. But where property of the applicant in insolvency is sold in execution between the dates of the application and of the order of adjudication the property sold vests in the auction purchaser and not in the receiver. *Sri Chand v Murari Lal* I L R 44 698 followed. *Basornal Anantmal v Khemchand Daryanomal* 11 Indian cases 433 approved. *DRY DAYAL v GUR SARKAR LAL*

I L R 42 All 336

§ 56 and 81—

See APPEAL I L R 41 Calc 418

§ 56 81, 88—

See MORTGAGE I L R 35 Bom 395

§ 57—

See MORTGAGES I L R 89 Mad 419

See MORTGAGE DEGREE 2 Pat L J 118

§ 58—

See s 6 I L R 39 All 196

See CONSTRUCTION OF DEED

L L R 40 Bom. 74 378

See LIMITATION ACT 1908 s 5 ART 132

25 C W N 57

See MORTGAGE 1 Pat L J 563

See RATES AND TAXES

I L R 42 Calc 625

Mortgage—Construction of document A bond was executed in the following terms — I have borrowed Rs 1000 from so and so and $\frac{1}{2}$ out of the entire 20 biswa zamindari property in belonging to me and have brought the same to my use. I therefore covenant and give in writing that I shall repay the aforesaid amount with interest etc. Until the repayment of the aforesaid amount I shall not transfer the aforesaid property. If I do so then such transfer shall be invalid. I have therefore executed these few presents by way of a bond (*tamassuk*). Held that the document did not constitute a simple mortgage as there was no transfer of a specific interest in im-

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—contd—

§ 58—contd

moveable property to the lender nor any power of sale conferred on him. *Dalip Singh v Bahadur Ram* I L R 31 All 416 referred to by *PICCOOTT J. MOHAN LAL v INDOMATI* (1916)

I L R 39 All 244

Mortgage by conditional sale—Sale and agreement to re sell same transaction whether a sale or mortgage—Construction—Intention of parties—Surrounding circumstances terms of instrument or oral evidence of intention whether can be considered—Decisions of Privy Council on transactions before Transfer of Property Act—Applicability of to those after the Act Where in one and the same transaction land is sold absolutely but with a right of repurchase to be exercised before a certain date the transaction does not necessarily become by virtue of s 58 of the Transfer of Property Act a mortgage by conditional sale whatever the intention of the parties might have been. The Privy Council have laid down that in transactions before the Transfer of Property Act not governed by Bengal Regulation XVI of 1806 instruments of the above kind are to take effect according to their tenor unless it appears from the terms of the instrument or the surrounding circumstances excluding oral evidence of intention as inadmissible that the intention was to effect a mortgage. Though such decision dealt with transactions before the Act they still govern transactions after the Act which has not effected any change in the pre existing law on this subject. *Pattabhiram v Venkatarao Nair* 13 Moo I 4 560 *Thumburamy Moodelly v Hossein Routhier* I L R 1 Mad 1 *Situl Purshad v Luckmi Purshad* I L R 10 Calc 30 *Bhagwan Sahai v Bhagwan Din* I L R 12 All 337 *Bal kishen Das v W F Legge* I L R 22 All 149 and *Jhanda Singh v Bahadur Din* I L R 38 All 570 relied on *Palaniappan v Subbaraya Goundan* I L W 80 overruled. *MUTHUVELU MUDALIAR v VETHILINGA MUDALIAR* (1910)

I L R 42 Mad. 407

§ 58 59 70 and 71—

See EQUITABLE MORTGAGE

2 Pat L J 293

§ 58 59 68—

See MORTGAGE I L R 44 Calc 389

§ 58 60 98—*Possessory mortgage in 1894 for one year from a covenant to treat it as sale in default of payment—Anomalous mortgage—No right to redeem after one year* A document of 1894 which was described as a *Swadina Tanaka Meddattu Sharatu Pattiram* which may be translated as a possessory mortgage deed containing a condition for a period fixed contained among others the following terms within these limits a house site together with a thatched house thereon we have mortgaged that we have kept it as a possessory mortgage and have received Rs 10 from you. So having paid the principal and interest pertaining to these Rs 10 within the end of a year from the said date we shall take possession of our house and site. If we do not act according to the said condition we shall quit the land and house as if this is a sale. In a suit for redemption brought after the date fixed for redemption Held that the transaction was as an anomalous mortgage as described in s

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—contd

ss 58 60 98—contd

98 of the Transfer of Property Act (IV of 1882) that the rights of the parties were governed by the terms of the mortgage document and that accordingly the plaintiff had no right to redeem after the period of one year fixed by the document. The right of redemption given by s 60 of the Transfer of Property Act to every mortgagor has no application to cases governed by s 98 of that Act. *Sreenivasa Iyengar v Radakrishna Pillai* I L R 38 Mad 667 referred to *Usman Khan v Dasanna* I L R 37 Mad 645 distinguished. *HAKEEM PATTE MUHAMMAD v SHAIK DAVOOD* (1916) I L R 39 Mad 1010

ss 58 67 and 68—

See MORTGAGOR AND MORTGAGEE. I
I L R 45 Bom. 523

Usufructuary mortgage

—Failure of mortgagor to deliver possession—*Right of mortgagee to sue for sale* Held by the Full Bench —Where a mortgagor fails to deliver possession to his mortgagee the mortgagee is not a usufructuary mortgage within the meaning of s 58 (d) of the Transfer of Property Act and the mortgagee is entitled to bring a suit for sale of the mortgaged property. *Ss 58 (a) and (d) 67 and 68 (c) of the Transfer of Property Act referred to Ram Narayan Singh v Adhindra Nath Mukherji* I L R 11 Cal 355 followed. *Arunchalam Chetti v Ayyalayan* I L R 21 Mad 476 overruled. *SUBRAMMA v NARAYANA* (1917) I L R 41 Mad 259

ss 58 100—

See MORTGAGE I L R 34 All. 448

Construction of document—*Mortgage—Charge* A deed commenced by reciting that the executant had borrowed a certain sum of money from certain persons and then proceeded to refer to certain share in a property and finally there was a clause by which the executant undertook that until repayment of the amount he would not transfer the property by sale mortgage gift or in any other way but there was in no part of the document any expression conveying the idea of mortgage or hypothecation, nor was there any reference to any right of sale in the property. Held by *RICHARDS C J* that it was the intention of the parties to make the property mentioned therein security for the loan and interest and that the document created a charge within the meaning of s 100 of the Transfer of Property Act 1882. But as there was no transfer of any interest for the purposes of securing the loan, in the property mentioned in the deed it was not a simple mortgage without the meaning of s 58. *PER BANERJI J (contra)* The intention was that the persons who had lent the money should have a right to realize their money from the property by causing it to be sold. The document was therefore a simple mortgage within the meaning of s 58 of the Transfer of Property Act. *Martin v Pureram N W P H C 124* referred to. *JAWAHIR MAL v INDOMATI* (1914) I L R 36 All. 201

s 59—

See ATTESTATION I L R 37 Cal 526

See ATTESTING WITNESS

I L R 48 Cal 61

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 59—contd

See EQUITABLE MORTGAGE

I L R 38 Cal. 824
2 Pat L J 293

See EVIDENCE I L R 44 Cal 345

See EVIDENCE ACT 1872 s 68
1 Pat L J 129

See MALABAR LAW

I L R 44 Mad. 344

See MORTGAGE

I L R 43 Cal 895
I L R 46 Cal 748

See MORTGAGE BOND

I L R 46 Cal 502

See NOTICE

25 C W N 49

See REGISTRATION ACT 1877 s 17
25 C W N 49

See USUFRUCTUARY MORTGAGE

I L R 39 Cal 227

1 ————— Executant if may attest so as to bind co-executants—Improperly attested mortgage bond if operates as a charge. A party to a document cannot under any circumstances be allowed to sign a document as an attesting witness and a person who has once signed as an executant of a mortgage bond and as one of the persons who were borrowing the money on the bond cannot be allowed to have his position altered from an executant of the bond to that of a witness for the purpose of rendering the document valid as a mortgage against the other executants. *DEBENDRA CHANDRA POY v BEHARI LAL MUKERJEE* (1912) 16 C W N 1075

2 ————— The attestation of certain mortgage deeds by two witnesses required by s 59 of the Transfer of Property Act is attestation of the actual fact of the execution. *Ganga Das v Shyam Sundar* I L R 26 All 89 overruled. *SHAMU PATTAR v ABDUL HADID RAYU* (1912) 16 C W N 1009
I L R 35 Mad 607

3 ————— Mortgage bond—Attestation by only one witness—Bond judicially found to be invalid and unenforceable—Government notification—Retrospective effect—Exemption of certain Districts from the operation of s 59 of the Transfer of Property Act (IV of 1882)—Subsequent suit to enforce the mortgage—Res judicata—Rights vested under decrees not affected. In execution under a money decree certain property mortgaged to the plaintiff on the 8th September 1893 was attached and was about to be brought to sale. The plaintiff thereupon applied that the property should be sold subject to his mortgage lien. The Court rejected the plaintiff's application on the ground that the mortgage bond was invalid and not enforceable because it was attested by only one witness and not by two as required by s 59 of the Transfer of Property Act (IV of 1882). The plaintiff thereupon brought a suit in the year 1905 for a declaration that his mortgage bond was valid and operative according to law and, therefore enforceable. The suit came up in the second appeal to the High Court which on the 14th August 1909 finally decided that the plaintiff's mortgage was void and therefore inoperative.

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*s 59—*contd*

under s. 59 of the Transfer of Property Act (IV of 1882). In the meanwhile on the 4th June 1908 the Government of Bombay issued a notification exempting certain districts including the Poona District in which the mortgaged property was situate from the operation of s. 59 of the Transfer of Property Act (IV of 1882). The notification was given a retrospective effect from the 1st January 1893. On the strength of the said notification the plaintiff applied to the High Court for review of judgment and his application being rejected he in the year 1910 instituted the present suit to enforce his mortgage and both the lower Courts having rejected the claim on the ground of *res judicata* the plaintiff preferred a second appeal. *Held* confirming the decree that the decree passed by the High Court in 1908 still subsisted and was not affected by the Government notification although the notification had retrospective effect. The notification could not abrogate rights which had been judicially declared and had been merged in decree *Kay v Goodwin* 6 Bing 576 and *Lemm v Mitchell* [1912] A C 400 followed. **LAKSHMANRAO KRISHNAJI v. BALKRISHNA RANG WATHA** (1912) I L R 38 Bom 617

4. — Where a deed was executed by two pardanashin ladies in the presence of their husband and the latter after seeing the execution of the document signed his name underneath but not where other witnesses signed and apparently just to notify his approval *Held* he was not an attesting witness. **SRINATI DAB KUBBIN ALAK MAJARI KUBIN v. SREKAR BARNARD COMPANY** 6 Pat L J 473

5. — *Equitable mortgage—Deposit of title deeds of property situate in mofussil—Intention to create charge proof of—Registration* The plaintiff deposited with the defendant in Bombay title deeds of his property situate at Nasik and borrowed a sum from the defendant. The defendant also at the same time executed in favour of the plaintiff a writing setting forth the clear intention of the defendant that the deposit of title deeds should be security for the loan from the plaintiff and binding the defendant to execute on demand a proper legal mortgage of the property covered by the title deeds deposited. This writing which was the only evidence available of the defendant's intentions in making the deposit of title deeds was not registered. *Held* that the deed required registration as it created a charge upon the property that in its absence there was no evidence whatever of intention to connect the deposit of title deeds with the debt and that the mere fact that there was a subsequent or contemporaneous loan was not sufficient in law to warrant a presumption apart from any other evidence that the contemporaneous or antecedent deposit of title deeds was necessarily made as security for the loan. **BEHRAM RASHID v. SOHABJI RUSTOMJI** (1913) I L R 38 Bom. 372

6. — *Mortgage deed executed by pardanashin ladies attestation of—Requirements as to identity of executants and as to witnesses seeing signatures made—Waiver of right of priority by first mortgagee in favour of second mortgagee—Right to recover unsatisfied portion of claim in subsequent suit from purchaser of mortgagor's interest in other property comprised in*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*s 59—*contd*

mortgage In a suit on a mortgage executed by two pardanashin ladies the defendant objected that the deed had not been duly attested in accordance with the provisions of s. 59 of the Transfer of Property Act (IV of 1882) as in interpreted in the decision of the Privy Council in *Shamu Patter v Abdul Kadir Ravathan* I L R 35 Mad 607 L R 39 I A 218 and was therefore not operative as a mortgage. On this point the High Court differed Sir H G RICHARDS C J finding that the attestation was not complete because the attesting witnesses had not actually seen the signatures of the executants put on the deed and Sir P C BANERJI being of opinion that that requirements as well as all others necessary had been observed. *Held* (upholding the finding of BANERJI J) that the deed had been duly attested within the meaning of s. 59 of the Act. Two at least of the witnesses were well acquainted with the executants and though they did not see their faces they recognized their voices and saw them sign the mortgage deed. *Held* (affirming the decision of the High Court) that the plaintiffs (respondents) had not in a former suit insisted on their right as prior mortgagees but had waived it in favour of the second mortgagees and so left their claim only partly satisfied did not under the circumstances of the case disentitle them from recovering the unsatisfied portion of the debt in the present suit from the appellants (defendants) who were purchasers of the mortgagor's interest in other portion of the property comprised in the mortgage. **PADA BATH HALWAI v. RAM NAY UPADHIA** (1915) I L R 37 All 474

7. — *Attestation—Document attested by one witness only—Mortgage—Charge* A document purporting to be a deed of mortgage bore the signature of one attesting witness and the name of another person was written on the margin by the scribe but there was no signature or mark made by his second person. In a suit brought upon the document after his death it was held that the document was not duly attested by two witnesses within the meaning of s. 59 of the Transfer of Property Act inasmuch as there was nothing to show that the person whose name appeared on the document as an attesting witness had authorised the scribe to sign it for him and therefore it could neither operate as a mortgage nor create a charge on immovable property. **PARAM HANS v. RAJDEH SINGH** (1916) I L R 38 All 461

7 (a). — *Attestation of mortgage deed—Scribe who signs for and on behalf of the mortgagor if competent to become one of the attesting witnesses—Personal decree when allowable* The executant of a certain mortgage deed was illiterate and she executed the instrument by the pen of the scribe of the document who also signed the document as one of the attesting witnesses. *Held*—That the document was not legally attested by the scribe according to the provisions of sec. 59 of the Transfer of Property Act. Where no mark seal or thumb impression of the mortgagor appears on the mortgage deed the scribe who executes the document for and on behalf of the mortgagor is not competent to become an attesting witness to attest the signature he himself has written out. **Upadhyaya**

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 59—contd

v *Hulum I L R 46 Calo 522 s c 23 C W N 290* approved and followed A personal decree for the money is only allowable if the suit is brought within 6 years of the date of the Bond or for any payment within section 20 of the Limitation Act *SRISTIDHAR GHOSH v RAKHYAKALI DAS*

C W N 264

8

Mortgage bond—

Attestation—Person subscribing as scribe of attesting witness Per CHAMIER C J—To be an attesting witness within the meaning of s 59 of the Transfer of Property Act the witness must not only have seen the execution of the document but should have also subscribed as a witness Shamu Patter v Abdul Kadir L R 39 I A 218 s c I L R 35 Mad 607 16 C W N 1000 Raj Narain Ghose v Abdul Rahim 5 C W N 454 Dinanay Deb v Bon Behari Kapur 7 C W N 160 and Badri Prasad v Abdul Karim I L R 35 All 254 referred to Where a person who subscribed a mortgage bond as scribe was proved to have been present when the document was executed and the lower Appellate Court upon this and other evidence found that he had seen the document executed and held that he was an attesting witness within the meaning of s 59 of the Transfer of Property Act *Held per CHAMIER C J—That although on the finding he must be held to have seen the mortgage deed executed the scribe was not an attesting witness as he did not subscribe as a witness Per JWALA PRASAD J—That in the absence of evidence showing that he had witnessed the execution it could not be presumed that he had A scribe of a deed who has witnessed the execution may sign the deed because he has done so and yet describe himself as a scribe RAM BANADUR SHAKH v AJODHYA SINGH (1916)*

20 C W N 699

9

Deed of mortgage

Attestation—Execution—Mark by illiterate executant—Mark described by the scribe—Signature—General Clauses Act (V of 1897) s 3 cl 5° An illiterate person signed a deed of mortgage by putting his mark to it which mark was described by the scribe of the deed It was attested by two witnesses The deed was sought to be proved by the testimony of one of the witnesses and the scribe *Held* that the deed was duly proved for its execution was completed when the executant made his mark and the object of the scribe in describing the mark was to authenticate the mark that is to vouch the execution *GOVIND BHAIKARI v BHAV GOPAL (1916)*

I L R 41 Bom 384

10

Mortgage deed

executed by the scribe on behalf of the mortgagor—Attestation only by the scribe and one witness if sufficient Where the mortgagor not being able to sign his own name the mortgage-deed which contained no mark or seal or thumb impression of the mortgagor was executed by the scribe on behalf of the mortgagor *Held* that the scribe having executed the document for and on behalf of the mortgagor was not competent to attest his own signature as an attesting witness even in the view that the subscription of his own name as the

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 59—contd

scribe amounted to attestation within the meaning of s 59 of the Transfer of Property Act *RAJANI KANTA BHADRA v PANCHAVANDA (1918)*

23 C W N 990

11

Mortgage—Attestation—Execution—Scribe whether an attesting witness—Attesting witness meaning of Indian Evidence Act (I of 1872) s 68 A mortgage bond was written and signed at the writer's house where one of the attestants put his attestation on the deed but the other witness attested the document in the Sub Registrar's office Both the lower Courts held that there was no proper attestation of the document as required by the Transfer of Property Act 1882 On appeal to the High Court it was contended that the scribe who signed the document should be treated as an attesting witness — *Held* that a writer of a document who put his signature at the end of a document could not be treated as an attesting witness within the meaning of s 68 of the Indian Evidence Act 1872 unless he actually signed as an attesting witness in the document Attesting witness is a witness who has seen the deed executed and who signs it as a witness *Govind Bhikaji v Jodhpur Gopal (1916) 41 Bom 384 distinguished Ramu v Laxmanrao (1903) 33 Bom 44 followed DAST CHAND SHIVRAM v LOTU SAKHARAM (1918)*

I L R 44 Bom 405

12

Validity of mortgage

*gag bond when scribe who executed the deed on behalf of the mortgagor attested his own signature—Evidence Act (I of 1872) sec 69 and 70 proof of the deed by the scribe who also acted as an attesting witness is sufficient where execution of the deed is admitted In a suit upon a mortgage bond but pleaded mitted the execution of the bond not be regarded inter alia that the bond should not be regarded as a mortgage bond The first Court held that the execution of the bond being admitted the necessity of its proof did not arise and decreed the suit On appeal it was held that the scribe having executed the deed on behalf of the Appellant was not competent to attest his own signature and there being no other evidence dismissed the suit *Held—That the validity of a mortgage bond and the proof of its execution are two different questions The question of the validity of a mortgage bond with reference to the provisions of section 59 of the Transfer of Property Act can arise even though the document might be proved according to law or is not required to be proved by the attesting witness under sec 68 of the Evidence Act by reason of the execution of the document being admitted by the executant as laid down in sec 70 of the Evidence Act Where in the above circumstances the Plaintiff produced only the scribe who executed the deed on behalf of the executant to prove the deed although the names of other persons appeared as attesting witnesses in the document *Held—That instead of dismissing the suit the plaintiff should be given an opportunity of producing evidence that the document was duly executed PATAK HANU v BADAL SARNAL***

26 C W N 950

—s 59 100—Mortgage—Charge—Attestation—Document attested by one witness only *Held* that a document which purported to be a mortgage but which was attested by only one witness

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

s. 59 100—contd.

ness, could not operate either as a mortgage or as creating a charge on immovable property within the meaning of s. 100 of the Transfer of Property Act 1882. *Shamu Pater v Abdul Kadir Raru* than I L R 35 Mad 607 referred to COLLECTOR OF MIRSAPUR v BHAGWAN PRASAD (1913) I L R 35 All 164

s 60—

See s 60 I L R 38 Mad 1010

See s 98 I L R 43 Mad 589

See MORTGAGE I L R 40 Bom 334
I L R 43 Mad 37

1.

Mortgage—Re

demption—Tender of mortgage money as a condition precedent to a suit for redemption S 60 of the Transfer of Property Act 1882 does not necessarily mean that before a suit for redemption can be instituted the amount due on the mortgage must be paid or tendered and this would obviously be impossible when, the mortgage being usufructuary the plaintiff's case is that the debt has been liquidated by the profits of the property mortgaged *Bansi v Giridhar Lal Weekly Notes 1894 p 143 Narasingh Singh v Achhaib Singh* I L R 36 All 36 *Muhammad Ali v Baldeo Pande* 14 A L J 56 *Mewa Ram Singh v Ganga Pam* 17 A L J 910 and *Muhammad Mushtaq Ali Khan v Daulat Lal* I L R 42 All 420 referred to *HET SINGH v BHARAT LAL*.

I L R 43 All 95

2.

Mortgage—

R demption—Mortgages to remain in possession so long fruit bearing trees remain on land—Whether the term operated as a clog on equity of redemption—*Dekkhan Agriculturists Relief Act (11 of 1879)* s 13 A mortgage deed of 1867 provided that on payment of the principal sum on the expiry of twenty one years the mortgagor shall be entitled to recover the land and trees free of all charges and that if the money was not so paid the mortgagor will be allowed to develop the land by growing fruit bearing trees on it and will not be required to give up possession until the trees had ceased bearing fruit The mortgagor did not redeem at the expiry of the stipulated period of twenty one years The mortgagees who remained in possession planted a number of fruit bearing trees on the land In 1913 the mortgagor sued for redemption of the mortgage of 1867 under the Dekkhan Agriculturists Relief Act contending that the stipulation in the deed postponing the mortgagor's taking possession so long as there were fruit bearing trees on the land was a clog on the equity of redemption Held that the provision in the deed postponing the mortgagor's taking possession so long as there were fruit bearing trees did not operate as a clog on the equity of redemption Held further that the proper relief which the mortgagor was entitled to was that under s 118 of the Dekkhan Agriculturists Relief Act 1879 namely the taking of an account from the beginning of the mortgage up to the date of the suit The words at any time after the principal money has become payable in s 60 of the Transfer of Property Act mean become payable according to the terms of the contract *PER HEATON Acting C J*—S 60 of the Transfer of

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

s 60—contd.

Property Act merely enacts that redemption is to be according to the terms of the mortgage contract and there is nothing in the Transfer of Property Act which says anything about clogs on the equity of redemption *GFNU v NARAYAN* (1920) I L R 45 Bom 117

3.

Suit by assignee of

Hindu widow's right to annuity charged on properties a portion whereof acquired by plaintiff—Apportionment of the plaintiff's claim between properties acquired by him and rest of charged properties—Widow's right whether personal or transferable A Hindu widow in consideration of releasing her life interest in her husband's properties obtained from her two brothers in law a deed of maintenance whereby she was entitled to receive Rs 100 per annum in cash and certain rice from them with the payment whereof certain properties were charged The plaintiff the assignee of this right of the widow subsequently purchased a portion of the properties not free from encumbrance created by the deed of maintenance The first Court partly decreed the plaintiff's suit to enforce the charge The lower Appellate Court decreed the whole of the suit against the properties not purchased by the plaintiff Held that the case was covered by the last few words of the final clause of s 60 of the Transfer of Property Act A mortgagor having become a partial owner of the equity of redemption is bound to apportion the money which he seeks to recover as between the properties acquired by him which were subject to the charge and the rest of the mortgaged properties Held also that this was not a personal right of the Hindu widow It was a claim which the widow had under a deed of covenant for which there was a charge on certain properties and it was capable of transfer in the same manner as in other cases The mere fact that the grantee of the deed of covenant happened to be a Hindu widow did not prevent her from transferring her interest if she thought fit so to do *RAJAT KAMINI DEBI v RAJA SATYA NARAYAN CHAKRABARTY* (1919)

23 C W N 824

4.

Mortgage—Suit

for redemption—Tender of mortgage money not a condition precedent—Usufructuary mortgagee planting trees—Improvement It is not necessary that a mortgagor who wishes to redeem should make a tender or payment of the money due on the mortgage before instituting a suit for redemption All that s 60 of the Transfer of Property Act 1882 provides is what constitutes the right of redemption and there is nothing in the section which requires that a tender of the mortgage money should be made as a condition precedent to the institution of a suit for redemption The planting of trees on the mortgaged property by a mortgagee in possession is not such an improvement as entitles him to claim compensation from the mortgagor but he is entitled to remove those trees. *RAJCHANDAN PANDIT* I L R 47 All 19

5.

Mortgagors if may redeem unless they are in default of foreclosure without making any payment on the mortgaged properties party—*RAJCHANDAN PANDIT*

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 60—contd

deem that property only—English law and Indian law on the point of different It is not the law in India any more than it is in England that one of several mortgagors cannot redeem more than his share unless the owners of the other shares consent or do not object Subject to proper safeguarding of the right to redeem which these other owners may possess he is entitled to redeem the mortgage in its entirety, unless something had happened which extinguished the mortgage in whole or in part The concluding part of sec 60 of the Transfer of Property Act does no more than declare applicable what is but the law as established in England In English law the transferee of a part of the security is entitled to redeem the entire mortgage on the properties generally and correlatively cannot compel the mortgagees to allow him to redeem his part by itself *MIRZA YADALI BEG v TUKA RAM* (P C)

25 C W N 241

ss 60 61, 62—Mortgage with possession and charge on the same property in favour of the same person—Assignment of equity of redemption—Breach of contract by mortgagor—Loss to mortgagee—Right of assignee of equity of redemption to redeem mortgage with possession without paying amount due on the charge and the loss sustained by mortgagee A mortgagor has a statutory right under s 62 (b) of the Transfer of Property Act to redeem a usufructuary mortgage on property which is also subject to a simple mortgage without redeeming the latter also Therefore where a person mortgaged some of his properties with possession and regained possession of them by executing a rental agreement giving a charge thereon and on other properties for all arrears of rent held that the mortgagor could redeem the properties mortgaged with possession alone without being obliged to pay at the same time any amount due under the simple mortgage *Tajjo Bibi v Bhagwan Prasad* (1894) I L R 16 All 245 followed The losses which the mortgagee might have sustained by reason of breach of contract committed by the mortgagor and which were not specifically charged on the mortgaged properties are recoverable only from the mortgagor and not from the mortgaged properties in the hands of his assignee *Bohra Thakur Das v Collector of Aligarh* (1910) I L R 32 All 612 (P C) followed *Per WALLIS C J*—*Quere* whether in India a mortgagor has the right to redeem one mortgage on his property without at the same time paying off another mortgage on the same and other properties as well *Per SESHAGIRI AYYAR J*—Whatever may be the rights of a mortgagee in India to compel the mortgagor to consolidate mortgages upon the same property the rule is not applicable against purchasers of the equity of redemption The rule in *Vent v Padget* (1858) 2 De U J 611 s = 44 E R 1126 is not applicable to India. *RAMARAYANINGAR v MAHA RAJAH OF VENKATAGIRI* (1921)

I L R 44 Mad 301

ss 60 67—82—Suit for redemption—Previous suit by mortgagee for sale—Decree for sale—Decree in favour of mortgagor as defendant for redemption and recovery of possession in execution—Decree not executed by Mortgagee or mortgagor—Suit for redemption by mortgagor Maintainability

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

ss 60, 67—82—contd

of—Res judicata Where a mortgagee sued for sale on a mortgage bond of 1864 and obtained a decree in 1872 which contained a provision in favour of the mortgagor who was a defendant therein for redemption and recovery of possession of the mortgaged lands in execution of the decree but the decree was not executed by either party Held that a fresh suit instituted by the mortgagor for redemption of the mortgage was barred by the rule of res judicata *Vedapurath v Val lappa Valiya Raja* I L R 25 Mad 300 and *Adipuram Pillai v Gopalasami Mudali* I L R 31 Mad 354 referred to *Pama v Bhagchand*, I L R 39 Bom 41 dissented from. *RAVIA ATTANGAR v NARAYANA CHARIAR* (1915) I L R 39 Mad 896

ss 60 74 81—

See MORTGAGE I L R 34 Mad 115

ss 60 80 and 95—

See REDEMPTION 3 Pat L J 490

ss 60 and 91—Redemption suit for by the owner of a portion of the equity of redemption—Mortgagee in possession—Vendee from other co-owners of the equity of redemption—Payment by vendee of his share of mortgage amount to the mortgagee—Possession surrendered of by mortgagee to vendee of aliquot portion of lands—Objection by mortgagee and vendee to redemption of the whole mortgage and surrender of the whole mortgaged property—Redemption of plaintiff's share only on payment of his share of debt—Possession of lands right to by fair partition in a suit for redemption—*Equities on partition—Transfer of Property Act (IV of 1882) s 91* construction of Where the plaintiff (an owner of a half share in the equity of redemption) sued the mortgagee and the owner of the other half of the equity of redemption for who had redeemed one-half of the mortgage for the redemption of the whole mortgage and for the recovery of possession of the whole of the mortgaged property the High Court on Second Appeal passed a decree for redemption of the plaintiff's half share on payment of half the mortgage amount and for partition and delivery of possession of half the mortgaged lands in respect of such share The owner of a portion of the equity of redemption is not entitled as matter of right to redeem the whole of the mortgage and recover possession of the whole of the mortgaged property on payment of the whole of the mortgage amount against the will of the mortgagee in possession and of the vendee of another portion of the equity of redemption who was put in possession of some of the lands by the mortgagee on payment of an aliquot portion of the mortgage amount. The question whether the Court will allow redemption of the whole of the mortgage at the instance of a person entitled to a part only of the equity of redemption must depend on the circumstances of each case and the rights acquired by the mortgagor or by third persons subsequent to the mortgage *Kuray Mal v Pura Mal* I L R 20 All 565 *Munshi v Daulat* I L R 29 All 263 and *Asad Azimul Ali Khan v Jankar Singh* 13 No. 1 A 493 followed. *Hutasanam Vambudri v Parameswaran Vambudri* I L R 30 Mad 27

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

— ss 60 and 91—contd

dissented from. S 91 of the Transfer of Property Act explained. *RATHNA MUDALI v PERUMAL RIZDY* (1912) I L R 38 Mad 310

— ss 90 and 98—

See s. 89 I L R 39 Mad 1010

Mortgage deed simple and usufructuary combined—No anomalous mortgage—Redeemable—Mortgagee to be vendee on mortgagor's failure to pay at the stipulated time—Whether mortgage by conditional sale Where the usufructuary mortgage deed provided that if the mortgage amount was not paid on the stipulated date the mortgage was to work itself out as a sale for the principal amount and further contained a covenant that the mortgagor would pay to the mortgagee the costs of the construction of earth work, etc on the date fixed for redemption as per the accounts of the mortgagee. *Held* that it was not an anomalous mortgage as defined in s 98 of the Transfer of Property Act the word not in s 98 governing equally the words a combination of the first and third or the second and third of such forms in the section and that therefore it was redeemable. *Amarchand v Kila Marar* I L R 27 Bom 600 and *Ammanu v Gurusuri* I L R 16 Mad 64 dissented from. *Perayya v Venkata* I L R 11 Mad 403 and *Ankinedu v Subbiah* I L R 35 Mad 744 followed. *Per Sadasiva Ayyar* J It is a combination of a simple mortgage and a usufructuary mortgage clogging the equity of redemption. A mortgage deed which begins as a mortgage transaction cannot be called a mortgage by conditional sale though it is a mortgage giving the mortgagee after a certain time and on breach of certain conditions a right to claim title as vendee. *Per Srinivas J* It is either a usufructuary mortgage deed with a clog on the equity of redemption or a usufructuary mortgage combined with a mortgage by conditional sale and in either case redeemable under s 60 of the Transfer of Property Act. *Go palasami v Arunachella* I L R 16 Mad 304 referred to. *Kangaya Gurukul v Kalmuthu Annam* I L R 27 Mad 326 distinguished. *Srinivasa Ayyangar v Radhakrishnam Pillai* (1913) I L R 38 Mad 667

— s 61—

See MORTGAGE 25 C W N 129
I L R 1 Lah 105

— ss 61 and 62—

See s 60 I L R 44 Mad 301

— ss 81 85 and 99—*Civil Procedure Code (Act V of 1908) O XXXIV rr 1 and 14—Mortgagee holding two mortgages—Suit on the second mortgage subject to his interest in a prior mortgage—Maintainability* It is open to a mortgagee to bring a suit for the recovery of his debt by sale of the properties mortgaged to him subject to his interest in a prior mortgage. *SUBRAMANIAM v BALASUBRAMANIAM* (1916) I L R 36 Mad 927

— s 63—*Accession to mortgaged property mortgagor's right to if depends on special advantage of mortgagee as such in acquiring the accession—Mortgagee also co-owner of the property—acquisition by mortgagee of rayats holdings in the Property—Mortgagee's right on redemption of*

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

— s 63—contd

mortgage Where the plaintiff's share in a mehal was mortgaged to the co proprietors of the mehal and the mortgagees during the continuance of the mortgage bought in some of the rayati holdings of the mehal from the tenants and obtained possession thereof separating the lands purchased from those in the possession of the tenants. *Held* that on redemption of the mortgage, the plaintiff was entitled to get khas possession of the lands to the extent of the share in the mehal on payment to the mortgagees of the proportionate share of the expenses incurred in acquiring them. *Per N R CHATTERJEE J*—The purchases were accessions to the mortgaged property within the meaning of s 68 of the Transfer of Property Act. The mortgagee's right to the accessions to the mortgaged property under s 68 of the Act does not depend upon whether the mortgagee had any special advantage by reason of his position as mortgagee in acquiring the accession. *Kishen datt v Mumtaz Ali* I L R 5 Calc 198 referred to. S 63 of the Act applies to a case where the mortgagee holds the property both as co proprietor and as mortgagee. *RAM BRICK NARAIN SINGH v AMBIKA PRASAD SINGH* (1913)

17 C W N 586

— ss 63 72 78—

See MORTGAGOR AND MORTGAGEE

I L R 43 Bom 69

— s 65—

See s 68—

2 Pat L J 490

See MORTGAGE

I L R 35 All 48
I L R 38 Mad. 19

Duty of a mortgagor in possession to pay public charges purely personal—Acquisition of equity of redemption by trespasser—Non payment of public revenue and purchase by trespasser in revenue sale—Extinguishment of mortgage The implied covenant on the part of the mortgagor in possession mentioned in s 65, cl (c) of the Transfer of Property Act (IV of 1882), to pay all public charges is in the nature of a personal covenant and is not one arising by virtue of his being in possession of the mortgaged property. Hence if after the creation of a simple mortgage a stranger acquires the equity of redemption by adverse possession as against the mortgagor the acquirer is under no duty towards the mortgagee to pay the public revenue payable on the property and therefore if after allowing it to be sold for arrears of revenue he buys it himself he holds it free from the mortgage. The rule that no man can take advantage of his fraud does not apply to a case like this where the party charged with fraud does not stand in any fiduciary relation to or has a joint interest with, the person defrauded and is under no duty to protect his interests. *Narab Sudhee Narur Ally Khan v Raja's Gopodhyaram Khan* 10 Moo I A 640 distinguished. *Quere* Whether an assignee for value from the mortgagor is affected by the mortgagor's covenant to pay the public charges? *SUBBIAH v RAMI RIZDY* (1916)

I L R 39 Mad. 959

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 67—

See MORTGAGE I L R 47 Cal 175
I L R 39 Mad 17

Usufructuary mortgage

—Date payable within a fixed period—Expiry of the period—Mortgagee's right to an order for sale Where under a usufructuary mortgage the mortgage debt is made payable within a fixed period, the mortgage is not purely a usufructuary mortgage and the mortgagee has, in the absence of a contract to the contrary the right to an order under s 67 of the Transfer of Property Act (IV of 1882) that the property be sold after the debt has become payable *Mahadaj v Joti* I L R 17 Bom 425 and *Krishna v Hari* 10 Bom L R 615 explained *DATTAMBHAT RAMBHAT v KRISHNABHAT* (1910) I L R 34 Bom 462

—Right of puisne mortgagee to sue for sale subject to prior mortgages—Suit for sale by first mortgagee without impleading subsequent mortgagee—Purchaser in execution rights of—Right of puisne mortgagee to sue for sale against purchaser—Purchaser in puisne mortgagee's suit right of Where a prior mortgagee sued for sale on his mortgage without making a puisne mortgagee a party to his suit and obtained a decree and in execution of the decree the property was sold and purchased by a third person the puisne mortgagee is entitled to sue for sale on his mortgage subject to the prior mortgage after making the purchaser a party to his suit *Mulla Fittil Seethi v Achuthan Nair* 21 Mad L J 213 followed *Venkatagiri v Sadagopa Chariar* 22 Mad L J 129 and *Venkatanarasammah v Ramiah* I L R 2 Mad 108 dissented from *Muhammad Usan Routhan v Abdulla* I L R 24 Mad 171 *Venkataramana Iyer v Gompert* I L R 31 Mad 425 and *Rangayya Chettiar v Parthasarathi Naicker* I L R 20 Mad 120 referred to Case law on the subject reviewed. Rights of purchasers in the prior or subsequent mortgagee's suits discussed *CHINNU PILLAI v VENKATASAMY CHETTIAR* (1915) I L R 40 Mad 77

—Mortgage—Suit by one mortgagee to recover his individual share in the mortgage debt—What amounts to a severance of the interests of the mortgagees Certain property was mortgaged by K to B and J Then other property was mortgaged by G (K's brother) also to B and J Subsequently A and G made a usufructuary mortgage of both properties in favour of B alone ostensibly in lieu of the former mortgages and B purported to give the mortgagors a discharge of those mortgages Held that in these circumstances it was competent to J to sue the mortgagors for the recovery of his share in the mortgage debts due in respect of the two earlier mortgages the action taken by B amounting in law to a severance of the interests of the mortgagees with the consent of the mortgagors *Gobind Ram v Sundar Singh* 1899 All Weekly Notes 246 distinguished. *JATILAKI SINGH v GARGA SARAI* (1919) I L R 41 All 631

—Mortgagee's right to a decree for sale when the mortgage is an English mortgage—Civil Procedure Code (Act I of 1908) Or XXIV r 6—Mortgagee's right to a personal decree against the mortgagor when after the transfer and redemption clauses in the mortgage

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 67—contd.

deed there is a covenant for payment of the mortgage debt—Appellate Court's power to pass a personal decree in the appellate stage Under the provisions of sec 67 of the Transfer of Property Act a decree for sale may be made in favour of the mortgagee when the mortgage is an English mortgage When the mortgagor covenants to transfer the hypothecated properties indefeasibly to the mortgagee with the usual clause of redemption and further covenants to pay the mortgage debt with interest to the mortgagee his heirs and assigns the latter clause is a personal covenant to pay out of properties other than the hypothecated properties as the latter clause would be entirely superfluous if the parties had no intention that the mortgagor should be personally liable to pay to the mortgagee the money due to him Therefore in such cases the mortgagee is entitled to a decree for sale as also to a personal decree against the mortgagor A personal decree may be made against the mortgagor at the appellate stage *ASHARAN BAID v GOBORDHAX ROZIA* 26 C W N 318

ss 67 and 68—

See s 68 I L R 41 Mad 259
I L R 45 Bom 523

ss 67 83—

See s 60 I L R 33 Mad 599

ss 67, ss 100—

See CIVIL PROCEDURE CODE O XXIV
RR. 4 5 14 AND 15 2 Pat L J 53

s 68—

See CIVIL PROCEDURE CODE 1908 O
XXIV r 14 I L R 39 All 36See MORTGAGE I L R 44 Cal 389
3 Pat L J 168

Usufructuary mortgage

—Dispossession of mortgagee—Right of mortgagee to sue for debt A usufructuary mortgagee who has failed in a suit by a subsequent mortgagee to take a defence which would have pre-erred to the security is not entitled to sue for the mortgage money under s 68 *DUVIA LAL CHOWDHURY v MUSAMMAT NOWRATAN KOER* 2 Pat L J 490

2 Mortgage with possession—Dispossession by person having better title than mortgagor—Right to sue for mortgage money Dispossession of the mortgagee by a person holding a better title than the mortgagor comes under the provisions of s 68 (c) of the Transfer of Property Act and entitles the mortgagee to sue for the mortgage money *Kalchodji Fim v Ram Chariar Pail*, Weekly Notes 159, p 14 referred to *RAM SURAT MISRA v GUR PRASAD* I L R 31 All 454

3 Lawfructuary mortgage created for want of title—Dispossession of possession not by mortgagor but by title partition mount—Suit for mortgage money whether maintainable S 68 of the Transfer of Property Act does not entitle a person who takes a usufructuary mortgage which is invalid for want of attestation and who is deprived of his possession by title partition

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 68—contd

mount and not by any act of his mortgagor to sue for the mortgage money. The default referred to in s 68 (b) as entitling the mortgagee to sue for the mortgage money is one anterior to the deprivation of possession and failure of the mortgagor to establish the possession when called upon as against the strangers dispossessing the mortgagee as no default within s 68 (b). *Ram Narayan Singh v Abhintra Nath Mukherjee* 1 L R 44 Cal 338 distinguished. *KUTPIER v PERIARATNA KAVUN DAN* (1919) 1 L R 42 Mad 578

s 69—Sale by mortgagee—Surplus proceeds retained by mortgagee—Whether attachable under warrant under Criminal Procedure Code (I of 1898) s 386—Priority of Crown over attaching creditor. A mortgagee sold the mortgaged property under a power of sale and after discharging his own dues retained the surplus sale proceeds for payment to the mortgagor. The mortgagor was convicted and sentenced to pay a fine which if recovered was directed to be paid to the complainant. A warrant for recovery of the fine was issued under s 386 of the Criminal Procedure Code against the funds in the hands of the mortgagee who paid the amount to the bailiff. The plaintiff who had attached the mortgaged property in execution of a decree against the mortgagor disputed the right of the Crown to proceed against the fund or at least in preference to him and sued the Secretary of State for India and the complainant to whom the amount was paid. *Held* (i) that the surplus amount retained by the mortgagee was money held in trust by him for the mortgagor under s 69 of the Transfer of Property Act (ii) that a warrant could be issued for the levy of the fine by distress on the amount in the hands of the mortgagee under s 386 of the Criminal Procedure Code and (iii) that the fine was a Crown debt which had priority over the plaintiff's debt though the fine if recovered was directed to be paid to the complainant. *PICOT v ADRIAN* THE SECRETARY OF STATE FOR INDIA (1916)

1 L R 40 Mad 767

s 70—

See EQUITABLE MORTGAGE

2 Pat L J 293

Mortgage of mukarrari right Where a mukarrarid mortgaged his mukarrari right and the mortgagee obtained a decree on the mortgage for sale of the mortgaged property. *Held* that the decree holder was not entitled in execution of the decree to sell the brahmottar right in the property which had been acquired by the mortgagor subsequent to the passing of the decree. *HARADHAN CHAKRIVARTY v HARGOBIND DUTTA* 6 Pat L J 347

s 70 and 71—

See EQUITABLE MORTGAGE

3 Pat L J 293

s 72—

See MORTGAGE

1 Pat L J 589

1 L R 46 Cal 448

1 L R 38 Mad. 18

See MORTGAGOR AND MORTGAGEE

1 L R 43 Bom 69

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 72—contd

Mortgage—Redemption—Purchase by mortgagee of portion of mortgaged property—Right of mortgagee to put whole burden of mortgage debt on remainder—Enhancement of revenue assessed on mortgaged property whose mortgagor makes himself liable for it and mortgagee pays it—protect property In 1669 a village named Kachaura was mortgaged to the predecessors of the respondent (defendant) and in 1870 the same mortgagor mortgaged 11 biswas of Kachaura and 6 biswas of another village called Agrana to the same mortgagee. Under the terms of the later mortgage the mortgagee was to have possession of the mortgaged properties, realize the rents and profits and pay therewith the Government revenue which was separately assessed on the two shares out of the balance he was to retain the interest of the loan and pay the mortgagor a yearly sum as malikana. As a fresh settlement was in progress the mortgage further provided that if at the recent settlement the Government revenue is enhanced or decreased to some extent I (the mortgagor) shall be entitled to and liable for it and the mortgagee shall have nothing to do with it. The revenue on the two properties was enhanced on Kachaura by Rs 895 and on Agrana by Rs 469. In 1873 the equity of redemption in Agrana was purchased by the predecessor of the appellants (plaintiffs) who afterwards sued and obtained a decree for the apportionment of the malikana due in respect of his share of Agrana which amount they subsequently received annually less the enhanced amount of the Government revenue assessed on it. In 1878 the mortgagee purchased the whole of Kachaura in execution of a decree obtained by him on the mortgage of 1868 but he only obtained possession of an 11 biswas share of it. The mortgagee had from the date of the enhancement up to the time of his purchase paid the enhanced revenue assessed on Kachaura for which the mortgagor had made himself liable on the terms of the mortgage. In a suit by the appellants to redeem their 11 biswas share of Agrana on payment of a proportionate amount of the mortgage money and for surplus profits if any. *Held* by the Judicial Committee (affirming the decree of the High Court) that Agrana was liable for the whole mortgage debt and the applicants could not therefore redeem on payment of only a proportionate amount. *Held* also (reversing the decree of the High Court) that in calculating the amount to be paid on redemption the mortgagee was not entitled to tack on to the mortgage debt the amount he had paid for the enhanced revenue on Kachaura. The mortgagee was on the terms of the mortgage liable to pay the Government revenue. The clause as to the enhanced revenue could not be construed as meaning that the mortgagor agreed to pay every year separately the enhanced revenue nor did it alter the liability of the mortgagee to meet the demand for the Government revenue. In the case of Agrana he had protected himself by deducting the enhanced revenue from the malikana but he had omitted to do so in the case of Kachaura and could not now be allowed to throw the burden of his laches on Agrana. It was not the mortgagor who was seeking to redeem the property and any equity that might have been invoked against him, did not in their Lordships' opinion arise as against the appellants.

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 76—contd

Mortgagee in possession
obligations of—Mortgagee in possession as lessee
obligations of— There is a difference between the case of a mortgagee who enters into possession of the mortgaged property by virtue of a lease under which a rent is payable to the lessor and the case of a mortgagee who enters into possession of the mortgaged property by virtue of a lease under which the rent is appropriated by the lessee towards the reduction of the mortgage debt. In the former case he is not chargeable as a lessee in possession under s 76 of the Transfer of Property Act 1882 and in the latter case he is so chargeable. *KISHUNDATAY v MAHABIR BHAGAT*
 5 Pat L J 492

ss 76 82—

See LIMITATION ACT s 23 SCH II
ARTS 36 115 116

I L R 33 Mad 71

s 76—

See MORTGAGE L R 43 Cal 1052

s 81—

See APPEAL I L R 41 Cal 418

ss 81 and 82—

See MORTGAGE I L R 35 Bom 395

s 82—

See MORTGAGE (CONTRIBUTION)

Mortgage—Contribution—Principle upon which contribution is to be assessed Where of two properties belonging to the same owner one is mortgaged to secure one debt and then both are mortgaged to secure another debt for the purpose of apportioning the liability of the respective properties in regard to the subsequent mortgage the value of the two properties must be taken into account and credit given for the amount due upon the earlier mortgage out of the value of the property comprised in the subsequent mortgage. Where the amount due upon the earlier mortgage exceeds the value of the property comprised in that mortgage the necessary result is that the whole of the amount of the second mortgage is recoverable from the other property comprised in the latter mortgage. *GHULAN HAZRAT v GOBARDHAN DAS* (1911)

I L R 33 All 387

Mortgage—Contribution—

Principle upon which contribution should be assessed—Civil Procedure Code (1908) O XXI r 89 Where a co mortgagee is suing the other co mortgageors for contribution upon the allegation that the portion of the mortgaged property in which he is interested has been made to discharge more than its proper share of liability under the mortgage the Court in assessing contribution has first to ascertain the values of the various items of property in question as they stood at the date of the mortgage next the rateable liability of each item for the amount payable under the decree next how much each item has contributed to the payment of the decretal amount disregarding any purchase money which any of the purchasers has paid or retained and it should then proceed to apportion the liability between the different items. *BHAGWAN SINGH v MAHAR ALI KHAN* (1914)

I L R 36 All 272

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 82—contd

Mortgage—Contribution—Charge In the year 1830 one Tikam Singh who with several sons constituted a joint Hindu family executed a mortgage of a village forming part of the joint family property. In 1889 he with five of his sons executed a second mortgage of the same village. In 1891 he with two of his sons executed a third mortgage of the same village. Tikam Singh died and the sons partitioned the village amongst them into several mahals. The first mortgagee brought a suit for sale on his mortgage and having obtained a decree brought to sale the share of Het Singh one of the brothers and the mortgage was discharged. Thereafter Het Singh brought a suit for contribution and obtained a decree. After the satisfaction in this manner of the mortgage of 1880 the other brothers discharged the later mortgages of 1889 and 1891 and then brought the present suit for contribution against Het Singh. Held that in these circumstances the plaintiffs were not entitled to a decree against Het Singh. *Har Prasad v Raghunandan Prasad* I L R 31 All 166, referred to. *HASMI RAM v HET SINGH* (1914)
 I L R 37 All 101

ss 82 and 86—

Mortgage—Contribution—Principle upon which contribution is to be assessed Part of mortgaged property passing to auction purchasers at a court sale—Mortgage money realized from property remaining in hands of the mortgagor—Mortgagor's right of contribution against the auction purchasers. Some out of several properties covered by a mortgage were sold subject to the mortgage in execution of a simple money decree against the mortgagor. The mortgagee then brought to sale in execution of his decree on the mortgage a village L which still remained in the possession of the mortgagor and the proceeds of the sale of this village being insufficient to satisfy the decree subsequently caused a share in another village D in the possession of the mortgagor to be sold. In this way the mortgage decree was fully satisfied. Thereafter the mortgagor brought a suit for contribution against the auction purchasers of the villages above referred to upon the ground that the village L had been made to contribute more than its rateable share of the mortgage debt. Held that the suit would lie and the plaintiff after the sale of L was entitled to get contribution from the other villages which had been sold subject to the mortgage in execution of the simple money decree. *Magnam v Mehdi Hossain Khan*, I L R 31 Cal 95 and *Ibn Hussain v Brij Lal Saran* I L R 96 All 407 distinguished. *Har Prasad v Raghunandan Prasad* I L R 31 All 166, referred to. *PAMA BHATTAR PRASAD v LAL RAM HUSAIN*
 I L R 42 F 11 273

ss 82 100—

Mortgage—Contribution—Principle upon which contribution should be assessed—Limitation—Indian Law with an Act (IX of 1908) Sch I Arts 22 161 and 162 The owner of a property which is mortgaged with other properties to secure a simple money decree by virtue of the provisions of ss 82 and 100 of the Transfer of Property Act 1882 is a creditor against such other properties as in the property has been sold in execution of a decree in the mortgage and has contributed more than its rateable share of the mortgage debt and is entitled to a contribution against such property as has been sold in the execution of the mortgage.

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd—

s 82, 100—contd

gaged property nor has the sale of his property alone discharged the mortgage decree. A claim to enforce such a charge is governed by Art 132 of the first schedule to the Indian Limitation Act, 1908 *Ibn Hasan v Brybhukan Saran* I L R 26 All 407, *Muhammad Yahya v Rashid ud-din* I L R 31 All 65 *Rajah of Vizianagram v Rajah Satruchera Somasekharavar* I L R 26 Mad 686 and *Bhagwan Das v Har Des*, I L R 26 All 227, referred to *Per BANERJI and CHATTER JJ* (dubitante *RICHARDS O J*)—If property against which a charge for contribution would otherwise have accrued has been sold and has realized more than the amount remaining due on the mortgage an equitable lien on the surplus sale proceeds arises in favour of the person entitled to contribution. A suit to recover contribution in virtue of such a lien is governed by Art 62 of the first schedule to the Indian Limitation Act 1908 if not, perhaps by Art 120 *Berhamdeo Pershad v Tara Chand* I L R 23 Cal 92 *Gosto Behary Pyne v Shih Nath Dutt* I L R 20 Cal 241 *Kamala Kant Sen v Abul Barkat* I L R 27 Cal 180 *Mahomed Wahid v Mahomed Ameer* I L R 32 Cal 527 *The Rajputana Malwa Railway Co operative Stores Limited v The Ajmere Municipal Board* I L R 32 All 491 and *Guru Das Pyne v Ram Narain Sahu*, I L R 10 Cal 860 referred to *BHAGWAN DAS v KARAM HUSAIN* (1911)

I L R 33 All 708

s 83—

1 ——— Deposit paid to mortgagee—Balance of mortgage debt promised—Mortgage not discharged. The consequences resulting from a payment into Court under s 83 of the Transfer of Property Act 1882 only occur when the amount paid in is found to be or is accepted by the mortgagee as being equivalent to the full amount due under the mortgage in suit *HAN DAYAL v PIRTHI SINGH* (1909)

I L R 32 All 142

2 ——— Tender under s 83 in one Court subsequent to suit by mortgagee in another Court to enforce his mortgage invalid—Where mortgagee entitled to possession mortgagee must be put in possession before deposit under s 83—Costs right of mortgagee to. Where after the institution of a suit by the mortgagee to enforce his mortgage in one Court the mortgagor deposits the amount in another Court under s 83 of the Transfer of Property Act the deposit is not a valid one and cannot have the effect of stopping the running of interest on the amount deposited. Where the mortgagor proposes to take action under s 83 of the Act he must have a valid right to redeem under his contract with the mortgagee. No deposit can be made if the mortgagee being entitled to possession is not put in possession *Pam Sonji v Ariahajaj*, I L R 26 Bom 312 followed. A mortgagee is entitled to his costs unless there are special reasons disentitling him to them. *DAYYA SAO v NARASINGHA MAHAPATRO* (1911)

I L R 35 Mad 209

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd—

s 83—contd

that if the mortgagor wished to redeem the mortgage he could do so on the last day of Jeth in any year. The mortgagor filed a suit for redemption and paid the mortgage money into court on the last day of Jeth 1910. Held that it was no reason for dismissing the suit that notice could not be given to the mortgagee within the time limited. Even if the tender was not enough to warrant the Court in passing a decree for redemption from the date of the deposit it was certainly proper and legal for the Court to pass a decree from the last day of Jeth next succeeding the date of the deposit. *Het Singh v Bihari Lal* I L R 43 All 95 referred to *SAYYID AHMAD BEG v DHANU RAI*.

I L R 43 All 424

4 ——— *Usufructuary mortgage—Hypothecation—Deposit of usufructuary mortgage amount only—Refusal by mortgagee—Subsequent deposit of hypothecation amount—Compound interest at enhanced rate—Penalty—Deposit of compound interest at the original rate only sufficiency of—Acceptance by Court as reasonable compensation effect of—Mene profits claimed for by plaintiff from date of deposit if sustainable*. The plaintiff as the vendee of certain lands which were subject to a usufructuary mortgage as well as a hypothecation in favour of the defendant sought to recover the property on payment into Court of the amount due under the usufructuary mortgage under s 83 of the Transfer of Property Act. The defendant claimed that the plaintiff should deposit the sum due under the hypothecation bond also. The plaintiff paid subsequently into Court an amount as due for principal and interest on the latter bond, but calculated compound interest at the original rate and not at the enhanced rate after default as mentioned in the bond disputing the provision as penal. The Court held the provision to be penal and accepted the amount paid as reasonable compensation. The for interests as reasonable profits from the date of his plaintiff claimed mene profits from the date of his first deposit but the defendant disputed his right to any mene profits as the plaintiff did not deposit the full amount specified in the bond. Held (i) that the plaintiff was bound to deposit the amounts due under both the bonds and (ii) that the plaintiff was not bound to deposit the amount rate of interest but that the payment of an amount as reasonable compensation which was accepted by the Court as proper was legally sufficient to entitle the plaintiff to mene profits from the date of the second deposit. *ATYAKTITI MAR KONDAN v PERITASWAMI KAYANDAN* (1915)

I L R 39 Mad 579

s 83 s 84—

withdrawal by mortgagor effect of—Interest on mortgage amount does not cease to run—Costs of mortgage in redemption suit. Where the mortgage amount deposited by the mortgagor under s 83 of the Transfer of Property Act has been withdrawn by the mortgagor on the mortgagee's refusal to accept it interest in such amount does not cease to run under s 84. The continuance of the deposit is necessary to justify the claim to the cessation of interest. The mortgagee is entitled to his costs in a redemption suit. It will be for felty by some improper defence or misconduct

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

ss 85 90—

See MORTGAGE I L R 40 Cal 342

ss 85 91—Mortgage suit—Parties

—Non joinder of attaching money decree holder—Sale, validity of. Where after attachment by a money decree holder of certain property previously mortgaged by the judgment debtor the mortgagee brought a suit on the mortgage without impleading the attaching decree holder as a party obtained a decree for sale and himself bought the property in execution of his decree. Held that the order for sale and the sale held thereunder were not binding on the attachment decree holder and that the latter was entitled to bring the properties to sale under his attachment. An attaching decree holder has under s 91 Transfer of Property Act an interest in the mortgaged property entitling him to redeem the mortgage and is a necessary party in a suit on the mortgage. *Ghulam Hussain v Dina Nath* I L R 23 All 467 referred to. *VENKATA SEETHARAMAYYA v VENKATARA MATTA* (1912) I L R 37 Mad 418

ss 85 99—

See s 61 I L R 32 Mad 927

See MORTGAGE I L R 41 Cal 727

ss 86 to 90—

See CIVIL PROCEDURE CODE, 1908 O XXXIV

ss 86 88 and 90—Mortgage decree for

sale—Decree silent as to costs whether costs recoverable against mortgagor personally. In a mortgage decree for sale costs are part of the amount due upon the mortgage and are recoverable from the mortgaged property and not personally from the debtor unless the decree itself so directs. Such a direction cannot be presumed where the decree is silent on the point. *Per ATKINSON J*—Costs awarded by a decree prepared under the joint provisions of ss 86 and 88 of the Transfer of Property Act 1882 can only be realised from the mortgaged property. *MATUKDHARI SINGH v RAMDAS SINGH* ■ Pat L J 51

■ 88—

See s 86 2 Pat L J 51

See MORTGAGE I L R 35 Bom 395

See MORTGAGE DECREE 4 Pat L J 213

ss 88, 89—

See MORTGAGE I L R 38 Cal 913

See MORTGAGE DECREE 4 Pat L J 213

Joint decree for sale—

Application for order absolute made by some of the decree holders after the coming into force of the Civil Procedure Code 1908—Civil Procedure Code 1908 O XXXIV—General Clauses Act (X of 1897) s 6. A decree for sale under the provisions of s 88 of the Transfer of Property Act 1882 was passed jointly in favour of B and K. B died before any order absolute for sale was passed. On 30th April 1909 the sons of B made an application for an order absolute for sale under s 89 of the Transfer of Property Act. K was not made a party to it. Held that the application would lie inasmuch as the sons of B being joint decree holders with K were entitled to apply for an order for sale (whether or not such order be in fact a final

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

ss 88 89—contd.

decree) their right to do so being inherent in the decree under s 88 of the Transfer of Property Act. The subsequent repeal of the section could not affect any right acquired or liability incurred thereunder. *GARGA SINGH v BANWARI LAL* (1911) I L R 34 All 72

Application for order absolute for sale—Limitation—Limitation Act (XV of 1877) Sch II, Art 179. Where a preliminary decree for sale on a mortgage was passed on 28th September 1898. Held that an application for order absolute made more than three years after that date was barred by limitation—such an application being a proceeding in execution. *Kista Bar v Banamoy Debta* 19 C W N 470 reversed. *Munna Lal v Sarat Chandra Mukerjee* 21 C L J 118 s 19 C W N 561 referred to. *Batuk Nath v Munni Das* I L R 36 All 284 s c 18 C W N 740 and *Abdul Majid v Jawahir Lal* I L R 36 All 350 s c 18 C W N 263 followed. *KISTA BAR v BANAMOTI DEBTA* (1915) 19 C W N 649

Civil Procedure Code

(Act XIV of 1882) s 244—Limitation Act (XV of 1877) Sch. II Arts 178 179—Civil Procedure Code (Act V of 1908) s 97 O XXXIV rr 1 and 5—Order passed under s 88 of the Transfer of Property Act if not appealed against cannot be questioned in an appeal from the decree absolute for sale. In 1907 a suit was filed to recover the mortgage amount by sale of the mortgaged property. A preliminary decree was passed on the 30th of June 1910 as contemplated by O XXXIV r 4 of the Civil Procedure Code (Act V of 1908) and ordering among other things defendants Nos 1 and 2 to pay the mortgage amount within six months to the plaintiff and in default directing a sale of the mortgaged property. The payment was not made and a final decree for sale was made on the 16th March 1912. Defendant No 1 appealed against the decree of 1912 and raised substantial points against the decree of 1910. The lower Appellate Court held that the defendant not having appealed against the preliminary decree within time was precluded by s 97 of the Civil Procedure Code (Act V of 1908) from disputing its correctness in an appeal preferred from the final decree. The defendant appealed to the High Court contending that the suit having been filed in 1907 the right of appeal which he had under the Civil Procedure Code of 1882 was not taken away by the Civil Procedure Code of 1908. Held that whether an order absolute for 1908 was treated as an order falling under s 244 of the Civil Procedure Code (Act XV of 1882) or not it was and appealable on that footing or not it was quite clear that even under the Civil Procedure Code of 1882 the correctness of the decree under s 88 of the Transfer of Property Act (IV of 1882) corresponding with O XXXIV r 4 of the Civil Procedure Code of 1908 could not be questioned in an application for an order absolute made under s 89 or in an appeal from an order absolute made on such an application. *MULLIHAN NARAYAN v VISHNUPADA* (1915) I L R 40 Bom 321

■ 89—

See CIVIL PROCEDURE CODE 1908 O XXXIV r 5 I L R 42 All 517

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

s 89—contd

See MORTGAGE I L R 42 All 364

I L R 37 Cal 897

See PRIVITY COVENANT—PRACTICE OF

I L R 36 All 350

See REDEMPTION 3 Pat L J 490

Execution of a decree—

Benamidar Held that in an application under s 89 of the Transfer of Property Act the fact that the Court came to the conclusion that the applicants transferees were benamidars was no bar to its granting an order absolute. A benamidar is competent to take out execution of a decree. *Intikhab Husain v Rafi un nissa* All Weekly Notes (1907) s 39 *Yad Ram v Umrao Singh* I L R 21 All 350 *Nand Kishore Lal v Ahmed Ala* I L R 18 All 69 *Bochha v Gajadhar Lal* I L R 28 All 44 *Parmlwar Datt v Anardani Datt* I L R 37 All 113 referred to *KAMTA PRASAD v INDOMATI* (1915)

I L R 37 All 414

Suit on prior mortgage

—Second mortgagee not made a party—Sale of property and purchase by decree holder—Subsequent suit by second mortgagee on his mortgage—

First mortgagee purchaser if may claim to be paid on the foot of mortgage contract or the amount decreed—Transfer of Property Act (IV of 1882) s 89 An order made under s 89 of the Transfer of Property Act (IV of 1882) for the sale of the mortgaged property has the effect of substituting the right of sale thereby conferred upon the mortgagee for his rights under the mortgage and the latter rights are extinguished. Where a first mortgagee obtained a decree for sale upon his mortgage in a suit in which he did not make the second mortgagee a party and purchased the mortgaged property at such sale. *Held* in a suit by the second mortgagee upon his mortgage that the first mortgagee purchaser had no greater rights than any stranger would have had who had purchased the property under the mortgage decree and paid cash for it and the latter was entitled to set up only the amount of the decree made in his suit. *Hei Ram v Shadi Lal* I L R 45 I A 130 22 C W 1033 (1918) followed *Umesh Chunder Sircar v Musummat Zahoor Fatima* L R 17 I A 201 (1890) distinguished *LALA MATHU MAL v MUSAMMAT DURGIA KUNWAR* (P C)

25 G W N 397

s 90—

See s 80 2 Pat L J 51

See CIVIL PROCEDURE CODE 1908 s 47

I L R 35 Bom 452

See MORTGAGE 47 Cal 370

See SUIT TO SET ASIDE A DECREE

I L R 38 All 7

1

Civil Procedure

Code (Act XIV of 1882) ss 43 and 50—Transfer of Property Act (IV of 1882) s 90—Suit to recover mortgage-debt by sale of mortgaged and unhyponothecated property—Decree against mortgaged property alone—Sale—Amount realised not sufficient—Application for supplemental decree to recover balance by sale of other property—Limitation—Putting forward allegations at a late stage In a

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—contd

s 90—contd

suit upon a mortgage dated the 18th April 1887 the plaintiff claimed on the 18th April 1899 to recover the mortgage debt by sale of the mortgaged property and the balance if any from the non hypothecated property of the mortgagor. The decree was passed in plaintiff's favour against the mortgaged property alone. The amount realized by the sale of the mortgaged property being insufficient to satisfy the decree the plaintiff applied under s 90 of the Transfer of Property Act (IV of 1882) for a supplemental decree against the other property of the mortgagor. The first Court found that the claim for a personal decree against the mortgagor was time barred. On appeal by the plaintiff he attempted to prove that the claim was within time owing to an intermediate payment by the defendant but the Appellate Court found that the plaintiff failed in his attempt and confirmed the decree. On second appeal by the plaintiff *Held* confirming the decree that the mortgage in suit being of the year 1887 and the suit of the year 1899 the plaintiff's right to a personal decree against the mortgagor was time barred the plaintiff having failed to show the ground on which exemption from the law of limitation was claimed. *Held* further that the plaintiff could not be allowed at a late stage of the suit to bring forward for the first time allegations which it was necessary to prove in order to show that he was entitled to a further decree against the defendant personally. *GULAM HUSSEIN v MAHAMADALI IBRAHIMJI* (1910) I L R 34 Bom 540

2 ——— Mortgage—Sub mortgage—Purchaser from mortgagor—Mortgage money forming part of consideration for sale—Personal liability of purchaser—Sale of mortgage rights In this case it was held (affirming the decisions of the Courts in India in *Jamna Das v Ram Autar Pande* I L R 31 All 350) that the purchaser of the mortgaged property was not a person from whom the balance of the mortgage debt was legally recoverable within the meaning of s 90 of the Transfer of Property Act IV of 1882. *JAMNA DAS v RAM AUTAR PANDE* (1911) I L R 34 All 63

3 ——— Mortgage decree —Decree for costs of a personal decree A decree had been passed on appeal in a mortgage suit upholding the mortgage and ordering that the appellant who was a transferee of a portion of the mortgaged property from the mortgagor do pay costs to the respondents the mortgagees. The mortgaged property having been sold in execution of the decree the decree holder applied for execution of the decree for costs against the transferee personally. *Held* on a construction of the decree that there was a personal liability imposed by the decree. In such cases regard should be had to what decree was passed rather than to what decree ought to have been passed. *MOHANYA OJHA v RAM BHADUR SINGH* (1912) 16 G W N 731

4 ——— One decree on mortgage for sale as also on personal covenant for sale of other properties if mortgaged properties fail to satisfy decree of legal—Civil Procedure Code (Act XIV of 1882) s 316—Sale set aside before confirmation—Second sale before former sale set aside if passes title—Delay in litigation The words of

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—contd

s 90—contd

s 90 of the Transfer of Property Act are satisfied when the Court in passing a decree in a mortgagee's suit granting him the necessary relief under the mortgage proceeds in addition to provide that if the proceeds of the sale be not sufficient to cover the amount secured by the mortgage with interest till the date of realisation the balance should be recovered from the other properties of the mortgagor. Where property previously sold in execution of another decree was before confirmation of such sale sold again and the sale was never confirmed by reason of its being subsequently set aside. Held that under s 316 of the Civil Procedure Code of 1832 which was in force at the date the property remained the property of the judgment debtor notwithstanding the sale and passed by the second sale. Excessive delay in bringing litigations to a final hearing condemned. JEUNA BAHU & PARNESHWAR NAPA YAN MATHA (1918) 23 C W N 490

s 91—

See s 90 I L R 118 Mad 310

See s 85 I L R 37 Mad 418

See ATTACHMENT I L R 37 Mad 418

I L R 44 Mad 232

See CIVIL PROCEDURE CODE 1908 O

XXI R 103 I L R 43 Mad 696

See MALABAR LAW

I L R 43 Mad 393

See MORTGAGE I L R 36 Mad 428

I L R 34 Mad 115

1 ———— Redemption mortgage of fixed rate tenancy—Death of tenant without heirs—Right of zamindar to redeem—Escheat to Crown—Agra Tenancy Act (Local II of 1901) ss 5 18 20 57 Held that on the death of a fixed rate tenant without heirs his tenancy does not escheat to the Crown but reverts to the zamindar. Bam Dihal Rai v The Maharaja of Vizianagram I L R 30 All 488 overruled. Ramee Sonet Kowar v Mirza Hummat Bahadur L R 31 A 92 I L P 1 Cal 391 distinguished. TULSHI PAM SAHU v GUR DAYAL SINGH (1910) I L R 33 All 111

2

——— Mortgage suit—Attaching creditor if necessary party—Right of purchaser in execution of money decree to redeem mortgage pending attachment in execution of mortgage decree—Attachment effect of. Although an attaching creditor is entitled to redeem a mortgage under s 91 Transfer of Property Act he has no interest in the mortgaged property. A purchaser at the sale in which the attachment culminated has no right to redeem the purchaser at the mortgage sale or to resist his getting possession of the property. Ghulam Hussain v Dina Nath I L P 23 All 467 430 commented on. Frederick Peacock v Madan Gopal I L R 29 Cal 478 and Motilal v Karabulduin I L R 25 Cal 179 referred to. SHANTANDA CHANDRA PAL & SRI NATH RAY CHOWDHURY (1912) 17 C W N 871

3

——— Mortgage—Right to redeem—Attaching creditor. Certain property was mortgaged on the 4th of April 1899. One

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—contd

s 91—contd

N K obtained a simple money decree against the mortgagor on the 25th of May 1899. Before judgment N K had attached the property and it was subsequently sold by auction and purchased by L R on the 28th of September 1902. In 1897 the mortgagees sued on their mortgage without impleading either N K or L R. In execution of their decree the property was sold and purchased by defendant's father who obtained possession on the 25th of April 1900. L R brought suit for recovery of possession or in the alternative for redemption. Held that under s 91 (5) of the Transfer of Property Act N K was entitled to redeem and the plaintiff as a person claiming under him is also entitled to redeem. LAKSHYAT RAI & FAKHR UD DIN (1917) I L R 90 All 536

s 92—

See LIMITATION ACT 1877 s 23 SCH II APT 36 I L R 33 Mad 71

See MORTGAGE I L R 47 Cal 317

——— ss 92 and 93—Power of mortgagor to apply for sale of mortgaged properties. In a suit for redemption of a mortgage (the mortgage not being a simple mortgage or a mortgage by way of conditional sale) where the mortgagor fails to pay the mortgage amount according to the decree he may apply for sale of the mortgaged properties. Paragraph 2 of s 93 Transfer of Property Act while giving the defendant mortgagee a right to apply for sale does not take away such right from the plaintiff mortgagor. GOVINDA TIRAGAVI & VEERAN (1913) I L R 36 Mad 32

s 93—

See s 60 I L R 39 Mad 696

s 95—

See s 53 I L R 118 Mad 1010

See LIMITATION ACT (IX OF 1908) SCH.

I ARTS 134 144

I L R 118 All 135

14 C W N 817

3 Pat L J 490

See MORTGAGE

See REDEMPTION

ss 95 100—

See LIMITATION I L R 46 Cal 111

See MORTGAGE (REDEMPTION)

6 Pat L J 660

s 96—

See MORTGAGE I L R 47 Cal 662

s 98—

See s 60 I L R 39 Mad 1010

I L R 38 Mad 667

See MALABAR LAW

I L R 44 Mad 344

——— ss 98 and 60—Anomalous mortgages—Mortgages defined in s 58 and combined mortgage under s 98—Clog on equity of redemption void under s 98—Applicability of provisions of the Act to ordinary and anomalous mortgages—Terms of the deed and local usage. How far binding—Construction of deed. Where the mortgagee was put in possession of the lands mortgaged under a deed executed in 1900 which provided that the principal with interest at a specified rate should be repaid on a

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—contd—

ss 98 and 60—contd

certain date eleven years thereafter and that in default the mortgagor should give up the lands as sold to the mortgagee and execute a proper sale-deed and further that the latter should enjoy the property paying the revenue due to Government and where the mortgagor sued in 1914 to redeem the mortgage and the mortgagee pleaded that the former could not redeem after the time limited under the deed. Held (by the Full Bench) that the transaction evidenced by the deed was not a mortgage by conditional sale or an anomalous mortgage under s 98 but a combination of a simple mortgage and a usufructuary mortgage and that consequently the stipulation in the deed which fettered the equity of redemption was invalid as opposed to s 60 of the Act. Held (by WALLIS C J and SETHAGRI AJAYAR J).—In the case of anomalous mortgages referred to in s 98 the provisions of s 60 as to the right of redemption do not apply when there is a contract or local usage to the contrary. KANDULA VEYIAH v DOVOI PALAYA (1900) 1 L R 43 Mad (FB) 589

s 99—

See CIVIL PROCEDURE CODE 1908 O XXXI—

B 4 2 Pat L J 55
B 14 1 L R 35 Bom. 248

See EQUITY OF REDEMPTION

2 Pat L J 587

See MORTGAGE 1 L R 47 Cal 377
14 C W N 579
1 L R 42 Cal 780

Civil Procedure Code

(1901) O XXXIV v 14—Hendulac—Joint Hindu family—Mortgage by father alone—Suit on mortgage ending in money decree—Sale of mortgaged property in execution—Suit by sons for redemption. One N S the father and managing member of a joint Hindu family executed a simple mortgage of joint family property in favour of R L R L brought a suit for sale on this mortgage against N S alone not impleading his son, but in that suit he released the security and took a simple money decree against N S in execution of which he attached and brought to sale the mortgaged property and purchased it himself. The sons of N S neither objected to the passing of the decree against their father nor to the sale of the property but subsequently filed a suit against R S for redemption of the mortgage. Held that the mortgagee could not by taking a simple money decree for his debt and bringing the property to sale in execution of such decree direct himself of his character as a mortgagee and that the sons of the mortgagor not having been made parties to the original suit for sale were still entitled to sue for redemption of the mortgage made by their father. *Moyan Pathul v Pakuran* 1 L R 42 Mad 347 *Mariand Balakrishna Bhat v Dhondo Damodar Kulkarni* 1 L R 42 Bom 674 *Pancham Lal Chaudhary v Kishan Pershad Mitter* 14 C W N 579 and *Kharajmal v Daim* 1 L R 32 Cal 296 referred to. *Debi Singh v Jia Ram* 1 L R 25 All 214 *Tara Chand v Imdad Husain* 1 L R 18 All 345 *Pormanand v Dzulal Ram* 1 L R 23 All 549 *Banhi Dal v Manni Lal* 1 L R 27 All 450 *Muhammad Abdul Rashid Khan v Dilshukh Rai* 1

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—contd—

s 99—contd

1 L R 27 All 517 *Kishan Lal v Umrao Singh* 1 L R 30 All 146 and *Muthu v Koruppan* 17 Mad L J 163 distinguished. *SARDAR SINGH v RATAN LAL* (1914) 1 L R 33 All 518

—Sale of mortgaged property in contravention of terms of section—Right of repurchase of mortgagor to redeem. If a mortgagee brings the mortgaged property to sale in contravention of the provisions of s 99 of the Transfer of Property Act 1882 such sale is not void but merely voidable. If such a sale is confirmed the auction purchaser whether he be an outsider or the mortgagee bidding with the leave of the Court obtains an indefeasible title and the right of the mortgagor and those who represent him to redeem is absolutely extinguished. *Ta a Chand v Imdad Husain* 1 L R 16 All 325 *Muhammad Abdul Rahid Ejan v Dilshukh Rai* 1 L R 27 All 517 *Madan Mahomed Lal v Jamma Kavalapuri* 2 All L J 123 and *Mangli Prasad v Patis Ram* 1 All L J 60 followed. *Jhabba Lal v Chhappu Mol* 4 All J J 787 overruled. *Sardar Singh v Ratan Lal* 1 L R 36 All 518 *Ashutosh Suddar v Behari Lal Arlamia* 1 L R 35 Cal 61 and *Pancham Lal Choudhary v Kishan Pershad Mitter* 14 C W N 579 referred to. *LAL BAWADER SINGH v ABHARAN SINGH* (1913) 1 L R 37 All 185

—Held that where a mortgagor in contravention of s 99 has attached the mortgaged property and brought it up to sale and purchased it himself the mortgagor or his transferee cannot successfully maintain a suit for redemption of the property without first getting the sale set aside. Assuming that upon purchase by the mortgagee himself the equity of redemption in contravention of s 99 the mortgagee merely becomes a trustee for the mortgagor in respect of it. Held by the majority of the Court that the mortgagor's right to recover the property cannot be enforced by a suit for redemption within art 148 of the Limitation Act 1908. *UTTAM CHANDRA DAW v PAJ KRISHNA DALAL* 22 C W N 230

s 100—

See s 58 1 L R 36 All 20
See s 59 1 L R 35 All 164
See s 62 1 L R 33 All 708
See CIVIL PROCEDURE CODE 1908 O XXXIV B 4 2 Pat L J 55
See LIMITATION 1 L R 46 Cal 121
See MADRAS ESTATES LAND ACT (1 OF 1908) s 3 1 L R 42 Mad 114
See MORTGAGE 1 L R 33 All 446
See PROVINCIAL SMALL CAUSE COURTS ACT s 23 and 23 5 Pat L J 243
See PATES AND TAXES 1 L R 42 Cal 625

—Construction of document—Charge created where words though used are definite. Where by a document the properties of one of the parties are made liable and it appears on the construction of the document that the word properties does not mean the properties of such party generally but certain specific properties a

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—contd

s 100—contd

charge will be created on such specific properties alone. A distinction must be drawn between wideness and indefiniteness of language. *Bheri Dorayya v Moddi Patu Ramayya* 1 L R 3 Mad 35 considered. **MANICKAM PILLAI : AUDINARA YANA PILLAI** (1910) 1 L R 34 Mad 47

A document which is imperative as a mortgage by reason of its not being properly attested cannot take effect as creating a charge under s 100. **Transfer of Property Act DEBENDRA CHANDRA ROY : BEHARI LAL MUKERJEE** (1912) 18 C W N 1075

s 101—J

See MORTGAGE 1 L R 38 Bom 24
1 L R 38 Mad. 18

Prior and subsequent mortgages.—Purchase of mortgaged property by prior mortgagee.—Suit for sale by subsequent mortgagee. Held, that a prior mortgagee who had in the exercise of a right of pre-emption purchased the property mortgaged to him had a right to be repaid the money due in respect of his mortgage before a subsequent mortgagee could bring such property to sale in execution of a decree on the mortgage held by the latter. **BALDEO PRASAD v UMAN SHANKAR** (1907) 1 L R 32 All 1

Purchase.—Satisfaction of mortgage on property purchased.—Intention of purchaser to keep mortgage alive for his benefit.—Presumption. In considering the question whether an incumbrance should be deemed to continue to subsist on the ground that the continuance of it was for the benefit of the person who has acquired the property the point of time to be regarded is the date of the acquisition of the property. If an intention to keep alive a charge on property is inconsistent with the real intention of the parties to the deed by which the purchaser of the property takes an assignment of it the charge cannot be treated as still subsisting simply because the purchaser afterwards finds that it would have been better for him to have kept the charge alive. **Liquidation Estates Purchase Co v Willoughby** [1898] A C 321 followed. **Bundeswars Singh v Pandit Balraj Sahai** 10 Oudh Cases 49 and **Mohesh Lal v Bawda Das** 1 L R 9 Cal 361 referred to. **JUGAL KISHORE v RAM NARAIN** (1912) 1 L R 51 All 288

Extinction of charge.—Mortgagee having two charges.—Purchase by mortgagee at the sale under the first mortgage.—Second mortgage cannot be enforced. G took a mortgage of certain lands in 1886. They were mortgaged to him again in 1894. In 1895 he sued on his first mortgage and obtained a decree. In execution of the decree the lands were sold subject to the mortgage of 1895 and purchased by G with the permission of the Court. In 1900 a partition took place between G's heirs at which the certificate of sale went to the share of the defendant and the mortgage deed of 1895 went to the share of the plaintiff. The plaintiff next sued the defendant to enforce the mortgage against her. Held, that the plaintiff could not sue the defendant on the mortgage for after what had occurred in 1895 G could have had no right to sue himself in a double capacity as mortgagee under the

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—contd

s 101—contd

mortgage of 1894 and mortgagee under the sale certificate of 1895 that is he could have had no cause of action against himself and the plaintiff as his heir could have no higher rights. **LAXMAN GANESH : MATHURARAY** (1913) 1 L R 38 Bom 365

s 105—Lease—Proof—Kabuliyat executed by alleged lessor if sufficient. A Kabuliyat by itself does not prove a lease being only an undertaking by the prospective tenant to take the lease. **Nand Lal v Hanuman Das** 1 L R 6 All 368. **Kasha Qir v Jogendra Nath Ghose** 1 L R 27 All 136. **Turof Sahib v Esuf Sahib** 1 L R 30 Mad 322, approved. **NUMANUD SAKKAR v BOUL DAS** (1909) 14 C W N 73

s 105 and 107—

See COMPROMISE 3 Pat L J 255
See KABULIYAT 1 L R 3D Cal 1016

Agreement to let land in reliance on agreement.—Construction of building in reliance on agreement.—Licence.—Remedy of licensee for wrongful eviction. The defendant's father gave the plaintiffs permission to build a gola or market place on a certain plot of land the latter agreeing to pay Rs 8 a year as ground rent but no lease was executed. The plaintiffs began to build the gola but before it was finished they were evicted by the owner of the land. Held on suit by the plaintiffs for possession and for an injunction to prevent the defendant from interfering with the gola that the plaintiffs were not lessees but merely licensees and that their remedy was for damages for the wrongful revocation of their licence. **BASPRO RAI v DWARKA RAM** (1915) 1 L R 38 All 178

s 105 and 109—Whether lease can give notice to quit a monthly tenant who has not been informed of the lease. One H P I leased his house to the plaintiff on the 1st October 1917. The defendants were in possession of the house as the monthly tenants of H P. The plaintiff on the 16th February 1918 gave the defendants notice to vacate the house before the 15th March. The defendants replied that they had no knowledge of the plaintiff's lease and did not recognize him as the landlord. Then at the plaintiff's request H P also sent a notice to the defendants on the 23rd March to quit within a week. As the defendants did not comply with the notice the plaintiff brought the present suit for ejectment and for Rs 750 a month as account of rent. The only question was whether the plaintiff's notice to the defendants of the 16th February 1918 was valid. No notice had been given by the owner to the defendants of the lease in favour of the plaintiff. Held that it was not necessary for the landlord to inform the defendants that he had leased the house to the plaintiff. **Gour's Law of Transfer 4th Edn** p 1701 referred to. Held also that the plaintiff as lessee was a transferee of a part of the lessor's interest in the property and under s 103 of the Transfer of Property Act possessed all the rights of the lessor as to the property transferred and was consequently entitled to serve the defendants with a notice to quit. **Manikam Pillai v Pailanarai Nadar** (43 Indian Cases 100) approved. **PANU RAM v TEK CHAND** 1 L R 1 Lab 241

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—contd

s 106—

See EJECTMENT I L R 40 Calc 858

See LANDLORD AND TENANT

I L R 46 Calc 458

ss 106 107—

See LANDLORD AND TENANT

I L R 44 Calc 403

Land held not for agricultural or manufacturing purpose on oral settlement at an annual rent—Presumption that tenancy annual—Contract to the contrary not valid because not registered—Notice length of Where there being no written lease the tenants were found to have been holding the land on an annual rent of Rs 15 and not for an agricultural or manufacturing purpose Held that from the fact that the rent was an annual rent the presumption ought to be drawn that the tenancy was an annual tenancy That in the absence of anything to rebut the presumption s 106 of the Transfer of Property Act if it stood alone would be inapplicable there being a contract to the contrary within the meaning of that section This contract however not being in writing and registered was invalid under s 107 That the tenancy was therefore terminable under s 106 on fifteen days notice expiring with the end of a month of the tenancy Durga Narayan v Gobardhan Das 19 C W N 69 s c 20 C L J 438 439 referred to AXLOO v ENAKOR (1916)

I L R 44 Calc 403

20 C W N 1005

Lease without registered instrument for purposes other than agriculture or manufacture at a fixed rent a year without any settlement as to duration of tenancy—Effect of holding over with acceptance of rent by landlord—Notice necessary to terminate tenancy—nature of—Notice signed by an mukhtar of valid—Fifteen days from date of notice calculation of The defendant took the premises in suit for a stationery shop as a tenant from the commencement of the Bengali year, the rent being fixed at a certain amount a year but the period during which the tenancy was to continue was not settled The tenant continued in occupation after the end of the year and the landlords accepted rent for the next year The plaintiff landlords subsequently served a notice to quit by registered post The notice was signed by an mukhtar and was dated the 16th Baisakh and called upon the defendant to vacate the premises within the 31st Baisakh The registered cover which was addressed to the defendant at his place of business was returned to the sender by the Postal authorities with an endorsement that the addressee had refused to accept it There was no oral evidence to show where the cover was posted or when and where it was tendered to the defendant On the cover were the seals of the office of posting and the office of destination as also an endorsement that the letter was returned as the addressee refused to receive it the seals and the endorsement bearing date corresponding to the date of the notice Held that under s 107 of the Transfer of Property Act which was in force at the time a lease of immovable property from year to year or for any time exceeding one year or reserving a yearly rent could be made only by a registered instrument and consequently the

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—contd

ss 106 107—contd

defendant became a tenant for one year only and in the absence of an agreement to the contrary within the meaning of s 116 of the Act the effect of his holding over was that after the expiry of the year in which the tenancy took effect it was renewed from month to month and was terminable by the lessors by fifteen days notice expiring with the end of a month of the tenancy That the notice was a fifteen days notice and was properly signed It was not intended to lay down in Subadans v Durga Charan I L R 28 Calc 118 s c 4 C W N 790 that in calculating the 15 days the day on which the notice was served as also the date on which the notice expired were both to be excluded GOBINDA CHANDRA SHAHA v DWARKA NATH PATTA (1914) 19 C W N 489

Notice to quit—Construction of—A notice of ejectment served by a landlord on his tenant contained besides the usual terms of a notice to quit a further statement that if the tenant did not vacate the house by the time specified the landlord would hold him liable from that date to rent at an enhanced rate The tenant did not attempt to treat this latter statement as an offer to renew the tenancy at the enhanced rate Held that the notice was a good notice and the landlord was entitled to a decree for ejectment SHANKAR LAL v BABU PAM

I L R 43 All 330

s 107—

See s 4 I L R 44 Mad. 55

See s 105 I L R 38 All 178

See COMPROMISE 3 Pat L J 255

See HANULIYAT I L R 39 Calc 1016

See LEASE 25 C W N 225

See REGISTRATION ACT 1908 ss 17 AND

90 I L R 36 All 176

See TENANCY AT WILL

I L R 44 Calc 214

1 Lease exceeding one year—Registration—Unregistered lease cannot be received as evidence—Evidence Act (I of 1872) s 91—Oral evidence of the lease cannot be given—Tenant admitting landlord's title—Amount of rent can be proved by other evidence—Parties—Admission—Estoppel—Practice The plaintiff owned a one third share in certain salt pans which share was during her minority leased by her guardians for a period of three years at an annual rental of Rs 500 The plaintiff having attained majority she at the expiration of the period let her share to the same lessees for a further period of two years at the rent of Rs 1000 a year The new lease though in writing was not registered The plaintiff sued to recover the rent for the two years at the rate of Rs 1000 a year and also Rs 6.3 for rent due on the first lease The defendants admitted the plaintiff's ownership and their tenancy under her but disputed the amount of rent Held that the plaintiff could not be allowed to rely on the lease set up by her because it was not registered (s 107 of the Transfer of Property Act) nor could she be allowed to give oral evidence of the lease (s 91 of the Indian Evidence Act) Held further that the defendants having admitted the ownership of the plaintiff and that they were in possession of her

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—*contd.*s 108—*contd*

to whom the property had been given for her maintenance for life by the former proprietor. The deed did not contain any express provision authorising the grantee to open new mines and to appropriate the minerals therefrom. The plaintiff who was a proprietor by right of purchase sued for a declaration that these four defendants had no right to open new mines and to raise minerals therefrom on the disputed property also for a perpetual injunction to restrain them from opening and working new mines and from further working the new mines which they had opened. *Held* that s 108 of the Transfer of Property Act which defines the rights and liabilities of lessor and lessee provides in cl (a) that in the absence of a contract or local usage to the contrary the lessee must not work mines or quarries not open when the lease was granted and no question of local usage arising in the present case and there being no express provision authorising the grantee to open new mines and to appropriate the minerals therefrom in the deed which was one for maintenance for the life of the grantee the grantee had no right to grant a mining lease for the purpose of opening and working new mines. Circumstances under which a mine may be said to be open considered. CHRISTIAN v NARBADA KOERI (1914)

19 C W N 786

4 ——— *Fixtures—Right of tenant to remove—Acquisition of land with building by Government—Tenant if only entitled to price of material* *Held* (as to the contention that under s 108 of the Transfer of Property Act the right of the tenant to remove fixtures must be exercised during the continuance of the lease) that the provisions of s 108 of the Transfer of Property Act are subject to local usage and in the present case the leases not being determined by any notice to quit and the decree in the mortgage suit under which the respondents lost their right not having given them an opportunity to remove the building they should be allowed to remove them unless the appellants chose to take them on payment of compensation. In the circumstances of the case the respondents were given one half of the amount awarded on account of the building. KANAIAL JALAN v PASIK LAL SADBURNAY (1914)

19 C W N 361

——— s 108 (a) and (e)—*Lease—Disturbance of possession by paramount title holder—Lessor's liability to indemnify—Lessor's defective title if a material defect in the property with reference to its intended use* *R* the registered proprietor in possession of the estate left by her husband granted a *zurgeshgi* lease of certain properties to the plaintiff and others. *C* the brother of the husband of *R* instituted a suit against *R* and obtained a declaration that on the death of *P*'s husband he became the rightful owner of the estate and *R* had no title in it. The plaintiff remained in possession till he was dispossessed by *C*. The plaintiff sued *P* for the recovery of his share of the *zurgeshgi* money and for damages for loss sustained by him in consequence of his possession. There was no evidence to warrant a finding that the defect in *R*'s title was one which the plaintiff could have with ordinary care

TRANSFER OF PROPERTY ACT (IV OF 1882)

—*contd*s 108 (a) and (e)—*contd*

discovered. *Held* that s 108 cl (c) of the Transfer of Property Act is wide enough to include disturbance of possession by a person with a paramount title. A defect in the lessor's title is not a material defect in the property with reference to its intended use within the meaning of s 108 cl (e). Those words have reference to the nature and condition of the property demised. *Held* further that s 108 cl (a) is inapplicable to the present case and the defendant is liable for damages for the interruption of the plaintiff's possession under the provisions of s 108 cl (e). MUKHTAR AHMED v SUNDAR KOER (1913)

17 C W N 980

s 108 (e)—

See LESSOR AND LESSEE

I L R 43 Mad 132

——— *Lease of colliery—Destruction by fire—Notice by lessee to determine lease if should be 15 days' notice* A notice by the lessee under s 109 (e) of the Transfer of Property Act avoiding the lease on the ground of destruction of the leased hold property by irresistible force takes effect immediately on service. S 108 of the Act has no application to such a notice. DAMODA COAL COMPANY LIMITED v HURMOOK MARNAPT (1915)

19 C W N 1019

s 108 (h)—

See BOMBAY LAND REVENUE CODE (BOM

ACT V OF 1879) s 63

I L R 38 Bom 716

See LANDLORD AND TENANT

I L R 10 Mad 710

See MADRAS ESTATES LAND ACT 1908

s 3 I L R 37 Mad 1

s 108 (j)—

See LANDLORD AND TENANT

I L R 37 Cal 377

See LEASE

1 Fat L J 1

——— *Lease or licensee—Agricultural land left for building purposes under special agreement and afterwards included in neighbouring town* Some fifty years ago by an agreement between the Government the zamindars and certain butchers a certain area of cultivated land adjoining the city of Allahabad was let in plots to the butchers for building purposes at a uniform rent of Rs 10 per bigha. There was also a proviso against arbitrary enhancement of the rent. Subsequently the land upon which the butchers had settled was included in the municipal limits of the city of Allahabad and was called *Muhalla Atala*. One of the butchers having sold his house the zamindars sued him and his vendee under the terms of the *wajib ul arz* claiming either one fourth of the price or in the alternative that the site might be cleared and possession made over to them. *Held* that in the circumstances these sites were not subject to the ordinary law with reference to village sites occupied by agricultural tenants but the butchers must be taken to be lessees and in the absence of a contract to the contrary their rights as such were transferable without reference to the zamindars. ABDUL HAQ v DATTA LAL (1914)

I L R 37 All 144

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 108 (j)—contd

Lessor and lessee—Mortgage with possession by lessee—Mortgagee not liable to the lessor for rent—Privity of estate meaning of A mortgagee with possession from the lessee is not liable to the lessor for rent as there is neither privity of estate nor of contract between them. *Per WALLIS C J*—Privity of estate is a technical term of English Law and under that law such privity arises only where the whole of the lessee's interest is assigned over and not where a subsidiary interest is carved out of the lessee's interest. The Transfer of Property Act in enacting s 108 (j) does not seem to have introduced any departure from the English Law. English and Indian cases reviewed. **THETHALAN : THE ERALPAD RAJAH CALICUT (1917)** I L R 40 Mad 1111

Lease from year to year in existence from before 1882—Transferability—Custom—Onus—sublease transfer by way of—Landlord if may recover khas possession A lease of homestead land from year to year which was in existence before the passing of the Transfer of Property Act is not governed by that Act and s 108 cl (j) of that Act does not make it transferable absolutely or by way of sublease. Such leases are not transferable except by custom the burden of proving which is on the party who sets it up. Whether a tenant from year to year had power before the Transfer of Property Act to transfer the holding by way of sublease or not where it appeared that the tenant had abandoned the lands without arranging for payment of rent and no rent had been paid by him since the year and that the transaction was in substance though not in form an assignment. *Held* that the landlord was entitled to recover khas possession of the land. **AVANDA MOHA SAHA & GORINDA CHANDRA RAY CHOUDHURY (1915)**

20 C W N 322

s 108 cl (o)—Principle applicable to agricultural lease—Mulgani tenant has no right to fell timber standing at time of grant Although Ch V of the Transfer of Property Act does not apply to agricultural leases the principles embodied therein may be applied to such leases. The rules contained in s 103 (h) (o) will apply to mulgani leases and a mulgani tenant is not entitled to cut trees standing at the date of grant. The law applicable to occupancy tenants will not apply to such leases as the former is not a tenant but one holding divided ownership. **CARGAMMA : BHON MARKA (1909)** I L R 33 Mad 253

ss 109 117—

See LANDLORD AND TENANT

I L R 37 Calc 723

s 109—

See s 108 I L R 1 Lah 241

ss 109 and 111—

See s 6 I L R 43 Bom 28

s 111 (d) (f)—Merger doctrine of—Application to tenures in India—Equitable considerations The predecessors of the defendants who held a *malgu* tenure directly under the *Mis* as *zamin* afterwards took a *malgu* lease from the *put* *dar* under s 1 of the *maliks*. *Held* that the condition which would make s 111 cl

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 111 (d) (f)—contd

(d) or s 111 cl (f) of the Transfer of Property Act applicable did not exist in the case and the *malgu* interest did not merge in the *malgu* tenure either under these provisions or under the general law. The English doctrine of merger has never been held to apply to land tenures in India in their entirety. On the other hand very eminent Judges have doubted that it does. *Woomes v Chandra Gopio v Ray Narain Ray* 10 W R 15 and *Jibanti Nath Khan v Gocool Chandra Choudhuri* I L R 19 Calc 760 referred to. *Raja Krishen Datt Ram v Raja Mumta Ali* I L R 5 Calc 198 was not decided on the ground of merger. In *Promatho Nath Mitter v Kals Prasanna Choudhury* I L P 23 Calc 741 *Surya Narain Mandal v Danda Lal Sinha* I L R 33 Calc 1212 and *Ujjat Hussain v Gayan Das* I L R 36 Calc 802 apart from the application of s 111 cl (d) of the Transfer of Property Act there was no equitable consideration to prevent the merging of rights whereas in the present case there was no equitable consideration to attract the application of the doctrine of merger. In deciding whether there is a merger in equity what must be first looked at is the intention of the parties and if that be not expressed then the Court looks to the benefit of the person in whom the interests coalesce. *Gokaldas Gopal Das v Puran Mal* I L R 10 Calc 1035 referred to. **AMATOO & SRIKISHAN MUK UD ALI (1914)** 19 C W N 435

s 111 (g)—

See s 6 I L R 33 Bom 98

See EJECTMENT I L R 45 Calc 469

See KROD KAST JOTES

I L R 48 Calc 359

See LEASE 1 Pat L J 1

See LANDLORD AND TENANT

I L R 41 Mad 699

I L R 42 Mad 659 654

See LESSOR AND LESSEE

I L R 39 Mad 445

Suit for khas possession on breach of covenant of lease—Over-act of lessor determining lease as condition precedent—Period of limitation and point of time whence period runs A lease provided that the lessee was to enjoy the land from generation to generation for purpose of residence without any power of alienation and that in the event of such alienation the lessor would be entitled to khas possession. The lessor sold the land and the lessor sued to recover possession. *Held*—Act 143 was applicable and the period of limitation was 12 years and time began to run from the date of alienation and not from the date when the lessee surrendered possession to the transferee. That under cl (g) of s 111 of the Transfer of Property Act it was necessary for the plaintiff to establish that the lessor had prior to the institution of the suit done some act showing an intention to determine the lease. Where the rights and obligations of the parties are regulated by cl (g) of s 111 of the Transfer of Property Act there is no determination of lease by forfeiture immediately on breach of covenant but such breach must be followed by an

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 111 (g)—contd

overt act on the part of the lessor before the institution of the suit for ejectment the institution of the suit cannot be rightly regarded as the requisite act because the forfeiture must be completed and the lease determined before the commencement of the action *Yowrang v Janardan* I L R 45 Calc 469 s c 22 C W N 312 27 C L J 277 (1917) approved. A suit for ejectment does not lie in respect of a portion of the lands of a tenancy which has been forfeited or a condition whereof has been broken *Gopalram Mohuri v Dhukeshwar Pershad Narain Singh* I L R 35 Calc 807 (1908) and *Syed Ahmad Sahib Shullari v Magnesite Syndicate Ltd* I L R 39 Mad 1043 (1915) referred to *MOTILAL PAL CHAUDHURY v CHANDRA KUMAR SEN*

24 C W N 1064

Landlord and tenant

—Denial of title—Suit for ejectment of tenant—Landlord's intention to take advantage of denial of title to be expressed before suit. The denial of his landlord's title by a tenant in order to work a forfeiture under s 111 (g) of the Transfer of Property Act 1882 must be an unequivocal and unambiguous denial mere non payment of rent or even the mortgaging of the premises as belonging to the tenant does not necessarily constitute such a denial. A landlord wishing to take advantage of his tenant's denial of title to determine the lease must do some act showing his intention to do so before he can file a suit for ejectment *PRAG NARAIN v KADIR BAKSH* (1913)

I L R 35 All 145

Landlord and tenant

—Forfeiture—Ejectment—Cause of action—Intention to determine the lease—Whether institution of the suit to eject a sufficient manifestation of intention. A landlord sued to eject his tenant on the ground that the lease was determined by the tenant's disclaimer of the landlord's title. The tenant contended that the landlord had no cause of action inasmuch as he had never before filing the suit done any act showing his intention to determine the lease as required by cl (g) of s 111 of the Transfer of Property Act 1882. *Held* that the mere institution of the suit and the assertion in the plaint as to the repudiation of the landlord's title constituted a sufficient manifestation of the landlord's intention to determine the lease *ISABALI TAVASALI v MAHADU EKOTA* (1917)

I L R 42 Bom 195

s 114—

See LANDLORD AND TENANT

I L R 39 Mad 834

I L R 42 Mad 654

I L R 44 Mad. 629

See LEASE I L R 45 Bom 300

s 116—

See s 116 19 C W N 525

See s 106 19 C W N 489

See s 107 18 C W N 858

See PENAL CODE s 341

I L R 43 Bom 531

s 117—

See KROD HAST JOTES

I L R 43 Calc 359

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 117—contd

See LANDLORD AND TENANT

I L R 37 Calc 723

I L R 42 Mad 654

See UNDER RAYATI HOLDING

I L R 42 Calc 751

s 118—

See s 54 I L R 77 Mad 423

I L R 40 All 187

See ESTOPPEL BY CONDUCT

I L R 40 Mad 1184

ss 118 119 120 54 and 55 cl (b)—

Exchange of lands of the value of one hundred rupees or upwards—No registered instrument—Oral transfer invalid—Parties placed in possession of the lands—Sale by one of the parties of lands obtained on exchange—No estoppel against the transferor or his creditor—No estoppel against statute—A charge for the value or price of the lands on the date of the transactions. An exchange of immovable property the value of one hundred rupees and upwards can be made only by a registered instrument under ss 118 and 54 of the Transfer of Property Act. No estoppel can be pleaded against the directions and the prohibitions enacted by the statute law and against the rights accruing to any party by reason of such directions and prohibitions. A party to an exchange which is not valid in law is not entitled to a charge on the property obtained by him in exchange for the price of such property on the date of the exchange under ss 120 and 55 cl (b) of the Transfer of Property Act. *Kurri Veerareddi v Kurri Bapireddi* I L R 29 Mad 336 followed. *Ram Baksh v Mughlani Khanam* I L R 26 All 266 dismissed from *Karalia Anandhaji v Mansukham* I L R 24 Bom 400 distinguished. *Muthu Venkatchellappathy v Pynda Venkatchellappathy* 23 Mad J 650 referred to *CHIDAMBARA CHETTIAR v VAIYDI LINGA PADAYACHI* (1913) I L R 38 Mad 519

s 119—

See LIMITATION ACT (IX OF 1908) ARTS.

113 AND 143 I L R 42 Mad 690

ss 122 123 126—

See OCCUPANCY HOLDING

I L R 45 Calc 434

s 123—

See s 3 I L R 44 Mad. 198

See s 55 I L R 34 Bom 687

See s 55 I L R 43 Bom 287

See GIFT

See LIMITATION I L R 43 Mad 244

I L R 46 I A 285

See OUDH ESTATES ACT (I OF 1869) ss.

18 16 AND 17 I L R 32 All 227

Gift of land—Oral gift

—No registered deed of gift—Gift inoperative—

Unauthorized occupation and use of land—Owner

of land making an oral gift of land—Acquiescence

—Estoppel—Indian Evidence (1st I of 1870)

s 115 In 1903 the defendant Municipality took

plaintiff's land into its p.c. possession and used it for

making a new road through it. After a major

portion of the road was constructed the plaintiff's

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

s 123—contd.

father objected to the unauthorised occupation and use of his land but he was prevailed upon to give the land in gift to the Municipality. The gift was orally made and no writing was made or registered. The plaintiff's father died in 1906. The plaintiff sued in 1914 to recover possession of the land from the Municipality. *Held* decreeing the suit that the absence of a registered deed of gift invalidated the gift owing to the provisions of s 123 of the Transfer of Property Act 1882 and that the mere consent of the plaintiff's father to make the gift was not sufficient to vest the land in the Municipality. *Held* further, that the plaintiff was not estopped under s 115 of the Indian Evidence Act 1872, from denying the gift because the defendant had occupied the land and laid out a substantial part of the road before the plaintiff's father was prevailed upon to make the gift. *KUVFRI KAVASI v MUNICIPALITY OF LOVAVALA* (1920)

I L R 45 Bom 164

Gift—Attestation—Meaning of attested. A deed of gift was attested by two witnesses. At the trial of the suit only one witness was examined and he deposed that he was at some distance when the deed was being written and that he did not see the executant making his mark on the deed. *Held*, that the deed of gift was not properly executed within the meaning of s 123 of the Transfer of Property Act 1882. The word attested in s 123 of the Transfer of Property Act 1882 meant the witnessing of the actual execution of the document by the person purporting to execute it. *Shamu Patter v Abdul Kadir* (1912) 14 Bom L R 1034 relied to *ANABAPPA v RAOHAVA* (1919)

I L R 44 Bom 231

ss 123 129—Gift—Validity of gift of immovable property—Mahomedan law. Where a Mahomedan had made a gift of immovable property which was valid according to Mahomedan law it was *held* that the gift was none the less valid because the donor had executed a deed of gift purporting to convey the property to the donee which owing to a defect in the attestation, was invalid according to the provisions of the Transfer of Property Act 1882. *KARAM ILAHI v SUARF UD DIN* (1910) I L R 38 All 212

s 126—

See GIFT I L R 39 Calc 933

See OCCUPANCY HOLDING

I L R 45 Calc 434

s 127—

See s 11 I L R 38 All 62

s 129—

See s 123 I L R 38 All 212

s 130—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 I L R 37 Bom 471

See MORTGAGE I L R 43 Mad 803

See SECTE 1104 ACT (V OF 1865) s 190 I L R 38 Bom 618

s 130—Actionable claim.—Claims to proceeds of policy of insurance by depositor of policy and by assignee of policy by an

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

s 130—contd.

instrument in writing—Transfers by way of security. The appellant and the respondent were rival claimants to the proceeds of the policy of insurance on the life of their debtor which had been paid into Court by the Insurance Company as a defendant in a suit brought for the money in which the appellant was also a defendant. The appellant relied on an assignment by the debtor of the policy by an instrument in writing and the respondent based his claim on a deposit of the policy with him by the debtor unaccompanied by any written instrument. *Held* (reversing the decision of an Appellate Bench of the High Court) that the case was governed by s 130 sub s (1) of the Transfer of Property Act (IV of 1882 as amended by Act II of 1900) which precluded the application in India of the principles of English Law and the title of the appellant as being based on an instrument in writing and so conforming in all respects with the provisions of that section was absolute as against that of the respondent who acquired no right to the policy or its proceeds by reason of the deposit. The right to the proceeds was an actionable claim and s 130 covered transfer by way of security as well as absolute transfers as appeared from illustration 2 to the section. *VIJAY KUMAR v VISWANATH PRABHAKAR VADYA* (1912) I L R 37 Bom 188

ss 130 131 134—Transfer of debt notice of—Duty of debtor on receiving notice from transferee. Where a creditor hypothecates a debt due to him and authorises the person to whom the debt is hypothecated by power of attorney in the writing to recover the debt from the debtor the debt is absolutely transferred to the transferee under s 130 of the Transfer of Property Act. Notice of the transfer is not necessary to perfect the title of the assignee but until the debtor receives notice of the assignment in accordance with law his dealings with the original creditor will be protected. The notice of transfer need not necessarily be free from any condition or qualification. A debt was assigned absolutely and the debtor received notice of assignment from the transferor who at the same time requested the debtor to pay only if the liability formed the consideration for the transfer was not discharged. The debtor also received notice of the assignment from the transferee who claimed payment. The transferee did not represent that he had discharged the claim on account of which the transfer was made. The debtor after receiving the above notices refusing to recognise the assignment paid the amount to the transferor. *Held* that the payment was inoperative and that the transferee was entitled to recover from the debtor. If the fact of the assignment or its validity is disputed the only safe course for the debtor who has received notice of the assignment is not to pay either party but to ask them to interplead. *William Brandt & Sons & Co v Buxton Fuller & Co* (1905) A C 404 referred to *CORALTA KRISHNA IYER v CORALAKRISHNA IYER* (1903) I L R 33 Mad 103

ss 130 and 134—Effect of notice of a promissory note—As signers of a promissory note. By virtue of s 130

TRANSFER OF PROPERTY ACT (IV OF 1882)—*concl'd*— **ss 130 and 134—*concl'd***

and 134 of the Transfer of Property Act (IV of 1882) a mortgage in writing of a promissory note executed in favour of the mortgagor by a third party creates an assignment of the promissory note in favour of the mortgagee even without an endorsement and as the right of the promisee to sue on the note becomes vested in the mortgagee the mortgagee alone is entitled to sue on the note and in taking accounts he is liable to be debited with the amount of the note if he without any justification allows the recovery of debt barred by limitation. *Uday Khataw v. Venu Nath Prabhuram* I L R 31 Bom 198 followed. *Shyam Amari v. Pameswar Singh* I L R 32 Cal 97 followed. *MUTHURISHNIER v. VEERABAGAVAT IYER* (1913)

I L R 33 Mad. 297

— **s 132,**

See CIVIL PROCEDURE CODE (ACT XIV OF 1852) ss 268 278 283

I L R 38 Bom 631

Where a mortgage is transferred without the privity of the mortgagor the transferee takes subject to the state of accounts between the mortgagor and mortgagee at the date of the transfer but not subject to any independent debt in no way connected with the mortgage. *SUBRAMANIA AYYAR v. SUBRAMANIA PATTAR*.

I L R 40 Mad. 683

— **s 134—**

See s 130

See DEBT HYPOTHECATION OF

I L R 34 Mad 53

— **s 136—**

See LEGAL PRACTITIONERS ACT 1879

s 13

I L R 37 Mad 238

— **s 137—**

See CONTRACT I L R 41 Cal 670

See CONTRACT ACT (IV OF 1872) ss 4 61 103

I L R 38 Bom 255

See VENDOR AND SUB VENDOR

I L R 53 Cal 127

TRANSFER OF PROPERTY (AMENDMENT ACT (III OF 1885))— **s 3—**

See KADULITAT I L R 80 Cal 1016

TRANSFER OF PROPERTY (VALIDATING ACT (XXVI OF 1917))— **s 3 proviso 5—**

Review of judgment—
Judgment reviewed that of appellate court—
Former Court Where action is taken by an appellate court on an application for review presented in accordance with the provisions of Act No XXVI of 1917 and an appeal which had been dismissed is restored the former court mentioned in proviso (3) to the section is not the court of first instance but the appellate court. *KAMPA DEBI v. KISHORI LAL*
 I L R 42 All 430

TRANSFER OF SHARES

See COMPANIES ACT (VI OF 1882) ss 58

147 I L R 40 Bom 134

See COMPANY I L R 36 All 365

TRANSFER OF SUIT

See CIVIL PROCEDURE CODE (1908) s 24

I L R 41 All 381

5 Pat L J 588

Transfer of a suit under s 92 Civil Procedure Code (Act I of 1908) from the Court of a District Judge to that of the Additional District Judge— Authority of Additional District Judge to try such suit—Civil Courts Act (XII of 1887) s 8 sub s (2)—Convenience. An Additional District Judge by virtue of the assignment of all the functions of a District Judge under the provisions of sub s (2) of s 8 of Act XII of 1887 is empowered to exercise the same powers as the District Judge in suits under s 92 of the Civil Procedure Code. *Semle*. Any other Court empowered in that behalf by the Local Government in s 92 of the Code probably refers to Courts such as the Subordinate Judges Courts. Transfer of the suit was ordered in this case on the ground of convenience the opposite party being compensated by payment of his costs. *MOHAMMAD FAHMAN v. HAZI ABDUR RAHIM* (1920) I L R 48 Cal 53

TRANSFERABILITY

See BUILDING LEASE

I L R 37 Cal 377

See OCCUPANCY HOLDING

I L R 45 Cal 434

I L R 48 Cal 184

I L R 42 Cal 172

I L R 44 Cal 272 720

See OFFERINGS TO A TEMPLE

I L R 43 Cal 22

See PALAS OR TOWN OF WORSHIP

I L R 42 Cal 455

See UNDER PAITYATI HOLDING

I L R 42 Cal 751

TRANSFERABLE RIGHT

See SABBARAKARI TENURE

I L R 46 Cal 378

TRANSFEREE

See DEPOSIT IN COURT

I L R 44 Cal 100

— from *benamidar* right of to sue—

See MORTGAGE I L R 41 Mad 435

— from execution purchaser—

See PARTIES I L R 39 Cal 681

— of trust estate liability of—

See TRUSTEE I L R 39 Mad. 115

TRANSIT

— duration of—

See SALE OF GOODS ACT (V AND 5th VIC c 71) ss 45 AND 47

I L R 34 Bom 640

TRANSMISSION BY POST

See SEDITION I L R 39 Calc 522

TRANSPORT

See EXCISEABLE ARTICLES

I L R 39 Calc 1053

TRAVELLING WITHOUT TICKET

See RAILWAY PASSENGER

I L R 44 Calc 279

TREASURY OFFICER

— appropriation in payment by—

See SALE FOR ARREARS OF REVENUE

I L R 38 Calc 537

TREATY

See EXTRADITION I L R 48 Calc 328

See BOMBAY REVENUE JURISDICTION ACT
(X of 1876) s 12

I L R 45 Bom 463

TREES

See LANDLORD AND TENANT

I L R 34 All 545

See BOMBAY LAND REVENUE CODE (BOM
ACT V OF 1879) s 83

I L R 38 Bom 716

See TIMBER

— overhanging ones land—

See TORT I L R 43 Bom 164

— right of removal of—

See LANDLORD AND TENANT

I L R 37 Calc 815

— partition of—

See JURISDICTION (CIVIL AND REVENUE)

I L R 42 All 574

— whether temporary right to take
fruit of is immovable property—

See PUNJAB PRE EMPTION ACT 1913

I L R 1 Lah 567

— growing on boundary between 2
fields—

See EASEMENT I L R 44 Bom 605

— Growth of sandalwood trees on
occupancy lands subsequent to survey settle-
ment—

See FOREST ACT (VII of 1878) s 75

CL. (c) n 2 I L R 45 Bom 110

— Trees planted after lease

— Right of removal of trees by tenant—Fixtures
doctrine of—Bengal Tenancy Act (VIII of 1885)
s 23—Transfer of Property Act (II of 1882) s 2
108 (h) In the absence of any special provision
in a lease granted before the Transfer of Prop-
erty Act (IV of 1882) came into force the prop-
erty in the trees planted by the lessee after a
koms lease had been granted does not vest in
the landlord. The rule laid down in s 108 cl (h)
of the Transfer of Property Act (IV of 1882)
has no application to such a case. The lease
in the present case not being for agricultural or
horticultural purpose s 23 of the Bengal Tenancy
Act has no application. The doctrine of the

TREES—contd

English Law of Fixtures cannot be appropriately
extended to this country on equitable grounds
Bain v Brand 1 App Cas 762 *Mears v Callender*
(1901) 2 Ch 388 *Elves v Mau* 2 Smiths Leading
Cases 189 3 East 38 *Ness v Pacard* 2 Peters
137 referred to. The Law of Fixtures is not
recognised under the Hindu or Mahomedan laws
Thakoor Chunder Paramanick v Ramdhone
Bhuttacharyee 6 W R 228 B L R F B 595
Secretary of State v Charlesworth Pilling & Co
I I R 26 Bom 1 *Khodeeram Serma v Trilochan*
1 Mac Sel Rep 35 *Jankee Singh v Bukhoote*
Singh (1856) Beng S D A 1517 *Bri Bhootun*
toollah (1855) Beng S D A 1517 *Bri Bhootun*
v Dabee Dyal (1863) 2 Agra S D A 480 *Kalee*
Pershad Dutt v Gourree Pershad Dutt 5 W P
103 relied upon. Before the passing of the
Transfer of Property Act the doctrine of the
English Law of Fixtures did not prevail in this
country and the provisions of that Act substan-
tially reproduced the law on this subject as recog-
nised by Hindu and Mahomedan jurisprudence
Jemas Kani Routhan v Nazarali Sahib I L R
27 Mad 211 referred to *Moriz Sheikh v*
Rasik Lal Ghose (1910)

I L R 37 Calc 815

TREE PATTI

Effect of cancellation
of on land pattadar—No resumption or grant to
the latter—Right of tree pattadar for the trees even
after cancellation as against land pattadar—Pos-
sessory right protection of as against trespassers
A person who was in possession until dispossessed
by defendants who having no title as owners were
mere trespassers is entitled to rely on his pos-
session and succeed in a suit to eject them *Aaroy*
and Rao v Dharmachar I L R 96 Mad 514 and
Subbaraya Chetty v Ayyar I I R 39
Mad 86 followed. In the absence of proof to the
contrary a cancellation of patta is used by the
Government in favour of the plaintiff in respect
of trees standing on certain lands for which lands
the patta was being used in favour of defend-
ants does not amount to a resumption of pos-
session of the trees by the Government or to a grant
of them by the Government to the defendants
The only effect of cancellation of the patta for
the trees was that the Government no longer
made any demand on the tree pattadar for
revenue in respect of the tree. The facts that
when both pattas were in existence the land
pattadar was credited with whatever revenue
was collected from the tree pattadar and that
on cancellation of tree patta the whole revenue
was payable by the land pattadar to the land
pattadar. On to a grant of the trees to the land pattadar
the rights of the tree pattadar and land pattadar
Reference under s 39 of Madras Forest Act I L R
12 Mad 203 and *Therai Panditani v Secretary*
of State for India I I R 21 Mad 433 referred
to *KESGODA GOUDAN v VAPADAPPAN* (1913)
I L R 38 Mad 145

TRESPASS

See ARREST OF SUIR I L R 42 Calc. 85

See CRIMINAL TRESPASS.

See EASEMENT I L R 47 Bom 481

TRESPASS—contd

See FOOTING I L R 38 Calc 687

See GRAVEYARD I L R 40 Calc 548

See JURISDICTION I L R 42 Calc 942

See LIMITATION ACT (IX of 1908) SCH I
ARTS I O 144

I L R 42 Bom 333

See PENAL CODE (ACT XLV of 1860)
§ 297 I L R 33 All 773

See TORT I L R 43 Bom 164

— suit for declaration by Trespasser—

See SPECIFIC RELIEF ACT 1877 s 42
1 Pat L J 95

— when supported by Land lord—suit
by tenant—A

See EJECTMENT 1 Pat L J 430

1 ———— what constitutes—The foundation
of the pass is the doing of an illegal act forcibly
and without legal authority as against the pro-
perty of another To sustain trespass the illegality
and the wrongfulness of the act must be estab-
lished by proof If the act is not illegal no right
is infringed *DANAI DAS v GOVINDA GUDI*

1 Pat L J 533

2 ———— Suit for damages—Provincial
Small Cause Courts Act (IX of 1887) Art 31
Sch II Jurisdiction under Where the plaint
alleged that the defendants had trespassed upon
plaintiff's land and removed his crop and assess-
ed damages at the profit thus wrongfully obtained
by defendants Held that the suit was one for
damages for a single act of trespass and not exempted
from the jurisdiction of the Provincial Small
Cause Courts by Art 31 Sch II of the Provincial
Small Cause Courts Act (IX of 1887) *ANNARAO
v SUBRAMANYAN* I L R 15 Mad 293 followed
and *VENKOBBA PAO v MUTHU AIYAR* 18 Mad L J
88 dissented from *PANAIYAN v SAMINATHA
AIYAR* (1912) I L R 33 Mad 728

3 ———— Right of Magistrate to order
search for arms—Criminal Procedure Code (Act
V of 1898) s 94 96 100 Sch III (5)—Juris-
diction to issue search warrant—Arms Act (XI of
1878) s 25—Provision as to recording grounds
for belief in s 25 whether mandatory or directory—
Protection of Judicial Officers—Directing search
where offence has been committed as judicial action—
Charge of want of bona fides and malice repro-
bated For some time prior to 21th April 1907
much illfeeling existed in and about Jamalpore
a sub division of Mysnasingh between the Hindu
and Mahomedan communities and much excite-
ment and resentment had been aroused on account
of the action of the Hindus in attempting some
days before that date to enforce a boycott of
Bideshi or foreign goods On 27th April at night
a Mahomedan was wounded by a revolver shot
fired by one of a party of Hindus dressed as
Mahomedans who after the occurrence took
refuge in some cutcherries belonging to the leading
zamindars of the neighbourhood who were active
sympathisers with the action of the Hindus A
crowd of Mahomedans at once collected and
proceeded to the cutcherries but were prevented
from attacking them by the District Superinten-
dent of Police and the Sub divisional Officer
who hearing of what had occurred proceeded to
the cutcherries and restrained the mob thereby

TRESPASS—contd

averting a serious riot A large number of Hindus
some of them with arms had collected in a temple
close by and having bolted and barred the doors
refused admittance which was demanded by the
District Superintendent of Police and the Sub
divisional Officer Shots were fired from inside
the temple and a man in the crowd outside was
wounded The District Magistrate was then sent
for and on his arrival on the morning of 28th
April he decided in consultation with the District
Superintendent of Police and the Sub divisional
Officer that it was necessary to search the cutcher-
ries to obtain possession of the arms used on the
27th and others which it was reported to them
were concealed there and also for the purpose of
and in connexion with the investigation of the
offences committed The cutcherries were found
locked and as no officer or servant of the
zamindars could be found they were broken
open under the District Magistrate's orders and
instructions and a search was made therein by
the District Superintendent of Police and the
men acting under his orders No arms of any
kind were found In a suit for the pass against
the District Magistrate instituted by one of the
zamindars whose cutcherry had been searched—
Held (reversing the decision of the first Court
and of the majority of the Appellate Court and
upholding the decision of *BRETT J*) that the
search was warranted by the Code of Criminal
Procedure (Act V of 1898) A serious offence
had been committed against the public tran-
quility into which it was the duty of the District
Magistrate to enquire and by virtue of his superior
rank he was at Jamalpore the proper person to
conduct the enquiry By s 36 Sch III and
s 96 of the Code the power of issuing a search
warrant was among his ordinary powers
and therefore under s 105 he had power to direct
a search to be made in his presence if he thought
it advisable to do so That being so it was
unnecessary to decide on the other defences set
up but *semble* (agreeing with the majority of the
Court of Appeal) that the District Magistrate
not having complied with the preliminary condi-
tion prescribed by s 25 of the Arms Act (XI of
1878) could not defend his action under that
Statute Also (agreeing with *BRETT J*) that
the District Magistrate in directing a general
search of the plaintiff's cutcherry in view of an
enquiry under the Criminal Procedure Code,
was acting in the discharge of his judicial functions
and had it been necessary might have appealed
for protection to Act XVIII of 1860 The charge
of personal misconduct advanced and reiterated
without any shadow of proof deserved the
severest reprobation *CLARKE v BRAJENDRA
FISHER POX CHOWDERY* (1912)

[I L R 39 Calc 953

4 ———— Who may sue for—tenant or
owner—Title by adverse possession not pleaded
if may be alleged in the Court of Appeal—Civl
Procedure Code (Act V of 1908) O XII s 94—
Adverse possession against Municipality or the Crown
Per *SANDERSON G J* and *MOOKERJEE J*—The
tenant is the proper plaintiff to sue for trespass
committed in re feet of the land the rever-
sioner can only sue for the alien-
the pass is injurious of
land and to the
C J—Even though t.

TRANSMISSION BY POST

See SEDITION I L R 79 Cal 522

TRANSPORT

See EXCISEABLE ARTICLES
I L R 39 Cal 1953

TRAVELLING WITHOUT TICKET

See RAILWAY PASSENGER
I L R 44 Cal 279

TREASURY OFFICER

appropriation of payment by—
See SALE FOR ARREARS OF REVENUE
I L R 38 Cal 537

TREATY

See EXTRADITION I L R 48 Cal 328
See BOMBAY REVENUE JURISDICTION ACT
(V of 1876) s 12
I L R 45 Bom 463

TREES

See LANDLORD AND TENANT
I L R 34 All 345
See BOMBAY LAND REVENUE CODE (BOM
ACT V OF 1879) s 83
I L R 38 Bom 716

See TIMBER

overhanging ones land—

See FORT I L R 43 Bom 184

right of removal of—

See LANDLORD AND TENANT
I L R 37 Cal 815

partition of—

See JURISDICTION (CIVIL AND REVENUE)
I L R 42 All 574

whether temporary right to take

fruit of is immovable property—

See PUNJAB PRE-EMPTION ACT 1913
I L R 1 Lah 567

growing on boundary between 2

fields—

See EASEMENTS I L R 44 Bom 606

Growth of sandalwood trees on

occupancy lands subsequent to survey settle-

See FOREST ACT (VII OF 1878) s 76
cl. (c) r 2 I L R 45 Bom 110

—Right of removal of trees by tenant—Fixtures
doctrine of—Bengal Tenancy Act (VIII of 1885)
s 25—Transfer of Property Act (IV of 1882) s 2
108 (h) In the absence of any special provision
in a lease granted before the Transfer of Pro-
perty Act (IV of 1882) came into force the pro-
prietor's lease had been granted does not vest in
the landlord. The rule laid down in a 108 cl (h)
has no application to such a case. The lease
in the present case not being for agricultural or
horticultural purpose s 23 of the Bengal Tenancy
Act has no application. The doctrine of the

TREES—contd

English Law of Fixtures cannot be appropriate
extended to this country on equitable grounds.
Bain v Brand 1 App Cas 762 Meares v Callender
(1901) 2 Ch 333 Ellice v Mar 2 Smiths Leading
Cases 189 3 East 35 Yeas v Foca d 2 Peter
1st, referred to. The Law of Fixtures is not
recognised under the Hindu or Mahomedan laws.
Thaloor Chunder Paramanick v Pamdhon
Bhattacharjee 11 B R 205 B L R F B 595
Secretary of State v Charlesworth Pilling & Co
1 J R 26 Dom 1 Akhdecram Serma v Trilochan
1 Mac Sel App 35 Jankee Singh v Bukhoor
Singh (1886) Beng S D A 761 Pogose v Nyamu
toolah (1858) Beng S D A 1317 Brij Bhawan
v Dabee Dyal (1863) 2 Agr S D A 450 Kulu
Perash Dutt v Couree Perash Dutt 5 B R
103 relied upon. Before the passing of the
Transfer of Property Act the doctrine of the
English Law of Fixtures did not prevail in this
country and the provisions of that Act substan-
tially reproduced the law on this subject as prac-
tised by Hindu and Mahomedan jurisprudence.
Ismat Kani Roushan v Aarabi Sahib 1 L P
27 Mad 211 referred to. MORIS SMITH
RASHI LAL GHOSH (1910)

I L R 37 Cal 815

TREE PATTA

Effect of cancellation
of on land pattadar—No resumption or grant to
the latter—Right of tree pattadar for the trees etc
after cancellation as against land pattadar—Pos-
sibility right protection of as against trespassers.
A person who was in possession until he possessed
by defendants who having no title as owners were
mere trespassers is entitled to rely on his possession
and succeed in a suit to eject them. Arav
ana Rao v Dharmachar 1 L P 96 Mad 514 and
Subbaraya Chetty v Arumugam Swar 1 L R 20
Mad 86 followed. In the absence of proof to the
contrary a cancellation of patta is used by the
Government in favour of the plaintiff in respect
of trees standing on certain lands for which licence
the patta was being issued in favour of defend-
ants does not amount to a resumption of posses-
sion of the trees by the Government or to a grant
of them by the Government to the defendants.
The only effect of cancellation of the patta for
the trees was that the Government no longer
made any demand on the tree pattadar for
revenue in respect of the trees. The facts that
when both pattas were in existence the land
pattadar was credited with whatever revenue
was collected from the tree pattadar and that
on cancellation of tree patta the whole revenue
was payable by the land pattadar cannot amount
to a grant of the trees to the land pattadar. On
the rights of the tree pattadar and land pattadar
Reference under s 32 of Madras Forest Act 1 L R
12 Mad 203 and Thevar Pandiyan v Secretary
of State for India 1 I R 21 Mad 433 referred
to. YESHODA GOUNDAN v VARADAPPAN (1911)
I L R 38 Mad 149

TRESPASS

See ARREST OF SHIP I I R 42 Cal 85

See CRIMINAL TRESPASS—

See FARMING I L R 37 Bom 491

TRESPASS—contd

See FOOTING I L R 58 Calc 687

See GRAVE YARD I L R 40 Calc 548

See JURISDICTION I L R 42 Calc 942

See LIMITATION ACT (IX OF 1908) SCH I
ARTS 120 144

I L R 42 Bom 333

See PENAL CODE (ACT XLV OF 1860)
s 297

I L R 118 All 773

See TORT I L R 43 Bom 164

— suit for declaration by Trespasser—

See SPECIFIC RELIEF ACT 1877 s 42

1 Pat L J 95

— when supported by Land lord—suit
by tenant—J

See EJECTMENT] 1 Pat L J 430

1 ———— what constitutes—The foundation of trespass is the doing of an illegal act forcibly and without legal authority as against the property of another To sustain the trespass the illegality and the wrongfulness of the act must be established by proof If the act is not illegal no right is infringed. DANAJ DAS v GOVINDA GUDI

1 Pat L J 533

2 ———— Suit for damages—Provincial Small Cause Courts Act (IX of 1887) Art 31 Sch II Jurisdiction under Where the plaintiff alleged that the defendants had trespassed upon plaintiff's land and removed his crop and assessed damages at the profit thus wrongfully obtained by defendants Held that the suit was one for damages for a single act of trespass and not exempted from the jurisdiction of the Provincial Small Cause Courts by Art 31 Sch II of the Provincial Small Cause Courts Act (IX of 1887) Annarajah v Subramanyan I L R 15 Mad 298 followed and Venkoba Rao v Vithu Aiyar 18 Mad L J 88 dissented from RAMAIAH v SANTINATHA AYYAR (1912) I L R 35 Mad 726

3 ———— Right of Magistrate to order search for arms—Criminal Procedure Code (Act I of 1898) s 96 94 96 105 Sch III (8)—Jurisdiction to issue search warrant—Arms Act (XI of 1878) s 25—Provision as to recording grounds for belief in s 25 whether mandatory or directory—Protection of Judicial Officers—Directing search where offence has been committed in judicial action—Charge of want of bona fides and malice rebutted For some time prior to 27th April 1907 much illfeeling existed in and about Jamalpore a sub division of Mymensingh between the Hindu and Mahomedan communities and much excitement and resentment had been aroused on account of the action of the Hindus in attempting some days before that date to enforce a boycott of British or foreign goods On 27th April at night a Mahomedan was wounded by a revolver shot fired by one of a party of Hindus dressed as Mahomedans who after the occurrence took refuge in some cutcherries belonging to the leading zamindars of the neighbourhood who were active sympathisers with the action of the Hindus A crowd of Mahomedans at once collected and proceeded to the cutcherries but were prevented from attacking them by the District Superintendent of Police and the Sub divisional Officer who hearing of what had occurred proceeded to the cutcherries and restrained the mob thereby

TRESPASS—contd

averting a serious riot A large number of Hindus some of them with arms had collected in a temple close by and having bolted and barred the doors refused admittance which was demanded by the District Superintendent of Police and the Sub divisional Officer Shots were fired from inside the temple and a man in the crowd outside was wounded The District Magistrate was then sent for and on his arrival on the morning of 28th April he decided in consultation with the District Superintendent of Police and the Sub divisional Officer that it was necessary to search the cutcherries to obtain possession of the arms used on the 27th and others which it was reported to them were concealed there and also for the purpose of and in connexion with the investigation of the offences committed The cutcherries were found locked and as no officer or servant of the zamindars could be found they were broken open under the District Magistrate's orders and instructions and a search was made therein by the District Superintendent of Police and the men acting under his orders No arms of any kind were found In a suit for trespass against the District Magistrate instituted by one of the zamindars whose cutcherry had been searched—Held (reversing the decision of the first Court and of the majority of the Appellate Court and upholding the decision of BRETT J) that the search was warranted by the Code of Criminal Procedure (Act V of 1898) A serious offence had been committed against the public tranquillity into which it was the duty of the District Magistrate to enquire and by virtue of his superior rank he was at Jamalpore the proper person to conduct the enquiry P s 36 Sch III and s 96 of the Code the power of issuing a search warrant was among his ordinary powers and therefore under s 105 he had power to direct a search to be made in his presence if he thought it advisable to do so That being so it was unnecessary to decide on the other defences set up but *semble* (agreeing with the majority of the Court of Appeal) that the District Magistrate not having complied with the preliminary condition prescribed by s 25 of the Arms Act (XI of 1878) could not defend his action under that Statute Also (agreeing with BRETT J) that the District Magistrate in directing a general search of the plaintiff's cutcherry in view of an enquiry under the Criminal Procedure Code was acting in the discharge of his judicial functions and had it been necessary might have appeal d for protection to Act XVIII of 1850 The charge of personal misconduct advanced and reiterated without any shadow of proof against the severest reprobation CLARKE v BRIDGE, KISHORE POY CHOWDRY (1912)

[1 L R 27 Cal 27

4 ———— Who may sue for trespass by owner—Title by adverse possession—If it may be allowed in the Court of Appeal in the Procedure Code (Act V of 1898) s 211 s 212 Adverse possession against the owner—If the owner is the proper plaintiff—If the owner is committed in respect of the land and the trespasser can only sue for trespass if the land is the pass is injurious to the owner's interest in the land and to the person who is in possession of it—Even though the land is in the possession

TRESPASS—concl

by a claim of right it is not necessarily injurious to the reversionary estate *Barter v Taylor* 4 Barn & Ad 72 referred to *Per Woodroffe J*—It is not sufficient for the plaintiff in an action in ejectment to prove possession. He must show title *Per Mookerjee J*—More previous possession will not entitle a plaintiff to a decree for recovery of possession except in a suit under a 9 of the Specific Relief Act *Purnu Shuar v Broyolal* 1 L R 17 Calc 256 *Ashchand v Kanchuram* 1 L R 26 Calc 579 s c 3 G W N 563 *Shama Charan v Addool* 3 C W N 155 and *Manil Borai v Banicharan* 13 C L J 619 referred to. The plaintiff may be allowed to succeed on a title by adverse possession pleaded for the first time in the Court of Appeal provided such a case arises on the facts stated in the plaint and the defendant is not taken by surprise *Sundari Dassee v Modhu Chunder* 1 L R 14 Cal 593 *Lauderia v Meguni* 1 L R 23 1 A 81 88 s c 5 C W N 513 *Vajlal v Thambuswamy* (1914) Mad N 784 *Soma sundaram v Vndelus* 1 L R 51 Mad 631 *Shirokumari v Gouind Shaw* 1 L R 2 Calc 413 *Joytara v Mahomd Mobarrack* 1 L R 9 Calc 975 and *Bijoya v Dadonath* 24 N R 444 referred to. To establish a title by adverse possession the plaintiff must prove enjoyment possessing the same characteristics as are necessary for presumption of a lost grant and consequently that the possession was adequate in continuity, in publicity and in extent to extinguish the title of the true owner *Subramanya v Secretary of State* 21 Mad L J 132 and *Iadhamany v Collector of Khulna* 1 L R 27 Calc 943 s c 4 C W N 593 690 referred to *Per Woodroffe J*—Where in a suit for declaration of title and possession the plaintiff did not in the alternative plead title by adverse possession the plaintiff cannot ask the Court to frame such an issue on appeal except by amendment and O L X 24 which authorises the Court to remodel the issues does not apply to such a case *RAM CHANDRA SIL v RAMAKRANT DAS* (1916)

20 C W N 773

TRESPASSER

See *BENGAL TENANCY ACT* s 102
14 C W N 812

See *EJECTMENT* 1 L P 37 Mad 282

See *MADRAS ESTATES LAND ACT* (I OF 1908) s 8 EXCISE

1 L R 18 Mad 843

See *MISFE PROFIITS* 4 Pat L J 301

See *PUBLIC PEJICIOUS TRUST*
1 L R 41 Calc 749

purchase by—

See *TRANSFER OF PROPERTY ACT* (IV OF 1882) s 65 (c)

1 L R 39 Mad 959

tenant as—

See *LIMITATION ACT* (IX OF 1908) s 28
ART 47 1 L R 38 Mad 432

Tenants settled by trespasser—Principle of *Binad Lal Pakrashi's Case* of applies when tenant never got possession—*Dond fides* The principle of the Full Bench case of *Binad Lal Pakrashi v Kolu Pramanick* 1 L R

TRESPASSER—costs

20 Calc 708 is an encroachment upon the ordinary rule of law that a grantor is not competent to confer upon the grantee a better title than what he himself possesses and must be cautiously applied and is not to be extended. In order to make the principle available it is essential that the lessee should be in possession of the disputed property as de facto landlord and that in good faith he should have inducted into the land a cultivator who has accepted the settlement in good faith. Want of good faith either on the part of the lessor or the lessee makes the rule inapplicable. The principle could not be applied in favour of the plaintiff who took a lease from the owner after his interest had been sold in execution of a decree who never obtained juridical possession of the disputed property and who had to be bound down by a Criminal Court to prevent him from interfering with the possession of the defendant *KRISHNA NATH CHAKRAVARTI v MANOHAR WAST* (1915) 21 C W N 83

TRIAL

See *CONTENT OF COURT*
1 L R 45 Calc 169

See *CRIMINAL PROCEDURE CODE* s 235
AND 342 1 L R 38 Mad 303

s 369 1 L R 42 Bom 292

See *JOINT TRIAL*

See *SUMMARY TRIAL*
1 L R 39 Mad 942

a new demand for—

See *CRIMINAL PROCEDURE CODE* (ACT V OF 1908) s 367
1 L R 40 Mad 108

conduct of—

See *PRESIDENTIAL MAGISTRATES*
1 L R 42 Calc 313

Reduction in Bench of Magistrates

during—

See *CRIMINAL PROCEDURE CODE*, s 16
1 L R 44 Bom 400

of an offence with the aid of

assessors—

See *CRIMINAL PROCEDURE CODE* (ACT V OF 1908) s 238
1 L R 43 Bom 619

Trying cases piecemeal
—Practice condemned—*Grant Firman*—*Leo* or License—Construction—Practice Cases ought not to be tried piecemeal such a method may facilitate the disposal of a case but certainly does not conduce to the administration of justice *MORIPAL SING v LALJI SING* (1917)
17 C W N 166

TRIAL BY JURY

See *EVIDENCE* 1 L R 4 Calc 671

See *JURY, TRIAL BY*

See *REFERENCE*
1 L R 42 Calc 799

TRIAL BY JURY—contd

Charge to the Jury—
Misdirection—Omission to explain the law as to abetment—Uncertainty in the meaning of the Judge's direction relating to a confession—Omission to direct the Jury upon the evidentiary value of a retracted confession Where one accused was charged under s 52 of the Post Office Act (VI of 1898) and s 380 of the Penal Code and the other under s 52 read with s 70 of the Post Office Act and s 317 of the Penal Code and the Judge omitted to direct the Jury to consider what evidence there was of abetment and to explain the law in connection therewith—**Held** that the law was not adequately explained and that the omission of any explanation with regard to the charge of abetment constituted a misdirection. *Abbas Padda v Queen Empress* I L R 25 Cal 736 referred to. Where it did not appear clear in the charge to the Jury whether the Judge intended to require them to consider how far the statements of the accused amounted to admissions of guilt or how far they believed them to be true—**Held** that the uncertainty in the meaning of the charge when the statements formed a large part of the evidence against the accused was a misdirection. The omission to direct the Jury that a retracted confession should have practically no weight as against a peer on other than the maker and that the very fullest corroboration was necessary far more than was required for the sworn testimony of an accomplice on oath, **held** to be a serious misdirection. *Fazim v King Emperor* I L R 28 Cal 689 followed. **HEMANTA KUMAR PATHAK v EMPEROR** (1919)

I L R 47 Cal 46

Charge to the Jury—
Record of heads of charge—Directions on the law actually given to be embodied in the record—Verdict of Jury justified by the evidence—Petrial not ordered—Criminal Procedure Code (Act 5 of 1898) s 387 (5) proviso A mere statement by the Judge in the record of the heads of charge that he referred to certain sections of the Penal Code and explained the law relating thereto is insufficient. The record must itself embody the directions on the law actually given so as to enable the High Court on appeal to determine whether the constituent elements of the offence or offences charged were correctly and fully explained to the Jury. The Court however refused to direct a new trial for such defect in the record when the Jury were justified in convicting on the evidence in the case. **KASIMUDDIN NASTA v EMPEROR** (1910)

I L R 47 Cal 795

The law requires the Judge to record only the heads of charge to the jury but this record should be sufficient to enable the High Court to ascertain what was actually said to the jury. **ABDUL GOFUR v KING EMPEROR** 20 W N 596

Jury trial by—Misdirection on points of law and improper direction on facts The three accused were found guilty by the unanimous verdict of the jury two under secs 302 34 Indian Penal Code and one under ss 302 149 Indian Penal Code and further all under ss 364 148 I P C. The Sessions Judge in charging the jury said—See 34 provides that where it is doubtful which of several persons has taken the chief part in any given crime committed in

TRIAL BY JURY—contd

furtherance of the common intention of all of them each of such persons is severally liable as if he alone had done the deed. **Held**—That it is necessary for the Judge to read the very words of the section itself to the Jury if he purports to give them what are the provisions of the section and then if necessary to explain what is the meaning of the section and the direction with regard to s 34 was not a proper direction. In charging the Jury as to what constitutes murder the Sessions Judge said—Murder is the intentional killing of another human being with malice aforethought. **Held**—That it is not the way in which Judges ought to charge the Jury in this country. It is usual to refer to the sections which relate to culpable homicide and to direct the Jury as to what is culpable homicide and in what circumstances culpable homicide amounts to murder. As to the charge under ss 302 149 the Sessions Judge charged the jury as follows—This charge is to some extent redundant and strictly applies only to one accused A for the other accused are supposed to have been the actual murderers. By s 140 A becomes a constructive murderer and liable for the substantive offence. Just as by s 34 all the accused are equally liable for the murder as though each of them had committed it single handed. **Held**—That this was a misdirection. **Held further**—That the Sessions Judge was in error in not drawing the attention of the jury to some material evidence and to the fact that many of the prosecution witnesses were related to a person who was the prime mover in the prosecution or to one another and to the discrepancies in the evidence and his direction on the evidence in one instance was not borne out by the record. That the attention of the jury should have been directed to the individual cases of the three accused. On the point of misdirection the High Court set aside the verdict of murder as regards all the accused and held that there was no misdirection as to the conviction under s 364 Indian Penal Code up to the conviction of two of the accused on that charge. It set aside the conviction of two of the accused under s 143 and upheld the conviction of the other KING EMEROR v BERAHI

22 C 3 N 364

TRIBAL COMMUNITY, FLATTS

See CUSTOM I L R 46 Cal 134

TRIBUNAL OF APPEAL

See BOMBAY CITY SUPR 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 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- See CONTRACT I L R 38 Mad 788
 See COURT FEES ACT 1870 SCH III
 (ART) 2 Pat L J 611
 See HINDU LAW—ENDOWMENT
 L R 46 I A 204
 See KHOJA MAHOMEDAN'S
 I L R 36 Bom 214
 See LIMITATION ACT (I) OF 1908 s 10
 SCH I ARTS 14 120
 I L R 39 Bom 572
 See MAHOMEDAN LAW—GIFT
 I L R 28 All 627
 I L R 41 Bom 372
 See MAHOMEDAN LAW—TRUST
 I L R 34 Bom 604
 See MAHOMEDAN LAW—WAKF
 I L R 42 Calc 933
 See MORTGAGE I L R 38 All 209
 See PUBLIC TRUST
 I L R 42 Mad 335
 See RESULTING TRUST
 I L R 40 Bom 341
 See SUCCESSION ACT (I) OF 1865 s 190
 I L R 38 Bom 618
 See TATQPAN I L R 33 All 125
 See TRUSTEE
 See TRUSTS ACT (II) OF 1882 s 88
 I L R 34 All 308
 See TRUST FUND
 See WILL I L R 38 All 214

1 ——— Deed of trust construction of

—Uncertainty—Gift for religious acts (*dharma karmarthi*) and for religious purposes (*dharma d'she*)—Works of public good—Discretion of trustee A settler by a deed of trust in the Bengali language after declaring that for religious acts (*dharma karmarthi*) with a desire for the spiritual benefit of the deceased forefathers and to please Vishnu she made over the properties covered by the deed for religious purposes (*dharma d'she*) proceeded to direct that certain *Thaloors* should be worshipped and maintained and the annual *Durgotsab* performed out of the income of the trust estate and further by the sixth clause of the trust deed provided that out of the income which should remain after incurring the expenses aforesaid a sum not exceeding one thousand rupees should be applied in supporting the poor the blind and the destitute and in imparting education in *upanayan* (assumption of the sacred thread ceremony) in removing marriage difficulties (getting girls married) or in works of public good It was to be paid at the discretion of the trustee towards dispensaries hospitals charitable societies schools or any students' education feeding of the poor etc marriage *upanayan* etc excavation and consecration of tanks etc in villages having a dearth of water or in the construction and consecration of *ghats* and *maths* The trustee for the time being had under the deed discretion to render assistance beyond a thousand rupees and had also full power to decide where or for whose education *upanayan* or for whose daughter's marriage the same should be applied Held that such directions as were

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contained in the sixth clause of the trust deed were void and inoperative for vague and uncertainty *Trikumdas Damodhar v Haridas Morari* I L R 31 Bom 583 *Grimond* (for *Macintyre*) v *Grimond* (1905) A C 124 *Bel Chadunba v Dady Nusserwanj Dady* I L R 26 Bom 632 *Williams v Kerehaw* 5 Cl & F 111 *Surbomungola Dabey v Mohendranath Nath* I L R 4 Calc 508 and *Runchordas Chandras v Paratibai* I L R 23 Bom 725 L P 261 A 71, referred to *SARAT CHANDRA GHOSE v PRATAP CHANDRA GHOSE* (1912) I L R 40 Calc 239

2 ——— Scheme of management of a temple made by the High Court—Provision in its decree for modification of scheme by itself and for lower Court carrying out modification so made—Application to lower Court for directions involving modification of scheme—Competence of lower Court to entertain such application Under a decree of the High Court the petitioner was appointed High Priest of a temple and the opposite party and another person members of a committee thereafter on the application of one of the members of the committee the High Court amended its decree in so far as it gave liberty to any person interested to apply to the High Court for any modification of the scheme that might appear necessary or convenient and to apply to the District Judge with reference to the carrying out of the directions of the High Court on such application Subsequently the members of the committee applied to the District Judge for such directions on the petitioner as involved a modification of the scheme Held that the application could be entertained only by the High Court *UNESHWANANDA DUTTA JHA v RAYANESWAR PRASAD SINGH* (1912) 17 C W N 841

3 ——— Deed of trust construction of—Scheme of Management—Superintendent of—*cestus que trust*—Trustee's power of dismissal by—Contract of service—Perpetual injunction—Specific Relief Act (I) of 1877 s 21 (b) and 54 A donor by an *arpanama* or deed of trust transferred certain property to trustees for religious and charitable uses The deed provided *inter alia* that there should be a superintendent of the trust properties subject to the control of the trustees It was further provided that the superintendent should be the executive band of the trustees should supervise the management of the property which were to be registered in his name in the Collectorate summon meetings of the trustees and keep accounts and submit them to the trustees The first superintendent was to be appointed by himself and after his death or relinquishment of office the superintendent was to be appointed by the trustees No express power of dismissal was given to the trustees by the deed Held that a superintendent appointed by the trustees under the foregoing power was not a *cestus que trust* but was the servant of the trustees and that if dismissed by them he had no right to an injunction restraining the trustees from interfering with his enjoyment of the rights and privileges of such superintendent as in the deed of trust provided *Dean v Bennett* L R 6 Ch App 489 *Wills v Child* 13 Bear 117 *Attorney General v Magdalen College Oxford* 10 Bear 402 and *Whiston v Dean and Chapter of Poche* 10 Bear 532 referred to *Davgers v River* 15 Bear 233 distinguished The position of each

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a superintendent is not analogous to that of a shebait or mutawil. *Nanabhai v Shriman Govaram Girdhary*, 1 L R 12 Bom 331. *Govaram Shri Girdhary v Vadkordas Premji*, 1 L R 17 Bom 600 and *Gulam Hussain v Ali Ajam & Mad H C 40* referred to *Held* further that the contract of service between the superintendent and the trustees was governed by s 21 (b) of the Specific Relief Act and an injunction should therefore not be granted in respect of it under s 54. A power of appointment ordinarily involves a power of dismissal. *RAM CHANDR BHATTAI v RAKHAL DAS MOOKELIFE* (1913)

I L R 41 Cal 19
17 C W N 1045

4 ———— **Trust charitable—construction of conditional gift—cyprus doctrine**—To determine the true construction of a deed of settlement regard must be had to the object and scope of the instrument judged if necessary by surrounding circumstances. Where a charitable gift is made upon a condition precedent the gift fails if the condition is not satisfied. To attract the cyprus doctrine an absolute declaration of intention to give a charity must be established. *SHEEMATTY SANTOYA ROY v THE ADVOCATE GENERAL BENGAL*
25 C W N 344

5 ———— **Court's power to sanction sale of trust property—Voluntary settlement—Sale of trust property—Trustees having no express power to sell immovable property—Remainder estate in favour of issue of the tenant for life—Trustees contracting to sell immovable property with the consent of beneficiaries living—Such consent not sufficient as issue may include unborn children or grand-children of the tenant for life—Sanction of Court to a sale by trustees under its extraordinary jurisdiction—Sanction given in a case of emergency—The Indian Trusts Act (II of 1882) ss 40 36 40** An immovable property in Bombay was settled in trust in February 1896 by a Parsee lady since deceased the trustees being her two daughters S and R. The trusts were for the settlor for life with remainder as to one moiety for R for life with remainder for the issue of the body of the said R in the shares prescribed by law as if the said R had died possessed of the said share in estate leaving such issue only as her right heirs and in default of such issue upon the trusts hereinafter declared in regard to the other half. The other moiety went to the other daughter S for life with a limitation over to her issue similar to that contained as regards P's moiety. There was an ultimate gift over of all the property to charity in case there should be no person living entitled to take the said premises under the trusts herebefore declared. In March 1918 the trustees entered into an agreement of sale of the property at a fairly advantageous price. All the beneficiaries living at the date of the agreement namely A S and her six children had consented to the sale. The trust instrument itself did not contain a power of sale and the purchasers did not accept the title without the sanction of the Court. The trustees accordingly presented a petition to the Court asking for sanction. It was urged that ss 40 and 36 of the Indian Trusts Act II of 1882 enabled the trustees to effect such a sale or in the alternative that the case was one of emergency not foreseen by the author of the trust. The property stood at

TRUST—contd

the corner of two streets and was liable to a set back under Municipal Regulations and if the set back arose it would be very seriously depreciated. The property further needed heavy repairs and was defective in regards sanitary conveniences. The trustees apprehended that they might be served any moment with a sanitary notice which might result in a set back being enforced. *Held* (i) that the proposed sale could not be said to have been consented to by all the beneficiaries interested under the trust instrument appearing before the Court inasmuch as it was possible that when the settlement came finally to be construed and the trusts wound up some child or grandchild born hereafter might be entitled to a share in the property (ii) that the present case however was one of emergency not foreseen or anticipated by the author of the trust and the sale though not provided for by the trust instrument ought in the interests of all the beneficiaries concerned to be sanctioned by the Court in the exercise of its extraordinary jurisdiction (iii) that the extraordinary jurisdiction of the Court to sanction a sale of immovable property in the absence of a power of sale in that behalf in the trust instrument is of an extremely delicate character and should be exercised with the greatest caution. *In re New* (1901) 2 Ch 534 and *In re Tollemache* (1903) 1 Ch 457 955 referred to. *In re SHIRINBAI MERWANJI* (1918)
I L R 43 Bom 519

TRUST DEED

See STAMP ACT 1899 s 2 (24) SCH I
ART 7 I L R 35 Bom 444

TRUST ENDOWMENT

Held that possession of a portion of endowment property by other persons who pay over and apportion revenue to different purposes of the trust is not incompatible with the position of general trustee but may be adverse to him. *AMBALARANA PANDARA SAUNDHI AVERAL v SRI MEENAKSHI SUNDARESWARAL DASAR PANDAM*
25 C W N 1

TRUST PROPERTY

See PRINCIPAL AND AGENT

L R 46 I A 250

See TRUSTEE

I L R 38 Mad 71

Permanent lease not void ab initio A permanent lease of trust lands is not void ab initio it is only voidable. *KADIE MASTAN POWTHER v SENGUMMAL* (1906)
I L R 43 Mad 433

Suit for account by trustee against trustee de son tort—Intermeddling when there is a personal representative—Limitation Act (IX of 1908) s 10 applicability to suit for accounts in respect of trust property—Limitation Act (XV of 1877) Sch II Art 100—Continuous obligation The Plaintiff and another person as executors and trustees appointed by the Will of a Hindu lady took out probate but the estate was administered by the latter alone during his life time and on his death in 1900 by his son and by his grandsons the Defendants on the death of his son. In 1910 the Plaintiff sued the Defendants for accounts. *Held*—That the Defendants were in the position of a trustee de son tort.

TRUST PROPERTY—contd

and it was not open to them to deny their liability as such or to contend that they were trespassers and could not therefore be liable to render accounts. The rule of English law that no liability as executor *de son tort* can arise where there is a personal representative did not apply in this case where Plaintiff the rightful executor took no part in the administration when the Defendants were intermeddling with the estate *Aaravanasami v Eia Abbay* I I A 23 Mad 301 (1905) referred to. That the trustee represents the *cestus que trust* and the suit for accounts at the instance of the Plaintiff was maintainable against the Defendants. That under the present Limitation Act a suit for accounts in respect of trust property comes under s 10 and a trustee *de son tort* stands in the same position as an express trustee. That the claim for accounts for six years prior to the institution of the suit would be saved by Art 120 of the Limitation Act of 1877. The obligation of a trustee to account being continuous *Hell*. That the suit was barred as to the Defendants dealings with the trust property from 1900 to 1903 but was not barred as to their dealings from 1904. *Dhanraj Simon Khettry v Monesh Nath Tewari*

24 C W N 752

TRUSTEE

See CHURCH I L R 38 Mad 418

See CIVIL PROCEDURE CODE (Act V of 1908) s 92 I L R 37 Mad 184
I L R 40 Bom 439See LIMITATION ACT (XV of 1877) s 10
I L R 35 Bom 49

SCH II ART 120

I L R 38 Mad 280

See MORTGAGE 14 C W N 579

See RELIGIOUS ENDOWMENTS ACT (XX of 1863) s 11 I L R 38 Mad 1176

See TRUSTS AND MORTGAGES POWERS ACT I L R 35 Bom 380

— alienation by—

See LIMITATION I L R 37 Bom 231

— alienee of—

See PARTIES I L R 42 Calc 1185

— appointment of—

See MAHOMEDAN LAW—ENDOWMENT
I L R 43 Calc 1085

See RELIGIOUS ENDOWMENT ACT (XX of 1863) s 11 14 C W N 1104

— compromise of suit by—

See TRUSTEE I L R 39 Mad 116

— death of pending appeal—

See CIVIL PROCEDURE CODE (Act V of 1908) ss 92 and 93
I L R 35 Mad 1064

— liability of on hand—

See NEGOTIABLE INSTRUMENTS ACT s 26 27 28 I L R 41 Mad 815

— line of failure of—

See RELIGIOUS ENDOWMENT
I L R 40 Mad 612**TRUSTEE—contd**

— loan by—

See MAHOMEDAN LAW—ENDOWMENT
I L R 37 Calc 1, 9

— of a temple in Malabar—

See LIMITATION ACT (XV of 1908) Sec
I Art 124 I L R 41 Mad 4

— of charitable inams—

See CHARITABLE INAMS
I L R 40 Mad 839

— power of dismissal by—

See TRUST I L R 41 Calc 19

— suit against—

See LIMITATION ACT (XV of 1908) s 10
I L R 41 Mad 319

— suit by against co trustee—

See CIVIL PROCEDURE CODE (Act V of 1908) s 92 I L R 40 Bom 439

— suit for recovery of office of—

See CIVIL PROCEDURE CODE (Act XII of 1882) s 530
I L R 38 Mad 384

— suit to remove—

See PARTIES I L R 42 Calc 1185

— transfer by—

See MAHOMEDAN LAW—ENDOWMENT
I L R 47 Calc 886

1 — Powers of investment of—
Investment by trustees, who are members of a firm in the firm under direction of *cestus que trust*—
Firm does not hold the money in a fiduciary capacity—
Indian Trusts Act s 51 Where the settlor appoints the members of a banking firm as trustees and directs them to invest the trust funds with the firm in deposit account without any directions which would constitute the firm a trustee such funds are when invested, held by the firm as its own property and the relation between the firm on the one hand and the trustees and settlor on the other is merely that of debtor and creditor. On the bankruptcy of the firm such amount cannot be recovered in full but can only be proved as a debt. The doctrine cannot be used in the Trusts Act that a trustee cannot use trust funds for his own profit does not apply where the settlor directs such use. *In re Estate of Corbridge* L R 4 Ch D 416 referred to. OFFICIAL ASSIGNEE OF MADRAS & KARAIKAL NAIDU (1909) I L R 33 Mad 134

2 — Trustee mixing trust money with his own—*Indian Insolvent Act* II s 10
Act c XXI s 21—Voluntary payment. By a resolution dated 31st July 1906 the Directors of the Madras Equitable Insurance Company resolved that a sum of Rs 25,000 standing to the credit of the company with Messrs Arbutnot & Co its secretaries and Treasurers should be invested in Government promissory notes. Messrs Arbutnot & Co purchased for the Insurance Company Rs 25,000 of Government promissory notes on 7th August 1906 Rs 25,000 on 20th October 1906 and Rs 10,000 on 20th October 1906 the securities being credited to the Insurance Company. On 2nd October 1906 Arbutnot & Co failed. *Hell* that Arbutnot & Co failed.

TRUSTEE—contd

the securities as trustees for the Insurance Company which was entitled to rank as a secured creditor *Held* also that the fact that Arbuthnot & Co before purchasing the Government promissory notes mixed up the Insurance Company's money with their own and used it in their banking business did not amount to misappropriation of the money the trust having a lien on the aggregate amount in the hands of the trustee and any sum which may have been drawn for the trustee's own use being deemed to have been taken out of his own money *Held* further that even if Arbuthnot & Co could be held to have misappropriated the trust money a subsequent payment in reparation by them would not amount to a voluntary payment within the meaning of s. 24 of the Indian Insolvency Act (1843) 11 & 12 Vict Cap XVI RANSAI & Co v THE OFFICIAL ASSIGNOR of MADRAS (1912) I L R 35 Mad 712

3 ——— Breach of trust—Liability in damages—Failure to trust invest funds in authorised securities—Indian Trusts Act (II of 1832) s 20—Failure of unauthorised security—Degree of care and prudence—Indian Trusts Act (II of 1832) ss 15 and 20—Fund to be applied immediately or at an early date—Construction of—Fund payable to minor if payable to guardian—Liability of trustee for interest—Interest on damages—Indian Trusts Act (II of 1832) ss 41 and 23 A testator appointed certain persons as trustees and directed them to realise an amount payable by the Oriental Life Assurance Company and to pay a sum of Rs 200 to his brother another sum of Rs 400 to his daughter for her bride's jewels and the remainder to his minor son. The trustees realise the amount due from the Insurance Company and after paying Rs 200 to the testator's brother invested the balance on one year's fixed deposit with Messrs Arbuthnot & Co who were then believed to be in very good credit. After the deposit had been renewed several times Messrs Arbuthnot & Co became insolvent and the trust fund was lost. The plaintiff who was appointed by the Court as trustee in the place of the defendants (who were the previous trustees appointed under the will) brought this suit against the latter for damages for loss of the trust funds by reason of their breach of trust. The District Judge decreed damages against the defendants who preferred a Second Appeal to the High Court. *Held* that the defendants were liable in damages for breach of trust. As regards the amount payable to the minor son it could not be applied for the purposes of the trust immediately or at an early date as the trustees could not pay the money to the minor until the attainment of his majority nor could it be paid to the guardian of the minor during minority. § 41 of the Trusts Act permits payment to the guardian only of the income of the property. The specific provisions contained in the other sections of the Indian Trusts Act are as obligatory as the general provisions of s 15 of the said Act. The defendants were bound to invest the trust moneys in the securities specified in s 20 of the Indian Trusts Act and having failed to do so they must be held to have committed a breach of trust although they had acted honestly and with the prudence which an ordinary man would exercise in the conduct of his own affairs. A trustee guilty of breach of trust

TRUSTEE—contd

by not investing trust funds as required by s 20 of the Indian Trusts Act is not exempted by s 15 thereof from liability in damages. The Indian Courts have not been given the power (conferred by statutes in England) to protect trustees in any case where a clear breach of trust has been committed. Where a trustee invests money in an unauthorized security this must be treated as tantamount to failure to invest within the terms of s 23 cl (c) of the Trusts Act and he is liable to pay interest under that section. It may be doubted whether the rule disentitling the beneficiary to interest except in the cases enumerated in s 23 could be applied where the trust money has been lost in an unauthorized investment. The Court should have power in such cases to award interest as damages. *TRIVIPATRAYUDU NAIDU v LAKSHMINARASANA* (1912) I L R 38 Mad 71

4 ——— Powers improperly and unreasonably exercised—Liability of transferee of trust estate—Compromise of suit by trustee—Decree ordering party benefiting by breach of trust to repay benefit—Compromise where minor is party to suit—Civil Procedure Code (Act XIV of 1882) s 462 In the suit out of which this appeal arose the plaintiff (respondent) was the minor Raja of Ramnad. The first defendant (appellant) was a creditor of the late Raja and the party in whose favour the three instruments which the suit sought to set aside were made. The second defendant was the trustee appointed under a deed of settlement executed by the late Raja on 12th July 1895. The suit was brought for a declaration that an agreement of 16th January 1899 between the appellant and the trustee and two mortgages of 6th and 13th July 1899 executed by the trustee in favour of the appellant were invalid and for an order that a sum of Rs 43,000 paid under those instruments should be repaid by the appellant to the credit of the trust estate. The validity of the deeds was largely dependent on the consideration of whether the trustee under the voluntary settlement of 12th July 1895 had power to give a mortgage bond for four lakhs of rupees on the security of a suitable portion of the Ramnad estate to the then Raja of Ramnad. *Held* by the Judicial Committee (upholding the decision of the High Court) that on the evidence and the construction of the settlement and under the circumstances of the case the power of the trustee was not exercised properly and reasonably and in the interest of the trust estate that the deed of compromise was therefore not valid and that being so the mortgages could not be regarded as valid and binding on the properties therein comprised. Their Lordships concurred in the conclusions of the High Court both as to the validity of the deed of compromise and of the two mortgages and as to the amount of the payment ordered to be made by the appellant to the credit of the trust estate. Even if the deed of compromise could be supported on other grounds it was invalid as not complying with the condition imposed by s 462 of the Civil Procedure Code 1882 in that one of the parties to the suit being a minor the sanction of the Court to the making of the compromise had not been obtained. *Manohar Lal v Jodh Nath Singh* I L R 28 All 555 559 L R 33 I A 198 131 Per Lord MACGREGOR and Concedo Per v

TRUSTEE—contd

Tuljaram Row I L R 36 Mad 295 L R 40 I A 132 followed *SUBRAMANIAN CHETTIAR & PAJA RAJESWARA DORAI* (1916)

I L R 39 Mad 115

TRUSTEES AND MORTGAGEES POWERS ACT (XXVII OF 1866)

— § 3—

See *MAHOMEDAN LAW—WAKF*

I L R 37 Calc 870

— ss 8 20 32—

See *RECEIVER* I L R 43 Calc 124

— § 43—

Trust deed—Application by trustees to divert funds to other objects—Trusts opinion—Cypres doctrine The surviving trustees of a fund founded with the object of distributing food amongst such poor persons as might assemble at certain stated times and places petitioned the Court under s 43 of the Trustees and Mortgagees Powers Act to divert the fund to more useful purposes on the grounds that in their opinion the charity tended to pauperise the recipients thereof and to encourage thriftlessness and laziness and vagrancy and to produce other undesirable results that the donor's intention was to benefit the poor of Bombay and the best way to carry out his intention would be to devote the trust funds to the education of poor boys *Held* that the application was entirely misconceived so far as the Act was concerned as the word trustees has been deleted in s 43 of the Trustees and Mortgagees Powers Act of 1882 Even if the Act applied the Court could not under s 43 do more than give advice or directions It could not pass any order which would in any way alter the duties of the trustees under the trust deed *Held* further on the merits of the application that the trustees had no justification for coming to the Court to try and get their duties under the trust deed altered according to their ideas of what was fit and proper *In re Weyr Hospital* (1910) 2 Ch 124 referred to *In re CURIMBOY EBRAHIM BART* (1910)

I L R 35 Bom 380

— § 45—

See *MAHOMEDAN LAW—WAKF*

I L R 37 Calc 870

TRUSTEE DE FACTO

See *TRUSTEE OF A TEMPLE*

I L R 40 Mad 456

TRUSTEE IN BANKRUPTCY

See *INSOLVENCY* I L R 38 Calc 542

TRUSTEE OF TEMPLE

See *SPECIFIC RELIEF ACT* ss 42

I L R 38 Mad 452

See *TRUSTEE*

— and Temple Committees respective rights of—

See *CIVIL PROCEDURE CODE (ACT V OF 1908)* s 92 I L R 40 Mad 212

1 ———— *Delegation of powers of trustee—Power to appoint and dismiss hereditary temple servants—Delegation of such*

TRUSTEE OF TEMPLE—contd

power to an agent whether valid—Dismissal of archaka by agent whether valid A trustee of a temple cannot appoint an agent to do acts which involve the exercise of judicial discretion by himself He cannot therefore delegate to an agent his power of appointing and dismissing hereditary temple servants who cannot be dismissed without sufficient cause being established *Krishnamachari v Rangachari* (1893) I L R 16 Mad 73 referred to *PARASURAMA UDAYAR* & *THIRUMAL ROW SAHIB* (1921)

I L R 44 Mad 636

2 ————

Trustees of Temple powers of suspend hereditary archakas—Suspension otherwise a justifiable not bad for want of previous notice—Archaka a servant subject to the disciplinary power of trustees—Power of interim suspension incidental to trustee's power to enquire and dismiss for misconduct The position of the hereditary archaka of a temple is that of a servant subject to the disciplinary power of the trustee The trustee of a temple has power to inquire into the conduct of such servants and dismiss them for misconduct The right of interim suspension pending such inquiry is incidental to such power and no notice is required for an *ad interim* suspension pending enquiry Even if such notice is deemed necessary the order of suspension will not be set aside if misconduct is proved at the enquiry be set aside if misconduct is proved at the enquiry by the hereditary archaka can be dismissed by the trustee but only for good reasons on which are liable to examination by a Court of Justice *See HADEI ARYANGAR & RANGA BHATTAR* (1919)

I L R 35 Mad. 631

3 ————

Transfer of management—Void or voidable—Setting aside if necessary—Suit by trustees to recover temple properties and for account—Indian Limitation Act (IX of 1908) Art 91 or 124 applicability of—Some trustees joined as defendants—Denial of their title by plaintiffs—Abandonment of the denial—Decree in favour of plaintiffs and defendants if can be given—De facto trustees—Expenses during management—Right for reimbursement—Right to retain possession of trust property—Indian Trusts Act (II of 1882) s 3—Decree for possession and for account—Provision for account of expenses incurred in the final decree The plaintiffs who were the *hukdars* (trustees) of a temple brought the suit on the 30th January 1911 to recover the possession of the temple properties from the defendants to whom the trustees had made over the management of the temple under an agreement dated 21st June 1901 The plaintiffs alleged in the plaint that the ninth and the tenth defendants (who were also originally *hukdars*) had lost their right to the office owing to their neglect to discharge its duties and that they were joined as defendants merely because they asserted a right to it But at the trial in the original Court the plaintiffs abandoned this contention The defendants contended *inter alia* that the suit was bad for non joinder of all the trustees as the plaintiffs and was barred under art 91 of the Limitation Act and that the defendants were entitled to be reimbursed out of the trust properties for expenses properly incurred by them during their management and to retain possession of the properties until they were reimbursed The lower Court passed a decree in favour of the

TRUSTEE OF TEMPLE—contd

plaintiffs and the ninth and the tenth defendants for possession and a preliminary decree for accounts against the defendants *Held* that the objection as to non joinder was not sustainable, but that a decree could be passed in favour of the plaintiffs and the ninth and the tenth defendants as trustees with the consent of the latter and the other defendants *Kokilasari Das v Mohuni Rudranand Goswami* 5 C L J 577 distinguished. The transfer to the defendants being void did not require to be set aside. Art 91 of the Limitation Act did not apply to the suit but Art 124 was the Article that was applicable and under that Article the suit was not barred *Malkarjun v Varhari* 1 I L R 5 Bom 337 followed *Gnanasambhanda Pandara Sannadhi v Velu Pandaram* 1 I L R 23 Mad 371 explained *Sidhu Sahu v Gopucharan* 17 C L J 233 referred to. A trustee of a public charitable endowment like a trustee of a private trust is entitled to reimburse himself all expenses properly incurred in connection with the trust and has a first charge enforceable only by prohibiting any disposition of the trust property without previous payment of such expenses—not that it is to say in the ordinary way by sale of the property subject to such charge. It is the duty of the Court specially in the case of a public charitable trust to take the trust property out of the possession of persons not entitled to hold it while making due provision for any claims that they may have in respect of expenditure properly incurred in connection therewith *Held* consequently that the defendants were not entitled to retain possession of the suit properties but that the preliminary decree should direct that accounts should be taken as to what was due to the defendants from the trust leaving it to be determined by the final decree how such claim if established should be enforced *NARAYANAN LAKSHMIANAN* (1916)

1 I L R 39 B.L. 456

4

Suspension from office of an hereditary archaka—Order passed without notice in archaka or previous inquiry whether valid—Order ad interim continued for an unreasonable long time whether legal—Punitive order of suspension whether valid without notice Where the trustees of a temple suspended an hereditary archaka of the temple from his office on account of certain imputations of misconduct made against him without giving him notice or making any inquiry previous to passing such order and no subsequent inquiry was made by them for fourteen months after the date of the order whereupon the latter brought a suit to recover his office and damages for wrongful suspension *Held* that the order of suspension pending inquiry into alleged misconduct should not have been continued in force for a longer period than was reasonably necessary that in this case the delay of fourteen months between the date of the order and the institution of the suit being unreasonable the order as an ad interim order ceased to be valid before the date of the suit and that the order viewed as a punitive order was invalid as having been passed without notice and inquiry whatever the merits of the case might be *Thiru ramdasa Desaiar v Manikarachala Desaiar* 1 I L R 40 Mad 177 and *Venkatarayana Pillai v Ponnuvanni Nadar* 1 I L R 41 Mad 357 followed *Willis v Sir G Gifford & Moore* 379

TRUSTEE OF TEMPLE—contd

applied *Seshadri Iyengar v Ranga Bhattar* 1 I L R 35 Mad 631 distinguished *Held* further that out of the temple funds the plaintiff was entitled to recover damages due to him as the trustees in passing the order of suspension and continuing it acted in their capacity as trustees and in what they conceived to be the proper discharge of their duties on behalf of the temple *JAGANNATHA ACHARIAR v SESHU BHATTACHARIAR* (1919) 1 I L R 42 Mad 618

TRUSTEES OF CASTE FUNDS

See TRUSTS ACT (II OF 1889) s 5 AND 6
1 I L R 84 Fcm 467

TRUSTS ACT (II OF 1889)

----- s 3 and 6—

See MORTGAGE 24 C W N 769

----- s 5—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 1 I L R 37 Fcm 41

See STAMP ACT (II OF 1899) SCH I ART 22 1 I L R 38 Fcm 676

----- Trust declared outside British India—Proceedings in British Indian Courts—Decreed mortgagee retaining mortgaged share as trustee for mortgagee—Notice of assignment by mortgagee—Death of mortgagee before registration of transfer in assigree—Validity of trust—Completion of gift though her agent T mortgaged a share in the Bank of Bombay with P. Later she directed T to redeem it and have it transferred by way of gift to her two nephews. It was redeemed and a transfer form was signed by P in favour of the nephews but the Bank declined to register it on the ground that the transferees were minors. A thereupon directed that it should be transferred to the names of T and M jointly as trustees for the minors. A transfer was accordingly signed by P in favour of T and M and this was duly registered by the Bank. The day before it was lodged with the Bank for registration A died. It was contended that the gift was imperfect and the trust in favour of the nephews invalid. *Held* that as the trust was set up in a British Indian Court the Indian Trusts Act applied although both A and P were living and domiciled in British India (i.e. outside British India) when A declared her wishes regarding the share. *Held* further that A had an equitable interest in the share and that the mortgage having been discharged P the registered proprietor held the legal title as trustee and was bound to deal with it as T or his principal. A should direct. *Held* further that the share had passed out of the control of A before her death the certificate as well as the transfer being in the hands or under the control of T to whom her desire to benefit the minors had been communicated and that the legal holder P having notice and having signed a transfer in favour of the minors before A's death could only convey for their benefit and had subsequently done so to the trustees desired by A. *Held* therefore that the trust was valid and the gift complete. *MAHOMED DEVECHAND v THEOMAN VINCAND* (1911) 1 I L R 26 Fcm 306

TRUSTS ACT (II OF 1882)—*contd*

ss 5 and 6—

See DEPOSIT I L R 35 Bom 403

Ca to fund—Trustee of caste funds—Extent of right to inspect documents—Demand and refusal—Jurisdiction of Civil Courts in caste questions—Application of Indian Trusts Act (II of 1882) ss 5 and 6 to creation of trusts of caste funds—Civil Procedure Code (I of 1908) s 151 As a result of dissensions in a Hindu caste a suit was filed by the plaintiff a trustee of certain caste funds and member of the Managing Committee, against the defendant a co trustee and the President of that Committee. The plaintiff prayed for a declaration that he had the right to inspect all books and documents of the Mahajan Managing Committee Sub Committee and Trustees and for an injunction restraining the defendant from interfering with him in the exercise of such right. The only two documents about which there was any real controversy were the minutes of the Sub Committee and the correspondence file of the Mahajan. *Held* that as trustees of the Derasar and Sadharan funds, the plaintiff had no right either in law or by virtue of any caste rules to the roving inspection claimed. *Bank of Bombay v Suleman* I L R 32 Bom 466 474, referred to. *Held* further that the Mahajan fund of this caste being a purely secular fund the Indian Trusts Act applied and the plaintiff could not claim to have been made a trustee of that fund merely by virtue of a caste resolution and his own letter of acceptance. *Held* further on the evidence that there had been no express demand addressed by the plaintiff to the proper quarter and no refusal by the defendant such as would be necessary to enable a suit of this character to succeed. *Held* further that where rights to property are not involved all matters of internal management must be left to the decision of the caste. The question in dispute was in reality a question between the caste and a section apparently a small section of the caste led by the plaintiff and as such it was outside the Court's jurisdiction in accordance with the decision in *Nemchand v Savaschand* I L R 6 Bom 84 F N, *Lalji Shamji v Walji Wardhaman* I L R 19 Bom 507 referred to and distinguished. *Held* lastly that when according to well established principles certain questions have been removed from the jurisdiction of the Court they cannot be brought within the jurisdiction under s 151 of the Civil Procedure Code (Act V of 1908). *JETHABHAI NARSAY CHAPSEY COOPERJI* (1903) I L R 34 Bom 467

s 10—

See TRUST PROPERTY

24 C W N 752

ss 15 and 20—

See TRUSTEE I L R 38 Mad 71

ss 30 and 40—

See TRUST I L R 43 Bom 519

See TRUSTEE I L R 38 Mad 71

s 22—

See TRUSTEES OF A TEMPLE.

I L R 39 Mad 456

s 36—Lease by trustee—Lease by

trustee for term exceeding twenty years not void but only voidable. A lease by a trustee for a term

TRUSTS ACT (II OF 1882)—*contd*s 36—*contd*

exceeding twenty years is not void and illegal under s 36 of the Indian Trusts Acts, but only voidable at the instance of the cestui que trust. *KADR IBRAHIM POWTNEY v ARUNACHELLAM CHETTIAR* (1903) I L R 33 Mad. 387

ss 38 and 40—

See TRUST I L R 43 Bom 519

ss 41 and 42—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 41 Bom 439

s 42—

See CHARITABLE TRUST I L R 39 Mad. 597

s 51—

See TRUSTEE POWERS OF INVESTMENT OF I L R 33 Mad 154

ss 80 to 86—

See LIMITATION ACT 1877 Art 91 I L R 38 Mad. 321

s 83—

See SETTLEMENT BY A HINDU WOMAN OR TRUSTS I L R 40 Bom 341

ss 88, 89, 90, 91 and 96—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 91 I L R 3 Mad. 310

s 88—

See IVAN I L R 42 Mad 181
See PRINCIPAL AND AGENT I L R 41 AU. 635

*Trust—Trustee entering into dealings in which his own interest may come into conflict with his duty as trustee—Purchase of mortgaged deed comprising property belonging to the trustee of purchase to the trust. A member of a body of trustees purchased for a very low price at an auction sale in execution of a simple mortgage bond held by the trustees as such a mortgage bond comprising amongst other property a village of which two thirds had been previously purchased by the author of the trust and formed part of the trust property. Further the purchaser nor the trustees had obtained the leave of the Court to purchase. The auction purchaser claimed the mortgage by for himself and sought to enforce the mortgage. *Held* that the auction purchaser could not be allowed to do this but must on the contrary be taken to have made the purchase for the benefit of the trust. All that he was entitled to pay for be repaid the actual sum which he himself paid for the mortgage deed at the auction sale. *Giri Narain v Anand Behari* L.R. (1917) I L R 34 AU. 308*

Sole d in favour of uncle—Fiduciary relationship of contracting parties—Undue influence—Voidable contract—Indian Contract Act (IX of 1872) ss 19 and 19A—Hindu Law—Marriage—Adura form—Succession—Two sisters M and S executed a sale deed in favour of their uncle A in the death of M S acted for a declaration that the sale deed was obtained by the uncle through fraud misrepresentation and the undue influence and to recover possession of the property from him. S claimed the property both

TRUST ACT (II OF 1882)—contd**s. 88—contd**

in her own right and also as the heir of *M*. The lower Courts allowed the plaintiff's claim holding that the uncle was in a fiduciary relation to his nieces and the consideration paid under the sale deed was invalid. On appeal to the High Court two contentions were raised: (i) that *S* was not the heir of *M* and (ii) that claiming through *M*, *S* had no right to exercise the option to avoid the deed as to one moiety of the property since *M* in her lifetime did not exercise the option. *Held* that *S* was heir of *M* as *M*'s marriage was performed in *Asura* form. *Held* further that on the facts found the case fell within the scope of s. 88 of the Indian Trusts Act 1882 and the sale deed was therefore null and void. *GOVIND RAMAJI v SAVITRI* (1918)

I L R 43 Bom 173

s. 90—

See DEKKAN AGRICULTURISTS RELIEF ACT (VII OF 1879)

I L R 40 Bom 483

See HINDU LAW—(WIDOW)

I L R 43 All 374

Co owner right of to appropriate rents collected by him towards his share. A co owner who has collected as rent more than sufficient to pay the Government peshkash and has paid it is not entitled to sue another co owner for contribution to the peshkash. *S. 90 of Trusts Act (II of 1882) referred to.* *SIVANARASA REDDI v DONAISAM PEDDI* (1918)

I L R 41 Mad 861

s. 91—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s. 40

I L R 40 Bom 498

s. 95—

See TRANSFER OF PROPERTY ACT 1882 s. 54

I L R 41 Bom 438

TURN OF WORSHIP

See PALAS OR TURNS OF WORSHIP

See USEFRUCTUARY MORTGAGE

I L R 39 Calc 227

U**UBAYAKAR**

See HINDU LAW—CUSTOM

I L R 40 Mad 1108

ULTRA VIRES

See ASSESSMENT I L R 37 Calc 374

See LEGISLATION ULTRA VIRES

See LIMITATION ACT (IV OF 1908) SCH 1 ART 14

I L R 39 Bom 494

See MERCHANT SEAMEN ACT (I OF 1859) s. 31 CL (4)

I L R 39 Bom 558

See PROSECUTION—BYE LAWS.

I L R 37 Calc 545

ULTRA VIRES—contd**Orders—**

See BOMBAY DISTRICT POLICE ACT s. 42
I L R 38 Bom 504

See LIMITATION ACT 1877 SCH II ART 14

I L R 30 Bom 325

Rules—

See ADEN SETTLEMENT REGULATION (VII OF 1900) s. 13

I L R 40 Bom 446

See RAILWAYS ACT (IX OF 1890) s. 72
47

I L R 39 Bom 465

See SCHEDULED DISTRICTS ACT (XIV OF 1874) s. 7

I L R 41 Bom 657

Bengal Tenancy Act (VIII of 1885) s. 101 cls. 1 (a) and (3).—A large proportion of landlords meaning of—Order passed by Local Government under s. 101 cl. 2 (a) at the instance of landlords having large proportion of interest effect of—Jurisdiction of Civil Court to question validity of the order after issue of Notification under the section. The words a large proportion of the landlords in s. 101 cl. 2 (a) of the Bengal Tenancy Act mean a large proportion of the landlords as determined by the interests they hold in the estates. Where therefore an application was made by landlords having a large proportion of interest in an estate to the Local Government for the issue of an order under the said section and an order was accordingly issued by a Notification in the official Gazette. Held that the order was not ultra vires. Held further that it was with the Local Government the discretion rested to determine whether the application was in due form under the provisions of s. 101 cl. 2 (a) of the Act and after the Local Government had decided that point and had issued the Notification the jurisdiction of the Civil Court to interfere with the order was barred by cl. 3 of the same section. SECRETARY OF STATE FOR INDIA v PURNENDU NARAYAN ROY (1912)

I L R 40 Calc 123

A Calcutta landlord was tried by the President of the Tribunal appointed under the Calcutta Improvement Act 1911, for cutting off water connection and was fined. On a rule to set aside. Held that the provision of s. 20 of the Act was not ultra vires but rule framed under s. 23 was GORESDHON DAS DEORA v DOOLICHAND SETHIA

I L R 48 Calc 955

UNALIENATED VILLAGE

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879)—

Ss 83 216 I L R 44 Bom 566

S 216 I L R 45 Bom 994

UNANIMOUS VERDICT

See CRIMINAL TRIALS

I L R 41 Calc 662

UNAUTHORISED ACT

See PRINCIPAL AND AGENT

I L R 38 Calc 511

UNCERTAIN EVENT

See WILL I L R 38 Calc 327

UNCERTAIN POSSESSION

See LIMITATION I L R 44 Mad 883

UNCERTAINTY

See CUSTOM I L R 45 Calc 475

See DEDICATION I L R 48 Calc 951

See RELIGIOUS TRUST
I L R 43 Calc 232

UNCERTIFIED PAYMENT

See LIMITATION I L R 45 Calc 630

UNCHASTITY

See HINDU LAW—INHERITANCE
I L R 36 Bom. 138

See HINDU LAW—MAINTENANCE
I L R 34 Bom. 278
I L R 39 All 234

UNCONSCIONABLE BARGAIN

See CONTRACT ACT ss 16 AND 74

See INTEREST I L R 42 Calc 652
I L R 43 Calc 632

See SPECIFIC PERFORMANCE
I L R 38 Calc 805

UNDEFENDED SUIT

See EX PARTE DECREE
I L R 43 Calc 1001

UNDER BROKER

dismissal of—
See DAMAGES I L R 47 Calc 290

UNDER ESTIMATION OF VALUE OF PROPERTY

See APPEAL TO PRIVY COUNCIL
I L R 40 Calc 635

UNDERGROUND RIGHTS

See LANDLORD AND TENANT
I L R 37 Calc 723

See MINERAL RIGHTS

UNDER PROPRIETOR

See BIFT I L R 43 All 358

UNDER RAIYATS

See EJECTMENT I L R 40 Calc 858

See LANDLORD AND TENANT
I L R 43 Calc 164

See OCCUPANCY HOLDING
I L R 44 Calc 272

See OCCUPANCY RIGHT
I L R 46 Calc 43

See ODISHA TENANCY ACT 1913 s 57
3 Pat L J 112

UNDER RAIYATS—contd

1 ————— Erection of occupancy raiyat under decree for rent—Position of under raiyat Where an occupancy raiyat in Chota Nagpur has been evicted in execution of a decree for rent obtained against him by the landlord as under raiyat holding under him becomes a trespasser and is liable to be evicted by the landlord by a suit in the Courts of ordinary civil jurisdiction. In a suit for eviction by the landlord under such circumstances the under raiyat has no locus standi under the Bengal Rent Act 1859 to contest the validity of the decree obtained by the landlord against the occupancy raiyat. *Bishun Narayan Das Poddar v Chandra Kanta Aask*
1 Pat L J 543

2 ————— The heir of an under raiyat has no heritable right to continue as such. *NADIRAM CHANDRA SIL v SERVATIA CHAKRA VARTI*
24 C W N 93

3 ————— Bengal Tenancy Act (Act I of 1885) s 43—Holding of Under raiyat s 48 of the Bengal Tenancy Act applies to cases in which the land held by the raiyat is co-tenanted with the land held by the under raiyat. *ANIL CHAND SAHA v JOY CHANDRA DATH (1910)*
I L R 39 Calc 839

4 ————— Notice for a period of indefinite duration—Ejectment—Bengal Tenancy Act (VIII of 1880) s 49 cl (b) The case of an under raiyat holding under a notice executed before the passing of the Bengal Tenancy Act and not expressly providing for the period of its duration comes within cl (b) of s 49 of the Bengal Tenancy Act and the notice must be as provided thereunder. *Madan Chandra Kapali v Joti Karikar 6 C W N 377* overruled. *Raj Kumar DEBI v BARATULLA MAHDAL (1911)*
I L R 39 Calc 278

5 ————— If may acquire occupancy right—Transferability of under raiyat interest The provisions of the Bengal Tenancy Act show that an under raiyat may under certain circumstances acquire an occupancy right. If he does acquire such a right that right may be transferable by custom or local usage but there is no authority for the proposition that the interest of an under raiyat is ipso facto transferable. *AKHIL CHANDRA BISWAS v HASAN ALI SADAGAH (1913)*
19 C W N 246

6 ————— Acquisition of status of A person in whose favour a permanent sub lease has been granted by a raiyat acquires on payment of rent to his grantor the status at least of an under raiyat if he is shown to have been in possession of the holding from before the lease. *JAYAKINATH HORE v PRADESHINI DAS (1915)*
19 C W N 1077
I L R 43 Calc 143

7 ————— Permanent lease by of valid—Suit by lessee to recover possession from lessor As between grantor and grantee a permanent lease granted by an under raiyat is a valid document and the grantee can recover possession of the land from the grantor on the strength of such a lease. *Gurudas Das v Kal Das Chandra 18 C W N 830* followed. *PRESIDENTIAL SULTAN v SITAL CHANDRA DAS (1915)*
19 C W N 1112

UNDER RAIYATS—*concl'd*

8 ———— *Status of under raiyat where raiyat evicted from occupancy holding for non payment of rent in Chota Nagpur—Interest of under raiyat void or voidable—Distinction between proceedings with respect to a tenure holder and a raiyat—Right of under raiyat to contest the validity of the decree against his lessor Where a holding of an occupancy raiyat is sold the interest of an under raiyat is not void but voidable But when the occupancy holding has been destroyed by eviction of the raiyat for non payment of rent s 22 of Act X of 1859 provides that the decree holder shall be put in physical possession of the land There is a clear distinction between proceedings in regard to a tenure holder and proceedings in regard to a raiyat Where the proceeding has been with regard to a tenure holder or under tenant the decree is to take the form of an order to all raiyats to pay rent to the decree holder and the decree holder cannot be put into actual physical possession of the land An under raiyat cannot contest the validity of the decree against his lessor as a defence to a suit in which it is sought to declare him a trespasser *BISUN NARAIN DASS PODDAR v CHANDRA KANTA NAIK* (1916)*

20 C W N 1240

9 ———— *Under raiyat to whom permanent sub lease granted suit for khas possession against—Bengal Tenancy Act (VIII of 1885) s 35—Defendant in possession—Notice to quit under s 49 (b)—Whether defendant can rely upon any subsisting tenancy In a suit for khas possession of the disputed land from the defendant an under raiyat to whom a permanent sub lease had been granted after the passing of the Bengal Tenancy Act in contravention of s III it was found that a notice to quit under s 49 (b) had been duly served upon him *Held* that the defendant could not rely upon any subsisting tenancy and the plaintiff was entitled to khas possession *NAVIR ALI SHIKDAR v BAN BI BADAN PATWARI* (1917)*

23 C W N 435

10 ———— *Suit for ejectment of defendant an under raiyat after notice to quit under s 49 of the Bengal Tenancy Act (VIII of 1885)—Defendant setting up permanent sub lease by plaintiff's vendor—S 35 (2)—Lease whether valid—Whether the tenancy can be put an end to by the notice—Whether defendant can rely upon previous possession Where in the plaintiff's suit to eject the defendant an under raiyat after service of a notice to quit under s 49 of the Bengal Tenancy Act the defendant set up a permanent sub lease granted by the plaintiff's vendor and pleaded that he could not be ejected on the principle that such a lease should be held to be binding on the lessor on the ground of estoppel *Held* that the lease being invalid according to the provisions of cl. (2) of s 35 the tenancy could be put an end to by a notice under s 49 and the defendant not having a subsisting tenancy could not rely upon his previous possession *Held* that the principle of estoppel cannot be invoked to defeat the plain provision of a statute If the contention were given effect to the provisions of cl. (2) of s 35 would be defeated in every case *ALI MUDDI DEBARI v CHINTANARAN MICKHAPADHYA* (1918)*

23 C W N 437

UNDER RAIYATI HOLDING—*concl'd*

See UNDER RAIYAT

Transferability—Transfer of Property Act (II of 1882) s 117—Agricultural lands—Relinquishment or abandonment what constitutes An under raiyat holding is not transferable What is relinquishment or abandonment depends on the substantial effect of what has been done in each case When a tenure or holding apart from the Transfer of Property Act is not transferable it cannot become so unless it is expressly made so by some other statute If it had been intended to make holdings transferable which were before non transferable the Legislature in framing the Bengal Tenancy Act would have said so S 117 of the Transfer of Property Act excludes agricultural land from the operation of the rule which makes leasehold property transferable *Hiramoti Dassya v Annada Proad Gho v C L J* 555 followed *AMINAT S v JINAT ALI* (1914)

I L R 40 Calc 751

Transferability—Purchase by landlord in execution of a money decree with objection by tenant—Title and possession Where an under raiyat holding was without objection on the part of the under raiyat sold successively in execution of two money decrees and purchased at the first sale by a stranger and at the second by the landlord who was the decree holder *Held* that the title of the landlord purchaser should prevail *PRAMATHA BHUSAN DEB v RAM CHARAN MONDAL* (1917)

22 C W N 124

UNDER TENANT

See BENGAL RENT ACT 1880 s 39

2 Pat L J 70

See LANDLORD AND TENANT

I L R 45 Calc 756

UNDER TENURE

See HOMESTEAD LAND

I L R 42 Calc 638

See REVENUE SALE

I L R 37 Calc 559

Act VIII of 1865 B C s 15—Court sale of under tenure if collusive and fraudulent does not destroy incumbrances—Second appeal—Findings of fact If a Court sale of an under tenure under Act VIII R C of 1865 had been the result of a corrupt agreement between the under tenure holder and the purchaser at the sale the purchaser would lose the benefit of s 16 of the Act specially if the default in payment of rent had been deliberately incurred in furtherance of such an agreement The findings of fact of the Court of first appeal in this case (which did not result from the mis construction of a document or the mis application of law or procedure but depended upon the evidence in the case) being that there had been no fraud or collusion the High Court had no authority to go behind them in second appeal *The MIDNATH ZEMINDARI COMMISSIONERS v LAL CHARAN MADDAL*

24 C W N 501

Effect of sale of under tenure by co-sharer landlord for arrears of rent—Non registration of purchase in execution sale by the whole body of landlords—Locus standi to maintain a suit—Rent Recovery Act (V of 1860) ss 27 105 106 108 109 and 110—Civil Procedure Code (VIII of 1859) s 29—Landlord and Tenant Procedure Act (Beng VIII of 1865) While under

UNDER RAIYATI HOLDING

See LANDLORD AND TENANT

UNDER TENURE—contd

■ 105 of Act X of 1859 which contemplates a decree by the landlord or the whole body of land lords for an arrear of the entire rent due in respect of an under tenure it is the tenure that is sold under s 103 which does not contemplate a decree for an arrear of rent but a decree for money due on account of a share of rent and a suit for it by only a sharer in a joint undivided estate it is only the right title and interest of the judgment debtor in the under tenure that passes *Doolar Chand Sahoo v Lala Chabel Chand L R 6 I A 47 3 C L R 561* and *Shamchand Kundu v Brojonath Pal Chowdhury 12 B L R 484 21 W R 94* followed in principle The purchaser of an under tenure under

■ 105 of Act X of 1859 is entitled to maintain a suit for possession against a subsequent purchaser under s 103 though he has not got his name registered in the landlords' sherista *Kristo Chunder Ghose v Raj Kristo Bandyopadhyay I L R 12 Calc 24* followed *Luckhnarain Mitter v Khetro Pal Singh Roy 13 B L R 146 20 W R 380* referred to *Patil Shahu v Hari Mahanti I L R 27 Calc 789* distinguished *Bhiktrananda Roy v Behari Lal Pandit 5 O L J 89* questioned The mere fact that a person cannot succeed in a suit does not mean that he has no *locus standi* to maintain the suit It is only where the Legislature distinctly or in effect provides that certain conditions must be fulfilled to entitle a person to maintain a suit and those conditions precedent are not fulfilled that the person has no *locus standi* to sue *NILADRI MAHANTI v BICHITRANAND ROY (1910)*

I L R 37 Calc 823

UNDERTAKING

— unconditional to pay—

See *VARTHAMANAM*

I L R 38 Mad. 660

UNDervaluation OF SUIT

See *JURISDICTION I L R 38 Calc 639*

UNDISCHARGED BANKRUPT

— *Vesting order under the Indian Insolvency Act 1848 (11 & 12 Vict C 21) s 7—Subsequently acquired property title to—Right of stranger to dispute title without alleging or proving intervention by the Official Assignee.* At the trial of this suit it appeared according to the admissions made by the plaintiff's witnesses and according to the original documents produced that the plaintiff's predecessor in title one J had a vesting order made against him on two occasions under s 7 of the Indian Insolvency Act 1848 viz on the 2nd December 1899 and on the 4th May 1905 In case of neither insolvency did J get his final discharge On the 1st August 1911 J acquired the premises in dispute from one D by means of a conveyance bearing that date After J's death one P took a conveyance of the said premises from the administrator appointed by the Court to J's estate P was alleged by the plaintiff to be a mere *denamidar* for himself and on the 26th May 1916 a deed of relinquishment was executed by P in favour of the plaintiff The issue in the case broadly speaking was whether the plaintiff could prove his title There was no reference in the written statement of the defendant to the fact of either of the two insolvencies of J which were apparently brought to the notice of

UNDISCHARGED BANKRUPT—contd

the defendant's advisers at a late stage if not actually during the conduct of the plaintiff's case In this state of things at the close of the plaintiff's case the defendant's counsel took the point that the plaintiff's suit should be dismissed without calling on the defendant to enter on his defence the ground being that the title to the said premises had been shown to be vested in some one else according to the plaintiff's evidence Held on the authority of *Herbert v Sayer 5 Q B 365* that the action must go on as the point raised was not available to a stranger (as distinct from the Official Assignee or his assign) as a complete defence unless he had pleaded and was able to prove that the Official Assignee had intervened In the circumstances of this case leave was given to the defendant to amend his written statement in order to state the fact of each of the said insolvencies and to aver and prove if he could, that at any date down to the institution of this suit the Official Assignee had intervened *DA ARATHY SINGHA v MAHANULTYA ASH (1900)*

I L R 47 Calc 661

UNDISCLOSED PRINCIPAL

See *HUNDI SUIT ON*

I L R 46 Calc 663

See *KUMAON RULES (1894) R 17*

I L R 42 All 642

See *PRINCIPAL AND AGENT*

I L R 39 Calc 502

UNDIVIDED FAMILY

See *HINDU LAW—ALIENATION*

I L R 38 Mad. 177

UNDIVIDED INTEREST

— purchase of—

See *SALE FOR ARREARS OF REVENUE*

I L R 39 Calc. 353

UNDUE ADVANTAGE

See *TEMPORARY INJUNCTION*

I L R 41 Calc 408

UNDUE INFLUENCE

See *BENGAL TENANCY ACT 1885 s 9*

1 Pat L J 76

See *CIVIL PROCEDURE CODE (Act X of 1908) O XXII R 3*

I L R 38 Mad. 550

See *CONTRACT ACT (IX of 1872)—*

S 16

See *HINDU LAW—WILL*

I L R 39 Bom 441

See *INTEREST*

I L R 42 Calc 652 690

See *LIMITATION ACT (XV of 1877) s 11 ART 91*

I L R 38 Mad 401

See *PANDANASHIN LADY*

I L R 43 All 595

See *SUCCESSION ACT 1860 s 2*

See *TRUSTS ACT (II of 1882) s 58*

I L R 43 Bom 153

See *WILL*

I L R 38 Calc 355

UNDUE INFLUENCE—contd

1 ————— *Contract—Illegal composition of non compoundable offence—Stifling prosecution—Suit for refund—Contract Act (IX of 18.2) ss 16 19 No refund of money or return of security given under agreement not to prosecute a criminal case will be allowed unless circumstances disclose pressure or undue influence. Mere fear of punishment in a criminal case does not constitute undue influence Jones v Merrett & Co Building Society [1892] 1 Ch 173 referred to ANJADYNESHA PIRI & RAHIM BUCKSH SHIEDAB (1914) I L R 42 Cal 286*

2 ————— *The Judicial Committee did not approve of the idea that in India the law would make the possession of reputation or high standing an element of suspicion BAL GANGADHAR TILAK & SHRI SHRINIVAS PANDIT (1915) 10 O W N 729 I L R 90 Bom 441*

UNHYPOTHECATED PROPERTY

See TRANSFER OF PROPERTY ACT (IV of 1882) s 90 I L R 34 Bom 540

UNENTRANCED PERSONAL INAM OF LANDS

————— *Attachment in execution of decree validity of Unentranced inam lands granted not for future public or private services but as a matter of favour for the maintenance of the donee and his heirs are liable to attachment and sale in execution of a decree against the holder of the inam A Vissappa v A Ramajogi (1865) 2 M H O R 31^o and Bhanappa Gura v Ramanna S A No 1397 of 1918 (unreported) followed VENKATARAMA AYYAR v CHANDRASAGARA AYYAR (1921) I L M 44 Mad 632*

UNITED PROVINCES AND OUDH ACTS.

See NORTH WEST PROVINCES AND OUDH ACTS

————— 1869—I—

See OUDH ESTATES ACT

————— 1873—VIII—

See NORTHERN INDIA CANAL AND DRAINAGE ACT

XXVIII

See NORTH WEST PROVINCE RENT ACT

XIX

See N W P LAND REVENUE ACT

————— 1876—XVII—

See OUDH LAND REVENUE ACT

————— 1881—XII—

See NORTH WESTERN PROVINCES RENT ACT

XVIII

See CENTRAL PROVINCES LAND REVENUE ACT

————— 1886—XXII—

See OUDH RENT ACT

————— 1898—XI—

See CENTRAL PROVINCES TENANCY ACT

UNITED PROVINCES AND OUDH ACT—contd

————— 1899—III—

See UNITED PROVINCES COURT OF WARDS ACT

————— 1900—I—

See NORTH WESTERN PROVINCES AND OUDH ACTS

See UNITED PROVINCES MUNICIPALITIES ACT

X

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT

————— 1901—II—

See AGRA TENANCY ACT

XI

See UNITED PROVINCES LAND REVENUE ACT

————— 1903—II—

See BUNDELKHAND ALIENATION OF LAND ACT

————— 1904—I—

See GENERAL CLAUSES ACT

————— 1910—IV—

See UNITED PROVINCES EXCISE ACT

————— 1912—IV—

See UNITED PROVINCES COURT OF WARDS ACT

VI

See UNITED PROVINCES PREVENTION OF ADULTERATION ACT

————— 1916—II—

See UNITED PROVINCES MUNICIPALITIES ACT

UNITED PROVINCES COURT OF WARDS ACT (III of 1899)

————— ss 2 & 3 34—

See NORTH WESTERN PROVINCES LAND REVENUE ACT 18.3 s 184

I L R 42 All 509

————— ss 10 and 37—

See UNITED PROVINCES LAND REVENUE ACT 1873 s 184

I L R 42 All 509

————— ss 16 20—*Claim not notified—Main liability of suit—Admissibility of documents S 20 of the Court of Wards Act 1909 applies only to cases where persons who have notified their claims under s 16 of the said Act have failed to produce their documents Where the property of the debtor was taken over by the Court of Wards at a time when the Court of Wards Act of 1899 was in force and the creditor did not notify his claim under s 16 but brought a suit upon his bonds after the property was released by the Court of Wards held that the bonds were admissible in evidence and the suit was maintainable Collector of Ghazipur v Balbhaddar Singh 10 All L J 234 overruled A HAFIZ & KALYAN DAS (1915) I L R 37 All 585*

————— ss 16 19 49—*Decree on contract made while debtor was a ward of Court—Collector not a party—Execution of decree C obtained a decree*

UNITED PROVINCES COURT OF WARDS
ACT (IV OF 1912)—*contd*

16 19 49-confd

8 and 11—cont'd

to money against M based upon a contract entered into by the latter after he had become a ward of the Court of Wards. In execution of the decree certain movable property belonging to M was attached. Upon objection taken that a certificate that the claim was notified under s. 16 of the Court of Wards Act 1839 should be obtained from the Collector Aell that the decree was had inasmuch as the suit and proceedings in execution were a fraud upon the Court and that as soon as it was brought to the notice of the Court that it was a debt of a debtor was a ward of Court the Court should have of its own motion then and there made the Collector a party and waited for such defence as the Collector might put forward. MCAZZAM ILY SIKH v. CHUNNI LAL (1911)

ment of India—1 validity of decree Where a mort-
gagor has been declared a disqualified proprietor
under the United Provinces Court of Wards Act
1912 and a final mortgage decree is made against
the Court of Wards during its superintendence of
the estate the decree is binding upon the mort-
gagor after the Local Government acting under
an order of the Government of India has dis-
charged the estate from superintendence in the
absence of proof that the proceedings of the Court
of Wards were a nullity **MAHENDRA BHABHAT
SINGH v. THE ORISSA COMMERICAL BANK LD**
I L R 43 All 478

48-

ILR 33 AU 791

1 L. R. 43 All 47
UNITED PROVINCES EXCISE ACT (IV OF
1910)

pty of any ward — Notice of suit— Pro
 of a decree held by a ward Held that the execution
 property of any ward as used in s 48 of the term
 United Provinces Court of Wards Act 1899 does
 not include property attached in execution of a
 decree held by a ward No notice is therefore
 required of a suit brought by a person claiming
 title to such property for a declaration of his title
 Lal Singh v The Collector of Etah (1914)
 I L R

ILR 38 AN 331

notice of plaint—If either fresh notice rendered neces-
 sary by amendment Certain persons who intended
 bringing a suit against a ward under the Court of
 Wards upon a promissory note of date the 20th of
 November 1909 served upon the Collector by way
 of notice under s 48 of the Court of Wards Act
 1893 a copy of the proposed plaint in which they
 stated— For a long time there were money
 dealings between the shop of the plaintiffs and
 Kunwar Pohkar Singh caste Thakur resident of
 mauza Changheal Accordingly the said Pohkar
 Singh having adjusted his account under the
 former promissory note dated the 15th of Novem-
 ber 1907 executed a promissory note on the
 20th of November 1909 In the course of the
 suit the plaintiffs discovered that they could not
 succeed on the promissory note of the 20th of
 November 1909 inasmuch as Pohkar Singh was
 already a Ward of Court at the date of its execu-
 tion and accordingly asked and obtained leave to
 amend their plaint and base their claim entirely
 on the promissory note of the 15th of November
 1907 Held that in these circumstances no fresh
 notice to the Court of Wards was rendered neces-
 sary by the amendment of the plaint *McInery*
The Secretary of State for India I L R 38 Cal
97 referred to BALDEO PRASAD & THE COLLEC-
TOR OF PILIBHIT (1914)

Y L R 37 AM. 13
T OF WARDS ACT

ss 2, 8, 9 10 and 34—
V W P L

See V W P 11: PLANNED ACT 1873
8 194
ss 8 and 11—
decree of
from super
L R 42 AL 509
Chf Proprietor—
We de—Discharge
Order by Governor

ss 8 and 11—
Wort 130 decree 11
1st 1st from super 1 1c

§ 40—Poles framed under Act—Trans-
fer or sub lease of licence—Agreement to share profit
The plaintiff entered into an agreement with the
defendant who was a drug contractor in consider-
ation of a sum money advanced by him to the
defendant that he would be entitled to a share in
the profits or responsible for the losses of the drug
business to an extent there set forth Held that
such an agreement was neither a transfer nor a
sub lease of the drug contractor's licence and did
not constitute a violation of r 82 of the rules
framed under the United Provinces Excise Act
1910 **SHIAM BHARTI LAL v MALHI** (1916)
I L R 39 All 107

I L R 39 AN 107

article—Search warrant—Indian Oaths Act (X of 1873) s 13—Presumption that oath was duly administered An excise inspector searched the house of a person suspected to be in illicit possession of an excisable article namely cocaine and cocaine was found in the house. Held that the subsequent conviction of the person in possession of the said house was not rendered illegal by the fact that the excise inspector had not previously obtained a search warrant. *Emperor v Alloted Khan 11 All L J 442 1 L R 35 All 358*

Emperor v Bargarbada 1 L R 35 All 1 referred to. Held also that it is a reasonable presumption that an oath has been duly administered to a witness appearing before a Court although the record of the Court may contain no reference to that fact. *Emperor v Sayed Mahmud (1913)*

I L R 35 AIL 575

§ 63-Criminal Procedure Code s 537
 Unlawful possession of excisable article - Search
 warrant - Conviction not invalidated owing to ab-
 sence of warrant Where the superintendent of
 police and a sub-inspector searched the house of a
 person suspected of being in illicit possession of a
 excisable article and such articles were found in
 the house searched it was held that the conviction
 of the owner of the house under s 63 of the United
 Provinces Act 1910 was not rendered in-
 valid by the fact that no warrant had been issued
 for the search, though it was pre-emptible that in
 section 63 where a signature that in a case under s
 search was necessary to search a house a
 warrant had to be obtained beforehand.

I L F 35 APR 35

UNITED PROVINCES EXCISE ACT (IV OF 1910)—*contd*

— s 64 (c)—*Breach of conditions of licence*
— *Breach committed by servant*—*Penal liability of master* In order to establish an offence under s 64 (c) of the United Provinces Act 1910 against a licence holder in respect of the alleged keeping of incorrect accounts by a servant it must be shown that the licence holder himself allowed the offence to be committed by his servant or was cognizant of what his servant was doing. *FIRAZER v PAM DAS* (1918) I L R 40 All 523

UNITED PROVINCES GENERAL CLAUSES ACT (U P ACT I OF 1904)

S GENERAL CLAUSES ACT

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)

— s 4—*Mahal*—*Partition*—*Uncultivable land*—*Jurisdiction*—*Civil and Revenue Courts* Land such as roadways uncultivated plots and *over abadi* sites of villages are all within the boundaries of a mahal although no revenue may be derived from them. Thus land forming the site of a *parao* but bearing a *khasra* and *khata* number in the revenue records must be considered as part of the mahal in which it is situated and can only be partitioned by a Court of Revenue. *MAMMUD JAHAN BEGAN v GOBIND PAM*

I L R 43 All 45

— s 18—*Suit for rent before Assistant Collector*—*Sanction to prosecute granted by him*—*Officer at the time of granting sanction placed in charge of another sub division of the same district*—*Jurisdiction* An Assistant Collector tried a suit under the *Agra Tenancy Act* in the course of which a question as to the genuineness of a certain document tendered in evidence by the defendants arose. Subsequently to the decision of that suit the Assistant Collector was put in charge of the work of another sub division in the same district. Held that such a transfer of work did not deprive him of jurisdiction to grant sanction for a prosecution in respect of the forging of the document so tendered. *DALIP SINGH v NAVAL* (1917)

I L R 39 All 297

— s 33 (d)—*Mahal*—*Land held revenue free by Government not of necessity excluded from the mahal* Held (i) that s 3 clause (d) of the United Provinces Land Revenue Act 1901 shows that there may be in a mahal persons holding land revenue free and the land so held yet forms part of the mahal and (ii) that a finding as to whether such land does or does not form part of the mahal is not a pure finding of fact but a mixed finding of fact and law. *ABDUL RAHIM KHAN v AHMAD KHAN* (1914) I L R 36 All 231

s 34—

See *AGRA TENANCY ACT (II OF 1901)*
s 108 I L R 30 All 689

s 36—*Agra Tenancy Act (II of 1901)*

— s 41—*Ex proprietary tenant*—*Enhancement of rent* The tenant of an ex proprietary holding who's rent had been fixed by the Collector under s 36 of the United Provinces Land Revenue Act entered into an agreement with the zamindar to pay an enhanced rent. The agreement was

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)—*contd*

s 36—*contd*

effected by means of a registered instrument and the enhanced rent was not in excess of the beneficial rate mentioned in s 10 of the Act. But it was made within the period of ten years from the fixation of rent by the Collector. Held that such agreement was not open to any legal objection. *BHAIROO PRASAD v SOMWARTTI* (1917)

I L R 39 All 318

— ss 51 52 99—*Assignment of Government Revenue*—*Right of Government to enhance or remit revenue* An assignee of Government revenue takes the assignment subject to all the rights of Government to assess enhance reduce remit or suspend the revenue. *BENI MADHO v BHAGWAN PRASAD* (1911) I L R 33 All 556

— ss 56 and 86—*Cess*—*Gaonkharch*

—*Civil and Revenue Courts*—*Jurisdiction* In a permanently settled portion of the Mirzapur district the tenants were in the habit of paying to their zamindars an addition to their rent of 5 to 4 pias per rupee under the name of *gaon kharch*. This additional payment however was not recorded under s 56 or s 86 of the United Provinces Land Revenue Act and it did not appear from the evidence that it could be regarded as part and parcel of the contract of rent. Held that whether or not a suit might be in a Civil Court for the recovery of the payment known as *gaon kharch* no such suit would lie in a Court of Revenue. *RADHA MADHO LALJI v RAM SEWAK*

I L R 43 All 422

— *Market*—*Pight to levy toll*—*Cess* Held that the levy by the owner of a private market of market dues at so much per head for every beast sold and of rent for land occupied by stalls is not illegal. *Sukhdoo Prasad v Ayal Chand* I L R 29 All 740 distinguished. *SADANAND LALDE v ALI JAN* (1910)

I L R 38 All 163

— *Cess*—*Rent*—*Rent payable partly in cash and partly in kind* Certain tenants holding under a *gabuliat* agreed to pay as rent a fixed sum in money and also certain quantities yearly of *blusa chari* grain and sugarcane described in the *gabuliat* as *rasum zamindari*. Held that notwithstanding that the payments in kind were described as *rasum zamindari* they were nevertheless part of the rent and could be recovered by the lessor and did not fall within the purview of s 56 or s 86 of the United Provinces Land Revenue Act 1901. *Sri Pam v Angkar Ali* I L R 35 All 19 distinguished. *RANGI LAL v JASSA* (1916)

I L R 38 All 286

ss 56 233—

See *JURISDICTION OF CIVIL COURTS*
I L R 34 All 358

s 99—

See s 51 I L R 33 All 556

— ss 106 and 233 (1)—*Partition of isolated plot in abadi*—*Owners not co sharer*—*Civil and Revenue Courts*—*Jurisdiction* Held that a suit for partition of an isolated plot in the *abadi* of a village the parties not being co sharers in the mahal but merely the purchasers of the plot from the zamindar lies in the Civil Court and not in the Revenue Court. *Pam Paton v Mamaz*

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)—contd

ss 107 and 233—contd
Ahmad 16 Indran Cases 876 followed Pam
Dayal v Megu Lal I L R 6 All 452 (454)
referred to Narain Das v Bhup Narain I L R
31 All 330 distinguished RANTU LAL v BAIDE
SIRAI I L R 43 All 454

s 107—
See Partition Act (IV of 1893) ss 1
2 AND 3 I L R 35 All 387
ss 107 111—

1
Hindu family—Claim for partition by widow in
possession in lieu of maintenance merely though
recorded solatu maud as a co sharer Held that
the widow of a member of a Hindu family who is
in possession of a portion of the family property
under a family arrangement is not a co sharer and
merely is not a co sharer and cannot in virtue of
such possession enforce a claim for partition of the
share of which she is so in possession even though
her name may be recorded solatu maud as a co
sharer Kailash Awar v Badri Prasad S A & Co
344 of 1913 decided 17th July 1913 and Bhoop
Singh v Phool Kuar N W P H C Rep 368
and Jhanna Awar v Chain Sukh I L R 3 All
400 followed Bhupat Sukh v Mohan Singh I
L R 19 All 324 referred to Habibullah v
Kushimba 3 All L J 481 distinguished PRWA
v Jas Kunwar (1913) I L R 25 All 527

2
Hindu family—Hindu widow—Claim for partition
by widow in possession in lieu of maintenance
merely though recorded solatu maud as a co sharer
Held that the widow of a member of a joint Hindu
family who is in possession of a portion of the
family property under a family arrangement in
lieu of maintenance merely is not a co sharer
and cannot in virtue of such possession enforce
a claim for partition of the share of which she is
so in possession even though her name may be
recorded solatu maud as a co sharer Bhoop
Singh v Phool Kuar N W P H C Rep 368
and Jhanna Awar v Chain Sukh I L R 3 All
400 referred to KAILASHI KUNWAR v BADRI
PRASAD (1913) I L R 35 All 548

ss 110 111 and 112—Partition—
Question of proprietary title One of the co sharers
in a village applied in a Court of Revenue for
partition whereupon another of the co sharers
raised the objection that the village had already
been partitioned privately and could not again be
divided Held that this objection raised a ques-
tion of proprietary title in respect of which the
Court of Revenue had jurisdiction to refer the
parties to the Civil Court RAM NARAIN v JAGAN
NATH PRASAD (1915) I L R 38 All 115

s 111 (1) (b)—

cont required to file suit in Civil Court—Non appli-
cance with order—Appeal A Collector trying
a case made an order under s 111 (1) (b)
of the United Provinces Land Revenue Act 1901
against the non applicant He failed to comply
with this order but alleged that in a civil suit
between the parties to the partition case it had
been decided in respect of certain non revenue
paying property that both sides were members of a

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)—contd

s 111 (1) (b)—contd
joint Hindu family The Collector however over-
ruled his objection finding that the ruling did not
apply to revenue paying property Held that no
appeal lay to the District Judge from this order
HAR PRASAD v MUKAND LAL (1915) I L R 38 All 90

—Question of proprietary title—Partly raising ques-
tion ordered to file civil suit—Suit filed beyond time
allowed—Suit barred Where an order has been
made by a Court of Revenue under s 111 (1) (b)
of the United Provinces Land Revenue Act 1901
requiring a party to partition proceedings to
institute within three months in the Civil Court
a suit for the determination of a question of pro-
prietary title raised in such proceedings the Civil
Court has no jurisdiction to entertain a suit if it
is not filed within the time limited BARNAR
Lal v Gopi 4 A L J 713 followed HANDHRI
Singh v Bhagwan Das I L R 35 All 481 re-
ferred to TAIKUR ALI SHAH v SHAH MUHAMMAD
KHAN (1918) I L R 41 All 211

ss 111 112—Private partition—
Lands held under a private partition claimed by non
applicant—No question of proprietary title—Appeal
When in a suit for partition of revenue paying lands
one of the non applicants alleged that under a
private partition he was in possession of certain
lands and claimed the lands for himself and the
Collector in appeal ordered those lands to be given
to him Held that no question of proprietary title
was raised and no appeal lay to the District Judge
against the order of the Collector FATEH RAI v
Gale Ram All W N (1904) 293 followed
Muhammad Jan v Sadanand Pandey I L R 28
All 394 distinguished MUHAMMAD NAB KHAN v LILAN
KHAN v MUHAMMAD ISHAQ KHAN (1910) I L R 32 All 523

ss 111 112 233 (b)—

Partition—Hindu law
—Joint Hindu family—Minor—No necessity for
minor to be specially represented in partition pro-
ceedings Where a partition of the property of
a joint Hindu family in which one of the members
was a minor was found to have been properly
carried out with due regard to the interests of
the minor it was held to be no ground for upsetting
the partition were such a course possible having
regard to s 233 (1) of the United Provinces Land
Revenue Act 1901 that the minor was not repre-
sented in the partition proceedings by a formally
appointed guardian In such circumstances a
minor member of the family is suitably repre-
sented by the managing member or members
BHAGWATI PRASAD v BHAGWATI PRASAD (1917) I L R 35 All 128

(1908) s 11 O II r 2—Partition—Suit for
possession of property the subject of partition A
person who was really entitled to one half of a
four biswa zamindari share but was recorded only
in respect of a 3½ biswa share applied for partition
of the latter share After the date fixed for filing
objections the person who was recorded in respect
of the remaining one fourth biswa share came in
and asked for partition of that one fourth biswa
share The partition was completed but sub

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)—*contd*

— 111 112, 238 (k)—*contd.*

sequently the original applicant brought suit to remove the one fourth biswa share *Held* that the suit was not barred by s 233 (k) of the United Provinces Land Revenue Act (1901) neither was it barred by O II r 2 of the Code of Civil Procedure inasmuch as that rule did not apply to proceedings under the Land Revenue Act nor by the rule of *res judicata* **KALKA PRASAD v MAHMOHAN LAL** (1916) **I L R 38 All 302**

— s 118—*Partition—Co sharers—Effect of order allotting to one co sharer land upon which are standing buildings belonging to another co sharer* Where a partition has been effected under the provisions of the United Provinces Land Revenue Act 1901 and the site of the house of one co sharer has been allotted to the share of another co sharer the presumption is that the owner of the house is to retain possession of the house The mere fact that ground rent has not been assessed cannot deprive the owner of the house of his right to it **Iswar Prasad v Jagan Nath Singh** *All Weekly Notes* 1906 194 followed **Nandan Pat Tewari v Radha Kishun Kaluar** 5 *Indian Cases* 664 distinguished **SABUR LAL v LALA** (1917) **I L R 39 All 707**

— s 121—*Plaintiff referred to Civil Court—Suit filed within time but subsequently withdrawn—Second suit filed after prescribed period* Where a Revenue Court acting under s 111 of the United Provinces Land Revenue Act 1901 required a party to the case before it to institute to a suit in the Civil Court within three months and the plaintiff did so but for some technical reason had to withdraw it with permission to bring a fresh suit which was in fact filed without delay but after the three months had expired *Held* that the second suit must be considered to be a continuation of the first suit and it could not therefore be held that the plaintiff had not complied with the order of the Revenue Court **PANDITA SIVOH v BHAGWAN DAS** (1913) **I L R 35 All 541**

— ss 142 143 146—

See REVENUE CODE (Act XLV of 1860)
s 275B **I L R 32 All 116**

— ss 203 to 207—*Agri Tenancy Act (II of 1901)* s 95—*Arbitration—Decision of Revenue Court based on award—Dispute between rival tenants as to possession of land—Suit for possession—Jurisdiction—Civil and Revenue Courts* *Held* that s 207 of the United Provinces Land Revenue Act 1901 does not bar a separate suit on title independently of the decision of the Revenue Court based on the award, to recover possession of property which has been the subject of arbitration proceedings under ss 203 to 206 of the Act **Girdhari Chaurhe v Pam Bharam** *Year 14 All L J* 85 approved and followed *Held* further that a suit between the rival tenants adjoining holdings to determine the question whether a certain parcel of land appertains to the holding of the one or of the other is cognizable by the Civil Court **Bhaw Pam v Ram Lal** **I L R 33 All 795** and **Jagannath v Ajudha Singh** **I L R 35 All 14** referred to **TARSI SIVOH v HAR DEO SIVOH** (1917) **I L R 39 All 711**

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)—*contd*

— s 233—

See s 106 **I L R 43 All 454**

See s 311 **I L R 35 All 126**
I L R 38 All 302

See JURISDICTION OF CIVIL COURTS
I L R 34 All 358

— *Partition—Land belonging to plaintiff's mahal allotted to defendants and a different plot to plaintiffs—Civil and Revenue Courts—Jurisdiction* By a mistake of a partition amiri a plot belonging to the defendants was allotted to the plaintiffs and two plots belonging to the plaintiffs were allotted to the defendants *Held* that no suit would lie in a Civil Court to rectify this error **Kishan Prasad v Kaddher Mal** **All W N** (1900) 11 distinguished **TIBBETI SAHAI v GOKUL PRASAD** (1911) **I L R 38 All 440**

— *Revenue Court irregularly entertaining an application for allotment of a share to applicant—Suit in Civil Court for declaration of title as to share so allotted—Jurisdiction* Some of the co sharers in a mauza applied for partition *H* one of the non applicants came in within the time limited in the proclamation issued under s 110 of the Land Revenue Act 1901 and asked for his share also to be partitioned off After the time for objecting to the partition had expired *L* filed an application claiming a share in the portion alleged by *H* to be his share and without notice to *H* this application was granted and part of the share allotted to him was given to *L* *H* then sued in the Civil Court asking for a declaration of his title to the plots so allotted to *L* *Held* that however erroneous the procedure of the revenue authorities might have been *H*'s suit was barred by s 233 (k) of the Land Revenue Act 1901 **Muhammad Sadiq v Lavie Ram** **I L R 33 All 91** followed **Khasay v Jupia** **I L R 38 All 432** and **Muhammad Jan v Sadananda Pande** **I L P 98 All 394** distinguished *Per Curiam*—We can only repeat here what was laid down in the full bench case of **Muhammad Sadiq v Lavie Ram** (**I L R 33 All 291**) in which it was held that any exercise of jurisdiction of a Civil Court which would disturb or in any way affect the distribution of land made by partition is barred by s 233 of Act III of 1901 whatever question is raised **LACHMAN DAS v HANUMAN PRASAD** (1910) **I L R 33 All 169**

— *Civil Procedure Code (1908)* s 11—*Res judicata—Joint mahal formed on partition—Suit by one co sharer against the other for exclusive possession of entire mahal* *A* and *B* applied jointly as against the other co sharers to have certain revenue paying property made into a joint mahal in their names and this was done Thereafter *A* sued *B* on title for exclusive possession of the entire mahal *Held* that this suit was not barred either by the principle of *res judicata* or by s 233 (k) of the United Provinces Land Revenue Act 1901 In the partition proceedings no question of title as between the present plaintiff and defendant had been raised and in his suit the plaintiff did not seek to alter the constitution of the mahal as it had been formed by the revenue authorities **LAL BIRAJI v PAK KALI KUTWAR** **I L R 42 All 309**

UNITED STATES LAND REVENUE ACT
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See CONTRACT ACT (17 of 1902), s. 23.
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UNITED PROVINCES MUNICIPAL ACCOUNTS

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UNITED PROVINCES MUNICIPALITIES ACT
(1 OF 1900)

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UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900)—*contd*

s 49—*contd*

by s 49 of the Municipalities Act 1900 *Muham-
mad Sadiq Ahmad v Panna Lal* I L R 36 All
290 distinguished *JUGAL KISHORE v JUGAL
KISHORE* (1911) I L R 33 All 540

s 57 152—*Municipal Board—Refusal
of permission to erect a building—Remedy open
to applicant special appeal not suit* When a Mun-
icipal Board refuse permission to erect or re-erect a
building the proper way to contest such refusal
is to appeal in the manner provided for by 152
of the United Provinces Municipalities Act 1900
The applicant for permission cannot maintain a
civil suit for an injunction to restrain the Board
from interfering with the plaintiff's building
*ABDUS SAMAD v THE CHAIRMAN MUNICIPAL
BOARD MEERUT* (1914) I L R 36 All 329

Held that s 152 does
not apply when the prohibition notice or order
issued by the Board is *ultra vires* and that s 84 (5)
applies only to buildings of the kind referred to
in the preceding sub-sections that is new buildings
in respect of which notice should have been given
under sub-section (1) *EMPEROR v PAM DAYAL*
I L R 33 All 147

s 88 and 91—*Municipal Board—
Power of Board to order demolition of structure over-
hanging a public road—Compensation—Offer to pay
compensation not a condition precedent to order for
demolition* The owner of a house to which was
attached a balcony overhanging a public road
repaired the balcony which had become dilapi-
dated and made it serviceable but without
obtaining the permission of the Municipal Board
thereto The Board thereupon issued notice to the
house owner under s 88 of the Municipalities
Act 1900 to remove the balcony and in default
of compliance prosecuted him *Held* that the
Board had power under s 88 cl (2) of the said
Act to order the removal of the balcony without
assigning any reason and that it was not necessary
for the Board in the case of a notice issued under
s 88 to tender or express its willingness to pay
compensation in respect of the structure the
demolition of which was ordered *EMPEROR v
NANNA MAL* (1913) I L R 35 All 375

s 123 (A) (1)—*Municipal Board—
Power of Board to make rules—Rule regulating use
by hawkers of parties of public roads* *Held* that
the United Provinces Municipalities Act 1900
did not empower a Municipal Board to make
rules regulating the sale or exposure for sale of
goods in streets or public places under the control
of the Board *EMPEROR v IMAMI* (1912)
I L R 35 All 24

s 130—

In order to render
a person liable to punishment for breach of the
rule made under cl (e) of s 130 by reason of
the continuance of the rule of certain articles on
premises then used for such purpose it is necessary
that 6 months notice in writing should have been
served upon him *EMPEROR v GHANMAN*
I L R 33 All 455

s 14—

1—*Municipal Board
Jurisdiction—Prosecution in respect of matter
concerning which a civil suit was pending* The

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900)—*contd*

s 147—*contd*

plaintiff to a suit against a Municipal Board was
permitted by the Court to erect certain structures
as specified in the decree of the Court Subse-
quently a dispute arose as to whether the struc-
tures which the plaintiff had erected were within
or in excess of the powers given to him by the
decree and the Court decided and the Board did
not contest its decision that the plaintiff had
exceeded his rights under the decree and that
some portion of the said structures must be de-
molished The Board meanwhile took action against
the plaintiff under s 147 of the United Provinces
Municipalities Act 1900 *Held* that it was not
open to the Board to prosecute the plaintiff in
respect of the structures pending the decision of
the Civil Court and to continue the prosecution
after its decision *EMPEROR v BALDEO PRASAD*
(1910) I L R 32 All 820

2—*Conviction for
disobedience to notice—Continuing breach* After a
conviction under s 147 of the United Provinces
Municipalities Act the person convicted cannot be
permitted to challenge the correctness of that con-
viction as often as he is prosecuted for continuing
disobedience of the order of the Board *ETAL
PRASAD v THE MUNICIPAL BOARD OF CANNORE*
(1914) I L R 36 All 430

3—*Prosecution for
disobedience to notice—Validity of notice to be con-
sidered* Before anyone can be convicted of an
offence under s 147 of the United Provinces Mun-
icipalities Act the Court must be satisfied that
what he had disobeyed was a notice lawfully issued
by the Board under the powers conferred upon it
by the Act *EMPEROR v PIARI LAL* (1914)
I L R 36 All 185

ss 147 and 152—*Notice—Disobedience
to lawfully issued notice—Competence of accused to
challenge validity of notice* *Held* that s 152 of
the United Provinces Municipalities Act 1900
does not prevent a person who may be prosecuted
for disobedience to a notice issued by a Municipal
Board from establishing the defence that the notice
in question was not a matter of fact the Board's
notice inasmuch as it was not signed by any one
legally authorized to sign such notices on behalf of
the Board *EMPEROR v HAZARI LAL* (1914)
I L R 36 All 227

s 152—
See s 87

I L R 36 All 111

s 187—

See U P GENERAL CLAUSES ACT (I OF
1904) s 23 I L R 34 All 111See NORTH WESTERN PROVINCES AND
ODISH MUNICIPALITIES ACT s 10

I L R 35 All 108

*Municipal election—
Rules framed by Local Government for regulation of
elections—Petition by defeated candidate—Appeal—
Procedure—Decree—Order* *Held* on a con-
struction of s 42 of the rule framed by the Local
Government under a 187 of the Municipalities Act
1900 for the regulation of municipal election
that the term "competent Court" as used in r 42
means a civil Court of competent jurisdiction with
reference to the valuation given by the petitioner
in his petition *Gur Charan Das v Har Sarup*

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900)—*contd*

s 187—*contd*

I L R 31 All 391 followed. *Held* also that no appeal lies from the order of a competent Court passed on an election petition under r 42 above referred to. *Sundar Lal v Muhammad Faig 16 Oudh Cases 36* approved. *Raghunandan Prasad v Sheo Prasad I L R 35 All 308* and *Sabhapati Singh v Abdul Ghajur I L R 24 Calc 107* referred to. *KHUNNI LAL v RAGHUNANDAN PRASAD (1913)* *I L R 35 All 450*

Municipal election—Rules framed by the Local Government for regulation of elections—Validity of rules—Petition against successful candidate—Appeal *Held* (i) that the provisions of s 187 of the United Provinces Municipalities Act which gave power to the Local Government to make rules generally for regulating all elections under the Act were wide enough to include rules for the filing and decision of election petitions and (ii) that no appeal lies from the order of a competent Court passed on an election petition under r 42 of the rules framed by the Local Government under s 187 (1) cl (h) of the Act. *Khunni Lal v Raghunandan Prasad I L R 35 All 450* followed. *Sundar Lal v Muhammad Faig 16 Oudh Cases 36* approved. *NAND RAM v CHOTE LAL (1913)*

I L R 35 All 578

UNITED PROVINCES MUNICIPALITIES ACT (U P ACT II OF 1916)

s 19 to 28—Election petition—Petition presented by unsuccessful candidate against several respondents It is not a valid objection to a petition filed by an unsuccessful candidate at a municipal election under s 19 of the United Provinces Municipalities Act 1916 having as respondents more than one of the successful candidates that the petitioner cannot be himself declared elected in the room of more than one of the respondents. *ABDUL BAZI KHAN v SIRAJ UL HASAN (1919)* *I L R 41 All 646*

s 185 186—Erection of building without sanction of Municipal Board—Prosecution—Notice for demolition of building not to be issued before prosecution Where it is found that a building for which the sanction of a Municipal Board is required has been erected either without such sanction or in contravention thereof it is not necessary for the Board to direct the demolition of the building before it can prosecute the person who has erected it. *EMPEROR v HASHTM ALI (1917)* *I L R 39 All 482*

ss 209 210—Erect a structure—Movable planks placed across a public drain in front of a shop *Held* that the placing without the permission of the Municipal Board of movable planks over a municipal drain outside a shop the planks being put out in the morning when the shop was opened and removed at night did not amount to an offence under the United Provinces Municipalities Act 1916. The expressions used in s 209 of that Act indicate that it refers to something of a permanent nature. *Kamla Yath v The Municipal Board of Allahabad I L R 33 All 196* referred to. *EMPEROR v MUHAMMAD YUSUF (1917)* *I L R 39 All 388*

UNITED PROVINCES MUNICIPALITIES ACT (U P ACT II OF 1916)—*contd*

s 233—

See s 111 *I L R 35 All 126*
I L R 38 All 302

s 263—

See s 267 *I L R 42 All 485*
s 267—

Notice to construct a cesspool—Appeal—Prosecution for failure to comply Power of trying Court to question reasonableness of Board's order on the merits—Procedure in case of continuing breach indicated. No appeal will lie from a notice legally issued under section 61 (b) of the United Provinces Municipalities Act 1916 requiring the owner of premises to construct a cesspool. The effect of section 321 read with section 318 of the United Provinces Municipalities Act 1916 is that certain orders, directions or requirements of a Municipal Board or of the Committee of a notified area only can be called in question as regards their reasonableness or practicability but the legality of any such orders, directions or requirements can be questioned in any Court in which penal proceedings are brought in respect of any alleged breach for non-compliance therewith. *Emperor v Ram Dayal I L P 33 All 147* *Municipal Board of Etawa v DEVI PRASAD I L R 42 All 435* *Pam Pratap Marwari v Emperor 18 A L J 229* and *Emperor v Mannu I L R 43 All 295* referred to. *EMPEROR v KASHMIRI LAL I L P 43 All 644*

s 267 and 268—Municipal Board—Distinction between order issued to protect public from physical danger and order issued to protect it from insanitary conditions A Municipal Board issued an order purporting to do so under s 267 of the Municipalities Act to a person living within the municipal limits requiring him to fill up a certain cesspool and to build another with a proper cover to it. The order being issued because the cesspool was without a cover and passers by were likely to fall into it at night. *Held* that the order was a bad order, inasmuch as the only order which could be legally made under s 267 was an order which was based on sanitary grounds. *Municipal Board of Etawa v DEVI PRASAD I L R 42 All 485*

s 274—Occupier *Held* that a person of whom no more could be said than that he was held responsible for the upkeep and cleanliness of a temple by the former adhkari was not an occupier of the temple and could not be convicted as such under s 274 of the United Provinces Municipalities Act 1916 for throwing rubbish on to the street. *EMPEROR v PIANI LAL (1917)* *I L R 39 All 309*

ss 298 and 318—Dangerous or offensive trades—Licence—Power of Municipal Board to refuse licence—Remedy of person whose application for licence has been refused In matters to which s 298 last 1 Heading G of the United Provinces Municipalities Act 1916 relates a Municipal Board is not bound to grant a licence to any one who is prepared to abide by the prescribed conditions unless it be found that the necessary licence cannot be granted in respect of the particular site in question without prejudice to the health, safety or convenience of the inhabitants of the municipality. If an application for such a licence is refused, the

UNITED PROVINCES MUNICIPALITIES ACT (U P ACT II OF 1916)—*contd*

— s 298 and 318—*contd*

remedy of the applicant = by way of appeal under s 318 of the Act *Moran v Chairman of Motihari Municipality* I L R 17 Cal 329 and *Queen Empress v Mukunda Ghunder Chatterjee* I L R 20 Cal 654 referred to *EMPEROR : MANNU*

I L R 42 All 294

— s 307—*Disobedience to notice lawfully issued by a Municipal Board—Recurring fine—Procedure necessary to imposition of daily fine* A Magistrate convicting an accused person of an offence under s 30 (b) of the United Provinces Municipalities Act 1916 cannot by the same order further sentence him to a recurring fine in the event of non compliance with the order of the Board. The liability to a daily fine in the event of a continuing breach has been imposed by the Legislature in order that a person contumaciously disobeying an order lawfully issued by a Municipal Board may not claim to have purged his offence once and for all by payment of the fine imposed upon him for neglect or refusal to comply with the said order. The liability will require to be enforced as often as the Municipal Board may consider necessary by the institution of a second prosecution in which the questions for consideration will be how many days have elapsed from the date of the first conviction under the same section during which the offender is proved to have persisted in the offence and secondly the appropriate amount of daily fine to be imposed under the circumstances of the case subject to the maximum prescribed *EMPEROR : AMIR HASAN KHAN* (1916)

I L R 40 All 569

— ss 318 and 321—

See s 207 I L R 43 All 644

— s 324—*Suit for damages by lessee of land against a Municipal contractor for causing obstruction to the use of his land* Held that section 324 of the United Provinces Municipalities Act 1916 does not apply to a suit by lessee of land for damages against a contractor of the Municipal Board who stacks building materials upon that land and thereby prevents the lessee from using it *MUHAMMAD GHAFAR ULLAH : BABU LAL*

I L R 43 All 614

— s 326 (4)—*Suit for establishment of title and injunction—Notice—Suit filed before expiration of prescribed time* The Municipal Board of Benares in June 1916 served notice on the plaintiff requiring him to remove a certain *chabutra* which it was alleged encroached on a public way. The plaintiff replied by giving the Board notice of a suit in which the reliefs to be claimed were (i) a declaration of the plaintiff's title to the land upon which the *chabutra* stood and (ii) an injunction restraining the Board from ordering its demolition. The suit was however filed before the expiration of the period of two months provided for by s 306 of the United Provinces Municipalities Act 1916. Upon objection taken by the Board as to want of a proper notice the plaintiff amended his plaint but still left the suit as a suit which asked for further relief than a bare injunction and which therefore could not come within the exception provided for by cl (4) of s 306: Held that the suit could not

UNITED PROVINCES MUNICIPALITIES ACT (U P ACT II OF 1916)—*contd*

— s 326 (4)—*contd*

be maintained *MUNICIPAL BOARD OF BENARES : CAJADHAR* (1918)

I L R 41 All 162

— *Suit to obtain refund of octroi duty—Limitation* Held that the special rule of limitation laid down by cl (3) of s 326 of the United Provinces Municipalities Act 1916 applies to a suit against a municipal board wherein the plaintiff claims refund of octroi duty which the board has refused to pay him *MAHMAN LAL : THE MUNICIPAL BOARD OF AGRA*

I L R 42 All 207

UNITED PROVINCES PREVENTION OF ADULTERATION ACT (VI OF 1912)

— ss 4 & 6—*Commission agent exposing adulterated article of food for sale* Held that a commission agent who expo ed for sale (but did not sell adulterated goods) was liable to punishment under s 4 of the United Provinces Prevention of Adulteration Act 1912 and could not claim the benefit of s 6 of the Act *EMPEROR : KEDAR NATH* (1918)

I L R 40 All 661

UNITED PROVINCES PUBLIC GAMBLING ACT (I OF 1917)

See PUBLIC GAMBLING ACT III OF 1887

ss 3 AND 10

I L R 42 All 470

UNITED PROVINCES RENT ACT (XII OF 1881)

See NORTH WESTERN PROVINCE AND OUDH RENT ACT I L R 41 All 356

UNITED PROVINCES TENANCY ACT (II OF 1901)

See AGRA TENANCY ACT

UNITY OF OBJECT

See MISJOINDER I L R 42 Cal 760

UNIVERSITIES ACT (VIII OF 1904)

See INDIA UNIVERSITIES ACT

See UNIVERSITY LECTURESHIP

I L R 41 Cal 518

— ss 21 (1) (c) and (f) ss (1) and 2 (m)—

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) ss 140 (c) 143 (2) (a) AND (2) (d) I L R 43 Bom 281

— s 25 and regulations thereunder—*cheating at examination—disqualified student—not competent to sue the University* Held that the Senate of a University is under s 25 of the Indian Universities Act empowered to make rules disqualifying a candidate who cheats at an examination from passing it and from appearing at any University examination for a period of two years from the date of his disqualification and that a candidate against whom the rule has been enforced has no remedy of Civil action against the University. In the matter of *Darasia Pustak*, (I L R 93 Bom 465) distinguished. *Taj Ahmad v University of the Punjab*

I L R 2 Lah 197

UNIVERSITY LECTURERSHIP

Specific Relief Act (I of 1877) s 45—Universities Act (VIII of 1904)—Appointments to Professorships and Lecturerships in the University of Calcutta—Provisional appointment—Sanction by Governor General in Council—If remedy lies against refusal to sanction—Mandamus—University Regulations Chap XI, s 12 The five conditions laid down in the proviso to s 45 of the Specific Relief Act are cumulative and all have to be fulfilled. The Senate of the University is only bound by its Resolutions. It cannot be held bound by representations made by any individual officer without the sanction or authority of the University. Where a person deals with a corporation whose rights are defined by statute he must be deemed to have informed himself of those rights. In this case the Resolution of the Senate cannot be interpreted as having appointed the applicant without the sanction of the Governor General or even that it was intended to appoint him without such sanction. No legal right can be said to exist because the petitioner had lectured the previous year. A rule cannot be granted to try the title to an appointment. Such title can only be tried in a properly constituted suit. The existence of a legal right is the foundation of every writ of *mandamus*. The principle underlying the jurisdiction in these cases is that the proceedings can confer no title not already existing though they may affect the consummation of the relator's title if he had one but it gives him none. Whether the sanction required under s 12 Chapter XI of the University Regulations for the appointment of a University lecturer is *ultra vires* or not cannot be determined in summary proceedings of this nature. The personal right referred to in s 45 of the Specific Relief Act is not a right in rem, such as every human being in civilized society possesses independently of any act of his own. The above dictum in *In re Rustum Jamshed Irani* 3 Bom L R 653 dissented from. He alone is a competent relator who has some interest other than that of the community at large in the question to be tried. *York & North Midland Railway Co v Th Queen I El & B 858* and *Ex parte Browning In re Marks L R 9 Ch 4p 593* discussed. *In re Abdul Rasul* (1913)

I L R 41 Calc 518

UNIVERSITY OF MADRAS

See SPECIFIC RELIEF ACT (I of 1877)
s 45. I L R 40 Mad 125

UNIVERSITY REGULATIONS

Chap XI s 12—
See UNIVERSITY LECTURERSHIP
I L R 41 Calc 518

UNLAWFUL ASSEMBLY

See JUDGMENT OF APPELLATE COURT
CONTENTS OF I L R 37 Calc 194

UNLAWFUL RECRUITMENT

See EMIGRATION I L R 37 Calc 27

UNLIQUIDATED DAMAGES

See EX PARTE DECKEN
I L R 43 Calc 1001

UNNECESSARY MATTER

printing of—
See COSTS L R 46 I A 239

UNPROFESSIONAL CONDUCT

See PROFESSIONAL MISCONDUCT

1 ———— *Pleader as litigant*
—Letter to Munsif threatening legal proceedings to recover costs in execution proceedings incurred owing to the negligence of the Court officer—Legal Practitioners Act (XVIII of 1879) ss 13 (b) and 14—Anonymous communication—Contempt of Court
Where a pleader who was a decree holder in a certain suit associated himself with his co decree holder in a notice to the Munsif threatening legal proceedings to recover costs in an execution proceeding incurred owing to the negligence of the Court officers though the pleader did not sign the notice. Held that what was done by the pleader was done by an individual in the capacity of a suitor in respect of his supposed rights as a suitor and of an imaginary injury done to him as a suitor and it had no connection whatever with his professional character or anything done by him professionally and that this case was not one within s 13 (b) of the Legal Practitioners Act. *In re Wallace L R 1 P O 283* In the matter of Jogendra Narayan Bose 5 C W N 48 *In re a Pleader 18 Mad L J 14* In the matter of a first grade Pleader I L R 24 Mad 17 and In the matter of Sarat Chandra Guha 4 C W N 663 matter of Sarat Chandra Guha & O W N 663 referred to. *In re POORNA CHANDRA ADDY* (1915)
I L R 43 Calc 885

2 ———— *Unprofessional conduct—Rules as to receiving instructions and accepting vakalatnamas compliance with—Judges duty to enforce compliance and take disciplinary measures on breach—One pleader appearing for another—Plea to Court to be informed* Where a pleader who was charged with having filed a petition for revival of a suit without authority alleged in defence that he had been instructed to appear by a clerk of the Muktear of the party and that it had been the (erroneously) represented to him that the vakalatnama filed in the original suit contained his name. Held that the pleader had acted in contravention of s 13 cl (a) of the Legal Practitioners Act in the matter of receiving instructions. That even if the vakalatnama did contain the pleader's name mere verbal acceptance of it would not be in compliance with cl (c) r 45 Ch XI of the High Courts General Rules and Circular Orders. Where a pleader appears for another pleader who is unable at the moment to attend Court he ought to let the Court know that he is so appearing. *Per RICHARDSON J* The rule in regard to the acceptance of vakalatnamas should be strictly and scrupulously observed in the Subordinate Courts. In connection with the enforcement of the rules it is always open to a Judge to refuse to hear a pleader or to refuse to allow a pleader to act who has not accepted a vakalatnama in the prescribed manner. It is also the duty of the Judge to take such action as may be appropriate in regard to infractions of the rule which escape notice at the time and are brought to light subsequently. *In the matter of JOGESH CHANDRA GUPTA* (1913)
20 C W N 253

3 ———— *Pleader—Attorney*
Court's record to conceal error due to carelessness
Where a property to be sold in execution of a

UNPROFESSIONAL CONDUCT—contd

decree was through the carelessness of the pleader for the decree holder and his clerk misdescribed in the application for execution in the warrant of attachment and in the sale proclamation and after they had been presented to Court the clerk actuated by a desire to conceal his and his master's carelessness from the decree holder altered the descriptions and the alterations were initialled by the pleader. *Held* (ordering the pleader's suspension for three months) that to tamper with the Court's records is at all times a serious matter and the pleader had acted without due care and caution and without that sense of responsibility which should govern the conduct of all officers of the Court in matters of such importance. *In the matter of A PLEADER* (1916)

20 C W N 1069

UNREASONABLE DELAY

See COSTS I L R 47 Calc 974

UNRECORDED CONFESSIONS

See MISDIRECTION I L R 45 Calc 557

UNREGISTERED DOCUMENT

See LIMITATION L R 46 I A 285

See REGISTRATION

See TRANSFER OF PROPERTY ACT I L R 44 Mad 55

UNSETTLED PALAYAM

*Alienability of for debts of holder for the time being—Lands held on service tenure alienability of—Enfranchisement of service tenure effect of on alienation prior and subsequent—Regulation XXV of 1802 effect of—Private Police service abolition of by legislation—Military service imposition of on landed proprietors—Abolition of—Limitation Act (IX of 1908) Sch II Art 120 II, and 144—Madras Regulation XI of 1816—Madras Regulation VI of 1831—Madras District Police Act XXIV of 1839—Madras Act III of 1895 Lands held on service tenure are even apart from statute inalienable by the Common Law of India beyond the life time of the holder for the time being. *Papaya v Pama* I L R 1 Mad 83 and *Palkiam Pillay v Seetharama Iyadhar* 14 Mad L J 131 followed. Abolition of service prior to the alienation renders the alienation valid. *Kustoor Koomaree v Monohur Deo* (1864) 11 R 39 *Rajioyirav bin Tamayirav v Balwantrao Venkataiah* 1 L R 5 Bom 437 and *Radhadas and Pama chandra Konker v Anantur Bhagavat Deshpande* 1 L R 9 Bom 198 212 followed. Enfranchisement of the land from service subsequent to an alienation thereof will not validate the alienation. *Palapa v Swamirao* I L R 1 Bom 536 and *Sannamma v Radhabhaya* I L R 41 Mad 418 followed. An unsettled palayam in the Presidency of Madras resembles a zamindari is hereditary in its character and is alienable for the debts of the previous holders and of the holder for the time being so as to bind the successors. The only difference between an unsettled palayam and a permanently settled zamindari is that in the latter the Government is precluded for ever from raising the revenue and in the former the Government may or may not have that power. *Olagappa Chetty v Arubhnot* L R 11 A 63 306 followed. *Held* on a review of the facts of the case that the*

UNSETTLED PALAYAM—contd

palayam of *hanmivad* in Madras district which was permanently settled in 1905 and which was in the eighteenth century liable to render military and police service to the Government of the day was as a fact unconditionally released from such services prior to 1895 and that accordingly a mortgage executed by the grandfather and father of the present zamindar in 1895 for debts incurred by the grandfather prior to that date and a decree and a Court sale held to satisfy the mortgage debt were binding upon the present zamindar and precluded him from recovering the zamindari from the auction purchaser. That the East India Company had by its Proclamations of 1799 and 1801 suppressed military service once imposed on landed proprietors in Southern India and police service similarly imposed was abolished pursuant to Regulation XXV of 1802 Regulation XI of 1816 Act XXIV of 1839 Act XVII of 1862 and Madras Act III of 1895 as services other than those of village officers had become long ago obsolete. *Quere* Whether if the plaintiff's father had debared himself from suing art 190 of the Limitation Act was the article applicable in which case the plaintiff would not be barred. *MIDNAPORE ZEMINDARI COMPANY v APPATA AND NAICKER* (1918) I L R 41 Mad 749

I L R 44 Mad 575

USAGE

See CUSTOM

See OCCUPANCY RIGHT

I L R 46 Calc 43

See USAGE OF THE PROFESSION

I L R 44 Calc 741

*Usage evidence of—Admissibility—Adding to the terms of a written contract—Repugnancy—Whether such usage makes the contract insensible inconsistent or unreasonably—Due date falling on a Sunday—Contract if may be performed on Monday following—European importer Evidence of well known trade usage is admissible to add to the terms of a written contract when such usage does not make the written contract insensible or inconsistent or unreasonable. In a contract to which both parties were Indian for the sale of piece goods imported by a European firm the due date fell on a Sunday. *Held* that according to the well known usage in the market the due date would be the Monday following. *HASIRAM PANTIA v HERNUND POY FEL CHAND**

26 C W N 355

Held that various words in written documents which *prima facie* present no ambiguity may be interpreted by extrinsic evidence of usage and their peculiar meaning when found in connection with the subject matter of the transaction fixed by parole evidence. *RAJA JOYE KUMAR MUKERJEE v JADUNATH BOSE*

26 C W N 1022

USAGE OF THE PROFESSION

See BARRISTER I L R 41 Cal 741

USER

See TRADE NAME I L R 40 Calc 570

See USING AS GENUINE A FORGED DOCUMENT I L R 39 Cal 453

USING FALSE TRADE MARKSee **TRADE MARK I L R 40 Calc 281****USING FORGED DOCUMENT**See **FORGERY I L R 38 Calc 75**

Handing over of a forged rent receipt by accused in the course of a criminal trial to his mukhtear—Examination by the mukhtear of a witness thereon—Receipt filed by the Magistrate with the record though not proved—Grant of sanction to landlord's agent not a party to the criminal case—Sanction by successor of Magistrate before whom the forged document was used—Penal Code (Act XLV of 1860) s 471—Criminal Procedure Code (Act V of 1898) s 195 Where the accused, during the course of a criminal trial against him of rioting and theft of crops handed over to his mukhtear a forged rent receipt bearing a counterfeit seal of the landlord to prove his possession and the latter put the same to a witness and questioned to him as to its genuineness but on the witness alleging that it was a forgery the trying Magistrate took it initialled it and placed it on the record. *Held* that there was a user of the document within s 471 of the Penal Code. *Ambica Prasad Singh v Emperor I L R 35 Calc 820 distinguished*. A sanction granted to the agent of the landlord whose seal was forged is valid though neither was a party to the criminal case in which the forged document was used. A sanction granted by the successor of a Magistrate before whom the forged document was used is good in law. *RATI JHA v EMPEROR (1911) I L R 39 Calc 463*

USUFRUCTUARY MORTGAGESee **AGRA TENANCY ACT (II OF 1901) ss 142 199 I L R 41 All 369**See **CIVIL PROCEDURE CODE (1908) O XXXIV R 14 I L R 41 All 399**See **INTEREST I L R 40 Calc 514**See **LANDLORD AND TENANT I L R 40 Calc 870**See **LIMITATION ACT (IX OF 1908) SCH I ART 109 I L R 39 All 200**See **MORTGAGE**See **SALE FOR ARREARS OF REVENUE I L R 44 Calc 573**See **TRANSFER OF PROPERTY ACT 1882—ss 65 AND 68 2 Pat L J 490**See **ss 54 118 I L R 37 Mad. 423**See **ss 68 (a) AND (d) 67 68 (c) I L R 41 Mad 259**See **S 53 I L R 39 Mad 579**

— construction of—

See **MORTGAGE I L R 44 Calc 388**

1 — *Specific Relief Act (I of 1877) s 42—Usufructuary mortgage—mortgagee recorded as tenant—suit by mortgagor for declaration of right of redemption and that mortgagee is not a tenant* Where a usufructuary mortgagee of land had him self recorded as the tenant of the land covered by the mortgage *held* in a suit by the mortgagor (i) for a declaration that the defendant was not a tenant of the land and (ii) for a declaration that the plaintiff was entitled to redeem the mortgage on repayment of the mort-

USUFRUCTUARY MORTGAGE—contd

gage debt that the plaintiff was entitled to the first declaration prayed for but not to the second. A mortgagor is not entitled to a declaration of the terms on which he may redeem the mortgaged property when it is open to him to bring a suit for redemption of that property. *PAN DOOR RAI v MAHANTH HARNAM DAS 3 Pat L J 71*

2 — *Transfer of Property Act (II of 1882), s 67—Usufructuary mortgage—Debt payable within a fixed period—Expiry of the period—Mortgagee's right to an order for sale* Where under a usufructuary mortgage the mortgage debt is made payable within a fixed period the mortgage is not purely a usufructuary mortgage and the mortgagee has in the absence of a contract to the contrary the right to an order under s 67 of the Transfer of Property Act (II of 1882) that the property be sold after the debt has become payable. *Mahadaya v Joti I L R 17 Bom 475 and Krishna v Hari 19 Bom L R 615 explained DATTABHAT RAMBHAT v KARI N NABHAT (1910) I L R 34 Bom 482*

3 — *Turn of worship in a temple—Transfer of Property Act (II of 1882) s 59—Mortgage bond creating right to worship whether requires attestation* A turn of worship is not an interest in immoveable property. There fore an usufructuary mortgage bond creating an interest in a turn of worship does not require attestation by witnesses under s 49 of the Transfer of Property Act. *Eshan Chunder Roy v Monmohini Das I L R 4 Calc 633 referred to JATI KAR v MURUNDA DEB (1911) I L R 39 Calc 227*

4 — *Dispossession of mortgage by a stranger adverse to mortgagor from the time of his knowledge* Where a trespasser dispossesses a mortgagee in possession and continues in possession asserting a title adverse to the mortgagor also such dispossession will be adverse to the mortgagor from the time the mortgagor has knowledge of the assertion (though he may not be then entitled according to the terms of the mortgage to recover possession from the trespasser to prove gagee). The onus is on the party adverse to the mortgagor but also that the latter knew it. *SACHINDRASEKARAN PERIYA AIYA ANBALAM v SACHINDRASEKARAN (1913) I L R 40 Mad 903*

5 — *Lease of mortgaged property by mortgagee to mortgagor—Sale of equity of redemption to a third party in execution of a decree for arrears of rent—Liability of the lender for rent* Defendant being the owner of a zemindari share made a usufructuary mortgage of it in favour of the plaintiff. On the same date the plaintiff executed a lease of the same property for the term of the mortgage. Defendant fell into arrears with his rent and plaintiff sued him and obtained a decree in execution of which he brought to sale defendant's equity of redemption under the mortgage and it was purchased by a third party. The purchaser however did not obtain mutation of names in his favour. *Held* on a fresh suit brought by the lender for arrears of rent accruing due after the sale of the equity of redemption that the defendant was still liable for payment of rent as the lender. *MITHAN LAL v CHHAJJI SINGH (1914) I L R 40 All 429*

USUFRUCTUARY MORTGAGE—*concl'd*

6 ———— When a puisne usufructuary mortgagee whose bond provides that if he is dispossessed he shall be entitled to sue for repayment of the loan has been dispossessed by purchaser at an execution sale of a prior mortgagee he is entitled to proceed against mortgagee personally on the bond although he has made no attempt to redeem the prior mortgage. *RAMJANAN SINGH v. KUNJ BEHARI SINGH*

6 Pat L J 670

7 ———— Possession by mortgagee as such for more than 12 years—Acquisition of title as mortgagee—Suit for redemption—Liability of mortgagee to account for the whole period of possession. A person in possession of a property as usufructuary mortgagee under a void mortgage for more than 12 years acquires by prescription the rights of a mortgagee and is as much accountable to the mortgagor for the rents and profits not only of the last three years preceding the suit for redemption but for the whole period of his possession. *Vadkai v. Varajana* (1886) 1 L R 9 Mad 244 and *Sundara Gurusahal v. Subramaniya Archakar* (1912) 16 I C 960 followed. *CORALA DASU v. RAMI* (1921)

I L R 44 Mad 946

8 ———— Suit for redemption of an usufructuary mortgage and for recovery of surplus profits from the mortgagee—Limitation Act (IX of 1908) Arts 148 and 105 applicability of—Civil Procedure Code (Act V of 1908) Or 34 rr (7) and (9) scope and effect of. A mortgagor brought a suit for redemption of an usufructuary mortgage and alleged that if accounts were taken a large sum would be found due from the mortgagee. The mortgagee contended that the claim for recovery of the surplus profits received by him was barred under Art 120 of the Limitation Act. *Held*—That having regard to the provisions of Or XXXIV rr (7) and (9) of the Civil Procedure Code the claim for recovery of the surplus profits received by the mortgagee is a relief which is a part of the suit for redemption itself for which the limitation is provided by Art 148 of the Limitation Act. Therefore the claim for recovery of the surplus collections was not barred by limitation. Art 105 of the Limitation Act applies to cases where the mortgagor has not to bring a suit for redemption but has to sue only for recovery of the surplus collections. This was an appeal against the decrees of Babu Aparajit Prasad Mukherjee Subordinate Judge 3rd Court of Zillah 24 Pergannas dated the 2nd of April 1919 affirming the decree of Babu Probodh Chandra Poy Munshi 2nd Court at Basirhat dated the 2nd of April 1918 and 10th May 1918 respectively. *PROBODH KUMAR MONDAL v. NILANBAR MONDAL*

26 C W N 121

USURIOUS INTEREST

See INTEREST I L R 42 Calc 690

USURIOUS LOANS ACT (X OF 1918)

— 3 —

See INTEREST I L R 44 Bom 775

USURY

See JURISDICTION I L R 42 Calc 116

See SOUTHERN PARGANAS.

L R 41 I A 187

UTTARAYAN

Abuab of liable to be taxed. Income derived from illegal abwabas such as Uttarayan is not agricultural income and is not exempt from assessment but must be taxed as income from whatever source derived within the meaning of s 3 of the Income Tax Act 1918. *MAHARAJA BIRENDRAJISHOI MANIKYA BAHADUR v. SECRETARY OF STATE FOR INDIA*

25 C W N 91

V**VACATION**

See LIMITATION I L R 38 Bom 656

VAKALATNAMA

S CIVIL PROCEDURE CODE (OR II PAPA 1 25 C W N 832

See CIVIL PROCEDURE CODE (1908)—

O III R 4 M Pat J J 259

O XII R 10 I L R 36 All 46

LEGAL PRACTITIONERS ACT s 13
28 C W N 589

See LIMITATION ACT 1908 s 5

I L R 33 All 392

*Civil Procedure Code (Act V of 1908) O XXIII r 1—Withdrawal application for—Pleader's authority—Vakalatnama—Plaintiff if may object to order as made on insufficient grounds. A vakalatnama executed by the plaintiffs which authorised their pleader to choose arbitrators prefer objections to awards file solenamah or rafanamah when necessary and do all necessary acts in connection with the suit that will be for our benefit gave the pleader authority to make an application under O XXIII r 1 for the withdrawal of the suit. *Quare* Whether it is open to the plaintiff to take exception to an order permitting him to withdraw a suit with liberty to bring a fresh suit on the ground that the grounds set out in the application for withdrawal were insufficient. *KALASH CHANDRA DAB v. HARADHAN CHATTERJEE* (1912)*

16 C W N 932

*Practice—High Court—Mofussil Courts—Vakalatnama acceptance of by pleaders—Endorsement if necessary—Civil Procedure Code (Act V of 1908) O III r 4—High Court General Rules and Circular Orders 1910 Vol I Ch XI s 45 (e). It is not necessary that the acceptance of a vakalatnama should be in writing but the High Court General Rules and Circular Orders 1910 Vol I Ch XI r 45 (e) should be fully complied with by the pleader who accepts the vakalatnama. *Per D CHATTERJEE J*—An appearance or act by a pleader named in the vakalatnama (without his accepting it in writing) would if allowed by the Court expressly or by implication be valid and operative. The High Court rule however was made to be followed and is a salutary rule prescribed for safeguarding the interests of litigants and should certainly be followed in the mofussil in the manner indicated by the court.*

VAKALATNAMA—contd

tion placed on the same in the answers to the several references made to this Court. It must be fully complied with by the pleader who first accepts the vakalatnama and all subsequent acceptances must be made by endorsements made in the presence of the Court or the *Sherristadar* or the Bench officer and dated, provided of course all the pleaders so accepting a vakalatnama are named in it. Courts in the mofussil must be specially careful in enforcing this rule in cases of compromise and withdrawal of cases and withdrawal of money and documents. *Per BEACHROFT J.*—There can be an acceptance by the pleader other than in writing. But if this Court has in the exercise of its powers framed certain rules which must be observed by pleaders a pleader who does not conform to those rules ought not to be heard. *Quere* Whether after the first endorsement by a pleader accepting a vakalatnama a mere endorsement of acceptance by those appearing on the strength of the original vakalatnama at subsequent stages of the case is sufficient. **MAHESWARI CHANDRA ADDY v. PANCHU MUDALI (1915)**
1 L R 43 Cal 384

Containing name of pleader who does not endorse and accept it—Whether the pleader can act—Vakalatnama authorising pleader to withdraw or give up claim of Plaintiff and to do all acts on behalf of Plaintiff—Whether Plaintiff would be bound by the pleader placing a Defendant on special oath and agreeing that his client should be bound by the answers—Indian Oaths Act (X of 1873) ss 8 and 9. One of the Plaintiffs in a suit for recovery of money died and her heirs were substituted in her place. On behalf of the original plaintiffs three pleaders A, B and C were engaged. The substituted plaintiffs presented a second vakalatnama on which only two junior pleaders B and C made a formal endorsement of acceptance though it contained the name of A also. Held that assessor pleader of the three to A was entrusted the management of the case on behalf of all the plaintiffs. The two vakalatnamas were similar in terms and authorized the pleaders amongst other things to withdraw the suit or to give up the claim of the Plaintiffs to cite and examine witnesses or to refuse to examine the same and provided that all acts done by the pleaders for the benefit of their clients would be accepted by the parties as their own acts. At the hearing the Plaintiff No. 1 was examined and he stated that he and other Plaintiffs would be bound by the answers given to certain questions by Defendant No. 2 on the said Defendant taking a special oath in the manner provided under ss 8 and 9 of the Indian Oaths Act. Thereupon the senior pleader A presented an application on behalf of all the Plaintiffs offering this special oath to Defendant No. 2 and agreeing on their behalf to be bound by the answers given by the said Defendant to the questions set forth in his application. The Defendant No. 2 was thereupon examined on special oath and he answered the questions. Upon this the Plaintiffs declined to examine any further witnesses and accordingly the suit as a whole was dismissed. On appeal the District Judge set aside the decree of the lower Court in so far as it related to Plaintiffs other than Plaintiff No. 1. Held—That the powers given to the pleader were very wide and when the vakalatnama authorized him even to withdraw the suit or to give up the claim

VAKALATNAMA—concl'd

of the plaintiffs the authority given and the words used were comprehensive enough to include also the step taken by the pleader in placing one of the defendants on special oath and agreeing that his clients should be bound by the answers given by the witness on such oath. **MEHREJAN BIBI v. SYED KAUREDDIN** 24 C W N 385

VAKIL

See LEGAL PRACTITIONERS

See PROFESSIONAL MISCONDUCT

1 L R 40 Mad 69

— duty and status of—

See HIGH COURT JURISDICTION OF
1 L R 44 Bom 418

— power to enter into compromise—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 3 AND S 96 (J)
1 L R 41 Mad 233

— Right of audience in references under s 51 of Income Tax Act—

See INCOME TAX ACT s 5
25 C W N 80

Vakil's right to appear before a Judge sitting on the Original Side of the High Court—Application to file warrant of attorney—Extraordinary Civil Jurisdiction—Civil Procedure Code (Act XIV of 1859) s 605—Civil Procedure Code (Act V of 1908) s 119 109. A vakil of the High Court applied before a Judge sitting on the Original Side of the Court claiming a right to file a warrant of attorney in respect of a suit pending before the Madras District Court, in which a rule had been issued calling upon the plaintiffs to show cause why the suit should not be transferred to the High Court in its Extraordinary Original Civil Jurisdiction. Held that having regard to the long continued course of practice during which vakils never appeared on the hearing of such applications the present application should be refused. Held further that the Civil Procedure Code of 1908 has nothing to do with a matter governed by old rules in force before 1909. In re A VAKIL'S APPLICATION (1910)
1 L R 37 Cal 853

Vakil right of audience of at hearing of application against order of Presidency Small Cause Court refusing sanction to prosecute before Division Bench appointed for the purpose. An application for sanction to prosecute the plaintiffs was rejected by the Judge of the Court of Small Causes at Calcutta who tried the suit. Against this the defendants applied to the Judge of the High Court sitting on the Original Side who remanded the matter to the trial court. On an appeal under the Letters Patent the order of remand was set aside and the application was remitted to a divisional bench appointed for the purpose for disposal. At the hearing the opposite party was represented by a vakil. Held 1st TRIVON J (CHAUDHURI J. dissenting) that the vakil had the right of audience. Per TRIVON J.—That the Presidency Small Cause Court is an inferior or subordinate court and in dealing with its judgments or orders the High Court is a superior court exercising not original but appellate or revisional jurisdiction. From this and the provisions of s 4 of the Legal Practi

VAKIL—contd

tioners Act it follows that the vakil was entitled to be heard. *Per CHAUDHURY J*—That the power of superintendence direction and control which was possessed by the Supreme Court over the Presidency Small Cause Court appertains to the Original Side of the High Court and all such powers when exercised by the Original Side are exercised in its Original Jurisdiction within the meaning of s 4 of the Legal Practitioners Act. **BUDHU LAL v CHATTU GORE (1917)**

21 C W N 654

—*Pight of audience in references under s 51 of the Income Tax Act 1918 established* **MAHARAJA BIRENDRAKISHOR MANI KYA BARADUR v SECRETARY OF STATE**

25 C W N 80

—*Suit on the Original Side of the High Court—Fees non payment of—Duty of vakil to take necessary steps in the suit—Written statement not filed in time—Refusal of vakil to file because his fees was not paid—Refusal of vakil to consent to transfer of case to another vakil—Application for change of vakil—Order of Court—Delay in filing written statement whether excusable—Rules of Practice Original Side of the High Court rule 48* A vakil engaged in a suit on the Original Side of the High Court is not entitled to refuse to take a neces ary step in the suit on the ground that his own fees had not been paid and at the same time refuse his consent to a change of vakilat to another vakil Delay in filing a written statement within the time fixed by the rules of the High Court caused by such refusal on the part of the vakil on the record was excused **MUTRU KRISHNA YACHENDRAI NURSE (1921)**

I L R 44 Mad 978

VALATDANAIPATTA

See CONTRACT ACT (IX OF 1872), s 6.

I L P NE Bom 249

VALIDITY OF WAKF

See MAHOMEDAN LAW—WAKF

L R 44 I A 21

VALUABLE CONSIDERATION

See LITIGATION I L R 43 Calc 34

VALUABLE SECURITY

See PENAL CODE ss 30 AND 471

S Pat L J 386

—*Title page of account book—Semble :* A title page in an account book containing the names of the partners and the amount of the capital contributed by each is if signed by them a valuable security within s 30 of the Penal Code **HARI CHANAY GOKAIT v GIRISH CHANDRA SADRUKHAN (1910)**

I L R 23 Calc 68

VALUATION OF APPEAL.

See APPEAL

See APPEAL TO PRIVY COUNCIL.

I L R 44 Calc 119

See CIVIL PROCEDURE CODE 1908 s 110

See COURT FEES ACT (VII OF 1873) s. 7 CL. (4) I L R 39 Mad. 25

VALUATION OF APPEAL—contd

See PRIVY COUNCIL.

14 C W N 651 872

See SUITS VALUATION ACT

—*Court fees Act (VII of 1870) s 5 Sch I Art I and Sch II, Art I cl (6)—Valuation of appeal when no amount claimed, but liability of certain properties disputed—Memo randum of appeal—Taxing Officer—Acceptance of court fee by Deputy Registrar finality of* Where the appellant in an appeal against a mortgage decree does not dispute the amount decreed but raises the question of the liability of certain properties the value of the appeal for the purpose of the court fees is the value of such properties Sch II Art 17 cl (6) of the Court fees Act (VII of 1870) has no application to such a case **Kesava rapu Ramakrishna Reddi v Kotla Kola Reddi I L R 30 Mad 96** **Bunwari Lal v Daya Sunler Master 13 C W N 815** referred to A memo randum of appeal was admitted by the Deputy Registrar of the High Court and no question was raised as to the sufficiency of the court fees At the hearing of the appeal it was objected on behalf of the respondents that the court fee was insufficient *Held* that there having been no decision under s 5 of the Act by the Taxing Officer who was the Registrar of the High Court it was open to the respondents to raise the objection at the hearing of the appeal **Kasturi Chel v Deputy Collector Bellary I L R 21 Mad 969** referred to **JEGAL PERSHAD SINGH v PABHU NARAIN JHA (1910)**

I L R 37 Calc 914

VALUATION OF LAND

See ASSESSMENT I L R 42 Bom 692

See LAND ACQUISITION

I L R 41 Calc 967

I L R 33 All 733

See MUNICIPAL ASSESSMENT

I L R 39 Calc 141

See MUNICIPALITY

I L R 46 Calc 784

See RESUMPTION OF LAND

I L R 42 Bom. 668

VALUATION OF RESIDENTIAL PROPERTY

—*Land Acquisition Act (I of 1894)—Compensation—Valuation of residential property—Elements to be considered—Evidence before Acquisition Officer—Practice* The income of a property whether actual or imaginary is no doubt one of the recognized starting points for a valuation but it is a mistake to think that it is the only element to be taken into consideration In the case of residential property to endeavour to arrive at the market value solely on the basis of an hypothetical rent may work grave injustice to the owner There are commodities which may possess a value in the market not for the return they give on capital invested but for the advantages and enjoyment which accrue from their possession Residential property—in the sense of property which a purchaser wishes to acquire for his own residence—is such a commodity The first question to determine is whether there is a demand and if there is a demand the original cost is the most important element for consideration. It is the duty of legal practitioners attending before the Acquisition Officer to assist him in arriving at a

VALUATION OF RESIDENTIAL PROPERTY

—contd

valuation by putting before him all the information and materials at their disposal *In the matter of LAND ACQUISITION ACT In the matter of GOVERNMENT AND SURNAME (1903)*

I L R 31 Bom 486

VALUATION OF SUIT

See ADMINISTRATION SUIT

I L R 44 Calc 890

See ADOPTION I L R 37 Calc 860

See APPEAL 14 C W N 343

See CIVIL PROCEDURE CODE 1908

s 115 I L R 39 All 723

O XXI R 63 I L R 38 All 73

R 60 I L R 40 All 505

See COURT FEES

See COURT FEES ACT (VII of 1870)

See MADRAS CIVIL COURTS ACT (III of 1873) ss 12 13

I L R 38 Mad 447

See MORTGAGE I L R 37 Mad 420

See PLAINT I L R 48 Calc 110

See SUITS VALUATION ACT

—For purpose of Privy Council Appeal

See CIVIL PROCEDURE CODE 1908 s 110

I L R 2 Lah 297

—suit to enforce right to share in joint family property

See CIVIL PROCEDURE CODE 1908 s 2

I L R 2 Lah 114

—suit for injunction—

See COURT FEES ACT (VII of 1870) s

7 (ii) (a) I L R 45 Bom 567

1 —Valuation in plaint contested—

Duty of court—to decide correct valuation suit for declaration method of valuation—*Suits Valuation Act (VII of 1887) s 11* If the valuation of a suit put in the plaint for the purpose of jurisdiction is contested it is the duty of the court to decide what the correct valuation is. In a suit for a declaration the value of the suit for the purpose of jurisdiction must be the value of the property in respect of which the declaration is sought. *MONIY MORAN MISSEY & GOUR CHANDRA RA*

5 Pat L J 337

2 —Partition suit—basis of value for jurisdiction The value of a suit for partition for the purpose of jurisdiction is the value of the share claimed by the plaintiff and not the value of the whole property of which partition is sought. *DUKHI SINGH & HARIBH SHAN*

s Pat L J 540

3 —Suit to set aside adoption—*Munsif jurisdiction of—Forum—Practice* According to a long standing practice a suit to set aside an adoption is for the purposes of jurisdiction incapable of valuation and it is competent to the plaintiff in such a suit to value the relief claimed, and that valuation determines the forum to decide the suit. *Allemanssa Bibi v Mahomed Hatem* I L R 31 Calc 849 commented on *Jan Mahomed Mandal v Mathar Bibi* I L R 34 Calc 352 referred to *PRABH CHANDRA DAS v DWARKA NATH GHOSE* (1910)

I L R 37 Calc 860

VALUATION OF SUIT—contd

4 —Suit for possession of land and mesne profits—*Value changed in the course of the suit*—Appeal to the District Court heard and entertained at earlier stage on the basis of original valuation—Application for assessment of the mesne profits—Total claim beyond District Court & appellate jurisdiction—Objection as to jurisdiction not taken in District Court—Objection if may be taken in High Court by way of appeal—Civil Procedure Code (I of 1908) s 99—Appeal if lies—Jurisdiction objection to transfer of—Return of memorandum of appeal—Presentation in proper Court out of time—Limitation Act (IX of 1908) s 5—Costs A suit for recovery of land with mesne profits instituted in the Court of a Subordinate Judge was originally valued at Rs 2 100 Rs 1⁰⁰ for the land and Rs 375 as the approximate amount of mesne profits for three years antecedent to the suit. The suit was decreed by the Subordinate Judge and the decree affirmed on appeal by the District Judge. Plaintiff thereafter appealed for assessment of mesne profits valuing his claim at Rs 549. The Subordinate Judge having allowed only Rs 90 the plaintiff appealed to the District Judge valuing his claim in the memorandum of appeal at Rs 27.8. His appeal was allowed whilst the defendant a cross appeal against the Subordinate Judge's decree for Rs 962 was dismissed. The defendant appealed to the High Court *inter alia* on the ground that the appeal to the District Judge was incompetent. *Held* that the real value of the suit was Rs 5415 (Rs 1725 and Rs 41 and Rs 210) and the appeal from the order of the Subordinate Judge lay to the High Court and not to the District Judge. That the defendant was not precluded from raising the question of jurisdiction on appeal by the fact that he had omitted to take exception to the fact that he had omitted to file an appeal and had District Judge's jurisdiction in his Court and had himself filed a cross objection. The principle that parties cannot by consent or by stipulation invest a Court with jurisdiction is applicable to cases wherein the jurisdiction is dependent upon the value of the subject matter in controversy. *Verrill v Petty* 16 Wallace 338 relied on. Where there is a total want of jurisdiction over the subject matter in controversy the objection cannot be waived. *In re Aylmer* 9 Q B D 933. *Jones v Owen* 5 D & L 669 18 L J Q B 3. *Mayor of London v Cox* L R 2 H L 939 relied on. That an appeal to the High Court lay against the decree made without jurisdiction by the District Judge. Where jurisdiction is usurped by a Court in passing an order against which an appeal would lie if it had been passed with jurisdiction an appeal against the order cannot be defeated on the ground that the order was made without jurisdiction. *Bhinderwar Charan v Lalpat Nath* 15 C W N 72. That the principle that no appeal lies where the Court has been constituted an arbitrator by the parties had no application to the present case. The High Court directed the memorandum of appeal to the District Judge to be returned for presentation in the High Court but as the memorandum of appeal was already in the High Court it was ordered that the memorandum be treated as presented in the High Court on that date and it was ordered under exercise by the High Court of its discretion under s 5 Limitation Act that the time between the presentation of the appeal in the District Judge's Court and the order for return made by the High

VALUATION OF SUIT—contd

Court be deducted. As the objection to jurisdiction was not raised before the lower Appellate Court each party was directed to pay his own costs **RAMJI MESSER v RAMANOR BIRGH (1912)**
127 C W N 116

5 ——— Investigation as to amount of value of subject matter of suit—Competence of Court of first instance to remit investigation of dispute to some other officer—Civil procedure Code (Act I of 1908) O XLII s 5—Practice R 6 O XLV of the Code of Civil Procedure does not empower the Court of first instance to remit the investigation as to amount or value of subject matter of suit to some other officer it must be carried out by that Court **HANSMAN JHA v BHARUJI JHA (1915)**
I L R 43 Cal 225

6 ——— Suit for declaration of title without consequential relief—Court Fees Act (VII of 1870) Sch II 17 (iii)—Suits Valuation Act (VII of 1887) s 3—Objection to jurisdiction not taken in First Court—Illegal and misconceived practice of valuing suit The plaintiff (respondent) brought a suit against the appellant for moveable and immovable property left by one V of whom he claimed to be the adopted son. The property was stated in the plaint to exceed Rs 60,000 and to be in the hands of the Collector (with the exception of a house worth Rs 250) at the instance of the appellant who claimed to be the nearest heir of the deceased. The plaint prayed for a declaration (valued at Rs 130) of the respondent's title and for an injunction (valued at Rs 5) to prevent obstruction by the appellant to the property in the respondent's possession. The appellant denied the adoption but he made no objection either in his written statement or in his memorandum of appeal to the District or the High Court to the jurisdiction of the First Class Subordinate Judge to try the suit. That Court decided the suit in favour of the respondent. From that decision the appellant appealed both to the District Judge and to the High Court and the latter appeal stood over until the former had been decided by the District Judge who on the ground that the valuation of the suit was less than Rs 5,000 reversed the decision of the District Court and made a decree in favour of the appellant but that decree was reversed on appeal to the High Court by the respondent and it was held that the appeal lay not to the District Judge but to the High Court which then heard the appellant's appeal from the original decision of the First Class Subordinate Judge and affirmed his decision. By order in Council leave was granted to the appellant for a special appeal to his Majesty in Council on the hearing of which the appellant raised the contention that the value of the subject matter of the suit was a sum not exceeding Rs 5,000 and therefore the decision of the First Class Subordinate Judge had been without jurisdiction and the appeal to the High Court was not competent. Held that the value of the subject matter of the suit exceeded Rs 5,000 and it was rightly instituted in the Court of the First Class Subordinate Judge in the exercise of his special jurisdiction and the appeal from his decision properly lay to the High Court. If any part of the Court fee payable and paid was a fixed fee under s 2 of the Court Fees Act the national value of the property could not displace its real value for the purposes of jurisdiction.

VALUATION OF SUIT—contd

The objection of the appellant to the First Class Subordinate Judge not having been raised in his Court could not be made at any subsequent stage of the suit. A practice of valuing a prayer for a declaratory decree at Rs 130 as being the value on which the fee nearest to Rs 10 would be leviable deprecated as being illegal and misconceived. It was contrary to the scheme of the Court Fees Act that there should be any valuation of such a suit **RACHAPPA SUBPAO v SHIDAPPA VENKATPAO (1918)**
I L R 43 Bom 567

VALUE OF PROPERTY

See **APPEAL TO PRIVY COUNCIL**

I L R 44 Cal 119

See **VALUATION OF LAND**

See **VALUATION OF SUIT**

VALUE PAYABLE POST

See **CIVIL PROCEDURE CODE 1908 s 20**

I L R 42 All 619

See **POST OFFICE ACT (VI of 1898) ss 35**

64 74 I L R 43 Mad 511

VARTHAMANAM (OR LETTER)

———Not stamped—Unconditional undertaking to pay—Promissory note in admissible in evidence—Evidence Act (I of 1872) s 91—Suit on original liability not maintainable *A varthamanam or letter which says "Amount of cash borrowed of you by me is Rs 300. I shall in two weeks time returning this sum of rupees three hundred and fifty with interest thereon at the rate of Rupee one per cent per month get back this letter amounts to an unconditional undertaking to repay borrowed money and is therefore a promissory note and not merely an offer to borrow or an acknowledgment of indebtedness"* **Bharata Pi Parodi v Vasudevan Namuduri I L R 27 Mad 1** distinguished. **Tirupathi Goundan v Pama Peddi I L R 21 Mad 49** doubted. When such a document is inadmissible for want of a stamp to allow a suit on one account for money had and received concealing the real contract of loan which had been reduced to the form of a document would nullify s 91 of the Indian Evidence Act (I 1872). **Pothu Peddi v Palayudasan I L R 10 Mad 94** followed. **Chinnappa Pillai v Muthuraman Chettiar 9 Mad L T 231**. **Mallaya v Ramayya 91 Mad L**. **Krishnaji v Pajmal I L R**. **Bay Nath Das v Salig Pam 10** from Doctrines of English C not to be imported into the a document. **Per SPEAKER** the word *varthamanam* will not deprive the document of promissory note if its such **MUTHU SASTRICAL v KASANKADHI (1913)**

VATAN

See **BOMBAY**
(BOMBAY ACT

See

VALUATION OF RESIDENTIAL PROPERTY

—contd

valuation by putting before him all the information and materials at their disposal *In the matter of LAND ACQUISITION ACT In the matter of GOVERNMENT AND SUKHANAND (1909)*

I L R 34 Bom 488

VALUATION OF SUIT

See ADMINISTRATION SUIT

I L R 44 Calc 890

See ADOPTION I L R 37 Calc 860

See APPEAL 14 C W N 343

See CIVIL PROCEDURE CODE 1908

s 115 I L R 40 All 723

O XXI B 63 I L R 40 All 72

R 66 I L R 40 All 505

See COURT FEES

See COURT FEES ACT (VI of 1870)

See MADRAS CIVIL COURTS ACT (III of 1873) ss 12 13

I L R 39 Mad 447

See MORTGAGE I L R 37 Mad 420

See PLAINT I L R 48 Calc 110

See SUITS VALUATION ACT

—For purpose of Privy Council Appeal

See CIVIL PROCEDURE CODE 1908 s 110

I L R 2 Lah 297

—suit to enforce right to share in joint family property

See CIVIL PROCEDURE CODE 1908 s 2

I L R 2 Lah 114

—suit for injunction—

See COURT FEES ACT (VI of 1870) s

7 (iv) (a) I L R 45 Bom 567

1 — Valuation in plaint contested—

Duty of court—to decide correct valuation suit for declaration method of valuation—*Suits Valuation Act (VII of 1887) s 11* If the valuation of a suit put in the plaint for the purpose of jurisdiction is contested it is the duty of the court to decide what the correct valuation is. In a suit for a declaration the value of the suit for the purpose of jurisdiction must be the value of the property in respect of which the declaration is sought. *MOHINI MOHAN MISSEER v GOUR CHANDRA RA*

5 Pat L J 337

—Partition suit—basis of value of, for jurisdiction. The value of a suit for partition for the purpose of jurisdiction is the value of the share claimed by the plaintiff and not the value of the whole property of which partition is sought. *DUEHI SINGH v HARINAR SHAM*

5 Pat L J 540

3 — Suit to set aside adoption—

Munsif jurisdiction of—Forum—Practice According to a long standing practice a suit to set aside an adoption is for the purposes of jurisdiction incapable of valuation and it is competent to the plaintiff in such a suit to value the relief claimed and that valuation determines the forum to decide the suit. *Allemannessa Bibi v Mahomed Haleem* I L R 31 Calc 849 commented on *Jan Mahomed Mandal v Masrah Bibi* I L R 34 Calc 352 referred to. *PRABHU CHANDRA DAS v DWARKA NATH GHOSE (1910)*

I L R 37 Calc 860

VALUATION OF SUIT—contd

4 — Suit for possession of land and mesne profits—Value changed in the course of the suit—Appeal to the District Court heard and entered at earlier stage on the basis of original valuation—Application for assessment of the mesne profits—Total claim beyond District Court's appellate jurisdiction—Objection as to jurisdiction not taken in District Court—Objection if may be taken in High Court by way of appeal—*Civil Procedure Code (Act I of 1908) s 99—Appeal of lies—Jurisdiction objection to waiver of—Return of memorandum of appeal—Presentation in proper Court out of time—Limitation Act (I of 1908) s 5—Costs* A suit for recovery of land with mesne profits instituted in the Court of a Subordinate Judge was originally valued at Rs 2100 Ps 17½ for the land and Rs 37½ as the approximate amount of mesne profits for three years antecedent to the suit. The suit was decreed by the Subordinate Judge and the decree affirmed on appeal by the District Judge. Plaintiff thereafter appealed for assessment of mesne profits valuing his claim at Rs 7540. The Subordinate Judge having allowed only Rs 96½ the plaintiff appealed to the District Judge valuing his claim in the memorandum of appeal at Rs 27 s his appeal was allowed whilst the defendant's cross appeal against the Subordinate Judge's decree for Rs 96½ was dismissed. The defendant appealed to the High Court *inter alia* on the ground that the appeal to the District Judge was incompetent. *Held* that the real value of the suit was Rs 5415 (Rs 1725 and Rs 462 and Rs 978) and the appeal from the order of the Subordinate Judge lay to the High Court and not to the District Judge. That the defendant was not precluded from raising the question of jurisdiction on appeal by the fact that he had omitted to take exception to the District Judge's jurisdiction in his Court and had himself filed a cross objection. The principle that parties cannot by consent or by stipulation invest a Court with jurisdiction is applicable to cases wherein the jurisdiction is dependent upon the value of the subject matter in controversy. *Merrill v Petty 16 Wallace 335* relied on. Where there is a total want of jurisdiction over the subject matter in controversy the objection cannot be waived. *In re Aylmer 20 Q B D 933 Jones v Owen 5 D & L 663 18 L J Q B 8 Mayor of London v Cox L P 2 H L 239* relied on. That an appeal to the High Court lay against the decree made without jurisdiction by the District Judge. Where jurisdiction is usurped by a Court in passing an order against which an appeal would lie if it had been passed with jurisdiction an appeal against the order cannot be defeated on the ground that the order was made without jurisdiction. *Binderwar, Charan v Lalpat Nath 15 C W 725* That the principle that no appeal lies where the Court has been constituted an arbitrator by the parties had no application to the present case. The High Court directed the memorandum of appeal to the District Judge to be returned for presentation in the High Court but as the memorandum of appeal was already in the High Court it was ordered that the memorandum be treated as presented in the High Court on that date and it was ordered in the exercise by the High Court of its discretion under s 5 Limitation Act that the time between the presentation of the appeal in the District Judge's Court and the order for return made by the High

VALUATION OF SUIT—contd

Court be deducted. As the objection to jurisdiction was not raised before the lower Appellate Court each party was directed to pay his own costs. **RAMJI MANSER = RAMADOR SINGH (1912)**
117 C W N 116

5 ——— Investigation as to amount of value of subject matter of suit—*Competence of Court of first instance to remit investigation of dispute to some other officer—Civil Procedure Code (Act I of 1908) O XL 1 s 5—Practice R 5 O XLV of the Code of Civil Procedure does not empower the Court of first instance to remit the investigation as to amount or value of subject matter of suit to some other officer it must be carried out by that Court.* **HANSMAN JHA v BAHUJI JHA (1915)**
I L R 43 Cal 225

6 ——— Suit for declaration of title without consequential relief—*Court Fees Act (VII of 1837) Sch II 17 (iii)—Suits Valuation Act (VII of 1837) s 8—Objection to jurisdiction not taken in First Court—Illegal and unconcerned practice of valuing suit.* The plaintiff (respondent) brought a suit against the appellant for moveable and immoveable property left by one of whom he claimed to be the adopted son. The property was stated in the plaint to exceed Rs 60,000 and to be in the hands of the Collector (with the exception of a house worth Rs 200) at the instance of the appellant who claimed to be the nearest heir of the deceased. The plaint prayed for a declaration (valued at Rs 130) of the respondent's title and for an injunction (valued at Rs 5) to prevent obstruction by the appellant to the property in the respondent's possession. The appellant denied the adoption but he made no objection either in his written statement or in his memorandum of appeal to the District or the High Court to the jurisdiction of the First Class Subordinate Judge to try the suit. That Court decided the suit in favour of the respondent. From that decision the appellant appealed both to the District Judge and to the High Court and the latter appeal stood over until the former had been decided by the District Judge who on the ground that the valuation of the suit was less than Rs 5,000 reversed the decision of the First Court and made a decree in favour of the appellant but that decree was reversed on appeal to the High Court by the respondent and it was held that the appeal lay not to the District Judge but to the High Court which then heard the appellant's appeal from the original decision of the First Class Subordinate Judge and affirmed his decision. By order in Council leave was granted to the appellant for a special appeal to his Majesty in Council on the hearing of which the appellant raised the contention that the value of the subject matter of the suit was a sum not exceeding Rs 5,000 and therefore the decision of the First Class Subordinate Judge had been without jurisdiction and the appeal to the High Court was not competent. *Held* that the value of the subject matter of the suit exceeded Rs 5,000 and it was rightly instituted in the Court of the First Class Subordinate Judge in the exercise of his special jurisdiction and the appeal from his decision properly lay to the High Court. If any part of the Court fee payable and paid was a fixed fee under s 2 of the Court Fees Act the nominal value of the property could not displace its real value for the purposes of jurisdiction.

VALUATION OF SUIT—concl'd

The objection of the appellant to the First Class Subordinate Judge not having been raised in his Court could not be made at any subsequent stage of the suit. A practice of valuing a prayer for a declaratory decree at Rs 130 as being the value on which the fee nearest to Rs 10 would be leviable deprecated as being illegal and misconceived. It was contrary to the scheme of the Court Fees Act that there should be any valuation of such a suit. **RACHAPPA SUBRAO v SHIDAPPA VENKATRAO (1918)**
I L R 42 Bom 507

VALUE OF PROPERTY

See **APPEAL TO PRIVY COUNCIL**
I L R 44 Cal 119

See **VALUATION OF LAND**

See **VALUATION OF SUIT**

VALUE PAYABLE POST

See **CIVIL PROCEDURE CODE 1908 s 20**
I L R 42 All 619

See **POST OFFICE ACT (VI of 1898) s 35**
64 74 I L R 33 Mad 511

VARTHAMANAM (OR LETTER)

——— *Not stamped—Unconditional undertaking to pay—Promissory note inadmissible in evidence—Evidence Act (I of 1872) s 91—Suit on original liability not maintainable.* A *vartthamanam* or letter which says "Amount of cash borrowed of you by me is Rs 350. I shall in two weeks time returning this sum of rupees three hundred and fifty with interest thereon at the rate of Rupee one per cent per month get back this letter amounts to an unconditional undertaking to repay borrowed money and is therefore a promissory note and not merely an offer to borrow or an acknowledgment of indebtedness." **Bharata Pusharodi v Vasudevan Aam Budri I L R 27 Vad 1** distinguished **Tiru pathi Goundan v Rama Reddi I L R 21 Mad 49** doubted. When such a document is inadmissible for want of a stamp to allow a suit as one on account for money had and received concealing the real contract of loan which had been reduced to the form of a document would nullify s 91 of the Indian Evidence Act (I of 1872). **Pathi Peddi v Valayudaman I L R 10 Mad 94** followed. **Chinnappa Pillai v Muthuraman Chettiar 9 Vad L 2 281** and **Mallaya v Ramayya 21 Mad L J 466** approved. **Krishnaji v Pajmal I L R 24 Bom 360** and **Dary Nath Das v Salga Ram 16 I C 33** dissented from. Doctrines of English Courts of Equity are not to be imported into the construction of such a document. *Per SPENCER J*—The mere use of the word *vartthamanam* in stead of promissory note will not deprive the document of its real character of promissory note if its terms show that it is such. **MUTHU ASTRIGAL v VISWANATHA PANDA RASANADHI (1913)**
I L R 38 Mad 660

VATAN

See **BOMBAY HEREDITARY OFFICES ACT (BOM ACT III of 1874) s 15**
I L R 44 Bom. 237

See **DEKKHAN AGRICULTURISTS RELIEF ACT s 2 EXPL (8)**
I L R 36 Bom. 151

VATAN—contd

See HEREDITARY OFFICES ACT (Box III of 1874)—

s 2 I L R 43 Bom. 323

ss. 4, 53 I L R 41 Bom. 677

s 11 I L R 37 Bom. 37

ss 25, 36, 63 and 64

I L R 41 Bom. 23

See HINDU LAW—INHERITANCE

I L R 34 Bom. 321

See INAM LANDS I L R 36 Bom. 272

See LIMITATION ACT 1877 s 22 23

I L R 34 Bom. 91

See LIMITATION ACT (IX of 1908) SCR I ART 152 I L R 43 Bom. 376

See RES JUDICATA

I L R 37 Bom. 224

See SANAD CONSTRUCTION OF

I L R 36 Bom. 639

See VATAN DESHMUKHI

—Mortgage of Vatan lands—

See LIMITATION ACT 1908 s 20

I L R 44 Bom. 500

1 —Regulation XI of 1827—Transfer of Property Act (I) of 1882 s 43 —Deshyat Vatan—Mortgage—Subsequent enlargement of the mortgagor's estate—Private property—Mortgagee's claim to hold the property against the mortgagor's heir A mortgages of Deshyat Vatan know that the property which was mortgaged to him was land appurtenant to an hereditary office and inalienable beyond the life time of the incumbent Subsequently to the mortgage the estate of the mortgagor was enlarged so as to be alienable in the life time of the holder After the enlargement, the mortgagee having claimed to hold the property against the heir of the mortgagor Held that the mortgagee took only such estate as the holder of the Vatan property was capable of conveying to the mortgagee at the time of the mortgage and that the mortgagee could not claim to retain the property in virtue of the mortgage after the death of the mortgagor *GANGARAI v BASWANT* (1909) I L R 34 Bom. 175

2 —Patil's Vatan—Court sale of the vatan lands in execution of decree against holder of vatan—Levy of full assessment by Collector—Character of vatan land not changed by the levy—Suit by next holder of vatan within twelve years of the death of his predecessor—Limitation The plaintiff's father held the land in dispute as patil's vatan which were sold in 1875 to the defendant at a Court sale held in execution of a decree The Collector thereupon levied full assessment on the land and assigned the assessment for remuneration for service The plaintiff's father died in 1905 In 1909 the plaintiff brought a suit against the defendant to recover possession of the land The lower Courts dismissed the suit on the grounds that the land had ceased to be vatan and that the suit was brought beyond time The plaintiff appealed Held that the land did not lose its character as vatan merely because the Collector levied full assessment and altered the mode of remuneration Held also that the plaintiff's suit was in time since on the death of the plaintiff's father in 1905 the plaintiff became

VATAN—contd

entitled to the land as the next holder of the vatan and the defendant's interest in the land as the vendee of the right title and interest of the plaintiff's father came to an end *SHIVRAM NARSINGRAO v NARAYAN KULKARNI* (1912) I L R 37 Bom. 81

3 —Suit to recover a share in the profits of vatan—Suit for money had and received—Amount of the claim under Rs 500—Small Cause Court nature—No second appeal A suit for the recovery of a share in the profits of a kulkarni vatan is a suit for money had and received by the defendant for the use of the plaintiff and the claim being under Rs 500 it was of a Small Cause nature in respect of which no second appeal lay *BRUKAJI HARI v PADHARAI* (1913) I L R 37 Bom. 700

VATANDAR

See CURATOR'S ACT 1841 s 3 4 14

I L R 34 Bom. 115

See HEREDITARY OFFICES ACT BOMBAY

ss 25 26 I L R 34 Bom. 101

s 67 I L R 36 Bom. 420

—mortgage by—

See HEREDITARY OFFICES ACT (Box

III of 1874) s 5

I L R 39 Bom. 587

—title against by adverse posses-

sion—

See HEREDITARY OFFICES ACT (Box Act

III of 1874) ss 10 AND 13

I L R 35 Bom. 146

VATANDAR BARBERS

—A Vatanbar Barber has the right to perform services as a barber on ceremonial occasions. He is entitled to recover customary fees from another barber who has acted in violation of his rights *BRAGORI QANU v BABU BALU* I L R 44 Bom. 723

VATANDAR JOSHI

—Right to officiate at marriages—Fajman—Ceremony in Pan Na Kalas Lingayat form—Claim for fees in respect of part of the ceremonial in Hindu form—Ceremony cannot be split up The question raised in this appeal was whether the ceremonial observed by Lingayets in whether the ceremonial observed by Lingayets in whether or not the village Gramopadhyas is entitled to perform the ceremony or whether the ceremony to perform the ceremony and if it is found that can be split up into parts and if it is found that some part of the ceremonial is similar to the Brahmin ritual the Gramopadhyas can in suit upon the payment of fees in respect of such part of the ceremonial as may have been performed by another Held that if the ceremony performed was not a Hindu marriage ceremony as a whole the Joshi or Gramopadhyas had no right to demand the fees *RANGAPPA v VENKANBHAT* (1916) I L R 40 Bom. 112

—Observance of non Brahmanical ceremonies—Fajman himself performing the ceremonies—Right to recover fees The defendants were non Brahmin residents of a village Defendant No 1's mother having died he with the assistance of defendant No 2 performed over the body certain non Brahmanical ceremonies No fees were paid to the defendant No 2 and the whole

VATANDAR JOSHI—contd

conduct of ceremonies was with the defendant No 1 himself. The plaintiff a Vatandar Joshi of the village having sued to recover damages for loss of his customary fees. Held that the plaintiff was not entitled to recover damages as the ceremonies performed were other than Brahmanical ceremonies and there was no ground upon which the plaintiff could lawfully exact the payment of his fees. *Vatani Krishna Joshi v Anant Panchandra II Bom H C R 6 Dinanath Abaji v Sadaniv Hari Madhavi I L P 3 Bom 9 Pajavali Shrivaya v Krishnabhat I L P 3 Bom 23* distinguished. **BALA GENCJI v BALWANT LAKHAN (1918) I L R 42 Bom 613**

VEHICLE

See BOMBAY DISTRICT POLICE ACT (BOM IV of 1890) s 61 cl (b)
I L R 41 Bom 464

VENDEE

— payment by—

See TRANSFER OF PROPERTY ACT (IV of 1882) s 60 and 91
I L R 43 Mad 310

VENDOR

— liability of—

See VENDOR AND PURCHASER
I L R 38 Calc 458

— Duty of vendee to protect vendee's title caveat emptor. Where in a suit brought by a third party against a vendor and vendee of immovable property the former admits the claimant's title and the suit is decreed upon that admission he cannot in a subsequent suit for the recovery of the purchase money paid to him by the vendee plead that the former suit was wrongly decided. *Per Imam J.*—In vernacular conveyancing the expression *gati saf* means a flawless title. **SHATTA RAM v GANGA PRASAD GORE 3 Pat L J 258**

VENDOR AND PURCHASER

See AGREEMENT **I L R 41 All 417**

See CONTRACT **I L R 38 All 325**

See CONTRACT ACT 1872 s 63
I L R 42 All 7

See LEASE **I L R 42 Bom 103**

See PREVIEW **I L R 40 Calc 140**

See SALE OF GOODS

See SALE OF IMMOVABLE PROPERTY

See SPECIFIC PERFORMANCE
I L R 43 Calc 990

See TRANSFER OF PROPERTY ACT 1882

— s 41—

— ss 41 to 57
I L R 43 All 263

— rights of—

See MORTGAGE **I L R 44 Calc 542**

— vendor's death before completion of sale—

See CONTRACT **I L R 45 Bom 434**

— Sale of property in possession of a third person—Person in possession claiming

VENDOR AND PURCHASER—contd

to be owner—The vendor a benamidar—Negligence. The plaintiff purchased a house from a person who had the title deeds of the house made out in his name. The house was in the defendant's possession who claimed to be its owner and it appeared that the plaintiff's vendor was only a benamidar for the defendant. The plaintiff sued to recover possession of the house from the defendant. Held that the plaintiff could not succeed because he omitted to make the inquiries which he was bound to make to perfect his own title and by his own negligence exposed himself to the risk of purchasing property which in reality belonged not to his vendor but to the defendant. **YANEA PACHARYA v YAMANASANI (1911) I L R 35 Bom 269**

— Mortgage—Contract of Sale—Breach by Vendor—Loss of bargain—Liability of Vendor—Transfer of Property Act (IV of 1882) s 65 (1)(g)—Measure of damage. The owners of certain immovable property which was under a mortgage entered into a contract for the sale of the property but subsequently declined to complete the sale on the ground of the existence of the mortgage. Thereafter the property was acquired under the land acquisition Act by the Local Government and the compensation paid to the owners including the statutory allowance of 15 per cent far exceeded the contract price. On a suit brought by the purchaser for damages for breach of the contract of sale. Held that the vendors were bound to convey the property free from incumbrances and the existence of the mortgage was no defence to the purchaser's action. *Engell v Fitch L R 4 Q B C 9 Day v Singleton (1899) 2 Ch 320 Jones v Gardner (1904) 1 Ch 190* referred to. *Flureau v Thornhill 2 B Bl 108 Bain v Fothergill L P 7 E & I App 108* distinguished. *Sebble*. The ruling in *Bain v Fothergill L R 7 E & I App 158* does not apply to India and there is no exception to s 73 of the Indian Contract Act in the case of sale of immovable property. **Ranchhod v. Marmohan Das I L P 32 Bom 165 and Pitamber Sundari v Cassibai I L P 11 Bom 212** referred to. The measure of damage was the difference between the contract price and the compensation allowed to the vendors excluding however the statutory allowance of 15 per cent inasmuch as the breach had occurred before the acquisition. **HARICHANDRA SAHA PARAMANICK v KRISHNA BARANA DAS (1911) I L R 38 Calc 458**

— Sale to raise funds for litigation—Transfer whilst vendor was out of possession—Agreement depending on success of litigation—Transfer of undivided share in joint ancestral property—Interest in property giving right to sue—Vendee and provider of funds made co plaintiffs. The original plaintiffs in the two suits out of which these appeals arose were in one suit the sons and in the other the grandson of the heads and managers of two distinct joint Hindu families, owners of an estate in Oudh by whom alienations of the joint ancestral property had been made in favour of the appellant whom they sued in ejectment to set aside those alienations on the ground that the managing members had no power to make them. As they required funds to enable them to prosecute the suit they entered into agreements with a third person (who was made a co plaintiff in the suits and was now respondent) to the effect

VENDOR AND PURCHASER—contd

that in the share of each of them in property he will be a co sharer of a one half share and the remaining one half share will belong to us. He will bear the entire expenses in connexion with the suit and in case of success he will be entitled to proprietary possession of the above mentioned one half share or one half of the share which may be decreed which can remain joint or be partitioned by him as he pleases. In the course of the litigation the original plaintiffs compromised the suits with the appellants and withdrew from them leaving the respondents to prosecute them alone. Held (reversing on this point the decision of the Courts in India) that the agreements (which constituted his only right to sue) conferred upon the respondent no present right to the possession of any share in the property in suit. He would only have the right to possession in case of success and success had not been achieved. Until then he was merely a co owner in a certain undivided share of the property. There was no present grant or assignment to him of any separate share of the property divided or undivided and he could not therefore maintain the suit. *Achal Prasad v. Kaum Husein Khan* I I R 27 All 271 L R 32 I A 113 distinguished. *Basant Singh v. Mahabir Prasad* (1913) I L R 35 All 273

Conveyance by executor—is beneficial owner—Construction of deed of sale—Inconsistency between recitals and operative part of deed—Omission to state expressly that he was conveying the property sold in his capacity of executor. Held (reversing the appellate decision of the High Court and restoring that of the first Court) that on the construction of a deed of sale and on the evidence in and under the circumstances of the case the title vested in an executor passed to the appellants under the deed by which he together with other vendors purported to convey all his estate right title claim and demand whatsoever in the property sold although he did not expressly state therein that he was conveying the property in his capacity as executor. The plain legal interpretation of the deed should not be allowed to be affected by speculations as to what particular rights existing in the various vendors were present to the minds of some or all of the parties to the conveyance at the date of its execution. The deed stated plainly that whatever right or title the vendors possessed was to go to support the conveyance and it was a settled rule that the meaning of a deed is to be decided by the language used interpreted in a natural sense. *Bhujaj Nopani v. Pura Sundary Dasee* (1914) L R 41 I A 189

I L R 42 Cal 56

OVER RULING

I L R 37 Cal 382

Conveyance of property by an administratrix—having a beneficial interest therein—No words of limitation in the agreement to convey specifying whether it was qua administratrix or qua beneficial owner—Principle to be applied in ascertaining in what capacity the administratrix acted. Where a person has two estates one larger and the other smaller and purports to convey the entire property without any words or limitation he must be taken to be conveying the highest estate he has that is to say if an executor having a one third personal beneficial interest in the estate purports to convey the whole of it without qual-

VENDOR AND PURCHASER—contd

ification or limitation he must be taken to be conveying in his character as executor and not in that of one having a beneficial interest only in a fraction of the whole estate purported to be conveyed. *In re Venn & Furter's Contract* [1894] 1 Ch 101 followed. No distinction can be maintained in principle between actual conveyance and agreements to convey for the purpose of applying this general rule. *Ganabai v. Sonabai* (1914) I L R 40 Bom 69

Title, proof of—Contract to give a marketable title free from all reasonable doubt—Evidence of discharge of mortgage—Recitals in release—Registration Act (III of 1817). The question in this appeal was whether a vendor had made out a marketable title free from all reasonable doubts which he had contracted to do by a written agreement dated 18th October 1913 to sell certain land in Bombay. There had been a mortgage effected on the property on 26th April 1892 in favour of two joint mortgagees by an agreement of charge duly registered under the Registration Act (III of 1817) and the deposit of the title deeds of the property with the mortgagees. To deduce a good title it became necessary to prove that the mortgage had been discharged. As proof of that fact the vendor produced a certified copy of a release dated 30th September 1902 which had been executed by only one of the joint mortgagees but which recited the death of the other mortgagee. The fact that his co mortgagee was his father and the redemption of the property from the equitable charge created by the agreement of 26th April 1892 was not one of the title deeds of the property was not produced by the vendor. Held (reversing the decisions of the Courts in India) that the recitals in the release were not evidence against the joint mortgagees and that the title contracted for had not been deduced. *Srinivasadas Bavei v. Meherbai* (1916) I L P 41 Bom 300

Sale of specific land—Vendor Evicted from part—On 10th September 1907 C D and his son M B the predecessors of defendants 3 to 8 sold to the Plaintiff 9 of defendants 3 to 8 sold to the Plaintiff 9 the property Kanals and 4 moris of land. The property comprised several plots which formed different Khazra numbers specified in the sale deed. The price paid was Rs 1000 per Kanal. Plaintiff asserted that the portion of 2 Kanal and 4 moris Defendants 1 and 2 being the true owners of the rest. Held that under the deed the vendors had sold 79 Kanals 4 moris and it was the duty of the vendors either to make good the deficiency or to pay damages having regard to s 55 of the Transfer of Property Act (II of 1882) as to the measure of damages being the price of the land at the time of eviction. *Jai Kishen Das v. Arya Prate Nidhi Sarha* I L R 1 Lab 360

VENDOR AND SUB VENDOR

Estoppel—Unpaid Vendor—Appropriation—Jute trade usage of—Pucca delivery order—Negotiability—Documents of Title—Indian Contract Act (IX of 1872) s 108—Transfer of Property Act (IV of 1882) s 137—Damages. A delivery order is recognised as a document of title under s 108 of the Contract Act and a 137 of the Transfer of Property Act and under a delivery order the transferee acquires a title to the goods to

VENDOR AND SUB VENDOR—contd

which it relates. By the usage of the jute trade in Calcutta *pucca* delivery orders are issued only on cash payment and are passed from hand to hand by endorsement and are sold and dealt with in the market as absolutely representing the goods to which they relate. On the 1st March 1909 the defendant company sold to J & Co s principals certain Hessian cloth on the terms that payments were to be made in cash in exchange for delivery order on sellers and delivery of the goods was to be given and taken ready payment against *pucca* delivery order. A *pucca* delivery order was issued on the 2nd March by the defendant company in favour of J & Co s principals or order embodying the term ready shipment. On the 3rd March J & Co requested the plaintiffs to advance money on the security of the delivery order. The plaintiffs on making enquiries at the mills were informed the delivery order was all right. On the 4th March J & Co obtained an advance of money from the plaintiffs on the pledge of the delivery order and duly endorsed the delivery order to the plaintiffs. On the same date J & Co handed the defendant company a cheque in payment of the goods comprised in the delivery order. On the 8th March the defendant company presented the cheque for payment but it was dishonoured. The defendant company thereupon refused to give delivery of the goods to the plaintiffs under the delivery order. The plaintiffs obtained an absolute release of all J & Co s interest in the delivery order and brought an action against the defendant company for delivery of the goods or their value or damages for conversion. *Held* that the defendant company were estopped from denying that cash had been paid for the goods to which the delivery order related and they could not claim to be entitled to a lien as against the plaintiffs. The defendant company were further estopped from denying that they had appropriated goods of the required quantity and description to the delivery order and that they held these goods for the plaintiffs. *Goodwin v Robert L P I A O 476* referred to *Anglo India Jute Mills Co v Osadenull (1910)* I L R 118 Calc 127

VENDOR'S LIEN

See TRANSFER OF PROPERTY ACT 1880
s 50
s 55 (f)

VENDOR'S MARK.

See TRADE MARK I L R 37 Calc 204

VENEREAL DISEASE

See DIVORCE I L R 48 Calc 283

VENUE

See CIVIL PROCEDURE CODE 1908 s 10—21

See JURISDICTION I L R 41 Calc 305
I L R 42 Calc 942

See RAILWAY COMPANY
I L R 41 All 488

— transfer of from one Court to another after decree—

See JURISDICTION I L R 37 Mad 477

VERBAL APPLICATION

See SANCTION FOR PROSECUTION

I L R 40 Calc 423

VERBAL NOTICE

See EJECTMENT I L R 40 Calc 558

VERDICT OF JURY

See CRIMINAL PROCEDURE CODE (ACT V OF 1899) ss 297 303 304

I L R 36 Mad 585

— by casting lot —

See JURY TRIAL BY

I L R 40 Calc 693

— Reference to High Court
— Power to question the jury as to their reasons for the verdict—Grounds of reference—Mere disagreement with a verdict not perverse—Interference by High Court when the verdict is not in defiance of the probabilities of the case. It is open to the Judge when he disagrees with the verdict of the jury and intends to make a reference to the High Court under s 307 of the Criminal Procedure Code to question the jury as to the reasons for their verdict. *Emperor v Annada Charan Thakur I L R 36 Calc 679* referred to. It is not in every case of doubt nor in every case in which a view different from that of the jury can be entertained on the evidence that a reference under s 307 of the Code is to be made to the High Court but when the verdict is manifestly wrong. The High Court will not interfere under s 307 in every case of doubt or in every case in which it may with propriety be said that the evidence would have warranted a different view. *Queen v Sham Bagdi I L R 40 Ap 19* approved. The High Court refused to interfere where the fact on a reasonable hypothesis were not inconsistent with the innocence of the accused and the verdict was not in defiance of the probabilities of the case. *EMPEROR v SWARNA MOYEE BISWAS (1913)* I L R 41 Calc 621

— Juror speaking to an outsider without the leave of the Court after their retirement to consider the verdict—Legality of the verdict—Criminal Procedure Code (Act V of 1899) s 300. The verdict of the jury is vitiated by the mere fact of one of them having without the leave of the Court and after their retirement to consider the same spoken to or held any communication with a person not a juror. It is not necessary for the Court to enquire into the nature of the subject matter of the conversation or communication. *Pex v Ketteridge [1915] I K B 467* referred to. *BEVI MADHAB KUNDU v EMPEROR (1918)* I L R 46 Calc 207

VERIFICATION

See CONSPIRACY TO WAGE WAR.

I L R 38 Calc 559

— of plaintiff—

See EX PARTE DECREE

I L R 43 Calc 1001

See PLAINT

VERNACULAR GOVERNMENT GAZETTE

See PREVENTIVE SALL.

I L R 41 Calc 278

VESTED INTEREST

See MAHOMEDAN LAW—TRUST

I L R 34 Bom. 604

VESTED INTEREST—contd

See TRANSFER OF PROPERTY ACT 1882
s 19

See WILL I L R 43 Bom 88

VESTED RIGHT

See LIMITATION I L R 41 Calc 1125

VESTING ORDER

See UNDISCHARGED BANKRUPT
I L R 47 Calc 961

effect of—

See INSOLVENCY I L R 42 Calc 72

VEXATIOUS CHARGE

See CRIMINAL PROCEDURE CODE (ACT
V OF 1898) s 20

I L R 37 Bom 376

VIEW OF PREMISES

See PRACTICE I L R 45 Bom 317

VILLAGE

See MADRAS ESTATES LAND ACT (I OF
1908) s 1 I L R 35 Mad 891

change of from one district to
another—

See RELIGIOUS ENDOWMENTS ACT (XX
OF 1803) I L R 39 Mad. 949

*Proprietors of who are
—Persons who do not pay land revenue but only
turns (grazing) charges s/ entitled to share on partition
of shamsiat land Persons who merely paid turns
(grazing dues) to the Government and who did not
pay any land revenue assessed on the village
were not proprietors of the village and were not
as such entitled to a share on partition of the
shamsiat land of the village BAOGA v SALEH
(1915) 19 C W N 1023*

**VILLAGE CHAUKIDARI ACT (BENG VI OF
1870)**

See CHAUKIDARI ACT

See CHAUKIDARI CHAKRAN LANDS

*Held that the words
otherwise than under a temporary settlement
in the definition of Chaukidari Chakran Lands
refer to a settlement by Government SRI RAJA
KRISHNAN BHUPATI HARI CHANDAN WAPATRA
s SECRETARY OF STATE.*

15 C W N 300

ss 1 48 to 52 58—

See CHAUKIDARI CHAKRAN LANDS
I L R 42 Calc 710

s 49—

See CHAUKIDARI CHAKRAN LAND
I L R 37 Calc 598

s 50—

See CHAUKIDARI CHAKRAN LANDS
I L R 44 Calc 841

*ss 50 51—Legal effect of resumption of
chaukidari chakran lands and subsequent transfer
thereof to the zamindars whether in such a case
the zamindar acquires a new title thereto and whether
it is incumbent on the putnidar to ask for a fresh
settlement thereof Where chaukidars chakran*

**VILLAGE CHAUKIDARI ACT (BENG VI OF
1870)—contd**

ss 50 51—contd

*land forming part of lands settled in putns was
resumed by Government under the provisions of
the Village Chaukidars Act and was subsequently
transferred to the zamindar who thereupon settled
such lands with the plaintiffs who were third
parties Held that the zamindar was not com-
petent to make a settlement with the plaintiffs
and that under the grant which the plaintiffs
obtained they had acquired no right as against
the putnidars The putnidars were not bound to
take a fresh settlement from the zamindar after
resumption Held also that the transfer of the
lands by Government subsequent to resumption
did not create a new estate in the zamindar but
the estate thus taken by him was in confirmation
and by way of continuance of his existing estate
SURENDRO MOHAN SINHA s RAJENDRA NATH
ROY (1917) 22 C W N 660*

s 51—

See CHAUKIDARI CHAKRAN LANDS
I L R 45 Calc 515 655
I L R 46 Calc 173

*ss 58 59 60 61—Determination by
a Commissioner under s 61—Fraud—Review by sub-
sequent Commissioner—Civil Suit An order by
Commissioner appointed under s 58 of the Village
Chaukidari Act determining that certain lands are
chaukidari chakran lands is final and conclusive
Such orders cannot be reviewed by a second Commis-
sioner even if the previous order was fraudulently
obtained An order under s 61 of the Village
Chaukidari Act may be set aside on proof of
fraud or of non compliance with the provisions of
the law if at all only in a regular suit by a Civil
Court SARADINDU NARAYAN ROY v BENODIN
BEHARY MONATA (1913) 18 C W N 143*

*s 60—Enquiry nature of—Notice per-
sons entitled to—Notice absence of effect of—
Commissioner's report of final and conclusive—
Reg VII of 1827 s 21 Held that s 60 of the
Village Chaukidari Chakran Act (VI of 1870 B O.) lays
down that in chaukidari chakran enquiries the
procedure shall be in accordance with Reg VII
of 1822 and the absence of notice would render
the proceedings of the Commissioner of no effect
against a person who was entitled to notice and
for such defect the order of the Commissioner would
be final and conclusive SARAT CH. RAY v SECRET-
ARY OF STATE FOR INDIA (1916) 21 C W N 238*

VILLAGE COMMUNITY

See PROFIT A PREVENDE
2 Pat L J 893

VILLAGE MAGISTRATE

information to—Effect of giving—

See BAILABLE OFFENCE
I L R 39 Mad. 1006

Power to confer—

See REGULATION XI OF 1818 (Mad).
I L R 44 Mad. 113

VILLAGE POLICE ACT

See BOMBAY VILLAGE POLICE ACT 1867

VILLAGE ROAD

Held that non joinder of parties in a suit for a declaration of right on a village Road may be fatal **HARAN SRIKIH v RAMESH CHANDRA BHATTACHARJEE**
25 C W N 249

VINCHUR COURT

See SPECIAL APPEAL

I L R 28 Bom 340

VIS MAJOR

S BOMBAY DISTRICT MUNICIPALITIES

ACT (Bo. II of 1901) ss 40 & 41

I L R 35 Bom 492

VOIDABLE CONTRACT

See PRINCIPAL AND AGENT

I L R 37 Calc 81

See TRUSTS ACT (II of 1883) s 88

I L R 43 Bom. 173

VOLUNTARY LIQUIDATION

See COMPANIES ACT 1913 s 207

I L R 39 All 407

Examination of Directors and Managers—

See COMPANIES ACT 1913 s 215

I L R 44 Bom 459

VOLUNTARILY OBSTRUCTING PUBLIC SERVANTS IN THE DISCHARGE OF PUBLIC FUNCTIONS

See PENAL CODE (ACT XLV OF 1860)

s 186

I L R. 37 Calc 122

VOLUNTARINESS

See CONFESSION I L R 40 Calc 873

VOLUNTARY PAYMENT

See MADRAS IRRIGATION CESS ACT s 2

(I L R 34 Mad 295

Suit to recover money paid under decree—Wrongful interference of defendant—Coercion—Contract Act (IX of 1872) ss 15 69 70 72 Illus (b)—Civil Procedure Code 1882 s 278 et seq—Claims to attached property—Money paid under compulsion—Money paid under process of decree against third person The appellant (plaintiff) stated in his plaint that he was the proprietor of the Delhi Cotton Mills against which the respondent Bank (defendant) had an unsatisfied decree that the respondent on 15th August 1902 applied for the attachment of the property and premises of the mills wrongfully stating that they were the property of the Delhi Cotton Mills Company attached the property on 20th August 1902 knowing that it belonged to the plaintiff and dispossessed him that he has suffered considerable damage by the said acts of the defendant and as he was by such acts practically ousted from all the machinery and mill and could not work them and the whole of such damage would be very considerable and part of it most difficult to prove and it was probable that by objection to such attachment under the Civil Procedure Code a considerable time would elapse before he could obtain an order setting aside the attachment the plaintiff was compelled to pay the balance due to the defendant under the decree

VOLUNTARY PAYMENT—contd

against the Delhi Cotton Mills Company under protest on 24th August 1902 In a suit brought for a return of the money so paid and damages for the alleged illegal acts of the defendant the defence (*inter alia*) was that the suit as framed would not lie and the case was argued on a preliminary issue the proceedings being of the nature of a demurrer *Held* (reversing the decision of the Courts in India) that the plaintiff was entitled to recover the money so paid as being an involuntary payment produced by coercion namely the wrongful interference of the defendant with his full and free enjoyment of his own property *Dulichand v Ram Kishan Singh* I L R 7 Calc 618 L R 9 I A 93 followed The fact that the sale was not inevitable in the present case was not relevant The greater or less probability of a sale taking place did not affect the *ratio decidendi* in that case which is that the payment was made under the force of the execution proceedings and that in India as in England such a payment is regarded by the law as being made under compulsion The procedure provided in the Civil Procedure Code referring to claims to attached property (s 278 *et seq*) is merely permissive being analogous to the procedure by interpleader in England But the fact that such a procedure is open to him if he chooses to adopt it in no way interfered with the plaintiff's right to take any other lawful alternative S 72 of the Contract Act (IX of 1872) is not exhaustive The meaning of the word coercion used in that section is not controlled by the definition in s 15 but is used in its general and ordinary sense The definition in s 15 is expressly inserted for the special object of applying to s 14 *et seq* to define what is the criterion whether an agreement was made by means of a consent extorted by coercion and does not control the interpretation of coercion when the word is used in other surroundings Ss 69 and 70 of the Contract Act do not refer in any way to remedies against the wrong-doer and are therefore irrelevant to the question raised in this appeal. **KANNAYA LAL v NATIONAL BANK OF INDIA LTD** (1913)
[I L R 40 Calc 598]

VOTERS

list of—

See MUNICIPAL ELECTION

I L R 40 Calc 132

I L R 39 Calc 598, 7th 4

qualifications of—

See MUNICIPAL ELECTION

I L R 45 Calc. 950

I L R 33 Calc 501

VRITTI

Recitation of Purans—

Conferring hereditary office and granting lands for performance of office—Grant of lands burdened with the performance of service—Resumability of lands Where an hereditary office *eg* of *vrutti* for the reciting of Puran is created and bestowed hereditary upon the grantee from generation to generation and lands are assigned as remuneration therefor the lands so granted are not resumable Where there is an interest in land coupled with a duty and the grant is not forthcoming so that its actual terms may be known, it must always be a matter of great difficulty and no more than a mere conjecture to decide whether the interest

VRITTI—contd

was so coupled with the duty that the latter could confidently be said to have been the sole motive and condition of the former. In such a case the interest in land is resumable on failure or refusal to perform the duty. In cases of grants burdened with service resumable for failure or refusal to perform that service the Court would ordinarily require very strong and conclusive evidence before disturbing the practice which has persisted for a long time. **MADHAWACHARYA & SHRIDHAR NARASINKA (1913)** I L R 37 Bom 409

Alienation in special cases under special conditions—Local usage and custom. As a general rule *vritti* are inalienable. They may be alienated in special cases and under special conditions provided that such alienations can be supported by local usage and custom. **Rajaram v Ganesh** I L R 23 Bom 131 referred to **MANJUNATH SUBRALABHAT & SHANKAR MANJAYA (1914)** I L R 30 Bom 26

Hereditary priest of caste—Right to office—Caste panchas preventing the priest from giving his ministrations—Suit by priest for an injunction—Laches—Civil Court—Jurisdiction. The plaintiff was an hereditary priest of Patidar Gujarathis of Koola. In 1906 the defendants who were Panch of the caste called upon the plaintiff to distribute the emoluments of the office amongst the members of the priestly family and on the plaintiff's refusal to do so issued an order to their castemen not to allow the plaintiff to officiate in his *vritti* and pay perquisites to him. In 1916 the plaintiff having sued for an injunction restraining the defendants from prohibiting plaintiff from officiating *Held* that an hereditary office of a priest was in the nature of immovable property and therefore the plaintiff would ordinarily be entitled to an injunction restraining the defendants from interfering with that immovable property. **Ghelabhai Gaurishankar v Hargovan Ramji (1911)** 36 Bom 94 relied on *Held* however that on the facts of the case the plaintiff having acquiesced in the action of the defendant's interfering with his right for over ten years had debarred himself from getting the preventive relief of injunction. **GIRJASHANKAR DASI & MURLIDHAR NARAYAN (1920)** I L R 45 Bom 234

VYAVAHARA MAYUKHA

See HINDU LAW—MITAKSHARA
I L R 40 Bom 621

See HINDU LAW—STYEDHAN
I L R 41 Bom 618

See HINDU LAW—SUCCESSION
I L R 33 Bom 120

VYAVAHARIKA

See HINDU LAW—DEBT
14 C W N 659

W**WADHWAN CIVIL STATION**

British India—Bombay Abkari Act (Bombay Act V of 1878) s 43—Bhang—Importation—Carrying bhang by rail from Wadhwan Civil Station to Viramgam. The accused was charged with having imported into the Presidency of Bombay *bhang* (an intoxicating drug) an offence

WADHDAN CIVIL STATION—contd

punishable under s 43 of the Bombay Abkari Act (Bombay Act V of 1878) inasmuch as he carried with him twenty tolas of *bhang* from Wadhwan Civil Station to Viramgam by rail. *Held* that the Civil Station at Wadhwan was not a part of British India, and the accused was guilty of the offence with which he was charged. **Triccam Panachand v The Bombay Baroda and Central India Railway Company** I L R 9 Bom 244 not followed. **Queen Empress v Abdul Latib** volad **Abdul Rahman** I L R 10 Bom 186 followed. **EMPEROR & CHIMANLAL (1912)**

I L R 37 Bom 152

WAGERING

Defence of—

See INTERROGATORIES
I L R 37 Bom 347

See PAKKI ADAT TRANSACTIONS

Defence of wagering in the case of transactions apparently genuine—Access to the defendant to prove that both parties entered into the transaction with the intention of treating it as a wager—Teji mandis transactions. The defendant dealt to a large extent in silver with the plaintiffs buying silver for forward delivery and afterwards settling the plaintiffs' claims by selling an equal quantity of silver to the plaintiffs. The plaintiffs sued the defendant for balances due on these transactions and also for moneys due on certain *teji mandis* transactions between the parties that is transactions in which the purchaser buys the option to buy or sell goods at a future date but the plaintiffs afterwards relinquished their claim in respect of the *teji mandis* transactions. *Held* that the Court will not lightly favour gambling defences. In order that a transaction apparently genuine may be set aside as a wagering transaction it must be shown that it was known to be a wager by both the parties to it who acted upon that knowledge with no intention of treating the transaction as anything but a wager. *Held* further the general rule in this country is that *teji mandis* transactions must be regarded as wagering transactions and the onus of proving that they are not such would lie heavily on the party so alleging. **Kesarichand v Merwanji** I Bom L R 63 followed. **JR 37 AN JUGGONATH & TULSIDAS DANODAR (1914)**
I L R 37 Bom 264

WAGERING CONTRACT

See CONTRACT I L R 43 All 555
22 C W N 625
I L R 33 All 555

See CONTRACT ACT (IX of 1872) s 30

See CONTRACT ACT (IX of 1872) s 30
See PAKKI ADAT TRANSACTION
I L R 39 Bom 1
I L R 45 Bom 386

Common intention to wager essential—Speculation not equivalent to wagering—Pakki Adat—Contract Act (IX of 1872) s 10—Bombay Act III of 1865 ss 1 and 2. Speculation does not necessarily involve a contract by way of wager and to constitute such a contract a common intention to wager is essential. Even if one party to a contract were a speculator who never intended to give delivery and the fact was known to the other party yet in the absence of any bargain or understanding express or implied,

WAGEPING CONTRACT—*contd*

that the goods were not to be delivered that would not convert a contract otherwise innocent into a wager nor would the mere fact that as to the greater part of the goods there was no delivery but an adjustment of claims vitiate the transaction *Palit Adat* dealing are well established as a legitimate mode of conducting commercial business in the Bombay market *Held* (reversing the decision of the appellate High Court) that the contracts in suit were not wagering contracts **BHAGWANDAS PARASHRAM v. BURJORJI RUTTOVJI (1917)** I L R 42 Bom 373

Gambling" and "Wagering" distinction between—Calcutta Police Act (Bengal) of 1866 as amended by Beng Act III of 1897) s 44—Common gaming house—Instruments of gaming—Gotton gambling not a game of contest Betting must always be on an uncertain event and betting in itself apart from stakes being laid on a particular game or instrument of gaming in a public place is not penal Playing with cards dice or money = penal if done in a public place The offence as created by the Calcutta Police Act is a purely technical one and nothing has ever been done on this side of India to include any form of betting or wagering without instruments in the offence except in the single case of rans gambling without a machine and in order to include this extraordinary legislation has had to be undertaken to make the books and registers in which rans gambling wagers are entered and all other documents containing evidence of such wagers instruments of gaming Gaming is playing in any game sport pastime or exercise lawful or unlawful for money or any other valuable thing which is staked on the result of the game i.e. which is to be lost or won according to the success or failure of the person who has staked *Reg v. Ashton 1 El & Bl 286 Lockwood v. Cooper (1903) 2 K B 498* referred to Wagering which includes betting is making a contract on an unascertained event past or future (in which the parties have no pecuniary interest other than that created by the contract) by which the parties are to gain or lose according as the uncertainty is determined one way or the other *Carlill v. The Carbolic Smoke Ball Co (1892) 1 Q B 484* referred to Cotton gambling is betting pure and simple *Hars Singh v. Jada Nandan Singh 1 L R 31 Calc 512 8 O W N 453* referred to *PAM PRATAP NEMANI v. EMPEROR (1912)*

I L R 39 Calc 988

WAGING WAR

See CONSPIRACY TO WAGE WAR

I L R 38 Calc 550

See JURY RIGHT OF TRIAL BY

I L R 37 Calc 467

See PENAL CODE ss 107—121A.

I L R 34 Bom 394

See PENAL CODE ss 101A 123

1B N W N 1105

WAIVER

See BOND

I L R 43 All 33

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 86 I L R 38 Mad 675

See CONTRACT ACT 1879

s 65 s Pat. L J 520

ss 56 (a) & I L R 40 Bom. 570

WAIVER—*contd*

See CROSS EXAMINATION

I L R 37 Calc 236

See EJECTMENT I L R 45 Calc 469

See ESTOPPEL

See INSOLVENCY I L R 47 Calc 56

See INSTALLMENTS

I L P 35 Bom 511

See JURY RIGHT OF TRIAL BY

I L R 37 Calc 467

See LANDLORD AND TENANT

I L R 34 Mad 161

I L R 37 Calc 449

I L R 46 Calc 552 1079

See LESSOR AND LESSEE

I L R 38 Mad 445

See LIMITATION I L R 38 Mad 374

See MADRAS CIVIL COURTS ACT (III OF 1873) s 17 I L R 38 Mad 531

See MAHOMEDAN LAW—PRE EMPTION

I L R 41 Calc 943

See MORTGAGE I L R 47 Calc 770

See NOTICE I L R 40 Calc 503

See RESUMPTION I L R 39 Bom 279

—Evidence of required—

See SALE I L R 43 Calc 780

—acceptance of rent—

See BOMBAY RENT (WAR RESTRICTIONS) ACT II OF 1918 ss 3 9 AND 12

I L R 35 Bom 535

—by conduct—

See PRE EMPTION I L R 1 Lah 51

—of claim to interest—

See BOND I L R 43 All 33

—of objection to jurisdiction of

Court—

See CIVIL PROCEDURE CODE 1908 s 105

I L R 1 Lah 54

—of notice—

See COMMON CARRIERS

I L R 38 Calc 80

—of right of priority in favour of second mortgagee—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s. 59 I L R 37 All 474

—on behalf of minor—

See MORTGAGE I L R 37 Calc 897

—Ejectment suit.—With claim for rent whether constitutes waiver The institution of a suit in ejectment is an unequivocal declaration of an intention to determine the tenancy The mere fact that after service of notice to quit the plaintiffs claimed arrears of rent due prior to the ejectment proceedings does not constitute a waiver of the notice to quit But where future rent is claimed and accepted after the notice to quit has been served and the ejectment proceedings instituted then the claim and acceptance of future rent amounts to waiver of the initial step and the proceedings upon which the right to eject depend.

SHAH WALI AHMAD v. MUHAMMAD HUSAIN BHOAM

2 Pat L J 565

WAIVER—contd

Enhancement of rent—Bengal Tenancy Act (VIII of 1885) ss 43 103—Chur lands—Right of Occupancy A took a lease of a certain Government *khaz mehal* and executed a *kabuliat* in favour of the Collector by which he (1) covenanted not to raise the rents or rayats beyond the amounts mentioned in the settlement *jamabandi*. The tenants, however subsequently agreed to pay rent at an enhanced rate on the ground that the fertility of the land had been increased. Upon a suit for arrears of rent at the enhanced rate against the tenants the defence was that 1 was bound by the *kabuliat* executed in favour of the Collector and as such he was not entitled to a decree at the rate claimed. *Held* that inasmuch as the tenants voluntarily agreed to an enhancement of rent they deliberately waived the benefit of the said covenant and they could not impeach the validity of their own agreement on this particular ground. *Zamir Mandal v Gopi Sundari Das* I L R 32 Cal 463 (note) referred to. Under s 180 of the Bengal Tenancy Act a rayat holding a *chur* land but who has not acquired a right of occupancy is liable to pay such rent for his holding as may be agreed on between him and his landlord irrespective of the provisions of s 43 of the Act. *JAHAN DAR BAKSH MALLIK v RAM LAL HAZRAN* (1910) I L R 37 Cal 449

Instalment decrees—Default—Instalments subsequently paid with interest accepted—Waiver—Question of law—Second appeal An instalment decree provided that on the failure of the judgment debtor to pay any instalment the decree holders would be entitled to realise the whole sum with interest at 12 per cent per annum by the sale of the mortgaged property. Default was made in the payment of one of the instalments and an application for execution was made but was dismissed for non prosecution. Subsequently the judgment debtors by petition put in the sum due on the defaulted instalment with interest and also the sum due on the next instalment specifying the instalments for which the different sums were paid. The decree holder withdrew the money. Several other instalments specifying the instalment in respect of which each deposit was made were similarly deposited and withdrawn. On an application by the decree holder for execution of the entire decree with interest at 12 per cent from the date of the default crediting the amounts received as merely part payments on account of the decretal debt. *Held* that the circumstances constituted a waiver of the default and it was no longer open to the decree holder to execute the decree on account of the default. The payments made were payments on account of instalments and not part payments of the entire decree. Two useful tests may be applied to determine whether there has been an actual waiver: (1) whether the payment subsequently accepted may be looked upon as a valuable consideration for the renunciation of the decree holder's rights (2) whether the decree holder has by his conduct intentionally caused the judgment debtors to believe that he had renounced his right. The question of waiver is a mixed question of law and fact and the High Court can interfere on this ground in second appeal. *FASLY KHAN v ABDUL WAHAB SIKDAR* (1910) 15 C W N 10

Waiver what is a waiver must be an intentional act with knowledge. A person cannot be barred of his remedy on the ground of waiver unless at the time of the alleged

WAIVER—contd

waiver he is shown to have been fully cognizant of his right and of the facts of the case. *SYAMA CHARAN BAISYA v PRATULLA SUNDARI CUPPA* (1915) 19 C W N 852

Letters Patent 1865 cl 12—Estoppel Where the plaintiff in his plaint alleges that portion of the cause of action arises outside the local limits of the Ordinary Original Civil Jurisdiction of this Court and fails to take leave under cl 1st of the Letters Patent, the defendant may by appearing and pleading waive the objection to the jurisdiction. Where however the plaintiff alleges that the whole cause of action arises within the local limits of the Ordinary Original Civil Jurisdiction thus setting up a complete jurisdiction in the Court and the defendant is called upon to plead to this and does plead but it turns out at the trial that the Court had not complete jurisdiction as portion of the cause of action arose within and portion outside the local limits of the Ordinary Original Civil Jurisdiction the defendant cannot be held bound on the doctrine of estoppel on the ground that he waived the objection of want of jurisdiction. *King v Secretary of State for India* I L P 35 Cal 394 and *Surban v Weiner* 17 T L R 491 referred to. *SHAMA KANTA CHATTERJI AND COMPANY v KUSUM KUMARI* (1916) I L R 44 Cal 10

Decree for ejectment—Suit for rent falling due before right to eject accrued whether constitutes waiver On the 8th April 1911 the landlords obtained a decree against the tenant for arrears of rent for the years 1314 to 1317 ams. The decree directed that if the arrears were not paid by the 8th May 1911 the tenant should be ejected. The decree was executed on the 13th July 1911. On the 30th April 1911 the landlords also instituted a suit for rent for the year 1318 (i.e. September 1910 to September 1911) which was payable in advance. The tenant had deposited part of the rent in Court on the 10th April 1911. On the 29th January 1910 the tenant instituted the present suit for recovery of possession of the land from which he had been ejected on the ground that the suit instituted on the 30th April 1911 and the proceedings on the matter therewith amounted to a waiver of the landlords' right to eject. *Held* that the institution of the suit on the 30th April 1911 coupled with the acceptance of the money deposited for the year 1318 constituted a complete waiver and estopped the landlords from proceeding in ejectment in execution of the decree of the 8th April 1911. *Quære* Whether the tenant having failed to plead waiver in the proceedings in execution of the ejectment decree was entitled to plead it in a separate suit? *MIDNAPORE FARMING CO LTD v JOYRAM SANKAL* 1 Pat L J 185

WAJIB UL-ARZ

See CIVIL PROCEDURE CODE 183 54
584 585 I L R 31 All 579

See CESTON (SUCCESSION)
I L R 1 Lab 234

See EVIDENCE I L R 40 All 86

See GROVE LAND I L R 42 All 634

See HINDU LAW (CESTON)
I L R 31 All 363

WAJIB UL-ARZ—contd

See LETTERS PATENT CL 10

I L R 34 All 15

See LANDLORD AND TENANT

I L R 34 All 545

See MAHOMEDAN LAW

See PENSIONS ACT (XIII OF 1871)

ss 3 4 6 AND 9

I L R 93 All 580

See PRE EMPTION—CUSTOM—RIGHT OF
PRE EMPTION—WAJIB UL ARZ

value of—

See CUSTOM (ADOPTION)

I L R 2 Lah 346

See OUDH ESTATES ACT (I OF 1869) ss

8 10

I L R 38 All 552

Contract or custom.—The pre-emptive clause of a *wajib ul arz* ran as follows—*Koi muqadma huj shafa ka dair nahin hua atwanda ko jari rakha huj shafa ka ham ko man ur hai*. Held on a construction of the *wajib ul arz* that these words did not denote a record of a custom but merely of a contract to take effect in the future. *Ta addug Husain Khan v Ali Husain Khan* 41 Weekly Notes (1908) 121 followed. *Hazari Lal v Durga Prasad* I L P 30 All 157 distinguished. *KANCHAN SINGH v MANI PANDI* (1910) I L R 32 All 201

Value of as evidence as record of traditions. A *wajib ul arz* in a village administration paper prepared by a village official in which are recorded the statements of persons possessing interests in the village relative to existing rights and customs. As such they are of considerable value in the determination of such rights and customs. But statements which merely narrate traditions and purport to give the history of devolution in certain families not even of the narrators stand in no better position than any other tradition. *MUFTAZA HUSAIN KHAN v MAHOMED YAH ALI KHAN* (1916) 21 C W N 410

I L R 38 All 552

Authority of as evidence.—Its importance in settlement proceedings.—Presumption as to its correctness & until successfully impugned though not a document creating a title.—Dispute between proprietors of two adjacent villages as to the ownership of the common lands.—Limitation. The authority of a *wajib ul arz* or record of rights which is described by Sir Henry Maine in his *Village Communities* page 7, as a detailed statement of all rights in land drawn up periodically by the functionaries employed in settling the claims of the Government to their shares of the rental and as the most important object of the Settlement Operations not second even to the adjustment of Government revenue is universally recognised. *Lal v Yuridhar* I L P 33 All 488. I L R 33 I A 31 referred to. Though a *wajib ul arz* does not create a title it gives rise to a presumption in its support which prevails until its correctness is successfully impugned. In a dispute between the proprietors of two villages Mouzah Dirakki and Mouzah Sher Ali of which the former belonged to the plaintiffs and the latter to the defendants as to the ownership of village common lands measuring upwards of 7989 acres the plaintiffs contended that these lands belonged

WAJIB UL ARZ—contd

to them jointly with the defendants in proprietary right by virtue of the ownership of the two villages and the defendants maintained that they were the exclusive proprietors. Their Lordships held that the final determination of the case depended on the interpretation to be placed on the *wajib ul arz* in which the final result of the settlement proceedings was recorded and on that document together with the facts of the case the plaintiffs claim to joint ownership failed. The statements in the other documentary evidence adduced were ambiguous and not immutable. The laches of the plaintiffs in failing to assert their claim after it had been repeatedly and consistently challenged as long ago as 1883 was a circumstance among others very unfavourable for its success apart from the bar of limitation. *DAKAS KHAN v CHULAM KASIM KHAN* (1918) I L R 45 Cal 793

WAKF

See CIVIL PROCEDURE CODE 1882 ss 30 AND 39

I L R 33 All 660

See CIVIL PROCEDURE CODE 1908—

s 66

I L P 43 All 416

s 92

I L R 40 Bom 541

I L P 35 All 88 459

I L R 37 All 86

SCH II AND s 92

I L R 32 All 503

See KHOJA MAHOMEDANS

I L R 80 Bom 214

See LIMITATION ACT 187 SCH II ART 123

I L R 33 Bom 111

See MAHOMEDAN LAW—ENDOWMENT

See MAHOMEDAN LAW—WAKF

See MAHOMEDAN LAW—WORSHIP

I L R 35 All 197

See THE ALMAH WAKF VALIDATING ACT (VI OF 1913) s 3

I L P 39 Bom 563

See FELICIOUS ENDOWMENT

See SPECIFIC RELIEF ACT (I OF 18 79)

s 4

I L R 32 All 631

See WAKF VALIDITY OF

See WAKF

by dedication or user—

See MAHOMEDAN LAW—ENDOWMENT

I L R 80 Cal 297

See MAHOMEDAN LAW—WAKF

I L R 30 All 88

See WAKF

See WAKF

23 C W N 138

contingent dedication—

See MAHOMEDAN LAW—WAKF

I L R 1 Lah 317

delivery of possession whether essential—

See MAHOMEDAN LAW (WAKF)

I L R 80 All 487

illusory gift to charity—

See MAHOMEDAN LAW—WAKF

21 C W N 306

WAKE—confd

principle of—

See MAHOMEDAN LAW—ENDOWMENT

I L R 47 Calc 866

_____ Residue of income retained by
settler effect of—

See PELIGIOUS ENDOWMENT

6 Pat L J 218

_____ suit for declaration of—

See CIVIL PROCEDURE CODE (1908) s 11

I L R 36 All 424

_____ validity of—

See MAHOMEDAN LAW—WAKF

I L R 42 Calc 933

See P ■ JUDICAT.

I L R 44 Calc 698

Settlement in perpetuity for aggrandisement of the family if valid.—*Deed of agreement* subsequently entered into between *mutawalli* and members of the family regulating payment of allowances to them under such deed of *wakf* if enforceable.—*Musliman Wakf Validating Act (VI of 1913)* if a declaratory statute having retrospective effect. A *wakf* was created for the maintenance of the members of the family of the settlor generation after generation and for the performance of worldly and religious affairs and of charitable acts. A suit was subsequently brought against the *mutawalli* by some members of the family which was however withdrawn on the execution of a deed of agreement between the parties specifying the amount of monthly allowance payable to each member of the family out of the income of the *wakf*. The beneficiaries sued to recover arrears of maintenance on the basis of this agreement. *Held*.—That the gift to charity being illusory and the chief if not the sole object of the settlor being to create a settlement in perpetuity for the aggrandisement of the family the *wakf* was invalid according to the decisions of the Judicial Committee. The test to be applied in cases of this character is whether there is a substantial dedication of the property to charitable uses at some period of time or other. *Abdul Fata Mahmud v. Pasamoy* L. R. 22 1 A 76 s. c. 1 L. R. 22 Cal. 619 (1894). *Muyibunnissa v. Abdur Rahim* L. R. 28 1 A 15 s. c. 1 L. R. 93 All. 223 5 C. W. N. 177 (1900) and *Mahomed Manwar Ali v. Razvi Bibi* L. R. 32 1 A 86 s. c. 1 L. R. 27 All. 300 9 C. W. N. 625 (1905). That the Musliman Wakf Validating Act 1913 is not even in terms a purely declaratory statute in reality it effects a vital alteration in the law and it is not retrospective in operation and *wakfs* invalid in their inception have not been validated by this legislation. Statutes which are properly of a merely declaratory character have a retrospective effect because if the statute is in its nature declaratory the argument that it must not be so construed as to take away pre-existing rights ceases to be applicable. The nature of the statute must be determined from its provisions and the mere fact that the expression it is declared has been used is by no means conclusive as to the true character of the legislation. That the *wakf* being pronounced to be invalid the entire scheme relating thereto embodied in the agreement must of necessity be of no avail. The assertion of the parties or of their representatives cannot validate

WAKE—*cont'd*

illegal *walifs* and the Court cannot be utilised for the enforcement of a scheme elaborately devised to carry out a plan of family aggrandisement in contravention of the whole policy of the law. That the agreement provided for a succession of allowances the amount of which could be varied by the family council from generation to generation in favour of unborn persons and a scheme for family allowances so framed apart from a scheme of valid *walif* is not recognised by Mahomedan law. NAWAB KHAJER HABIBULLAH SAEED v. KHAJER SOLEMAN QUADEF 24 W N 15

—Mahomedan Law—Private trust
—Gift—Essential elements for validity—Power of

In 1903 a Shia Mahomedan by deed conveyed certain immovable property to himself and other trustees for himself for life and after his death for the payment of annuities to his widow and daughter and the balance to certain charities. Further clauses provided that on the death of his widow her annuity was to go to certain other charities and that on the death of his daughter a lump sum was to be given to her son. A further proviso reserved power to the settlor at any time to revoke all or any of the above trusts. In 1908 he revoked the trust and executed a mortgage of the property. In 1909 he died and receivers of his estate were appointed. His daughter then filed a suit for a declaration *inter alia* that the revocation and subsequent mortgage were invalid and that the original trusts still subsisted. Held that the conveyance in 1907 was invalid. Looked at from the standpoint of the Mahomedan law giver a private trust would be no more than a private gift *inter vivos* through the medium of the third party and therefore subject to all the conditions of a valid gift but *quære* if other private trusts were known to Mahomedan law. *Banoo Begum v Mir Abed Ali* 1 L R 30 Bom 172 discussed and distinguished *JANABAI v R. D. SETHNA* (1910) 1 L R 34 Bom 804.

R D SETHNA (1910) Y L R SETHNA

Possession—Relations of—Mutawalli
 —Inheritance—Invalidity of wakf—Evidence
 —Prescription—Prescription—Prescription

with beneficiaries Act (I of 1870) ss 115 and 116—Estate of S A under will—Trust—Limitation Act (IX of 1908) s 10—Life estate—Shaffer Mahomedans On 16th June 1891 F a Shaffer Mahomedan lady executed a deed in the nature of a will whereby she settled certain immovable property in trust for her grand daughter M for life and thereafter on her de cendants from generation to generation and in default thereof on the settlor's husband's relatives and their descendants from generation to generation in perpetuity and in default with an ultimate trust for the education of Mahomedan youth The settlor's husband was appointed first trustee or Mutawalis and provision was made in the deed for a due succession of Mutawalis The first Mutawali and after his death his executors acting as Mutawalis during the minority of his eldest son S A paid the rents and profits to M and after her death to her son M H and her daughter A in equal shares In 1897 S A attained his majority and took over charge as Mutawali and in or about 1893 handed over charge of the property to the beneficiary retaining possession of the tract deed M H died in 1892 leaving one son M A who in his turn shared the rents with A until her death in 1901 when he took the whole rent he died in 1906 leaving him surviving his mother and two widows In 1906 the mother and the

WAKF—contd.

widow being in possession filed a suit praying for a declaration that the trust deed was void and that they with certain others were entitled to the property. The trust deed was held to be invalid and a concord was eventually passed to the effect that the property should be divided subject to a small provision for a certain charitable purpose in equal shares between the Mutawali on the one hand and the plaintiffs and others on the other. The present plaintiff however who was one of the parties to the above proceedings proved to have been insane at the time and subsequently having regained his sanity filed the present suit claiming the same relief as that claimed by the plaintiffs in the suit in 1906 and upon the same ground namely that M was entitled absolutely to the settled property. The suit having been dismissed the plaintiff appealed and the heirs of the original settlor F were brought on the record under cover of the Administrator General who took out letters of administration to F's estate and consented to be bound by all proceedings. Held that the trust deed was void as being an attempt to create a perpetuity in the nature of a family settlement under the guise of a wakfnama. Held further that the claimant M had obtained possession of the property from the Mutawali in the guise of beneficiaries and on the footing that the wakfnama was a valid document and thus under ss 115 and 116 of the Evidence Act (I of 1872) could not be permitted to deny that the person from whom the possession was claimed had a title to such possession when it was handed over. *In re Anderson (1905) 2 Ch 70* distinguished. Held therefore that for the purposes of this suit as between the parties other than the administrator of F's estate the wakfnama must be considered as a valid document and thus when the limitations in favour of M's descendants came to an end on the death of M in 1906 the remainder for the benefit of the settlor's husband's descendants took effect and the present Mutawali (a direct descendant of the settlor's husband) was entitled to the property both as trustee and as beneficiary. Held finally that the administrator of F's estate could only claim under a resulting trust in favour of the settlor and as such trust did not in the circumstances fall within the scope of s 10 of the Limitation Act (I of 1908) the claim had long been barred. *See Doorgamoney Doss v Doorgamoney Doss* 1 L R 4 Cal 455 and *Unduraitanias v Cursondas* 1 L R 21 Bom 646 discussed and followed. *See expressed in Cassa mally Jayapthas v Sir Gersimthoy Ebrahim* 1 L R 36 Bom 214 not approved. *Quare* Whether the principle that Mahomedan law does not recognize life estates applies to Shaffer Mahomedan? *MAHOMED ISFAHIM v ABDUL LATIFF (1912)*

[1 L R 37 Bom 447]

Application to be appointed Mutawali
—District Judge whether has powers of a Kazi—Petitioner whether to proceed by application or by suit—Civil Procedure Code (Act I of 1908). An application was made by a person to the District Judge to be appointed Mutawali of an wakf property but the District Judge refused to deal with the matter on application on the ground that the petitioner's only course was to proceed by suit under s 92 of the Civil Procedure Code. Held that it may be conceded that the District Judge has the powers of a Kazi but it does not neces-

WAKF—contd.

sarily follow that the petitioner is entitled to proceed by application or that the District Judge has no power to relegate her to a suit. *JAMILA KHATUN v ABDUL JALIL MIRA (1918)*

23 C W N 138

Res Judicata—Precedence due to previous decision of High Court as authority—Mussalman Wakf Validating Act (I of 1913) title preamble and s 3 whether retrospective or prospective only—Privy Council decisions and pronouncements on Indian Legislature. Where there had been a previous adjudication by the High Court on the invalidity of a certain wakf based on legal grounds (in a subsequent suit between the same parties). Held that (i) ordinarily that Court should feel bound not on the principle of *res judicata* but out of the deference which was due to a previous decision of the High Court to follow that authority and (ii) that the previous conclusive decision had not been affected by the remedial operation of the Mussalman Wakf Validating Act of 1913 which was not retrospective in effect but prospective only. *Palamunssa Bibi v Shaiikh Munir Jan* 19 C W N 76 approved. It is doubtful whether the Governor General in Council would make a legislative pronouncement that the repeated decisions of the Privy Council were erroneous though from its knowledge of the requirements of the country the Legislature may think that in future the law should be otherwise administered. *MAHOMED BUKH MAUMDAR v DEWAN AJMAN REJA (1915)*

1 L R 33 Cal 158

Mutawali—Right of inheritance—Although a descendant of the founder of a wakf property has a preferential claim to the office of the Mutawali he does not become Mutawali by right of inheritance but has to be appointed such by the Qadi who may supersede him if he is not so qualified—No right of inheritance attaches to a religious endowment. *ATTIYATZ SA LIZI v ABDUL SOBHAN*

1 L R 43 Cal 467

Suit by mutawali to recover possession of wakf property mortgaged by previous mutawali—Limitation Act (I of 1908) Art 133—Date from which limitation to be reckoned—Date of transfer or date of delivery of possession under the transfer—Nature of suit within the scope of article—Mutawali appointment of stranger as—Transfer of wakf property by mutawali transference without notice of trust if protected—Registration if sufficient notice of trust created by registered document—*Res judicata*. The founder of a wakf appointed his sister and brother and the male descendants of the latter mutawalis in succession after him. On his death the sister who was the then mutawali and the brother regreting themselves to be the secular heirs of their father and the founder joined in executing a mortgage of the wakf property. The mortgage was ultimately foreclosed and possession was delivered by the Court to the Defendant who was the assignee of the mortgage decree. Thereafter on a suit being brought under s 92 C P the District Judge removed the sister from the office of mutawali and no one of the founder's family being available appointed the Plaintiff a stranger. Within 12 years from the delivery of possession by the Court under the mortgage decree the Plaintiff sued the

WAKF—contd.]

Defendant to recover the property. *Held*—That the appointment of the Plaintiff as *mutawalli* was entirely within the decision of the District Judge as Kazi and in the circumstances of the case it was not without Jurisdiction although the Plaintiff was a stranger. *Ismail Arief v Moola Dawood* L R 43 I A 127 s c I L R 43 Calc 1085 20 C W N 1118 (1916) referred to. *Held* on a consideration of the *wakfnama*—That as there was a substantial dedication of the corpus and income to charitable uses within the test laid down by the Privy Council in *Mujibunnissa v Abdul Rahim* L R 28 I A 15 s c 5 C W N 177 (1900) and *Muta Ramanadan v Iain Levas* L R 44 I A 21 s c I L R 40 Mad 116 21 C W N 621 (1916) the *wakf* was not invalid as being illusory. *Held* further—That in the mortgage suit the sister of the founder who executed the mortgage was not in the language of a *li C P C* litigating under the same title as that under which the Plaintiff was litigating for she was sued in her secular capacity not as trustee and that suit did not create the bar of *res judicata*. *Held per RICHARDSON J*—That the suit was governed by Art 134 of the Limitation Act and was barred by limitation having been brought more than 12 years from the date of the mortgage from which time limitation began to run and not from the date when the Defendant obtained possession of the property. *Per SHAMSUL HUDA J*—That the onus to prove that the suit was within time was on the Plaintiff who failed to discharge that onus and show that the mortgage was not followed by possession and in that view of the case the suit was barred by limitation under Art 134 of the Limitation Act. *Per RICHARDSON J*—A suit to which Art 134 applies must be a suit to recover possession. The Plaintiff must be out of possession and the Defendant in possession. The transfers chiefly contemplated are apparently transfers for value in excess of the limited powers of the trustee or mortgagee. In terms the article would apply to a transfer within those powers but in such a case the true defence to a suit to recover possession would be title and not limitation though in some cases limitation might be useful as an alternative defence. The date of the transfer is the date on which the property or the title was transferred by the transferor to the transferee and where the transfer is effected by a registered instrument that date is the date of the instrument. To construe the date of the transfer as the date on which the transfer is followed by possession is to import into the article words which are not there. Where the possession of the trustee is that of a mere manager under a duly constituted trust it is immaterial under the present law whether the transferee takes with or without notice of the trust. Under Art 134 of the present Limitation Act the transferee without notice and the transferee with notice are on the same footing. Where the transferee is a mere manager he is not the ostensible owner nor has the transferee anything corresponding to the English legal estate to set over against the prior equity of the beneficial owner the legal ownership and the prior equity are generally speaking both in the beneficiary. The element of hardship in the case of a transferee without notice is minimized by the system of registration. The *mutawalli* of a *wakf* estate is not the ostensible owner of the estate but a

WAKF—concld

mere manager and in the case of a public charitable endowment the legal ownership is in the Divine Being or in the charity created in His name. A transfer by a *mutawalli* who assumes to deal with the trust property as if he were the true owner in breach of her duty and in fraud of the trust reposed in him is *ultra vires* and may be avoided by timely proceedings properly taken for the purpose. The vice in the transaction is title whether he takes with or without notice of the trust can only be cured by lapse of time. *NARAIN DAS v KAZI ABDUR RAHIM* 24 C W N 690

WAKF VALIDATING ACT (VI OF 1913)

If would operate retrospectively The Wakf Validating Act (VI of 1913) has no retrospective effect. *PANIMI v A BISI* : *SHAIKH MANIK JAN* (1914) 19 C W N 78

3-Act if operates retrospectively The operation of the Mussalman Wakf Validating Act of 1913 is prospective and not retrospective and it did not affect a previous conclusive decision of the Court declaring a *wakf* to be invalid. *MARUMUD BAKTH MAJUMDAR v DEWAN AJMOU RAJA* (1915) 19 C W N 987

Mutawalli—Matters

connected with *wakfs* being religious matters—*D* s c nant of the founder—Preferential claim to *mutawalliship*—No right of inheritance—*Qadi* under the Mahomedan law exercising jurisdiction in relations to *wakfs*—His equivalent in the British Indian system of law—Position of the Subordinate Judge—District Judge jurisdiction of. Though a descendant of the founder of a *wakf* property has a preferential claim to the office of the *mutawalli* he does not become *mutawalli* by right of inheritance but has to be appointed such by the *Qadi* who may supersede him if he is not so qualified. No right of inheritance attaches to a religious endowment. *Majeed Salimullah v Abdul Khair M. Yousaf* I I R 37 Calc 263 *Sayad Abdulla v Sayad Zain* I I R 13 Bom 555 *Mookhummud Sadiq v Mookhummud Ali* 1 Mac Sel Rep 29 and *Shahur Eanoor v Aga Mohamed* L I 31 I A 40 I L P 4 Calc 118 followed. *Shama Charan v Adil Kabir* 3 C W N 153 *In re Nooratunnesa* I L P 3 Calc 36 Calc 21 *In re Haima Khalun* I L R 3 Calc 870 *Amas Chand v Golam Hassan* I L R 1 Bom 633 *H C R 18 Jamal v Jamal* I L R 1 Bom 633 *Daud Sha v Ismail Sha* I L R 3 Bom 19 *Baba v Nassaryddin* I I R 18 Bom 103 *A C v Abdul Kadir* I L R 18 Bom 401 *Kudratull v Mohini Mohan* 4 B L R 134 *Mahammed v Ahmed Bhai* I L R 25 Bom 37 *Sayid Ali v Ali Jan* I L R 35 All 98 *Muhammad Abdul Majid v Ahmed Saeed* II All L J 633 referred to. Under the Mahomedan law that *Qadi* alone was competent to exercise authority in his *wakfs* who was so expressly authorized in his letters patent. There was some difference of opinion upon the question whether such express authority was needed where a person was explicitly appointed the Chief *Qadi* but even here the balance of opinion of jurists favours the view that power should be expressly conferred on the Chief *Qadi* to validate the administration of *wakfs* by him. There is also authority to show that the supreme authority in the State is whom the *Qadi*

WAKE VALIDATING ACT (VI OF 1913)— contd

is appointed, need not be a Mahomedan and although there is some divergence of opinion there is also authority to show that the office of Qadi may be held by a non Muslim for the decision of disputes between non Muslims under Muslim protection. As this is a matter regarding religious usages and institutions within the meaning of s 10 of Regulation IV of 1793 the rights of the parties must be determined with regard to the provisions of the Mahomedan law on the subject. It follows accordingly that a Subordinate Judge who has not been expressly authorised by the Government to exercise functions in connection with the administration of *wakfs* is not competent to act in that behalf. Whether a District Judge has implied authority to exercise the functions performed by a Qadi under the Mahomedan law is doubtful. In respect of *wakfs* which may be described as trusts created for public purposes of a religious nature within the meaning of sub s (1) of s 9 of the Civil Procedure Code 1908 the District Judge may be assumed to have been authorised to discharge the functions of a Qadi. The real difficulty arises in the case of private *wakfs*. It is desirable that the Local Government should to cover such cases authorise either District Judges or Subordinate Judges or even Judicial officers of a lower grade if necessary to exercise the functions of a Qadi. *ARIMANFSA BIRI v. ABDUL SOBHAN* (1915) 1 L R 43 Cal 467

WAKF

See WAKF

WAKF NAMA

Grantor claiming proprietary possession to that of a mutawalli—Appointment of trustees without transfer of ownership—Possession as managers and superintendents to protect waqf property—Injunction by Deputy Commissioner in respect of property out of his jurisdiction—Disqualification of registering officer as having interest in objects of endowed property who has acted in good faith—Defect in procedure—Punjab Court of Wards Act (Punjab Act II of 1903) ss 11 and 12—Registration Act (III of 1877) ss 17, 57 and s 174 of rules made under s 69. A Muhammadan landholder with property partly in Karnal and partly in Muzaffarnagar on the 25th of August 1903 executed a waqfnama or deed of charitable trust dedicating specific property to religious purposes. The terms of the deed were—

I was the lawful owner of the property. I had power in every way to transfer the same. By virtue of the said power I divested myself of the connection of ownership and proprietary possession thereof and placed it in the proprietary possession of God and changed my temporary possession known as proprietary possession into that of a mutawalli (superintendent). The grantor resided at Karnal in the Punjab. But finding that the Deputy Commissioner was about to place him and his property under the Court of Wards he went to Muzaffarnagar out of the jurisdiction of the Deputy Commissioner of Karnal who on the 30th of August 1903 under ss 11 and 12 of the Court of Wards Act 1903 issued an injunction restraining him from executing any deed of alienation of his property. The waqfnama was not

WAKF NAMA—contd

withstanding on the 1st of September 1900 registered by the Sub Registrar of Muzaffarnagar. On the 9th of November 1908 the grantor executed a further document appointing trustees to be superintendents after his death of the charity to which his property had been dedicated under the deed of the 25th of August 1908. The grantor died on the 26th of December 1908 and on the 8th of July 1912 the respondents who were the trustees brought a suit against the appellants the grantor's heirs who had obtained entry of their names in the Revenue Register as defendants alleging that the deceased had duly dedicated his property to the charity and claiming to be the parties named to execute the trust. Held that the waqfnama inasmuch as it did not purport to transfer to the trustees named in it the ownership of the waqf property but made them merely mutawallis or superintendents for its management and protection did not require registration under the Registration Act III of 1877. The injunction issued by the Deputy Commissioner of Karnal under ss 11 and 12 of the Punjab Court of Wards Act (Punjab Act II of 1903) in respect of property which together with the grantor was at the date of issue not within his jurisdiction was held to be invalid and inoperative. The Sub Registrar who being a trustee of one of the objects of the waqf nama entitled to the benefit of the trust had registered the deed but in so doing had acted in good faith though personally connected with and interested in the document within the meaning of s 174 of the rules made under s 69 of the Registration Act III of 1877 was held by his action not to have invalidated its registration as it was a defect in the procedure which s 87 of the Act was intended to remedy. *MUHAMMAD RUSTAM ALI KHAN v. MUSHTAQ HUSAIN* 1 L R 42 All 609

WAR

See WAGING WAR

See CONTRACT WITH ENEMY

See TRADING WITH ENEMY

----- effect of—

See BILLS OF EXCHANGE

1 L R 46 Cal 584

See CONTRACT 1 L R 41 Mad 225

See CONTRACT ACT 1872 s 50

1 L R 40 Bom 570

See DEBTOR AND CREDITOR

1 L R 44 Bom 1

See SALE OF GOOD

1 L R 40 Bom 11

1 L R 45 Cal 23

See TRADING WITH THE ENEMY

1 L R 42 Cal 1094

----- effect of, on contracts of affrighment—

See C I F CONTRACTS

1 L R 44 Bom 473

----- effect of on contracts entered into by a manager of an Indian branch of enemy firm prior to war—

See CONTRACT WITH ENEMY

1 L R 44 Bom.

WARRANT OF ARREST—contd

official designation and not by name validity of—
Omission to explain to accused the contents of
warrant effect of—Code of Criminal Procedure (Act
V of 1898) ss 75 77 79 80 537 and 554—Penal
Code (Act XLV of 1860) ss 224 225 and 353
Where the Magistrate issuing a warrant for the
arrest of an accused person signed the endorsement
on the warrant directing that if the accused gave
bail for Rs 100 he was to be liberated but only
initialled that part of the warrant which directed
the arrest of the accused held that it was gross
carelessness on the part of the Magistrate not to
have signed his name in both places but that the
omission to do so was not in itself an illegality
which vitiated the arrest The Illustration to
s 37 of the Code of Criminal Procedure 1898
covers a case in which the illegality of the warrant
itself is a fact in issue and does not relate merely
to a case in which the defence to the substantive
charge is that the accused have not been properly
brought before the Court A warrant directed in
the first place to a police officer by his official
designation and without inserting the officer's
name is not illegal but where the officer originally
entrusted with the execution of a warrant directs
it to another officer s 79 of the Code requires the
name of the latter officer to appear upon the
endorsement Omission on the part of an officer
executing a warrant to explain to the accused the
particulars of the warrant after showing him the
warrant does not invalidate the arrest All that
s 80 requires is that the accused shall have a
reasonable opportunity of knowing on what charge
he is being arrested and before what Court he is
to appear so that he may take steps to arrange
for his defence Where the constable executing a
warrant of arrest showed the warrant to the
accused and informed him that he would take bail
if it was offered and the accused asserted that no
warrant had been issued against him and the
constable thereupon took him into custody held
that the terms of s 80 of the Code had been sub-
stantially complied with **BANKEE BEHARY SINGH
v KING EMPEROR** 3 Pat L J 493

WARRANT OF ATTACHMENT

Signature of Sheristadar
and not of Court issuing it effect of—Evidence (Act
(1 of 1870) s 114 (e)—Code of Civil Procedure (Act
V of 1908) O XXV s 24 Where a warrant of
attachment was signed not by the Munif using
it but by the Sheristadar and did not bear the
seal of the Court and the accused were charged
with rioting with the common object of illegally
rescuing the attached property held (1) that
the onus of providing that the Sheristadar had no
authority to sign the warrant was on the party
contesting the validity of the warrant (in this case
the accused) (2) that in such a case it is not for
the prosecution to prove the authority of the officer
signing the warrant (3) that the provisions of
O XXV s 24 of the Code of Civil Procedure
1908 being mandatory the omission of the Court's
seal on the warrant rendered the attachment
illegal (4) that therefore the common object
charged was not an unlawful common object and
consequently the charge of rioting was not sus-
tainable **KURUPA DIX v KING EMPEROR**

3 Pat L J 636

WARRANT OF ATTORNEY

application to file—

S e PRACTICE I L P 37 Calc 853

WARRANT OFFICER

of the British Army—

See ARMY ACT (44 & 45 Vic c 58) s
145 190 I L R 43 Bom 368**WARRANTY**See CONTRACT I L P 117 Calc 324
15 C W N 981See TRANSFER OF PROPERTY ACT s 55
15 C W N 655sale of goods—Delivery to be given
on arrival of steamer—

See CONTRACT I L R 45 Bom 1222

sale and purchase of goods to be
manufactured by a Mill—

See CONTRACT I L R 44 Bom 907

WASTE

ownership of—

See MIRASI VILLAGE
I L R 40 Mad 410

Gift by a life tenant—
Bhog property—Interest taken by widow of Maho-
midan Bhogdar—Gift by Mahomedan widow for
spiritual benefit of her husband—Intention of widow
to make gift of her husband's property—Danger to
reversion—Receiver appointment of The gift of a
portion of the property of which the donor is a
life tenant constitutes waste unless some necessity
can be set up by the person making the alienation
A Mahomedan widow who according to custom is
only a life tenant of the Bhagdari property which
belonged to her husband cannot make gifts of the
estate as if she were in the position of a Hindu
widow who is entitled to make alienations to secure
spiritual benefit to her husband The fact that a
life tenant is anxious to get the lands transferred
to the name of another person does not by itself
constitute waste but it might constitute a danger
to the interests of the reversioner which a Court
might take into consideration on the question
whether his interests should be protected by
appointing a Receiver **ABDUL AMAL v BAI
BINI** (1919) 1 I L R 44 Bom 727

WASTE LANDSSee MADRAS ESTATES LAND ACT (1 of
1908) s 8 I L R 44 Mad 891

ownership of kudevaram—

See LIMITATION ACT (Act VI of 1907)
22 I L R 40 Mad 422**WASTE LANDS ACT (XXIII OF 1863)**

s 18—

Procedure with respect to
Act—Sale by Government of land under the Act
—Error in advertisement of sale—Effect of
of proclamation ousting jurisdiction of civil
Courts and constituting a Special Court for
years limit for claims only 3 years before
before Special Court—Act 33 of 1911 s 10

WASTE LANDS ACT (XXIII OF 1863)—contd**s 18—contd**

than those only held by Government. Great weight had always been given by the Judicial Committee to the accuracy of survey maps they were not conclusive but in the absence of evidence to the contrary they were presumed to be accurate. This appeal arose out of a suit by the Maharajah of Tipperah to recover possession of certain plots of land in Sylhet from the Government and from certain Tea Companies who in virtue of leases granted by the Government were in possession of the lands in suit. There were concurrent findings of fact by the Courts in India that the lands in question were *de facto* in the possession of the plaintiff and his predecessors since the beginning of the 19th century and that the dispossession had taken place within 12 years before suit so as to exclude the plea of limitation and the Judicial Committee substantially upheld the decision of the High Court in favour of the plaintiff. One plot however had been sold by the Government as waste land and the sale was not in any way stopped or interfered with by the Rajah and more than three years had elapsed from the date of delivery to the purchaser which was the period provided by s 18 of the Waste Lands Act (XXIII of 1863) after which no claim to any land or to compensation or damages in respect of any land sold as waste land could be received and it was contended that the suit was barred by s 18 as to that plot. *Held* that the Act was one which was drastic in its character and made great invasion on private rights. The defendant who pleaded it must therefore bring the matter strictly within its provisions which clearly pointed to the necessity of proper intimation being given by Government as to the proposed sale and where they had given a misleading notice and had advertised a sale of lands in one district when they were situated in another district the whole of the sale proceedings failed for want of a proper basis. When a claim was allowed under the Act procedure was provided for the issue of a proclamation which ousted the jurisdiction of the ordinary Courts and constituted a Special Court and no proof had in this case been given that any proclamation was issued. The provision as to three years in s 18 was clearly applicable to the proceedings before the Special Court and that Court alone. The procedure under the Waste Lands Act is not applicable only to lands belonging to the Government. SECRETARY OF STATE FOR INDIA v. BIFFANDRA KISHORE WATKIA (1916)

L R 43 I A 303
I L R 44 Calc 328

WATAN

See BOMBAY HEREDITARY OFFICES ACT
(BOM III OF 1874) ss 2, 36

I L R 40 Bom 55

See WATAN

WATANDAR

See BOMBAY REVENUE JURISDICTION ACT
(X OF 1876) s 4 (a)

I L R 45 Bom 1141

WATER

See EASEMENT 15 C W N 259
I L R 42 Calc 164

See FISHERY

I L R 42 Calc 489

WATER—contd

See GRANT CONSTRUCTION OF
I L R 48 Mad 424

See PIPAFIAN RIGHTS

flowing right to—

See MADRAS IRRIGATION CESS ACT (VI OF 1860) s 1 AND PROVISIONS 1 AND 2
I L R 40 Mad 886

for wet lands—

See MADRAS IRRIGATION CESS ACT (VII OF 1860) s 1 I L R 38 Mad 997

proprietary rights in—

See MADRAS IRRIGATION CESS ACT (VII OF 1860) I L R 37 Mad 322

right to the flow of—

See EASEMENTS ACT (I OF 1882) ss 2 (c) AND 17 (c) I L R 42 Bom 288

rights respective flow of—

See EASEMENT I L R 33 All 619

WATER CESS

See MADRAS WATER CESS ACT (VII OF 1865) I L R 48 Mad 67

WATER CONNECTION

See MUNICIPALITY I L R 47 Calc 426

WATER DUTIES

See NAVIGABLE RIVER I L R 46 Calc 390

WATER COURSE

See MADRAS IRRIGATION WATER CESS ACT

See RIPARIAN RIGHTS

WATERFLOW

Agricultural lands
upper and lower owners of—Right of upper owner to drain his water naturally on lower land—Indian Easements Act (I of 1882) s 11 (a) and (v)
The ruling in *Mahamatopadhyaya Rangachariar v. The Municipal Council of Kumbakonam* I L R 29 Mad 539 distinguished. An owner of upper agricultural land is entitled to let his water flow in its natural course without any obstruction by the owner of the lower land and the lower owner is not entitled to raise any bond on his land which will have the effect of seriously interfering with the upper owner's cultivation and submergence. *Ayyar v. Pamachandrarau* I L R 1 Mad 330 and *Abdul Halim v. Ganesh Dutt* I L R 1 Calc 373 followed. *Sangana Paddiar v. Perumal Reddhar* (1910) Mad W D 545 distinguished from *RANASWAMY v. RASI* (1913) I L R 38 Mad 148

WATER PASSAGE

See DISPUTE CONCERNING EASEMENT
I L R 39 Calc 560

WATER RATE

Madras Board of Port
new Standing Orders Edition 1908 Ch 1 App of s D rr 2 and 3— Full water rate meaning I The words full water rate in r 2 of the Standing Order of the Madras Board of Revenue Ch 1 App I s D (Ed 1900 p 91) mean full water

WATER RATE—contd

rate in respect of wet cultivation and not full water rate in respect of the crop actually raised
SECRETARY OF STATE FOR INDIA v SUBHA ROW OF KURNOOL (1910) I L R 34 Mad 436

WATER RIGHTS

See EASEMENTS I L R 37 Mad 304

See MADRAS IRRIGATION CESS ACT 1863
 s 1
 I L R 40 Mad 886

Surface water—Right of owner of higher land to discharge surface water over adjacent lower land—Inability of the owner of servient tenement to discharge same owing to rise of bed of adjacent stream by silting—Hastened—Dominant owner's right is affected It is well settled in this country that the owner of higher land is entitled to discharge surface water over adjacent lower land. Where owing to the silting up of a stream into which the water thus discharged ultimately flowed the level of the bed of the stream became higher than the adjacent lower land to the inconvenience of the owners thereof. Held that the increase of burden to the servient owners not being due to anything done by the dominant owners the latter were still entitled to exercise their rights and it was for the servient owners to take such steps as might be advisable to deal with the difficulties created by the rise in the bed of the stream. **KASRISWAR MUKHERJEE v JYOTI KUMAR MUKHERJEE (1917)**
 22 C W N 686

WAY

See RIGHT OF WAY

Public way—Public drain when filled up it becomes public way A public drain does not become a public way merely because it is filled up. **RAM CHANDRA SIL v PARAMANANI DAS (1910)**
 20 C W N 773

Suit for declaration of—Whether it is necessary to locate the exact position or to show whether any definite track was used—Plaintiff to establish the termini from and to which the way runs—Plaintiff to enjoy the right in the way pointed out by owners of servient tenement—If not the nearest route In a suit for a declaration of the plaintiffs right of way it is not necessary to locate the exact position in which the way was enjoyed over the compound of the defendants nor is it necessary to show that any definite marked pathway over the compound was always used. If the plaintiffs establish the termini from which and to which the way runs the plaintiffs would be entitled to have the right of way and that right would be enjoyed in the way that the owners of the servient tenement point out as being the track over which the way should be enjoyed and if not then the plaintiffs would be entitled to enjoy the way by the nearest route. **LAKSHI KANTA ROY v RAJ CHANDRA SHANU (1918)**
 22 C W N 922

Held that a suit for a declaration that a pathway is a village pathway can succeed without proof of special damage **HARISH CHANDRA SANA v PRANATH CHAKRA BARTI**
 26 C W N 587

WEEKLY SITTING LIST

notes to the—

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CONSTRUCTION

1. ———— Bequest to take effect after deaths of testator and his wife—*Legatee surviving testator but predeceasing wife—Vested or contingent interest* One S executed a will whereby he gave all his property after the death of himself and his wife V to his daughter B and his nephew D. D survived the testator but predeceased M. Held that D took a vested interest in the property which was transmissible to his sons. *Bhogabati Bar manya v Kals Charan Singh* I L R 33 Cal 468 3 All L J 433 followed. *BILASO v MURVI LAL* (1911) I L R 33 All 558

2. ———— Clause for maintenance of daughters—*Succession Act (X of 1865) s 111 157—Uncertain extent—Marriage of daughters—Legatee, right of to sue—Succession Act s 5—Probate of will obtained only after institution of suit—Grant of Probate modified by High Court on appeal* A Hindu died in 1879 leaving a will whereby (among other things) he made provision for his wives and his daughters who survived him. The clause providing for the daughters was: "When they will be married and if they desire to live in separate houses the person in whose management my property will be at the time will make separate houses for them in the vicinity of my house from the income of my property. For the maintenance of my daughters I fix an allowance of Rs 600 a year for Srimati Prasanna and Rs 600 for Srimati Sarat. As long as the daughters will live in the separate houses in this place they will get the fixed allowance respectively but if the daughters do not live in this place they will get Rs 10. The daughters married in 1883 and 1893 respectively and lived in separate houses. In suits for their allowances it was contended that the bequests to them were given in the event of their marriage and as that event did not happen until after the death of the testator the bequests were void by reason of s 111 of the Succession Act (X of 1865) and never took effect. Held on the construction of the above clause that the payment of maintenance was not contingent on the daughter's marriages and that therefore s 111 was not applicable. At the time the suits were instituted no letters of administration had been granted but pending the suits the widow obtained from the District Judge a grant of letters of administration with the will annexed. The grant was on appeal modified by the High Court by limiting it to the realisation of the main

WILL—*contd*CONSTRUCTION—*contd*

tenance allowance provided by the will for the widow but before the letters of administration could be recalled and altered the widow died and the letters were never formally altered. It was contended that the suits could not be maintained with reference to s 187 of the Succession Act which requires that before the right of a legatee can be established probate of the will shall have been granted. *Held* that the grant of administration with the will annexed was within the meaning of s 3 of the Act a grant of probate which was a compliance with the provisions of s 187. The subsequent limitation of the grant was immaterial. So long as the compliance with the section was prior to decree the fact that it was after the institution of the suits made no difference and the Court was fully competent to deal with the suits. **CHANDRA KISHORE ROY v PRASANNA KUMAR DAS** (1910) 1 L R 38 Cal 327 15 C W N 121

3 ——— Rules for devolution of trust if constitutes a will—*Probate*—*if may be granted of an instrument laying down rules for devolution of trust*—*Partial probate if may be given*—*Residuary bequest effect of* Where a Mohunt made a will the main body of which simply laid down rules for the devolution of trust property but there was a clause in the following terms "the said I shall get and shall be entitled of his own accord to make a gift or sale of any other property that I may earn during my life time." *Held* that whether or not there was any such residuary property there was here a valid testamentary disposition which may be admitted to probate though the main body of the will being a deed merely evidencing a devolution of trust would not by itself be testamentary or admissible to probate. *Held* further that in the circumstances probate must be granted of the will as a whole leaving it open to any party to establish his title by suit to any property in respect of which there may be a declaration of trust ineffectual as a will and vesting the whole estate in the executor pending determination of title to such property. **BAISAV CHAFAN DASS BAIKATI v KISHORE DASS MOHANTA** (1911) 15 C W N 1014

3(a) The term *Malik* when used in a will or other document as descriptive of the position which a devise or donee is intended to hold includes full proprietary rights unless there is something in the context or surrounding circumstances to restrict this meaning. **MUSAMMAT SASIMAN CHOWDHURAN v SHRI NARAYAN CHOWDHURY** ■ ■ W N 425

4 ——— Will or family arrangement—*Immediate operation*—*Irrevocability*—*Pegistation*—*Pegistration Act (III of 18)* s 1—*Leading inconsistency in*—*Costs*—*Success full party deprived of all costs* A document executed by the owner of an estate on 3rd May 1883 which was plainly intended to be operative immediately and to be final and irrevocable was held to be a non testamentary instrument e.g. a family arrangement which in regards immovable property failed of effect because it was not registered as required by s 17 of the Registration Act (III of 18). The appellants in who e favour the above decision was given having set up a will of a later date had started with the case that the instrument in ques-

WILL—*contd*CONSTRUCTION—*contd*

tion was a will but the will propounded by them being found not proved they later on attacked the document on the ground stated above. Similar inconsistency appeared in the pleadings of their opponents. *Held* that in the circumstances the Judicial Committee was not precluded from giving effect to the real character of the instrument but the appellants were deprived of their costs in all the Courts. **UMRAO SINGH v LACHMAN SINGH** (1911) 1 L R 33 All 344 15 C W N 497 18 C 38 I A 104

4 (a) ——— Signature—*Proof of*—*Handwriting Expert* The Propounder of a will should prove to the satisfaction of the court beyond all possible doubt that the will was executed by the alleged Testator. The opinion of a hand writing expert when he was not called as a witness was held inadmissible. **MUSAMMAT PADMA PRIYA DEBI v DEAR TA DAS DASARMA** 15 C W N 728

5 ——— Bequest dividing self acquired property—between testator's two sons with gift over to survivor—*Survivorship whether limited to survivorship during testator's life or extending to period after his death*—*Period of distribution*—*Hindu Law* A Hindu resident of Surat in the Presidency of Bombay made a will dated 20th August 1899 by which after appointing his two sons executors heirs and owners of the whole of his property (which was self acquired) and directing them to divide and take equal shares in it with certain exceptions gave each of them a half share of his estate not especially disposed of by the will. By clause 9 he made the following bequest "I have divided between and given to my two sons the whole of my property as mentioned above. But should either of the two sons die without having had (leaving) any male issue the survivor of the said two sons is duly to take the whole of the property appertaining to the share of the deceased son who may have (leave) no male issue (behind him) after undertaking (to defray) the expenses in connection with the maintenance of his widow and marriage of his minor daughter. But under the circumstances the heirs of my deceased son Surjalal shall not get any right whatever." The testator died on 4th July 1901 leaving him surviving his two sons. The elder son died on 2nd January 1903 leaving a widow and a daughter. In a suit by the surviving son to enforce the provisions of clause 9 of the will the High Court held that the period of distribution contemplated by the testator was the period of his death at which time half of his estate became vested in each of his sons absolutely and that clause 9 should be read as if the survivorship there provided was limited to survivorship at the death of the testator. *Held* (reversing that decision), that the words of clause 9 were not limited to survivorship during the testator's life but clearly pointed to survivorship whenever it then occurred and that the surviving son was a such survivor entitled to the estate covered by the clause subject to the obligation imposed upon him of maintaining his brother's widow and daughter. **CHUNILAL PAVATI HANPATI v BAI SAMRATI** (1914) 1 L R 38 Bom 399

6 ——— Direction to carry on testator's business—*Loss suffered in the course of the business*

WILL—contd

CONSTRUCTION—contd

annulled. *Held* that the consent decree did not operate as res judicata to prevent the High Court construing the bequest. **BALTHAZAR v BALTHAZAR** (1917) 21 C W N 992

10 ——— Construction of will—Absolute words and limiting words occurring in one sentence—*Intention of the testator* A testator made the following provision in his will I appoint by this testament my brother Joaquim Serpes as my only and universal heir of all the immovable property which I possess and which may hereafter in any manner belong to me with the strict obligation to him not to sell exchange or hypothecate it but only to enjoy the usufruct thereof and at his death to pass over the same to his male children preserving the same as a patrimony of the house The question being raised whether upon a proper construction of the will Joaquim was merely a life tenant or whether he took absolutely *Held* that Joaquim was a mere life tenant **ROSE D SOUZA v JOSEPH** (1916) I L R 41 Bom 70

11 ——— Wills by Hindu—fundamental principle common to Hindu and English wills—*Court's duty to give effect to intention as expressed not in add to will—Surrounding circumstances to be looked at as aid to interpretation only—Religious opinion and race in what way relevant—Liberal construction of native wills meaning of Contemporaneous deed referred to in will and interpretation by persons interested if may be referred to—English rules of construction if inapplicable* In construing a will a Court must consider the surrounding circumstances the position of the testator his family relationships the probability that he would use words in a particular sense and many other things including the race and religious opinions of the testator and influences and aims arising therefrom—but all this solely as an aid to ascertain the meaning of the language used by the particular testator in the particular will Once the right construction is settled the duty of the Court is loyally to carry out the intentions as expressed and none other This duty is universal and is true alike of wills of every nationality and every religion or rank of life The Court is in no case justified in adding to testamentary dispositions If they transgress any legal restrictions they must be disregarded If any eventuality arises which the will leaves unprovided for there will be intestacy This fundamental principle does not clash with the principle that the Court will not necessarily apply English rules of construction to a will of a Hindu like the present nor does it clash in any way with what is sometimes called giving liberal interpretation to native wills That native testators should be ignorant of the legal phraseology proper to express their intentions or of the legal steps necessary to carry them into effect is one of the most important of the "surrounding circumstances" which the Court must bear in mind and it is justified in refusing to allow defects in expression in these matters to prevent the carrying out of the testator's true intentions But the intentions must be ascertained by the proper construction of the words he used and once ascertained they must not be departed from It is legitimate in construing a will to look at contemporaneous document referred to in the will which the testator wrote or caused to be written with

WILL—contd

CONSTRUCTION—contd

the express intent to render clear his wishes with regard to his succession The interpretation placed on the power by the testator a widow was referred to for what it was worth **NARASIMHA APPA ROW v PAPHASARATHY APPA ROW** (1913) 18 C W N 554

I L R 37 Mad 189

12 ——— Republication—Succession Act (X of 1865) ss 105 153—*Codicil—Death of testator within one year—Repair of graves—Charitable bequest—Conditions Elections of Deacons Communion Service—Gift over to another charity—Perpetuities* The testator died on the 8th July 1909 leaving as next of kin a nephew and leaving a will dated the 14th April 1884 and four codicils The testamentary dispositions included certain charitable and religious bequests The last two codicils dated the 15th December 1906 and the 19th December 1908 respectively were not deposited according to the provisions of s 105 of the Succession Act they did not however purport to revoke the will but in effect republished the will *Held* that in the circumstances the will as modified by the codicils was operative **Hopwood v Hopwood** 7 H L Cas 798 In re Moore Long v Moore (1907) 1 Ir Rep 315 referred to A direction that the will shall not have any effect (beyond proving the same) for at least two years from the arrival of the news of the testator's death operated merely as a postponing clause, and did not invalidate the will. A direction to trustees to look after and keep in proper repairs certain graves and to pay for the expenses of such repairs in perpetuity out of the estate was not for charitable uses and was void and inoperative **Hoare v Osborn** L R 1 Eq 555 **Melick v The President and Guardians of the Asylum** (18-1) Jac 150 In re Vaughan Vaughan v Thomas L R 33 Ch D 157 In re Pogerson Bird v Lee (1901) 1 Ch 715 referred to In re Tyler Tyler v Tyler (1891) 3 Ch 35 distinguished A bequest in favour of the Lower Circular Road Baptist Church was subject to *inter alia* the following conditions (a) that no ordained minister or missionary be ever elected as a deacon of the church or be allowed to canvass for votes (b) that at communion two cups one of fermented one of unfermented wine should be provided (c) that the deacons do not introduce any innovation into the practice of the church In the event of the non-fulfilment of the conditions there was a gift over in favour of the Howrah Baptist Church and other charitable and religious institutions *Held* that there was nothing illegal or impossible in the conditions and inasmuch as the conditions had not been fulfilled the gift over came into operation In re Robinson Wright v Tugwell (18-1) 1 Ch 90 distinguished An immediate gift to a charity for charitable uses with a gift over on an event which may be beyond the ordinary limit of perpetuities to another charity is not invalid **Christie v Hoopes v Granger** 1 Mac & G 469 In re Tyler Tyler v Tyler (1891) 3 Ch 35 followed In re Fowen Lloyd v Hull & Co (1893) Ch 191 In re Strathell and Campbell (1894) 3 Ch 465 **Chamberlaine v Brockell** 1 L R 5 Ch App 96 dictum of Lord Atkinson **GENERAL OF BENGAL v HUGHES** (191)

I L R 40 Cal.

WILL—contd

CONSTRUCTION—contd

13 ——— Rule of justice equity and good conscience—Devise to eldest son and his lawful male children—according to law of inheritance—Mortgages made by testator as full owner and mortgages made by son with an estate for life only—Rights of mortgages—Alternative case set up on appeal—Costs T S a domiciled resident of the North Western Provinces of India died on the 9th of November 1864 leaving a will dated the 22nd of October 1864 [and therefore before the Indian Succession Act (X of 1865) came into force] where by he made provisions that certain villages houses and other property should at my demise descend to my eldest son T B S and to his lawful male children according to the law of inheritance and in the event of my eldest son T B S dying with out lawful male children to my female children or in the event of their death to the female children born in wedlock of my sons in succession. The testator had in 1863 mortgaged his property to the extent of Rs 50 000 with interest and his son T B S, after he succeeded to the property further mortgaged it in 1867 1869 and 1872 and in execution of decrees obtained against him on those mortgages the property was sold and his interest therein was acquired by the various auction purchasers T B S died in 1900 without lawful male children and was succeeded by the second son of the testator the present appellant who in 1890 and 1906 brought the present suits for ejectment against the auction purchasers in which he prayed for decrees for full proprietary possession and the suits were dealt with on that footing in the Courts in India, the High Court however only dismissing the suits because there was no specific claim for redemption. On his appeal part of the appellant's case was that the High Court instead of dismissing the suits should have made decrees for possession conditional upon payment of the debts binding on the estate of the testator and during the hearing it was conceded by counsel that on the construction of the will the appellant was only a life tenant of the property. Held that the regulation of the succession under the will was to be determined by the rule of justice equity and good conscience that the bequest was to be read in its entirety and together and that so read there was in it no intention that his son T B S should have an absolute ownership the testator intended to regulate the succession after the death of T B S and settle the mode of the subsequent enjoyment of the property and such detailed regulations were only natural necessary and entirely in place if T B S was intended to be merely a tenant for his life. Held therefore that the rights under mortgages granted by T B S ceased at his death and that the appellant as the next male heir was entitled to the enjoyment of the estate for life free from any rights so acquired. The case however was very different with regard to the rights acquired under mortgages granted by the testator himself. Even if T B S renewed such mortgages the right of the mortgagees would not be prejudiced thereby the renewal of a mortgage by a person with a limited interest in the estate not operating as a discharge of debts effectually secured upon the radical right. The appellant accordingly was not entitled to possession until full satisfaction had been made of rights of all mortgagees and their successors under mortgages granted by the testator. The appeals

WILL—contd

CONSTRUCTION—contd

were allowed and the suits remitted to the High Court on that footing. The alternative case set up by the appellant on appeal was only permitted by their Lordships to be the ground of judgment because it seemed possible in that way to construct the material for a just decision of the true rights of the parties concerned which would be best for the interests of all and prevent further litigation. SKINNER & NAUTHIAL SINGH (1913)

I L R 35 M 211

14 ——— Bequest creating a succession of life interests to illegitimate son and his issue (aulad)—Whether aulad includes illegitimate issue—Marriage of son by birth a Mahomedan to Hindu caste ladies—Intention of testator—Mahomedan brought up as orthodox Hindu. The question in this appeal was as to the construction of a codicil to the will of the late Maharaja of Balrampur who was a Hindu of the Chattri caste by which he purported to make provision for J B his son by a Mahomedan mistress who as held by the Courts below was by birth a Mahomedan. He afterwards however, became as far as was possible a Hindu. The appellant (plaintiff) was the eldest son of J B by a Mahomedan woman and the second third and fourth respondents were his brothers and there were concurrent findings of both Courts in India that there was no valid marriage between J B and their mother and that they were consequently illegitimate. The first respondent was the son of J B by a Hindu lady of the Chattri caste with whom he had admittedly gone through a marriage according to the strict Hindu rites and when that lady died his father got him married to other lady of the same caste. On the death of J B in 1899 the first respondent obtained possession of the property in suit and the appellant sued for it the question being whether the appellant was an issue of J B within the meaning of the word aulad as used in the codicil and as such entitled to inherit J B's property. The first respondent contended that the appellant being illegitimate could not take under the terms of the codicil that J B had been a Hindu from his boyhood to his death and that he (the first respondent) being the only son of the first Hindu marriage which was a valid one was the heir of his father and on the true construction of the codicil entitled to the property in suit. By the codicil dated the 15th of March 1878 the testator after reciting that his son J B being not born of Khas Mahal was not capable of the gaddishashin and the proprietorship of the riasat continued — But he also being born of my loins it is incumbent on me that such means be provided as would enable him and his issue (aulad) to support themselves well and with respect. Accordingly the settlement is made as follows Rs 4 000 per mensem or Rs 48 000 per annum (the income derived from certain villages named) shall be continued to be paid by the proprietor of the riasat the *locum tenens* of the gaddishashin for the time being and that amount shall be paid to J B and his issue (aulad) for generation after generation so long as the family (khandaan) of J B and his issue (aulad) remain in existence. (3) for his life time J B has a right to spend their money but after his death from among his issue (aulad) one person (jisko ha? pahuncha hove) to whom the right may go shall be considered proprietor of this maintenance allowance

WILL—*contd*CONSTRUCTION—*contd*

without division as a *res*. The other issue of the family of *J B* shall be entitled to get food raiment and other necessities out of the monthly allowance. (4) When there remains no descendant of the family of *J B* at any time the monthly allowance of Rs 4 000 will be resumed and remain in proprietary possession of the proprietor of the *riyat* the *gaddinashin*. The Court of the Judicial Commissioner held that *aulad primd facie* meant legitimate issue and dismissed the suit. Held (upholding the decision) that the case was not one where a gift is made by will of the *corpus* of a fund or a life interest in a fund to the children of the testator or of another as a class. There might be good reason in some such cases for holding that in India the word "children" includes illegitimate children. But here a succession of life interests from generation to generation is intended to be set up the successor or proprietor in each instance being vested with an absolute control of the income subject only to the duty of maintaining the issue (*aulad*) of the family (*khandan*) of the first proprietor *J B*. There was nothing on the face of the codicil to suggest that a meaning should be given to the word *aulad* different from its *primd facie* meaning. To include illegitimate issue would bring into the line of succession not only the testator's illegitimate grand children but their illegitimate issue from generation to generation. Such a construction would render condition No 4 rather unnecessary and would also defeat the whole purpose and object of the testator in establishing the succession of life interests. Nor was there any reason for extending the meaning of the word *khandan* which ordinarily refers to the group of descendants who constitute the family of the proprietor so as to include illegitimate offspring who from the necessities of the case cannot share in the family life or its worship or ceremonials. Held also that the fair result of the evidence was that *J B* did his utmost to become an orthodox Hindu and to pass as such in the society in which he lived and that his father from boy's youth upwards aided and encouraged him in those efforts. The testator treated his marriages with the two Chattri ladies as lawful marriages and desired that others should so treat them and consequently resolved to regard and treat the offspring of those unions as legitimate and desired that they should be so treated and regarded by others and that it was in this frame of mind he made the testamentary disposition in dispute. Having regard to all the evidence in the case and the provisions of the codicil itself the intention of the testator plainly was to treat the marriages of *J B* with the two women of the Chattri caste as valid marriages and the issue of those marriages as legitimate issue. *SHER BAHADUR v GANOA BAKESH SINGH* (1913)

I L R 38 All 101

14(a) — One *P* died leaving a will by which he directed that certain legacies should be paid out of a fund of Rs 10 000 invested in fixed deposit in the Delhi and London Bank. The Bank had during *P*'s lifetime advanced certain sums to his daughter on an undertaking by *P* that he would stand surety for the loan. *P* was also himself indebted to the Bank. Held on a suit by the legatees that the executor of *P*'s will was perfectly justified on being satisfied

WILL—*contd*CONSTRUCTION—*contd*

as to the fact of *P*'s relations with the Bank above described in permitting the Bank to realise from the fund in question both the amount of loan to *P*'s daughter and the amount of his own indebtedness. *HERBERT ARCHIBALD POCOCK v THE DELHI AND LONDON BANK LTD*

I L R 38 All 219

15 — Money belonging to the testator but not known to him—Residuary clause not binding by—Rule of construction of residuary clause in a will made in the town of Madras. A testator in the town of Madras after stating in the preliminary clauses the properties moveable and immoveable to which he was entitled and which he by subsequent clauses in the will bequeathed to various beneficiaries and legatees finally made a bequest in the following terms: the sum which may be left after deducting the above mentioned legacies and such other expenses shall be utilised in my name for pooja and other charities in Vytheenar temple. Unknown to the testator there was a sum of Rs 4 000 lying to his credit with the Registrar of the High Court which after his death was paid to his executor on his application. In this suit by the widow of the testator for administration of the estate. Held that the sum of Rs 4 000 was not disposed of even under the above residuary clause of the will that the plaintiff was entitled to it as on an intestacy and that the executor was liable to account for the same from the date of the testator's death on the footing of a wilful default. The residuary clause in the form in which it appears in English wills is practically unknown to the ordinary testator in Madras and the rules of construction which have been laid down by English Courts are not applicable. *KUNTHALANNAI v SURYA PRASADROYA MUDALIAR* (1914)

I L R 40 Mad. 1096

16 — Will of Parsi—Devise to two sons in equal shares—Gift over to son of elder son if he should have one—Failure of male issue to elder son—Provision for adopted son on failure of natural son—Adoption after testator's death and according to Parsi custom three days after death of father—Gift over to grandson on attaining majority—Elder son surviving testator—Succession Act (X of 1865) s 111. A Parsi having two sons *P* and *J* made a will in 1866 in the following terms:—Cl 2 stated: The said two sons are proprietors half and half alike and in equal (shares) of my whole estate outstanding debts title and interest and both the heirs living together are duly to enjoy the balance which may remain after the Sarkar's assessment. In this my testamentary writing I the testator have appointed my two sons as (my) heirs. Cl 5 said that *P* the elder son being in a confused state of mind the management of the estate was entrusted to the younger son *J* by his true and pure integrity and both the heirs are to equally enjoy half and half alike the whole estate with equanimity with my elder son *P* in such a way as not to injure his (*P*'s) rights. At present my elder son *P* has no male issue of his body (He) has only a daughter. Therefore if my elder son *P* gets a male issue half of the estate is to be made over to him on his attaining his full age. Cl 11 after prohibiting any alienation of the property continued, my son *P* does not get to give as *P*'s *palak* (or) All the

WILL—contd

CONSTRUCTION—con d

20 ——— Bequest to brother's widow and on her death to her daughter.—*Succession Interest—Absolute estate—Succession Act (X of 1865) s 111* Where in a will a legacy was given in the following words On my death my youngest brother's widow the said Bama Sundari Dehya and when she is dead her daughter my niece Kusum Kamini Debi will get one fourth share of all the self acquired immovable properties which I have other than my aforesaid immovable properties Held upon a construction of the will that the effect of the will was to give to Bama Sundari an interest for life in the self acquired properties of the testator with a gift over on her death of an absolute interest to her daughter Kusum Kamini The gift to Kusum Kamini was not a substitutional gift in the event of her mother Bama Sundari predeceasing the testator but it was one of successive interests and s 111 of the Indian Succession Act had no application to it **HARENDRA CHANDRA LAHIRI v BASANTA KUMAR MOITRA (1918)**

22 C W N 689

21 ——— Malek Mukhtyar for life.—*Existence indicated in will of special oral direction—Terms of the trust not ascertained or ascertainable—Power executed in professed compliance with authority given—Parol evidence admissible to prove the trust as to prevent a fraud—Onus of proof—Undistributed share of the property of an intestate—Indian Limitation Act (IX of 1908) Art 193* A Parsi testator by his will made his wife Malek Mukhtyar as to all his property during her life just as the testator was the owner free from question by any of his other heirs representatives relatives and kinsmen with directions that she should protect the children as he had protected them according to their means declaring that if any of his children should not act according to her orders then during her life time the child should not have any claim to any of the testator's property Cl 7 of the will provided that agreeably to what was written above the wife was during her life time to carry on *Yahivat* (management) in respect of every kind of property and make expenses on auspicious and inauspicious occasions as the testator had been doing The clause further provided and in her life time keeping God and Mehar Davar (the Dispenser of Justice) before her mind my wife shall duly as I have directed her orally and according to the times (i.e. as circumstances demand) make her will and all my heirs and the heirs of my heirs shall duly and agreeably to the same Cls 8 and 10 of the will provided for interests contingent upon the testator's widow and executrix dying without making a will as mentioned in cl 7 The testator died in 1872 and thereafter his widow as executrix administered the estate until her death in 1906 By her will she purported to dispose of all property both her own and what she had received from her husband and appointed her surviving son her executor The latter died in 1915 leaving a will whereby he appointed his daughter the 1st defendant his executrix The plaintiff a daughter of the original testator's son (who predeceased his mother) filed the suit on the 18th of May 1916 praying *inter alia* that the estate of the testator might be administered by the Court and that it might be declared that the

WILL—contd

CONSTRUCTION—contd

testator's widow had no power to make a will disposing of any part of the testator's estate The 1st defendant contended that the will of the testator's widow was valid and that the plaintiff's claim was barred by limitation Held (i) that the testator's widow took only a life estate under the will (ii) that the words shall duly as I have directed her orally and according to the times (i.e. as circumstances demand) were not consistent with a general testamentary power but indicated the existence of special directions as to the objects in which a favour the power was to be exercised (iii) that there being no direct evidence as to the testator's directions the will made by the widow should not be given effect to and that on her death there was an intestacy as regards all the property of the testator (iv) that Art 123 of the Indian Limitation Act applying to every suit where the plaintiff seeks to recover an undistributed share in the estate of an intestate the suit was not barred by limitation *Per SCOTT C J* The Court will not try to compel the execution of a trust where the terms of the trust are not ascertained or ascertainable but where a power in the nature of a trust has been executed in professed compliance with the authority given the onus as it seems to me, of proving that the execution was a fraud on the power should lie on those who seek by challenging the execution to get possession of property in the hands of those benefiting by the act of the donee of the power *Helley v Helley (1902) 2 Ch 866* referred to *Mawng Tun Tha v Ma Thi L R 44 I A 40* followed **SHRIDHAR v RATANBAI (1918)** 1 L R 43 Bom 645

21 (a) ——— Equitable estoppel.—Oudh Estates Act—S by his will bequeathed his taluqdari estate to his great grand son J subject to a provision under which J was to select particular villages yielding net incomes of stated amounts and grant them in under proprietary right to S's three grandsons J made the selection and the grantees accepted Held this did not constitute a transfer within s 16 of the Oudh Estates Act and did not require registration and that in any case J had no equitable claim to recover the villages from the grantees after delivery of possession and receipt of rent by the grantor **LAL JAGADI S BANADIR SINGH v MAHABIR PRASAD** 24 C W N 529

22 ——— Trust for charitable purpose as—Gifts over to another charity.—*Rule of remoteness—Vesting of the gifts over—Perpetuity rules against how far applicable—English Law—Res Judicata—Proceedings in prior suit—Issue reserved in decree—Heard and finally decided—Succession Act (X of 1865) ss 101 and 10—Civil Procedure Code (Act V of 1909) s 11* By a will dated the 14th April 1884 and four codicils the testator provided *inter alia* that certain annuities be paid out of his residuary estate and after the death of the last surviving life tenant a charitable and religious bequest be created in favour of the Lower Circular Road Baptist Chapel subject to certain conditions contained in cl 7 of the 2nd codicil In the event of the said conditions being unfulfilled it was directed in the said codicil that there would be a gift over in favour of the Howrah and the Lall Bazar Baptist Churches The testator died on the 8th July 1909 and the last survivor of the

WILL—contd

CONSTRUCTION—contd

annuitants was still alive. In a previous suit *Administrator General of Bengal v. Hughes*, 1 L. R. 40 Cal. 192 for the construction of the said will and codicils and for other reliefs it was admitted that the Lower Circular Road Baptist Chapel had not complied with the said conditions and was not in a position to do so and the Court on the 10th July 1912 held that the gifts over to the Howrah and the Lall Bazar Baptist Churches were valid and that there was no intestacy but in the decree the determination of these questions was expressly reserved. The last surviving annuitant having died on the 10th April 1917 a fresh application for the further construction of the said will and codicils was made. On this application it was declared that the gifts over were valid that there was no intestacy and that the question could not again be raised. On appeal—Held that the question of the validity of the gifts over to the two Churches could not be said to have been finally decided within the meaning of s. 11 of the Code of Civil Procedure so as to prevent the Court considering the point raised in the subsequent suit in respect of s. 101 of the Succession Act and that the decree of 1912 did not finally decide all matters raised in the suit. Held also that the language of s. 101 was clear and unequivocal and applied to all bequests whether they were of a charitable nature or not. Held also that the bequests to the Howrah and Lall Bazar Churches would not vest in them until the Lower Circular Road Baptist Chapel had failed to perform the specified conditions that they were within s. 101 and that they were not valid on the ground that the vesting of the funds bequeathed to those Churches might be delayed beyond the lifetime of one or more persons living at the testator's decease. Held also that as regards the corpus and income of the residuary funds in question after the death of the last surviving annuitant there was an intestacy. *J. H. JONES v. THE ADMINISTRATOR GENERAL OF BENGAL* (1918)

1 L. R. 46 Cal. 485

23 ——— *Cutchi Memons—Mahomedan law—Document in the nature of instructions as to the disposition of property operating as a will under Mahomedan law—Probate—Probate and Administration Act (V of 1881) s. 3* A widow of a Cutchi Memon applied for probate of a document in Gujarati as being the last will and testament of her deceased husband the document according to the official translation being in the following terms:—May it be known to Bhai Abdullahbai as follows:—In the will which you will get made to-morrow and give me be kind not to forget (to add) my Mukhatyari as long as I am alive and after me my wife s. Mul hatyari. Whatever costs may be incurred I will pay you. Written by your servant Mahomed Hassam Haji. On the other side of the document were the words Bhai Abdullahbai Mukhatyari in the document meant absolute ownership or full power. The document was unattested but was written by the deceased, and given to his brother in law Abdullahbai at a time when the deceased was lying on his death bed suffering from cancer of the tongue and unable to speak properly. The deceased died two days after the date of the document. Held (i) that the document in question was in the nature

WILL—contd

CONSTRUCTION—contd

of instructions by the deceased to his legal advisers or to his relative as to the instruction to be given to the legal adviser as to the disposition of his property (ii) that under the Mahomedan law which governed the execution of wills of Cutchi Memons no attestation was necessary and the document operated as a valid will which might be admitted to probate. *In re Aida Salar 7 Bom. L. R. 558 and Mahomed Allaf Ali Khan v. Ahmed Buih 25 B. P. 191* referred to *SARABAI AMIRAT v. MAHOMED CASSIM* (1918)

1 L. R. 43 Bom. 641

24 ——— In a Will the testator provided that after his death his daughter would be *malik* vested with the power to transfer by sale and gift the entire properties and would enjoy and hold possession of the same down to her son son's son and so on. The Will next provided that the daughter should live in the testator's ancestral *dhita* and perform the *pujas* inaugurated by him otherwise she would not be entitled to hold possession or transfer any portion of the property. The Will also provided that she would be entitled to transfer the property only if it was unavoidably necessary for the education of her son or if they fell into great calamity. In a suit for possession by the son of the daughter the Court of first instance held that the Will conferred an absolute estate on the Plaintiff's mother who having left a maiden daughter still living the Plaintiffs have no title to the property. On the appeal the Lower Appellate Court held that the questions raised should be decided after taking evidence and remanded the case for trial upon the merits. Held that the words in the earlier part of the Will without anything to qualify them would no doubt create an absolute estate and there was power of alienation expressly given. There is no doubt that if an estate conferred by a Will is held to be absolute the conditions as to the mode of its enjoyment are void. But considering all the terms of the Will it is clear that the provisions made in the earlier part of the Will are qualified by the provisions made in the other parts of it. Three things appear to have been uppermost in the mind of the testator that his daughter and her sons etc. should reside in his *dhita* that power of alienation should be given only for meeting the education expenses of her son or in case of great calamity and that she should hold subject to performance of *pujas*. She had not an absolute estate. *SURENDRA NATH CHATTERJEE v. SAPOJBANDHU*

25 C. W. N. 893

25 ——— *Bequest of estate for life—no express disposal of corpus—Prohibition against alienation—Law of perpetuity—her born of the womb meaning of—Hindu Law—Contingent remainder after woman's estate effect of—Adverse estate whether Hindu can create by Will—Adverse possession under doubtful Will effect of—No necessary proof of by recitals in a conveyance* A will recited that if a daughter or son was born to the testator during his life time such son or daughter will be the owner of all the testator's property but if there were no son or daughter his niece S was to take a bequest of a lakh of rupees and the rest of the movable and immovable property was to remain in the possession of his wife

WILL—contd

CONSTRUCTION—contd

until her death. After her death it was to remain in the possession of his niece. The remainder was disposed of in the following words— 'if on the death of my wife and my niece there be living a son and a daughter born of the womb of my said brother a daughter then two thirds of the movable property will belong to the son and one third to the daughter. But as regards the immovable property none shall have the least right of alienation. They will of course be entitled to enjoy the balance left after payment of rent etc.' *Held* (i) That the Will purported to convey an absolute estate ultimately to the son and daughter of the niece and the fact that the corpus was not expressly mentioned was not sufficient to justify the interpretation that the corpus did not pass. (ii) That the failure of the bequest of the remainder in favour of the niece's son and daughter on the ground that they were unborn at the testator's death did not make the Will itself invalid. (iii) That the disposition in favour of the niece's son and daughter was a bequest of the remainder to them and was not a mere description of an estate of inheritance in *S*. The words 'born of her womb' could not be interpreted to be a description of an estate of ordinary inheritance. (iv) That under the Will there was no interest vested in any person other than the widow in the first place and after her the niece. The Will therefore contemplated that the estate should be represented first by the testator's widow and thereafter by his niece. (v) That the estate taken by *S* was an estate such as a woman ordinarily acquires by inheritance under the Hindu Law which she holds in a completely representative character but is unable to alienate except in case of legal necessity. (vi) That by the provision against alienation the testator had in his mind the ordinary recognised restriction upon alienation which would apply independently of any provision in the Will and that he had not in his mind the eventuality of an alienation becoming necessary either for the purpose of providing maintenance for the niece or for the preservation of his estate. Where a mere contingent remainder is created after the woman's estate (as in this case) and not a vested remainder this is an indication that the estate created was a woman's estate in the technical sense and not merely a life estate. An estate of the kind that a Hindu widow inherits in the case of an intestacy can be created by a Will. Where such an estate has been created by Will a condition prohibiting alienation absolutely is void for repugnancy. *Obiter dictum*—A Hindu can by Will create an estate for life in the English sense but his intention to do so must be made clear by the terms of the Will itself without any importation of English ideas. It is doubtful whether where a person enters into possession of an estate under a Will of uncertain construction an absolute title can be quered by adverse possession in the absence of an express claim to hold an absolute estate. Where a conveyance had been executed twenty five years before the institution of the suit the title made at or about the time of the conveyance were accepted as proof of the existence of legal necessity. **PAN BHANER v JAGAR NATH PRASAD** 3 Pat L J 199

Gift to wife for life—Direction to wife to make will—As I have directed her

WILL—contd

CONSTRUCTION—contd

orally—General power of appointment. A Parsi by his will after giving to his wife a life interest in his property directed as follows: 'And in her life time keeping God and Meher Darer (the Dispenser of Justice) before her mind my wife shall duly as I have directed her orally and according to the time make her will and all my heirs shall duly act agreeably to the same'.—*Held* that the clause did not mean that the testator's wife should dispose of the estate according to oral directions given by the testator but according to her own discretion and accordingly that the wife had a valid general power of appointment. *In re Helley* (1902) 2 Ch 555 distinguished. **SHIRIVAI v RATANAI** (1921)

I L R 43 Bom 88

I L R 45 Bom 711

25 C W N 898

27—Construction—Accumulation provision for—Hindu Law. *R* in his will gave and devised the rent and residue of his property to *B* his widow and executrix for life thereafter to his five sons in equal shares with a direction to make certain payments and for accumulation of the surplus income during the life time of the widow for the benefit of the sons. *Held* that the provision for accumulation of the surplus income is not invalid. A direction to accumulate with a gift of the accumulation is not fundamentally bad. It fails only if it offends some independent rule of Hindu Law. *Watkins v Administrator General of Bengal* I L R 47 Cal 88 (footnote) followed. *In re Poulitney Poulitney v Poulitney* (1902) 2 Ch 541 referred to. *Saunders v Vautier* (1841) Cr & Ph 410 distinguished. **RAM LAL SEN v BIDHUNATH DAS** (1918)

I L R 47 Cal 76

28—Request to two brothers without specification of shares—Tenancy in common. *Held* that a devise of separate property made by a maternal grandfather in favour of two grandsons without specifying what share each was to take has the effect of creating a tenancy in common and not a joint tenancy. *Mankamna Kunwar v Balkishan Das* I L R 28 All 38 distinguished from *Kishori Dubain v Munda Dubain* I L R 30 All 665 followed. *Jageswar Agrawal Dio v Pam Chandra Dutt* I L R 35 Cal 670 and *Gordhandas Soonderdas v Bai Ramcooter* I L R 36 Bom 449 referred to. **RAM PRASAD v KRISHNA PRASAD** I L R 43 All 600

29—Absolute estate or life interest. A testator by cl 3 of his Will gave his share in an estate to his wife on account of her maintenance and other absolute use and provided that she was to be at liberty to enjoy the same with powers of alienation by sale etc. By cl 4 of the Will he gave his property in general terms to the infant sons of a brother. *Held*—That cl 3 gave an absolute interest in the property to the testator's wife. **A VAKADA PILLAI v JEEVAPATHY MANAL** 24 C W N 346

31—Described as such if necessarily so—Construction of document—Will or gift or a mere statement of an intention to adopt. On the question whether a document was a Will or a non testamentary disposition intended to operate *de presents*. *Held*—That it was not a Will. The only words contained in the document

WILL—*contd*DEBATTAR—*contd*

a direction for accumulation of surplus income and then continued with a provision that out of the income of such fund the *sheban* should have power to celebrate religious ceremonies the words

such fund included the added accumulations and was not confined to the original *debutter* fund. The decisions which assign a particular meaning to any word in a Will only a sign that meaning in connection with the terms of the Will and that meaning is always capable of modification and alteration if it be seen that the limited meaning was not intended. *Sembie*—The word cash in cl. 1. of the Will might have a wider meaning than it ordinarily bears. *Held* on the construction of the Will that no portion of the estate of the testator was undisposed of there being valid residuary gifts in favour of specified persons. **GAYENDRO NATH DAS : SURENDRA NATH DAS**
24 C W N 1228

DEMONSTRATIVE LEGACY

*Succession Act (X of 1865) s 311-312—Demonstrative legacy—Interest whether payable on a demonstrative legacy—Where no time for payment fixed by will the time from which interest runs—Where a testator had bequeathed legacies to several grand children named in the will to be paid from the sale proceeds of certain house property after the death of a daughter and the marriage of a grand daughter and it was contested that inasmuch as there is no specific provision in the Succession Act for the payment of interest on demonstrative legacies no interest was payable. Held (a) that interest is payable upon demonstrative legacies and (b) that where there is no time for payment fixed although the amount is expressly made payable out of a particular fund the case is governed by the principle laid down in *Lord v Lord* L R 2 Ch App 8 and s 311 of the Succession Act applies. *Held* also that the rate of interest is 4 per cent per annum. *Lord v Lord* L R 2 Ch App 782. *Chinnam Payamannar v Tadikonda Ramachandra Rao* I L R 29 Mad 155. *Mullins v Smith* 1 Drew & Sm 64 and *In re Walford Kenyon v Walford* (1919) 1 Ch 219 referred to and followed. **ADMINISTRATOR GENERAL OF BENGAL : A D CHRISTIANA** (1910)*

I L R 43 Cal 201

EXECUTION

1.—*Execution of Will—Proof of capacity of testator to execute Will—Undue influence—Evidence of exercise of such influence—Absence of evidence of any coercion—Question of fact whether property was ancestral or acquired—Concurrent decisions on fact—In this case the question was as to the capacity of a testator to execute a will propounded by the appellants and it was alleged that they had exercised undue influence over him in the matter of the execution whilst he was admittedly very seriously ill though the evidence was to the effect that he was in possession of his senses and understood what he was doing when he signed the will. *Held* (reversing the decision of the Chief Court of the Punjab) that so far as the charge of exercising undue influence was concerned all that was shown by the respondents who were attacking the will was that there was motive and opportunity for the*

WILL—*contd*EXECUTION—*contd*

exercise of such influence by the appellants and that some of them in fact benefited by the will to the exclusion of other relatives of equal or nearer degree. Circumstances of that character might suggest suspicion and would certainly lead the Court to scrutinise with special care the evidence of those propounding the will. But in order to set it aside there must be clear evidence that the undue influence was in fact exercised of that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his property. Such evidence was not only lacking in this case but in the opinion of their Lordships of the Judicial Committee the circumstances attending the making and execution of the will were not reasonably consistent with it. *Held* also that under the circumstances the evidence as to capacity was not displaced by mere proof of serious illness and of general intemperance and that the appellants had discharged the onus which lay on them of proving that the will was duly executed by the testator while in his proper senses. The question whether property was ancestral or not was held to be substantially one of fact and therefore subject to the usual practice of their Lordships not to interfere where two Courts had concurrently found it was not ancestral but self-acquired. **BUN SINGH : UTTAM SINGH** (1910)

I L R 35 Cal 355

2.—*Signature proof of—Hand writing expert opinion of without examination in Courts is admissible—Will proof of—The propounder of a will should prove to the satisfaction of the Court beyond all possible doubt that the will was executed by the alleged testator and that it was executed in accordance with the law and that the testator at the time of execution was in a fit state of mind and body to execute the will and so fully appreciated what he was doing as to the disposition of the property. The opinion of a hand writing expert on a signature when he was not called as a witness and not subjected to cross examination was inadmissible in evidence. **PADMA PRASAD DEBIA : DHARMA DAS DEB SARKA** (1911)*

15 C W N 728

3.—*Execution of will—Proof of genuineness of will—Status of attesting witnesses—Will natural reasonable and proper in its terms—Presumption of will being genuine—Grounds of suspicion not valid—Admission of additional evidence by appellate court—Civil Procedure Code (1882) s 563—In the case of a will reasonable natural and proper in its terms it is not in accordance with sound rules of construction to apply to it those canons which demand a rigorous scrutiny of documents of which the opposite can be said namely that they are unnatural unreasonable or tinged with improbity. On the question whether a will made by a Hindu in which he left all his property moveable and immovable after the death of his widow to his sister's son (one of the appellants) to the entire exclusion of the respondent (a remote relation), was genuine as held by the Subordinate Judge or a forgery as held by the Court of the Judicial Commissioner there were concurrent findings of both courts that the testator had been for years in amity and on the worst of terms with the*

WILL—*contd*EXECUTION—*contd*

respondent but had regarded the appellant with affection and treated him as his son. The will was found to have been duly executed and properly attested by respectable servants in the testator's house whom it was natural to employ for that purpose. *Held* that the will was in every respect a natural one and in accordance with the testator's feelings and tenor of life and the presumptions of law were in favour of its being maintained. A comment by the Court of the Judicial Commissioner which regarded the will with suspicion to the effect that the witnesses might have been of a better class, had no force except upon something on a much higher level than mere suspicion, namely proof which would thoroughly satisfy the mind of a Court that those persons had committed both forgery and perjury. *Chotey Narain Singh v Ratan Aker* I L R 22 Cal 519, L R 22 I A 13 per Lord Watson followed. Another ground of suspicion was that the paper on which the will was written appeared to be old instead of fresh which was supported by proof that paper was official paper in general use together with evidence that some other people had been in the habit of having forms which they signed in blank and forms were produced signed by people other than the testator and with none of which he had any thing to do. *Held* that such evidence was inadmissible as being not relevant to the case and should not have been admitted. *Held* further that the course followed by the Court of the Judicial Commissioner during the hearing of the appeal in sending for and (purporting to act under s 568 of the Civil Procedure Code 1882) admitting additional evidence (proceedings of the Municipal Board at Lucknow) to discredit one of the witnesses on a particular point without calling him and affording him an opportunity of making an explanation of the matter and on the ground that his evidence appeared untrue on that point disbelieving all the rest of his testimony as to the will was an improper procedure and not in accordance with s 568 of the Code. Their Lordships declined to conclude in the absence of his own evidence on the point that the rest of his testimony otherwise quite unimpeachable was perjury. *JAGANNATH KUNWAR v DURGA PRASAD* (1913) I L R 36 All 93

4 — *Held* that there is a presumption of due execution of a will where there is a proper attestation clause although no evidence of its due execution is forthcoming. *WOOLMER v MRS DALI* I L R 1 Lah 173

EXECUTOR

— *Executor acting under*
— *Executor setting up adverse title—Estoppel* An executor under a will who has accepted the office of executor and acted as such is estopped thereby from setting up an adverse title to property disposed of by the will. *Srinivasa Moorthy v Venkata Varada Ayyangar* I L R 29 Mad 239 followed. *PER ARNOLD WHITE C J*—The fact that an executor has not taken out probate (at any rate where the law does not require him to do so) is immaterial. *PER WALLIS J*—An executor is not at liberty to set up an adverse title to property which has come to his hands as executor any more than a trustee is entitled to set up an adverse title to property which

WILL—*contd*EXECUTOR—*contd*

he has taken possession of as trustee. The plaintiff's position was altered by his looking on and not opposing the first defendant in the steps taken by the latter to get possession of the assets. The fact that an executor has not taken out probate is immaterial. *PER MILLER J* (dissenting)—It is not clear in this case as it was in *Srinivasa Moorthy v Venkata Varada Ayyangar* I L R 29 Mad 239 that the executor was let into possession under the will nor in this case was the plaintiff induced to alter his position. The principles of estoppel do not therefore apply. *MUNISAMI CHETTI v MARUTHAMMAL* (1910) I L R 31 Mad 211

— *Executor—Powers of executor in dealing with the estate of his testator* One P died leaving a will by which he directed that certain legacies should be paid out of a fund of Rs 10,000 invested in fixed deposit in the Delhi and London Bank. The Bank had during P's life time advanced certain sums to his daughter on an undertaking by P that he would stand surety for the loan. P was also himself indebted to the Bank. *Held* on suit by the legatees, that the executor of P's will was perfectly justified on being satisfied as to the fact of P's relations with the Bank above described in permitting the Bank to realize from the fund in question both the amount of the loan to P's daughter and the amount of his own indebtedness. *Pocock v THE DELHI AND LONDON BANK LTD* (1914) I L R 36 All 217

1 — *Civil Procedure Code* (Act XIV of 1882) s 103 if applies to probate proceedings—*Probate and Administration Act* (P of 1881) s 83—*Dismissal of application for probate for default—Executor if may propound Will again*—*Res Judicata*—*Detriment costs sufficient remedy against vexatious conduct* A refusal to admit a will to probate is conclusive of the facts necessary will to support the decision. But if probate has been refused not on the merits but merely by reason of the insufficiency of some matter of form or procedure there is no adjudication that the instrument is not entitled to probate and therefore it may be again propounded. If therefore an application for probate by the executor of a will has been dismissed for default that fact itself cannot be set up in application by any other person claiming an interest under the will and therefore necessarily also, by the executor himself. An executor presenting an application for probate of a will cannot be regarded as a plaintiff who brings a suit in respect of a cause of action. S 103 of the Civil Procedure Code (Act XIV of 1882) would therefore be inapplicable to such an application. *Ganesh Jagannath v Ram Chandra* I L R 21 Bom 563 relied on. *PANDHARI DESAI v BHIMJI BHANDAR MOOKERJEE* (1910) 14 C W N 924

2 — *Probate application for—Onus—Testamentary capacity what is*—*Probate granted by Trial Court reversed by Appellate Court—Appellate Court when should differ from Trial Court's estimate of evidence—Signature genuineness of proof of—Witnesses of competency opinion of value of—Witness important but expected to be hostile how to be examined Where there appeared a striking resemblance between the signatures on the will and certain admitted signatures of the alleged testator but not that*

WILL—contd

EXECUTOR—contd

absolute identity which in many instances may furnish indications of deliberate imitation by the careful forger the High Court agreed with the Trial Court on the evidence in finding that the signatures were genuine. Where from the evidence it appeared that the illness of the testator had caused serious anxiety to his relations at least three days before his death and that on the day of his death his condition was such as to necessitate the attendance of three physicians on five occasions and the will was alleged to have been executed about two hours before his death. Held that in the circumstances the Court was bound to scrutinize with care and caution the evidence as to his testamentary capacity at the time when he was said to have executed the will. That the burden was upon the propounders of the will to show that the testator had testamentary capacity i.e. capacity to comprehend the nature and effect of his act to discharge this burden it was not enough to show that the testator was conscious when he executed the will or that he was able to maintain an ordinary conversation and to answer familiar and easy questions. It must be shown that he was able to dispose of his property with understanding and reason that he was able to realize his position to appreciate his property and to form a judgment with respect to the parties whom he decided to benefit. The opinion of witnesses as to competency is entitled to little regard unless supported by good reasons founded on facts which warrant them. Where the propounders of a will had reason to suppose that an important witness could not be trusted to tell the truth they might have asked the Court to summon him with liberty to both parties to cross-examine him if necessary. A Court will not reject a will merely because its terms appear extraordinary against clear evidence of due execution by a competent testator. But where the terms are unusual and the evidence of testamentary capacity doubtful the vigilance of the Court will be roused and before pronouncing for the will the Court will require to be satisfied beyond all reasonable doubt that the testator was fully cognizant of its contents and in a position to exercise and did exercise, thoughtful judgment and reflection respecting the act he was doing. *Bulla Kumar v Bhagwati* 2 C B A 649 *Sefson v Hopwood* 1 F F 579 *Marish v Tyrrell* *Hogg Ecc Rep* 84 1st *Dufaur v Croft* 3 Moo P C 136 and *Harwood v Paker* 3 Moo P C 28 referred to. The principle that a Court of Appeal should be extremely slow to disagree with the primary Court on a question of appreciation of oral evidence embodies a general rule but is not of universal application. Where the Trial Court had found in favour of the will but its decision was vitiated by its failure to test the evidence from the standpoint of the fundamental principle that the testator must be of sound and discerning mind and memory so as to be capable of making a disposition of his property with sense and judgment in reference to the situation and amount of such property and to the relative claims of different persons who were or might be the objects of his bounty the High Court on appeal reversed that decision not so much because it formed a different estimate of the credibility of the witnesses for the propounders but because it differed in its estimate of the effect of

WILL—contd

EXECUTOR—contd

their statements on the assumption that they had spoken the truth. This evidence in the opinion of the High Court was insufficient to discharge the onus that rested on the applicants for probate. The nature of this onus discussed. *Baker v Pitt* 2 Moo P C 317 and *Panton v Williams* 2 Curt 330 21 *Notes of Cases Sup* 21 referred to. *Susil Kumar Banerjee v Arsari Devi* (1914)

18 C W M 826

3 ————— Probate—Issue of citation object of—Citation of infant effect of—Citation to infant and his mother a minor—No opposition to grant of probate—Competency of infant for revoking probate—Testator testamentary capacity of—Onus of proof upon the executor—Probate and Administration Act (1 of 1881) Where one J died in 1901 leaving a widow S aged 14 years and a son D aged 3 months and it was alleged that J executed a will on the day previous to his death by which his three brothers G B and M were appointed successive executors and on G's application for probate of the will citations were issued on B and M as also upon S and D and there was no opposition and probate was granted to G in 1902 and in 1911 D still an infant applied through his mother S for the revocation of the probate on the ground that the alleged will had not been executed by his father J and the District Judge without formally revoking the probate called upon the executor to prove the will in the presence of the objector and held upon the evidence that the original grant should not be revoked. Held that service of notice upon the infant D and his mother S a minor was no proper service upon them and was useless for the protection of the interest of the infant and as such D was competent to apply for revocation of probate through his mother. The object of the issue of the citation is that all persons whose interests are or may be adversely affected by the decree of the Probate Court shall have notice of the proceedings and an opportunity should they choose to avail themselves of it of intervening for the protection of their interests. Held that this purpose was not achieved merely by issue of citations to infants and that in the circumstances of the present case the appointment of an officer of the Court as guardian of the infant would not have afforded him any protection. *Rebells v Rebells* 2 C W V 100 *Shorohibala v Ananda moeye* 2 C W V 6 and *Mortimer on Probate* p 530 referred to. A party who is cognizant of the proceedings and might have intervened is bound by their result and cannot be allowed to reopen them. *Konol Lorkan Datta v Viltruttan Mandle* 1 L R 4 Cak 360 *Brinda Choudhuran v Radhika Choudhuran* 1 L R 11 Cal 49 *Vistaram Datta v Ibrahimom* 1 L R 18 Cal 45 *In the goods of Luggubully Dax* 1 L R 77 Cal 2nd *Durgagati Debti v Sourabini Debti* 10 C W V 990 *etc* 1 L R 100 Cal 1001 *Verhelst v Weeks* 2 Phill 1 *Ratcliff v Barnes* 9 St & Tr 456 *McJereley v Andrews* 1 P 2 I D 3 and *Bell v Armstrong* 1 Id. 3rd referred to. Held that this rule of law did not apply to the circumstances of the present case. Even in cases where a party has upon notice failed to appear and contest the proceedings the Court may for sufficient reason, allow the proceedings to be reopened. *Young v Halpenny* (1895) P 57,

WILL—contd

EXECUTOR—contd

Peters v Tilly 11 P D 140 and *Ridchie v Malcolm* (1902) 21 R 403 referred to *Held* also that the District Judge ought to have revoked the grant in the first instance and then called upon the executor to prove the will *Brindaban v Sureswar* 10 C L J 263 and *Durganati v Sourabini* 10 C W N 995 s c *I L R 33 Cal 1001* relied on *Held* further on the evidence that the testator had no testamentary capacity at the time when he was alleged to have executed the will The High Court in this view revoked the grant on the probate. *Held* also that the onus was upon the executor to establish that the deceased had sound and disposing mind at the time when he was said to have executed the will *Haring v Haring* 6 Moo P C 325 referred to DWIJENDRA NATH SARMA PURKAYASTHA : GOLOKE NAT SARMA PURKAYASTHA (1914) 19 D W N 747

4 ——— Grandfather's daughter's son : on if has locus standi to contest grant when propounder a stranger to family—*Dayabhaga* law of inheritance—*Sakulyas* and *Samanodakas* who are—*Mitakshara* principles of application to cases not provided for by *Dayabhaga*—Order that caveator has no locus standi if appealable—*Civil Procedure Code (Act 5 of 1908) s 115* An application for the probate of a Will was opposed by the daughter's son's son of the grandfather of the testator while the propounder was a perfect stranger to the family The District Judge held that the caveators had no locus standi. *Held*—That the order of the District Judge was not appealable but could be revised by the High Court under s 115 C P C That in the circumstances the caveators had some interest in appealing and opposing the application for probate and it should be disposed of in their presence *Quare* —Whether grandfather's daughter's son's son is an heir under the Hindu law RADHIA RAVAN CHOWDHURY : GOPAL CHANDRA CHUCKERBUTTY 24 C W N 316

5 ——— Legatee long in possession in terms of will Where a will has been propounded and proved the Probate Court should grant probate even though it should appear that there were no debts due to or by the testator and other legatees have been in possession in accordance with the direction of the will for a long time it being absolutely necessary for the legatees to establish their title by proving the will The Probate Court cannot go into the question whether the legatees have acquired independent title by adverse possession ADWAIT CHARAN MONDAL v KRISHNADHAR SIKHAN 21 C W N 1129

PROOF

1 ——— Will of which probate has not been taken whether can be proved—*Succession Act (X of 1865) s 187*—Proper representation of testator's estate where no probate taken *Sarbanmogola Devi v Mahendro Nath Nath* I L R 4 Cal 509 is authority for holding that a will of which probate has not been taken may be proved in a proceeding other than a proceeding under the Probate Act But a will uncovered by a probate or letters of administration cannot prove that anybody named therein has title to the estate of the testator A legal heir of a testator in possession of his general estate can maintain a suit for the benefit of the estate so long as any other claimant

WILL—contd

PROOF—contd

does not establish his right to the same under the will *Prosunno Chandra Bhattacharya v Kriha Chaitanya Pal* I L R 4 Cal 347 *Choony Lal Bho v Osmond Bibee* I L R 30 Cal 1044 referred to BASUNTA KUMAR CHUCKERBUTTY v GOPAL CHANDER DAS (1914) 18 C W N 1196

2 ——— Proof of execution and due attestation—Attesting witnesses turned hostile—Court may find execution proved from other evidence—Proof that testator saw all attesting witnesses sign and latter saw testator sign if necessary where will regular on its face—Presumption of due execution The mere fact that attesting witnesses to a will have repudiated their signature does not invalidate the will if it can be proved by evidence of a reliable character that they have given false testimony When the evidence of the attesting witnesses is vague doubtful or even conflicting upon some material point the Court may take into consideration the circumstances of the case and judge from them collectively whether the requirements of the Statute were complied with in other words the Court may on consideration of the other evidence or of the whole circumstances of the case come to the conclusion that their recollection is at fault that their evidence is of a suspicious character or that there are willfully misleading the Court and accordingly disregard their testimony and pronounce in favour of the will It is no necessary under the law that affirmative evidence should be forthcoming that the testator did as a matter of fact see the attesting witnesses put their signatures or that the attesting witnesses did actually see the testator sign the document It is enough if the circumstances show that their relative position was such that they might have seen the execution and the attestation respectively Every presumption will be made in the case of a will execution and attestation in the case of a will regular on the face of it and apparently duly executed BRAHMADAT TEWARI : CHATDAY BIBI (1914) 20 C W N 192

3 ——— Proof—Execution in unusual circumstances—Will not inofficious—Witnesses such as were reasonably to be expected to be available in the circumstances not to be believed merely because their position socially inferior—Beneficiary under will recited as being testator's adopted son—Caveator if may question adoption—Judge if may refuse to frame an issue as to adoption whilst admitting evidence thereon—Prevalency on the question of genuineness of will—Vote of evidence to be given by witness refusal to produce if should pre-
judice party—Privilege K a Hindu gentleman went means and resident of a place called Sarwan and accompanied by his two wives and some of his servants and dependants to attend the bathing fair at Sonapur on 10th November 1900 Cholera having broken out at the fair it was broken up by Government order but K who had been suffering from dysentery and had been made nervous about the state of his health by the outbreak of cholera (it was alleged) executed the disputed will on 11th November 1900 and died at 3 a m of 16th November 1900 The will was proved by such of the attesting witnesses as were available and other witnesses The genuineness of the will was challenged *inter alia* on the ground that the witnesses to the execution were not of a superior position The will however appeared to be one which a Hindu gentleman in K's position might reasonably

PROOF—contd

and naturally have made and the attesting witness was such as one would reasonably expect to be available on the occasion. *Held* that there being nothing in the case to suggest that the evidence as to the preparation and as to the execution of the will had committed perjury the contention that the will should not be accepted as genuine because the witnesses to its execution were not of a superior position was not sound and was contrary to the view of the law as expressed in *Chetty v. Ramalinga Pillai* (1916) 1 L. J. 411 A. 50. *C* is 15 C. 151 A. something more than mere suspicion is necessary in such a case to make convincing an argument based on the social position of the witnesses. One of the beneficiaries and the will was *C* a boy to Hindu rites by *K* as his son. The executor questioned the factum of the adoption. *Held* that the trial Judge was right upon an application for probate in declining to frame an issue as to the alleged adoption though the matter had to be considered as bearing on the question of the genuineness of the will and the executors were not precluded from questioning the adoption and were rightly allowed to cross examine the propounder and witnesses on that subject and to call evidence to prove that *C* was not adopted. For the purpose of the propounder a brief note had been obtained from a witness (subsequently examined at the trial) of the evidence that he could give. *Held* that the notes was privileged from production and the executors should not have allowed their minds to be influenced in considering the evidence by the fact that the note was not produced in Court for the information of the court. (20 C. W. N. 617) *HAIRYANDAN SIVON* (1916)

Proof of genuineness

4. Clear and trustworthy evidence of attesting witnesses is to be rejected because appearance of document is suspicious. Court if in such a case may speculate as to what would have been a proper will for the testator. Proof of the genuineness of a will depends mainly on the testimony of a will deponent who attested on the last page of the will the signature of the deceased and who deposed that at the time the will was executed the deceased was perfectly capable of understanding a business transaction. The will on examination showed that the writing on the last page was inconveniently crowded above the signature of the testator and was so placed as to lend colour to the suggestion that the page had been filled up after the signature had been attached. Upon this the Trial Judge built the theory that the will had been written in black ink over erasures of the test or previous signatures and which the Judicial Committee did believe. *Held* that the doctor's evidence (which) completely destroyed this theory and in favour of the genuineness of the will. That it would be most unsafe and most undesirable in circumstances such as these to try to pull out from the peculiar form in which a document is written in the vernacular appears a hypothetical answer to the clear distinct and trustworthy evidence.

PROOF—contd

denre of the doctor who witnessed the will. Where a will has once been made and is apparently in perfect form and the evidence of the attesting witness is to be trusted few things can be more dangerous than to attempt to re-create the kind of will that the man ought in the opinion of the Court to have made. Once the man's mind is free and clear and is capable of disposing of his property the way in which it is to be disposed of rests with him and it is not for any Court to try and discover whether a will could not have been made more consonant either with reason or with justice. *ANDRACAPILLAY CHITTY v. RAMASWAMI CHETTI* (1916) 20 C. W. N. 673

5. Proof of—Onus—serious illness and general interperance not a sufficient rebut prima facie case made out by evidence—Undue influence is not to be proved by evidence—Opportunity to use such influence and benefits derived not enough for rebuttal. The onus of proving testamentary capacity is on those who propound a Will. In this case they had discharged that evidence by obligation by evidence which went to establish a strong prima facie case in favour of the Will. Proof of serious illness and of general interperance was not enough to displace this evidence. It was shown on the part of those attacking the Will that there was motive and opportunity for the exercise of undue influence by the defendants and that some of them benefited by the Will to the exclusion of other relatives of equal or nearer degree. Circumstances of this character may sometimes suggest suspicion and in the present case would lead the Court to scrutinize with special care the evidence of those who propounded the Will. But in order to set aside there should have been clear evidence that the undue influence was in fact exercised or that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his properties. *Held* that in this case such evidence was not only lacking but the circumstances attending the making and execution of the Will were not reasonably consistent with it. *BUR SIVON v. UTTAM SIVON* 15 C. W. N. 177

6. Suspicion also a valid ground for refusing probate—Presumption against misconduct operation of Evidence Act (2 of 1877) as s. 45, 101, 135—Order in which will is to be tendered dissection of Court's power—Expert medical examination of handwriting—Expert medical examination of handwriting and signature—Right of opposing counsel to inspect will if a party alleges a circumstance in itself ought to call for suspicion of the Court and calls upon it to pronounce in favour of which it could not do so unless the suspicion is removed and it is judicially satisfied that the paper propounded does express the true will of the deceased. *Curry v. Pullen*—*Moo P. C. 459* referred to and the rule in *Threl v. Panton* (1824) 1 D. 152 explained. *Per JETTER C. J.* The evidence which by itself would be grounds for the Court not pronouncing in favour of an alleged will was the

WILL—contd

PROOF—concl'd

inherent in the nature of the transaction it self and not the doubt that may arise from a conflict of testimony which becomes apparent on an investigation of the transaction *Per WOODROFFE J* the rule in *Tyrell v Pantton (1891) P D 151* applies to cases where the circumstances of suspicion arise from the nature of the case as put forward by the propounder in which case the propounder must remove the suspicion. Where, however the alleged suspicion against a will arises from facts which form part of the impugnant case then the Court must see whether the facts which are said to give rise to suspicion are proved or whether the propounder's case is proved. The rule therefore does not apply where the question is simply which set of witnesses should be believed. In this case the trial Judge having decided against the genuineness of the will on the ground that the evidence of the witnesses whom the propounder had called to support her case was not so unimpeachable so absolutely trustworthy in itself as by its own merit to dispose of all objections and to allay all doubt and suspicion *Held per JEVENS C J* that the standard of proof required by the Judge was higher than the law (as contained in s 3 of the Indian Evidence Act) prescribes *Per WOODROFFE J*—A probate case is not singular as regards the application of the general principles of proof as contained in ss 3 and 101 of the Indian Evidence Act. *Per JEVENS C J*—The Evidence Act by which in matters of proof the Courts in this country must be guided has in conformity with the general tendency of the day adopted the requirements of the prudent man as an appropriate concrete standard by which to measure proof. The Evidence Act is at the same time expressed in terms which allow full effect to be given to circumstances or conditions of probability or improbability so that where as in this case forgery comes in question in a civil suit the presumption against misconduct is not without its due weight as a circumstance of improbability though the standard of proof to the exclusion of all reasonable doubt required in a criminal case may not be applicable. *Cooper v Slade 6 H L Cas 746* and *Deo d Devine v Wilson 10 Moo P C 502 531* referred to. This probability gains in strength where the character and position of the individual impugned is apart from the particular case above reproach. In the goods of *GORES SIVA DUTT v BISSISSARA DUTT (1911)*

16 C W N 265

7 A holograph Will executed in India by a person of Scotch domicile is a valid testamentary document. On such document being propounded the Court declined to admit in evidence a treatise on Scotch Law but accepted the opinion of a writer to the agent attested before a notary *In re the goods of Mac Intyre I L R 41 All 248*

8 Will proof of—*Succession Act (X of 1865) s 60—Evidence Act (I of 1872) s 68—Examination of one attesting witness in Probate Court is sufficient to prove will* Under s 60 of the Indian Succession Act there must be two attesting witnesses to a will but under s 68 of the Evidence Act the will can be proved in the Court of Probate by one of the attesting witnesses. *RAMMOH DAS KOCH v HAKOL KOLI KOCHIRI (1917)*

22 C W N 315

WILL—contd

REVOCATION

1 Will in s 19 of the Probate and Administration Act is means original document—Existence of will up to testator's death if necessary to be proved—Revocation pleading and proof of—Presumption of destruction of will when arises—Loss of will if operates as revocation—Destruction of will when operates as revocation—*S 24—* Since the testator's death scope and effect of—Delay in applying for Letters of Administration with will annexed. Where the testator did not appoint an executor and the residuary legates applied for letters of administration with the will annexed 12 years after the death of the testator and the objector did not plead revocation but set up non execution of the will. *Held* that the execution of the will in the manner required by law having been proved it lay upon the objector to plead and prove revocation and no such plea having been taken it could not be held that the will was revoked. *Per PAY J* That the application for letters of administration was not liable to dismissal on the ground that the petitioner did not prove that the will was in existence up to the time of the testator's death. That in s 19 of the Probate and Administration Act the word will does not mean the original document but has been obviously used to mean the disposition. When a will is shown to have been in the custody of the testator and is not found at his death the well known presumption arises that the will has been destroyed by the testator for the purpose of revoking it. This rule of law bears only on revocation when it is an issue in the suit and then the presumption may be rebutted by the facts. The loss of a will does not operate as revocation to establish which destruction of the will by the testator must be shown. In s 24 of the Probate and Administration Act the words since the testator's death qualify the word lost or to the such no reference to the word lost. The delay in proceeding clause of the sentence. The delay in making the application under s 19 was not a material fact in this case. *SARAT CHANDRA BASAK v GOLAP SUNDARI DASTA (1913)*

18 C W N 527

2 Revocation—Will lost—Presumption that it has been revoked how to be applied in India—Finding that will was revoked based on presumption upon in second appeal—Proof of will by copy taken from Registrar's office without objection in the first Court—Objection on appeal that conditions for admission of secondary evidence not fulfilled if admissible. In view of the habits and conditions of the people of India the rule laid down in *Welch v Phillips 1 Moo P C 299* that when a will is traced to the possession of the deceased and is not forthcoming at his death the presumption is that he has discharged it must be applied with considerable caution. Where in such circumstances the first Appellate Court held that the will had been revoked or cancelled but on second appeal the Chief Court held that there was no sufficient evidence of revocation and that the more reasonable presumption was that the will was mislaid or lost or else stolen by one of the defendants after the death of the deceased. *Held* that it was perfectly within the competency of the Chief Court to come to that finding. There was nothing definite to show that deceased who was a very old man and towards

WILL—contd

PEVOCAATION—contd

the end of his life imbecile had any motive to destroy the will or was mentally competent to do so whilst on the other hand there were circumstances which favoured the view that the will was either mislaid or stolen. *Held* also that the first Appellate Court should not have treated a copy of the will taken from the Registrar's office which was filed and admitted in evidence in the first Court without objection as inadmissible on the ground that no sufficient foundation was laid for the admission in the first Court of secondary evidence—as if such objection had been taken in the first Court that Court would probably have seen that the deficiency was supplied. **PADMAN : HANWANTA (1912) 19 C W N 929**

Will revocation of
—Locus standi of persons seeking revocation. A person who is entitled to a much greater benefit under a will alleged to have been revoked by another will has locus standi as having sufficient interest to oppose grant of probate and to apply for revocation of the probate of the later will on the ground of non service of citation. It is not necessary to obtain probate of the earlier will in order to be competent to apply for revocation of the probate of the later will. **DRAUPADI DASSYA v RAJESWARI DASSYA (1917) 22 C W N 564**

Mutual and joint
wills.—Power of survivor of joint will to revoke.—Survivor can revoke unless he derives some benefit under the will. Where two persons agree to make mutual wills and one of them dies the survivor can revoke his will unless he has taken some benefit under the will of the deceased testator. **Stone v Huskins (1905) P 194** referred to. **MURKENT ALMAL v VISWANATHA AIYAR (1909) I L R 33 Mad 406**

Will in testator's possession—Will not forthcoming on testator's death.—Presumption of revocation. When a person who is known to have executed a will and to have had that will in his possession dies and the will is not found after his death a presumption arises that he has revoked the will during his life time. **Allan v Morrison (1900) A O 604** relied on. **Anwar Hossein v Secretary of State for India (1904) 31 Cal 885** disapproved. **ADITHAN v BAPULAL (1920) 45 Bom 906**

VALIDITY

rules for dissolution of a trust to constitute a will—

See WILL (CONSTRUCTION)

15 C W N 1014

what is sufficient for in the case of cutchi memons—

See WILL (CONSTRUCTION)

I L R 43 Bom 641

Test—Signature on one page out of several pages of a Will. If an instrument is on the face of it a testamentary character the mere circumstance that the testator calls it irrevocable does not alter its quality the principle test as to whether the instrument is a will is whether the disposition made takes effect during the life time of the executor of the deed or whether it

WILL—contd

VALIDITY—contd

takes effect after his death. **Rammoni v Ramgopal 12 C W N 949** relied on. **Sita Koor v Deonath 8 C W N 611 Chaitanya v Dayal 9 C W N 1021** distinguished. One signature made with the intention of authenticating the whole instrument is sufficient though a will be contained in several sheets of paper. **SAGORE CHANDRA MOY DOL : DIOAMBAR MOYDOL (1909) 14 C W N 174**

2—Caveat—Caveators withdrawing on proposers agreeing to pay an allowance—Personal liability of executors—Settlement of bond fide dispute—Enforcement of agreement if opposed to public policy—Registration. Where on the executors proposing a will the widows of the deceased entered caveat but before the case came on for hearing the parties settled their differences and the caveators withdrew their objections on the executors undertaking *inter alia* to pay them a fixed monthly allowance for performing religious acts although the will purported to provide for grants of money for purposes only out of the surplus income. *Held* affirming **Do s J** that the agreement having been entered into an order to settle a bond fide dispute was enforceable and as the liability which the executors undertook appeared to be a personal one the fact that the agreement was not registered or that the terms went beyond those of the will were no bar to its enforcement. **SURJA PRASAD SIKUL : SHYAMA SUNDARI DEBI (1909) 14 C W N 987**

3—Minor—Capacity to make will—Indian Majority Act (IX of 1875) s 3—Hindu Law. A Hindu minor who has not attained majority as provided in the Indian Majority Act, 1875 is not competent to make a will of his or her property. **BAI GULAB : THAKORLAL (1912) I L R 36 Bom 622**

4—Civil Courts jurisdiction to declare Mohamedan Will of which probate has been granted invalid—As opposed to Mohamedan law—Revocation of probate if may be made on such a ground—Decree for in such suit. The grant of probate of the will of a deceased Mohamedan does not preclude the Civil Court from making a declaration that one or more provisions of the will are inoperative as being opposed to the provisions of Mohamedan law. The Probate Court would have no jurisdiction to revoke the probate on such a ground and it is not one of the just causes set out in s 50 of the Probate and Administration Act. It is for the Probate Court to determine whether the will has been duly executed and it is for the Civil Courts to determine what effect is to be given to the will after probate has been granted. **PATEL MIA : DABIDA KHATOON (1918) 23 C W N 658**

5—Direction to pay fixed deposit to another after death of depositor—Whether a will. A person depositing money with a fund filled in a form provided by the fund whereby he nominated another as the person entitled to receive the money after his death. *Held* that this amounted to a will and if made in the town of Madras the nominee could not recover the deposit unless the nomination was duly executed and attested as a will and probate thereof obtained. **PER KARNAN J**—The direction created neither a charge nor a trust in favour of the

WILL—contd

VALIDITY—contd

nominee or a contract on which he could sue
Towers v Hogan (1889) 23 I R Ir 53 and *In re Williams* (1911) 1 Ch 1 followed *Florino Marlies v Pinto* (1917) 33 M L J 476 distinguished *NANA TAWER* & *BHAWANI BOYEE* (1920) I L R 43 Mad 728

6 ———— Testator of sound mind when giving instructions for a will—presumption that he was when executing it—Testator must be of sound disposing mind—testator suffering from para-lysis—Medical certificate of soundness of mind 26 days after execution of will—whether admissible and relevant—*Indian Evidence Act I of 1872 s 32 (2)*—letters by testator speaking of his relations with his wife the sole legatee—whether admissible Held that there is a presumption of due execution of a will where there is a proper attestation clause although no evidence of its due execution is forthcoming *Brahmadat Tewari v Chaudan Bibi* (34 *Indian Cases* 686) and *Halsbury's Laws of England Volume XXVIII page 505 Jarman on Wills 6th Edition page 100* and *Abdur Rahim's Law of Undue Influence Chapter XXI on Wills* referred to Held also that where a testator is of sound mind when he gives instructions for a will he must be deemed to be of sound mind when it is executed even though he is not able to follow its provisions then *Susil Kumar Banerjee v Apsara Devi* (7 *Indian Cases* 276 281) dictum of Lord Macnaghten in *Perera v Perera* quoted herein referred to Held further that a medical certificate of testator's soundness of mind made 26 days after the execution of the will is admissible in evidence under section 32 (2) of the Evidence Act and is relevant but that letters by the testator speaking of his relations with his wife in whose favour he subsequently made the will are not admissible Held lastly that a testator suffering with paralysis even if it has affected his mental capacity to some extent may still be able to execute a will of a simple character *Sayid Ali v Ibad Ali* (I L R 23 Cal 1 P C) *Sayad Muhammad v Fateh Muhammad* (I L R 22 Cal 324 334 P C) and *Bur Singh v Utam Singh* (21 P R 1911 P O) referred to also *Halsbury's Laws of England Volume XXVIII page 532 Tayam mai v Sashu Challa Dairker* (10 Moo I A 429) *Larkho Bibi v Gopi Varan* (I L R 23 All 472) *Woomesh Chandra v Rash Mohini Dassi* (I L R 21 Cal 278) *Pandit Indar Daram v Pandit Onkar Lal* (20 P R 1911) *Musst Kewati v Chandu Lal* (123 P R 1916) and *Raj Bachan Singh v Shitranji* (47 *Indian Cases* 963) distinguished *Woolver v Mrs Daly* I L R 1 Lah 173

7 ———— Execution of—Proof—Story of preparation of draft suspicious if ground for refusing probate when evidence of execution believed—Witnesses present but not examined by Court from recapture of work and not examined later on through no fault of propounder It is not safe to assume that a case must be a false case if some of the evidence in support of it appears to be doubtful or is clearly untrue There is on some occasions a tendency amongst litigants in India as else where to back up a good case by false or exaggerated evidence In this case the Judicial Committee held that the suspicion which attached to the evidence as to the preparation of the draft of the Will sought to be probated is that it

WILL—contd

VALIDITY—contd

had not been prepared beforehand but had been made from the Will itself did not destroy the evidence as to the execution of the Will The Judicial Committee did not consider the non examination of all the attesting witnesses as destructive of the case of the propounder of the Will most of them having been present to give their evidence on one or more of the dates fixed for the recording of evidence but were not examined owing to pressure of work in the Court none appearing to be persons living near the Court and there being nothing to suggest that any of them were intentionally kept out of the witness box by the propounder *BANKIM BIHARI MAITI v SRIMATI MATANGINI DAS* 24 C W N 628

8 ———— Depriving heirs proof of—Onus—In a suit by legal heirs of a deceased Hindu for a declaration that a Will propounded by the Defendants as the Will of the deceased was a forgery the onus lay on the Defendants to prove without reasonable doubt that it was the Will of the deceased Held on the evidence that the Will in this case had not been satisfactorily proved *BINDESHRI PRASAD v MUSSAMMAT BAIKARNA BIBI* 24 C W N 874

9 ———— standard of proof requisite—Examination of attesting witnesses—Testamentary capacity appellate courts duty in respect of findings of fact Held upon the terms of the Will in question they were not inoffensive and unnatural and therefore were not calculated to excite suspicion as to the genuineness of the disposition It is not enough to suggest doubts as to the veracity of a witness The standard of proof to establish a will required by the Indian Statutes is that of a prudent man and not an absolute and conclusive one Also that it was a salutary rule that the findings of fact of the trial judge should not be lightly disturbed When the issue is simple but it is otherwise where the question depends not only on assertions of witnesses but upon surrounding facts and circumstances *PRASANAMAYI DEBYA v BAIKANTHA NATH CHATTOPADYAY* 25 C W N 719

10 ———— Hindu testator—Creation of estates unknown to Hindu law—Invalidity of bequests—*Indian Succession Act (X of 1885) s 118* A Hindu made his will whereby he bequeathed his property successively to the three sons of his sister in the following manner In the first place it was to go to one of the sons absolutely subject to the condition that if he died without male issue surviving it was to go to the second The second son was also given an absolute estate similarly liable however to be defeated if he in his turn died without leaving male issue in which event the property was to go to the third son subject to a similar condition Ultimately the property was devised in favour of charity The first two sons having died without male issue surviving the third son sued for construction of the will and for a declaration of his right to the property in the events that had happened—Held that although the testator might have defeated the absolute estates which he gave to the first son by a gift over to the second son in accordance with the provisions of s 118 of the Indian Succession Act he could not attach a condition to the gift over and thus further restrict the disposition of the estate in a manner unknown to Hindu law

WILL—*contd*VALIDITY—*contd*

by directing that the second son was not to take an absolute estate but what would be in the language of the English law of real property an estate in tail male. *Held* further that the estates which were intended to be created by the testator being thus in fact a succession of estates in tail male the original gift over was bad in its creation and failed absolutely and the first son took an absolute estate which on his death would go to his daughter as his heiress. A Hindu may create a life estate or successive life estates. But a series of absolute estates defeasible in succession on the happening of an uncertain event cannot be considered as a succession of life estates. It can only be considered as an attempt to create a state of inheritance which is not recognised by Hindu law. **BAT DHANLAXMI v. HARIPRASAD UTTARAI** (1920) 1 L R 45 Bom 1038

11 — **Execution—Probate—Testamentary capacity—Onus probandi—Attesting witnesses—Hostile animus—Discrediting testimony of adverse witness—Evidence on commission—Duty of commissioner—Effect of improper cross examination not remediable in the Trial Court—Unattested alterations in a will—Presumption of Law—Duty of Trial Court in respect of intervention with questions during examination and cross examination of witnesses—Counsel's duty not to anticipate opinion of Judge—Evidence Act (I of 187) ss 153 and 154** The onus probandi lies in every case upon the party propounding a will and he must satisfy the convenience of the Court that the instrument so propounded is the last will of a free and capable testator. **Barry v. Butlin** 2 Moo P C 480 referred to. The burden of proof cast upon the propounder is in general discharged by proof of capacity and the fact of execution and when these have been proved the Court will under ordinary circumstances assume from them the knowledge of and assent to the contents of the instrument by the deceased and without requiring further evidence will pronounce for the will. Mere ability to sign one's name does not necessarily imply the possession of the full mental powers requisite for a valid disposition of the property. Nor is it sufficient to show that the testator was conscious when he executed the instrument. It is sufficient that there is enough mental power left to enable the testator clearly to discern and discreetly to judge of all the things which enter into the nature of a rational fair and just testament. **Earl of Sefton v. Haywood** 1 F & F 378. **Marsh v. Tyrrell** Hag 84. **Burdett v. Thompson** L 1 3 P & D 70. **Boughton v. Knight** L R 3 P & D 64. **Harwood v. Baler** 3 300 P C 8. **Hoomesh Chander Biswas v. Pashmohins Doss** 1 L P 21 Cal 99. **Rash Mohini Doss v. Umesh Chander Biswas** 1 L R 95 Cal 84. **Susil Kumar Banerjee v. Appeals** Debts 90 C L J 501 19 C W 56. **Marquis of Winchester's Case** 3 Coke 3. **Combe's Case** Meo A B 739. **Banks v. Goodfellow** L P 50 B 567 and **Ayre v. Hill** 2 Add 96 referred to. S 154 of the Evidence Act provides that the Court may in its discretion permit the person who calls a witness to put any questions to him which might be put in cross examination by the adverse party. There is in this respect no distinction in principle between an attesting witness

WILL—*contd*VALIDITY—*contd*

whom a party is obliged to call and any other witness whom he may cite of his own choice; but the Court may in the exercise of its discretion be more easily persuaded in the former case than in the latter case. **Bowman v. Bowman** 2 Mood & Rob 501. **Jackson v. Thompson** 1 B & S 745. **Coles v. Coles** L R 1 P & M 71. **Gill v. Gill** (1909) P 157. **Jones v. Jones** 24 T L R 839. **Price v. Manning** 42 Ch D 372 and **Phillips v. Davis** Times 13th December 1907 referred to. Two points must be borne in mind first that a witness is considered adverse where in the opinion of the Judge he bears a hostile animus to the party calling him and not merely when his testimony contradicts his proof and secondly when a witness is treated as hostile and cross examined by the party calling him this must be done to discredit the witness altogether and not merely to get rid of part of his testimony. **Coles v. Coles** L R 1 P & M 71 and **Faulthorpe v. Brine** 1 F & F 254 referred to. The principles laid down under s 153 of the Indian Evidence Act must be regarded in the examination and cross examination of witnesses on commission and the commissioner cannot exercise the discretion vested in the Court under s 154 of that Act. The mischief due to improper cross examination cannot be remedied in the Trial Court. Although where an instrument requiring attestation is subscribed by several witnesses it is in general sufficient to call only one of them (**Indian Evidence Act** s 68) in the case of wills it is desirable that all capable of being called should be examined to remove all suspicion of fraud. **McGregor v. Topham** 3 H L C 132. **Andrew v. Motley** 1 C B 514 and **Hindson v. Kersey** 4 Bur Ec L 116 referred to. Where unattested alterations occur in a will the presumption of law is that such alterations were made after the execution of the will and in the absence of evidence rebutting the presumption probate will be granted of the will in the original state omitting the alteration. **Cooper v. Cooper** 4 Moo P C 419. **Greide v. Tylee** 400 P C 30. In the goods of **Sykes** L R 3 P & D 96. In the goods of **Adam** on L R 3 P & D 93 and **Pandurang Hore Vaidya v. Vinayak Vishnu Kane** 1 L P 16 Bom 65 referred to. The presumption may be rebutted not merely by direct proof but also by internal evidence and by inference drawn from the condition of the will. In the goods of **Hindmarsh** L P 1 P & D 90. In the goods of **Cady** L P 1 P & D 513 and in the goods of **Torge** 66 L T 60 referred to. The intervention of the trial Judge with questions during the examination and cross examination of witnesses may lead to confusion and leaving him under the impression that the Court was not prepared to accept the statements made by the witnesses concerned is obviously not a matter which can be set right on appeal unless indeed it is established that the intervention of the learned Judge with questions with a view to clear up obscurities to fill up lacunae to supplement deficiencies and generally to elicit the truth exceeded the bounds of even the comprehensive provisions of s 160 of the Indian Evidence Act and so impeded the legitimate work of counsel engaged in the case as to amount to a miscarriage leading to a failure of justice. But it is manifest that during the

WILL—*concl'd***VALIDITY—*concl'd***

progress of the trial it is not wise for counsel to anticipate the final opinion of the Judge even as to the veracity of a witness which may have to be judged not solely from his individual statements but from his testimony taken in conjunction with all the other facts brought out in the course of the litigation **SURENDRA KRISHNA MONDAL v RANI DASSI (1920)** **I L R 47 Cal 1043**

Where a Will is prepared under circumstances which raise a well grounded suspicion that it does not express the mind of the testator the Court ought not to pronounce in favour of it unless the suspicion is removed but this suspicion must be one inherent in the transaction itself and not the doubt that may arise from a conflict of testimony which becomes apparent on an investigation of the transaction **SREENUTTY SAROJINI DASSI v HARI DAS GHOSE** **26 C W N 113**

WILL AND CODICIL

Oudh Talukdar's estate—As its partly taluk and partly personal property—Codicil raising the amount of legatee's allowance if should be construed as a textual amendment of the will—Codicil conforming to conditions fulfilled in the case of the will which would make it binding on talukdar's properties—Effect—Codicil directing allowance to be paid from this date if to be construed as a conveyance Where an Oudh Talukdar executed a will bequeathing inter alia a monthly sum of Rs 500 to his widow from the estate the said allowance being further made a charge upon the estate which the person in possession of the taluqa was bound to discharge and later on executed a codicil but without conforming (as he did in the case of the will) to the conditions which would make it binding on the talukdar's estate by which he purported to raise the amount payable to the widow from Rs 500 to Rs 1000 and it appeared that the talukdar had left other properties which would be bound by wills and other testamentary instruments made with regard to such conditions. *Held* that the codicil could not be construed as merely textually altering the terms of the will so as to indicate that the increment in the allowance was to be paid from the same source as the bequest in the will no source having in fact been indicated by the codicil. The direction in the codicil that the amount of Rs 1000 was to be paid to the widow from this date should be construed as a wish that the allowance should begin to run at once after death the idea that the donee was creating an annuity during his own life by inter vivos conveyance being opposed to the whole circumstances surrounding the execution of the document **DEPUTY COMMISSIONER OF KHURI v RANI BHAI RAJ KORB (1917)**

22 C W N 305**WINDING UP****See COMPANIES ACT (VI OF 1882)—****ss 38 45 61 I L R 36 Bom. 557****ss 45 AND 58 I L R 42 Bom. 595****ss 61 125 151 I L R 38 All. 347****See COMPANIES ACT (VII OF 1913)****s 153 I L R 41 All. 563****WINDING UP—*concl'd*****s 162****I L R 39 All. 331****s 169****I L R 33 All. 641****I L R 35 All. 177****See COMPANY****I L R 47 Cal. 651****I L R 35 All. 539****I L R 39 Bom. 16 47 331****I L R 40 All. 45****— examination of directors—****See COMPANIES ACT 1913 s. 215****— order passed in—****See CO-OPERATIVE SOCIETIES ACT 1912****s 42 I L R 34 Bom. 582**

Sale in execution of decree pending winding up proceedings validity of A sale held in execution of a decree against a Company while the Company is being wound up is in contravention of s 171 of the Companies Act 1913 unless the leave of the court under which the winding up is proceeding has been obtained and is voidable at the instance of the official liquidator. *Per CHAMBER, C J—* If the court executing the decree becomes aware of the winding up proceedings before the sale in execution of the decree is confirmed it should refuse to confirm the sale until the leave of the court under which the winding up is proceeding has been obtained. **BALDEO NARAIN SINGH v THE UNITED INDIA BANK LIMITED 2 Pat. L J 77**

WINDING UP PETITION

Petitioner a creditor for amount not immediately payable—General financial position of company—Indian Companies Act (VI of 1882) at ss 129 130 and 131—Scheme of arrangement—Practice The definition of debt in s. 130 of the Indian Companies Act (VI of 1882) is quite distinct from the meaning of the word creditor. A creditor is a person to whom money is owed by the Company. Whether he can claim immediate payment of that debt or his right to demand payment is deferred by his agreement with the Company to a future time he still remains a creditor. If the petitioners can satisfy the Court that the Company on a general perusal of its balance sheet cannot pay its debts in other words that its assets are not sufficient to satisfy its liabilities that will enable the Court to order its winding up. If an arrangement can be arrived at between the Company and its creditors it would be desirable that an attempt should be made to give effect to that arrangement. But any scheme or proposal by the Company to keep itself afloat cannot be discussed with any chance of success unless the winding up order is made. It is only after the winding up order is made that a three fourths majority of the creditors is able to bind the minority. Otherwise any one creditor can come in and upset any arrangement which has appeared satisfactory to the rest of his co-creditors. *In the matter of INDIAN COMPANIES ACT In the matter of THE BOMBAY MANUFACTURING COMPANY and In the matter of PATILAL HARBOL DAS (1909)* **I L R 34 Bom. 533**

WIRE-FENCE

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM III OF 1901) s. 3 CL. (1)
I L R 41 Bom. 563

WITHDRAWAL OF CASE

See COMPANY I L R 46 Calc 854

WITHDRAWAL OF PARDONSee PARDON I L R 37 Calc 845
I L R 42 Calc 756**WITHDRAWAL OF PROSECUTION**

Consent of Court given without recording reasons—Duty of the Court to give reasons and to examine the grounds of withdrawal stated by Public Prosecutor—Improper exercise of discretion in according consent—Permission—Criminal Procedure Code (Act I of 1898) s 491 An order according consent under s 491 of the Criminal Procedure Code is a judicial one and the reasons therefor should be stated in order to enable the High Court on revision to determine the propriety of the exercise of its discretion by the lower Court. *Umesh Chandra Pooj v Salish Chandra Roy* 2 C IV N 69 followed. Where on a commitment under ss 344 and 366 I P C the Public Prosecutor sought to withdraw the case on the ground of absence of evidence of the use of force by the accused.—*Held* that the Sessions Judge should have before accepting and acting on the reason stated by the Public Prosecutor satisfied himself on the point by examining the commitment record. The consent of the Sessions Judge to the withdrawal of the prosecution was held to have been improperly accorded when there was evidence of the employment of force on the record sufficient for the consideration of a jury and further when he could have added charges under ss 497 and 498 I P C on the husband's complaint to the Magistrate and proceeded with the trial on such charges. *IAJANIKANTA SHARMA v IDRIS THAKUR* (1921) I L R 48 Calc 1105

WITHDRAWAL OF RIGHTSSee ART OF STATE
II L R 39 Calc 615**WITHDRAWAL OF SUIT**See CIVIL PROCEDURE CODE 1882 s 373
I L R 86 Mad 643

See CIVIL PROCEDURE CODE 1908—

O O XXIII XLI R 11

I L R 85 Bom 261

O XXIII R 1

See JURISDICTION

I L P 48 Calc 138

See JURISDICTION OF HIGH COURT

I L R 44 Calc 454

See LETTERS PATENT 1863 (L 1)

I L R 45 Bom 377

See PRACTICE I L R 41 Calc 632

See RES JUDICATA

whether in ability to produce evidence justifies—

See CIVIL PROCEDURE CODE 1908—

O XXIII R 1 6 Pat. L J 113

Permission to institute fresh suit—No finding of formal defect—Power of High Court to interfere with order—Code of Civil Procedure (Act I of 1908) s 115 and O XXIII

WITHDRAWAL OF SUIT—contd

r 1 In allowing a suit to be withdrawn with permission to institute a fresh suit it is not sufficient that the trial Court should say or suggest that there is a formal defect but the existence of such a defect is a condition precedent to the exercise of jurisdiction under O XXIII r 1 of the Code of Civil Procedure 1908. *NATHUNI RAM v MUSANMAT SHEO KORE* 3 Pat L J 460

Procedure—withdrawal with permission to bring fresh suit on payment of costs—costs of first suit paid after institution of second suit whether the second suit maintainable Where a plaintiff is allowed to withdraw a suit with permission to bring a fresh suit on payment of the defendant's costs in the first suit and no limit of time is provided within which such costs are to be paid the second suit is maintainable even though the costs of the first suit are not paid until after the institution of the second suit. The Court should therefore limit the time. *Samble* that the second suit would be maintainable even though the period of limitation expired before the institution of the second suit inasmuch as the first suit would be pending until the costs had been paid. *KULDIR SING v KULDIR CHAUDHURY* 3 Pat L J 44

Grounds for—Code of Civil Procedure (Act I of 1908) O XXIII r 1 A suit may only be withdrawn with permission to bring a fresh suit when the Court is satisfied that the suit must fail by reason of some formal defect or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit. The sufficient ground contemplated in the second clause of O XXIII r 1 of the Code of Civil Procedure 1908 should be ground analogous to the ground given in the first clause. It is not sufficient for the Court merely to record a vague opinion that there is a defect which may materially affect the decision. *MAHENDRA PAM v SINGI LAL* 3 Pat L J 561

Duty of court to state reason for allowing withdrawal of suit—Power of High Court to interfere with order of withdrawal passed by Small Cause Court Judge Where a suit has been allowed to be withdrawn by a Small Cause Court and no reasons have been recorded for permitting such withdrawal the High Court will set the order aside in the exercise of its powers under s 107 of the Government of India Act 1915. *LUCHI PAM v RAGHUBER DEBE* 2 Pat L J 582

Suit for redemption—Permission to withdraw on condition fresh suit brought within 2 years The plaintiff filed a suit to redeem a mortgage but not wishing to proceed with the suit he was allowed to withdraw it with permission to bring a fresh suit provided it was brought within 2 years for the date of the order. The new suit was brought eight years after the order for withdrawal of suit. It was dismissed by the lower Courts on the ground that the plaintiffs had not complied with the conditions imposed by the order. On appeal to the High Court *Held* that the order for withdrawal of suit imposing a limitation of two years was erroneous and it would not affect the plaintiff's right to redeem during the period of limitation allowed by the Limitation Act. *RANCHANDEA KOLAJI v HANMANTA* (1920) I L R 44 Bom 939

WITNESS

- See ATTESTATION OF INSTRUMENT
I L R 37 All 350
- See BAR COUNCIL, RESOLUTIONS OF
I L R 40 Calc 898
- See CIVIL PROCEDURE CODE (1908) O
ALI R 27 I L R 38 All 191
- See COMMITMENT I L R 42 Calc 608
- See CRIMINAL PROCEDURE CODE 1898
s 339 I L R 37 All 331
s 428 B Pat L J 632
- See DEPOSITION I L R 46 Calc 895
- See DISPUTE CONCERNING LAND
I L R 38 Calc 24
- See EVIDENCE ACT (I of 1872)—
ss 21 157 I L R 34 Bom 599
ss 118 to 134
s 132 I L R 43 All 92
I L R 40 All 271
- See FACT 15 C W N 717
- See LEGAL PRACTITIONER
I L R 44 Mad 911
- See PAUPER SUIT
I L R 46 Calc 651
- See PENAL CODE s 467
15 C W N 565
- See PERJURY I L R 42 Calc 240
- See POLICE DIARIES 3 Pat L J 568
- See PRIVATE DEFENCE 3 Pat L J 419
- See PUBLIC PROSECUTOR
I L R 42 Calc 422
- See WARRANT I L R 38 Calc 789
- Called by Court—CROSS EXAMINATION OF—
See CRIMINAL PROCEDURE CODE ss
435 439 25 C W N 609
- commission to examine—
See CIVIL PROCEDURE CODE (ACT V of
1908) O XVI s 1
I L R 42 Bom 136
- counsel accepting Retainer when
likely to be a witness—
See BAR COUNCIL RESOLUTIONS OF
I L R 40 Calc 898
- CROSS EXAMINATION OF—
See CHANGE I L R 42 Calc 957
- See CROSS EXAMINATION
I L R 37 Calc 233
- See MANDATORY LAW—GIFT
I L R 38 All 627
- evidence of deceased—
See EVIDENCE ACT 1872 s 33
I L R 42 All 24
- examination of—
See INSOLVENCY
I L R 3 Calc 1059
- See CRIMINAL PROCEDURE CODE 1898
s 263 I L R 39 Calc 931
- See WILL I L R 47 Calc 1043

WITNESS—contd

- In insolvency proceedings—Costs
of—
See COSTS I L R 46 Calc 790
- privilege of—
See EVIDENCE ACT (I of 1872) s 170
I L R 41 All 120
- prosecution of for contradictory
statements—
See SANCTION FOR PROSECUTION
I L R 37 Calc 618
- questions put to by Court—
See EVIDENCE ACT 1872 s 33
I L R 42 All 25
- right of accused to summon—
See CRIMINAL PROCEDURE CODE ss 44
540 I L R 38 All 10
- statement of—
See PENAL CODE (ACT XVI of 1900)
s 499 I L R 36 Mad 216
- suit—whether an attesting—
See EVIDENCE ACT 1872 s 68
1 Pat L J 129
- 1 ——— Witness if party to suit—
Witnesses examined in a suit or proceeding are
not to be considered parties to the suit or proceed-
ing *Emperor v Chan Nam Sing* I L R 30
All 74 referred to DEBI LAL & DHANADHAR
GASHAI (1911) 15 C W N 565
- 2 ——— Attendance of—A servant of the
Municipality was summoned at the plaintiff's
instance to produce certain document which the
plaintiff maintained would support his case of
adverse possession of the land in dispute but he
failed or declined to attend and the plaintiff's
application for a warrant to compel his attendance
was rejected without good reason. The suit was
dismissed on the ground amongst other that
plaintiff was not in possession for 12 years. Held
on second appeal that there should be a rehearing
after compelling the witness to attend and pro-
duce the documents. *UPENDRA NATH CHOPRA v*
THE CHAIRMAN OF THE CALCUTTA CORPORATION
(1911) 16 C W N 116
- 3 ——— Competency of a person ac-
cused as witness against another implicated in the
therein but separately tried—Admissibility of the
deposition of a witness against himself on his sub-
sequent trial—*Evidence Act (I of 1872) s 114*
*130—Oaths Act (V of 1830) s 5—Criminal Pro-
cedure Code Act (I of 1898) s 31 (1) s 34 (1) of*
the Oaths Act (V of 1873) and s 34 (1) of the
Criminal Procedure Code apply only to the
accused actually under trial at the time. Such
*person cannot therefore be sworn as a wit-
ness for or against the co-accused. But when*
accused persons are tried separately each one
though implicated in the same offence is a
competent witness at the trial of the other.
Reg v Dargan Sunlar 5 Bom H C 117
and Empress v Durand 1 L R 23 Bom 13
followed. Banu Singh v Emperor 1 L R
*33 Calc 1353 and Anurita Lal Harra v Em-
peror 1 L R 4 Calc 937 approved. Queen*
Empress v Mona Puna 1 L R 16 Bom 661

WITNESS—contd

Subrahmanya Ayyar v King Emperor I L R 20 Mad 61 and *Queen Empress v Hussein Haje* I L R 25 Bom 42⁷ referred to. A previous deposition is admissible against the witness on his subsequent trial unless he has brought himself within the protection of the proviso to s 132 of the Evidence Act. *King Emperor v Nanda Gopal Roy* 29 C II V 1178 explained and distinguished. *Akhoy Kumar Mookerjee v Emperor* (1917) I L R 45 Cal 720

4 ————— **Competency of accused as witness**—Withdrawal of prosecution jointly by private rakil conducting the prosecution and the Court sub-inspector—Legality of the withdrawal and consequent discharge of the accused—Competency of accused as witness thereafter—Criminal Procedure Code (Act I of 1898) s 494—Evidence of cocaine and gambling cases prior to the conspiracy charged—Statement of an accused made after arrest not amounting to a confession—Admissibility of statement—Evidence Act (I of 1877) ss 10, 30 and 54—Conspiracy to cheat—Penal Code (Act LV of 1860) ss 170 B and 490. Where the prosecution against an accused was withdrawn with the consent of the Court after the opening of the Crown case by an application purporting to be signed by the Court sub-inspector and a private rakil who was not appointed a public prosecutor by the Governor General in Council or the Local Government but was acting under the directions of the public prosecutor duly appointed for the district and the accused was thereupon discharged under s 494 (a) removed from the dock and examined as a prosecution witness—Held that the withdrawal was legal as the Court sub-inspector who was a public prosecutor within s 494 of the Criminal Procedure Code had signed the petition filed for the purpose. *Akhoy Kumar Mookerjee v Emperor* I L R 45 Cal 720 applied. Evidence that some of the accused ran cocaine and gambling dens long before the existence of the conspiracy which was the subject of the charge was held admissible the prosecution case being that some of the accused were first thrown together by frequenting or running such dens and that they continued to meet at such places for the purposes of the conspiracy charged. The evidence of an ex-cise sub-inspector of raids on the dens was amissible as leading up to the admissions made to him. The statement of an accused made after arrest and not amounting to a confession is not admissible in evidence against a co-accused either under s 10 or s 30 of the Evidence Act but only against himself. The error does not however affect the conviction when no stress was laid on such statement by the Trial and Appellate Court. *Emperor v Aban Bhushan Chakrabarty* I L R 38 Cal 169. *Pulin Behari Das v King Emperor* 15 C L J 517 followed. *Sital Singh v Emperor* (1915) I L R 46 Cal 700

5 ————— **enforcing attendance of witnesses named in the list given to the Magistrate and summoned for the trial**—Application made at the last moment after examination of defence witness is present—Refusal by the Judge of the application on the ground of delay—Materiality of the evidence of the absent witnesses—Proper course to be followed by the Judge—Criminal Procedure Code (Act I of 1898) s 91. Where after the examination of the defence witnesses present had concluded and the

WITNESS—contd

case was ready for arguments an application was made to the Court to enforce the attendance of certain witnesses whose names had been entered in the list given by the accused to the Committing Magistrate and who had been summoned but failed to attend and it further appeared from the petition of appeal to the High Court that their evidence was material. Held that the refusal of the Judge to enforce the attendance of the witnesses based not on the ground of their evidence being immaterial but of delay in the application was not justifiable and that the conviction ought therefore to be set aside and a retrial ordered. Steps should be taken by the Sessions Judge to ensure an early application by the parties with regard to the attendance of their witnesses. *Faiyaz Juddi v Emperor* (1900) I L R 47 Cal 758

6 ————— **Hostile witness**—A witness is considered adverse when in the opinion of the Judge he bears a hostile animus to the party calling him and not merely when his testimony contradicts his proof. When a witness is treated hostile and cross-examined by the party calling him this must be done to discredit the witness altogether and not merely to get rid of part of his testimony. *Sreendra Krishna Mondal v Shy Panna Das* 24 C W N 860

7 ————— Where a witness was called by Court not examined by it but cross-examined by both sides—Impropriety of procedure discussed. *Ganadhat Coala v Reidwald Willie Lemon Peir* 25 C W N 809

WOMEN

See *PLEADER* I L R 44 Cal 290

See *HINDU LAW—WOMAN'S ESTATE*

————— **beneficiaries under will of a Hindu**—

See *HINDU LAW—WILL*

I L R 1 Lah 415

I L R 2 Lah 175

————— **disqualification of to perform duties of archaka**—

See *CIVIL PROCEDURE CODE (ACT V OF 1908)* O XXIII s 3

I L R 38 Mad 650

————— **right to inherit**—

See *CIVIL PROCEDURE CODE (ACT V OF 1908)* O XXIII s 3

I L R 38 Mad 650

WORDS AND PHRASES

————— **A large proportion of the landlords**—

See *ULTRA VIRES, BENGAL TENANCY ACT* s 101 I L R 40 Cal 123

————— **"Accused person"**—

See *CRIMINAL PROCEDURE CODE* ss 145, 56 I L R 34 All 533

————— **"Act together"**—

See *BENGAL TENANCY ACT* s 168 I L R 33 Cal 270

————— **"Addition to embankment"**—

See *EMBANKMENT* I L R 33 Cal 413

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- "Affected"—
 See LAND ACQUISITION
 I L R 44 C.J.C. 219
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- Agaharam—
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- "Aggregate sentences"—
 See CODE OF CRIMINAL PROCEDURE 1898
 s 3, and 403 3 Pat L J 138
- "Aggrieved person"—
 See PROVINCIAL INSOLVENCY ACT s 38
 15 C W N 253
- "Agreement" or "memorandum of agreement"—
 See STAMP ACT (II of 1899)
 s 57 I L R 38 Mad 319
- "Agricultural tribe"—
 See BUDELEKHAND ALIENATION OF LAND ACT (II of 1903) ss 3 4 6 9
 I L R 41 All 294
- "Agriculturists"—
 See CIVIL PROCEDURE CODE 1903
 s 60 (c) I L R 41 Bom 475
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 I L R 35 Bom 268
 I L R 34 Bom 65
- "Alienated"—
 See BOMBAY LAND REVENUE CODE (BOM V of 1879)—
 s 3 (19) I L R 35 Bom 462
 ss 3 (20) AND 217
 I L R 43 Bom 77
- "Alienation"—
 See BHAGDARI AND NAWAPDARI ACT (BOM ACT V of 1864) s 3
 I L R 40 Bom 207
- "All estate right and title"—
 See VENDOR AND PURCHASER
 I L R 42 Calc 56
- "Alteration of papers"—
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 I L R 47 Calc 71
- "Ammunition"—
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- "Annual net profit"—
 See CESS ACT 15 C W N 201
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- "Antecedent debt"—
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 I L R 41 All 529
- "Any accused person"—
 See CRIMINAL PROCEDURE CODE s 119
 I L R 35 Bom 401

WORDS AND PHRASES—*contd*

- "Any interest therein"—
 See IMMOVABLE PROPERTY
 See LIMITATION ACT 1908 SCH I ART 1 3
 3 Pat L J 527
- "Any one individual person"—
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 I L R 39 Calc 754
- "Any person within local limits"—
 See SECURITY FOR GOOD BEHAVIOUR
 I L R 46 Calc 215
- "Any trustees or trustee"—
 See TRUSTS I L P 39 Mad 597
- "Aparna is"—
 See HINDU LAW—INHERITANCE
 I L R 48 Calc 643
- "Appeal"—
 See HIGH COURT ORIGINAL SIDE JURISDICTION OF
 I L R 37 Calc 74
- "Ascertained sum"—
 See PROVINCIAL SMALL CAUSE COURT ACT SCH II ART 31 3 Pat L J 423
- "Assets come into his hands"—
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 I L R 41 Calc 771
- "Assets realised"—
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 3 Pat L J 456
- "At once"—
 See COMPLAINT I L R 42 Calc 19
- "Attested, meaning of"—
 See TRANSFER OF PROPERTY ACT (IV of 1882) s 103 I L R 44 Bom 231
- "Attesting witness" meaning of—
 See TRANSFER OF PROPERTY ACT (IV of 1882) s 59 I L R 44 Bom 405
- "Aulad"—
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- "Auras putra poutradik"—
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 L R 41 I A. 275
- "Authorized agent"—
 See HIGH COURT RULES AND ORDERS FOR CIVIL COURT CHAP XXI F I
 I L R 41 All 246
- "Auyavaharika"—
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 I L R 43 Bom 612
- "Awards"—
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- "becomes due"—
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 I L R 37 All 400
- "benefits to arrive out of land"—
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 100 137 141
 3 Pat L J 522

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"Bohras"—

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"building"—

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"by means thereof"—

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"Capable of instituting suits"—

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"Case"—

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(a) AND 2 (d) I L R 43 Bom 281

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1872) ss 3 AND 68

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"Circumstances and Property"—

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I L R 41 Calc 168

"Circumstances and Property
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"Claim arising under the mort-
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"Claim of right"—

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"Claiming under"—

See CIVIL PROCEDURE CODE (ACT V OF
1908) s 11 I L R 40 Bom 679

"Collector"—

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OF 1906) s 23

I L R 39 Bom 552

"Common carrier"—

See CONTRACT ACT s 56 AND 65

I L R 40 Bom 529

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I L R 4 Calc 6

"Common gaming house"—

See PUBLIC GAMBLING ACT (III OF 1867)
ss 1 3 I L R 88 All 47

"Company's sicca Rupees"—

See SUIT FOR RENT

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"Compelled to answer"—

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I L R 37 Calc 878

"Complaint"—

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ss 4 190 (1) I L R 35 All 8

ss 4 476 I L R 38 All 32

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"Consideration"—

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s 423 I L R 37 Mad 47

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1882) s 52 I L R 33 Mad 450

"Conveyance"—

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26 I L R 34 All 533

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"Criminal trial"—

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C 104) s 15 I L R 39 Mad 539

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dered unfit"—

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- "Full water rate"—
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- "heir next in succession"—
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- "holding"—
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- "income"—
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- "injury to the person"—
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- "instrument"—
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I L R 40 Calc 29
- "misapplication"—
See BOMBAY DISTRICT MUNICIPALITIES
ACT (BOM III OF 1901) s 42
I L R 40 Bom 186
- "misbehaviour"—
See BOMBAY REGULATION (11 OF 1877)
s 50 I L R 37 Bom 354
- "misjoinder" includes "non joinder"—
See CIVIL PROCEDURE CODE 1908 s 92
I L P 33 Mad 436
- "movable property"—
See PENAL CODE (ACT XLV OF 1860)
ss 403 AND 22 I L R 40 All 119
- "muakhiza"—
See MORTGAGE I L R 34 All 446
- "mutual dealings"—
See SET OFF I L R 45 Bom 1219
- "new and important matter"—
See CIVIL PROCEDURE CODE, 1903
O XLVIII s 1
I L R 33 All 569
- "newspaper"—
See PRINTING PRESS FORFEITURE OF
I L R 38 Calc 202
- "nij chas"—
See ORISSA TENANCY ACT 1913
3 Pat L J 475
- "nij jote"—
See ORISSA TENANCY ACT 1913
3 Pat L J 475

WORDS AND PHRASES—*contd.*

"oath"—

See SANCTION FOR PROSECUTION
I L R 43 Calc 597

"obtaining"—

See TRADING WITH THE ENEMY
I D R 40 Mad 34

"occupant of the place—

See DACOITY I L R 41 Calc 350

"occupier"—

See BUSTEE LAND
I L R 41 Calc 164

See MUNICIPAL ELECTION
I L R 45 Calc 950

See UNITED PROVINCES MUNICIPALITIES
ACT (II OF 1916) s 274

I L R 39 All 309

"offence involving a breach of the
peace"—

See CRIMINAL PROCEDURE CODE s 106
I L R 33 All 771
I L R 43 Bom 554

"offices or employments"—

See EXCESS PROFITS DUTY ACT (X OF
1919) I L R 45 Bom 1064

"Official Gazette"—

See REVENUE SALE L R 45 I A 205

"oil (other sorts)"—

See BOMBAY CITY MUNICIPAL ACT (III OF
1888) s 394 I L R 45 Bom 1078

"opposite party"—

See APPEAL I L R 43 Calc 178

"order"—

See AGRA TENANCY ACT (II OF 1901)
ss 170 177 I L R 32 All 373

"other sufficient grounds"—

See CIVIL PROCEDURE CODE (ACT V OF
1908) O XXXIII R 1 (c)
I L R 41 Mad 701

"otherwise transfer"—

See CENTRAL PROVINCES TENANCY ACT
1888 3 Pat L J 88

"oversight"—

See BOMBAY LAND REVENUE CODE
s 11 (1) I L R 36 Bom 315

"owner"—

See BEWAL MUNICIPAL ACT ss 6 AND
15 15 C W N 586

See BUSTEE LAND
I L R 41 Calc 104

See MADRAS ASSESSMENT OF LAND
REVENUE ACT s 2
I L R 38 Mad 1128

See MUNICIPAL ELECTION
I L R 38 Calc 501

"parjot"—

See EVIDENCE I L R 40 All 56

"partial performance"—

See HINDU LAW—ALIVATION
I L R 38 Mad 1187

WORDS AND PHRASES—*contd.*

"period of limitation prescribed"—

See DERKHAM AGRICULTURISTS RELIEF
ACT (XVII OF 1879) s 48
I L R 42 Bom 367

"person"—

See CODE OF CRIMINAL PROCEDURE
1898 3 Pat L J 124

"person aggrieved"—

See PROVINCIAL INSOLVENCY ACT (III OF
1907)—

ss 22 46 I L R 41 All 234
I L R 39 All 152

ss 43 (2) 46 I L R 39 All 171

"person in authority"—

See PRACTICE I L R 40 Bom 220

"persona designata"—

See NAKINS I L R 37 Bom 116

"personae incertae"—

See WILL I L R 39 Calc 87
15 C W N 945

"personally interested"—

See CRIMINAL PROCEDURE CODE s 538
I L R 32 All 635

"place"—

See BOMBAY PREVENTION OF GAMBLING
ACT (BOM II OF 1887) s 4 cls (a) (c)
I L R 37 Bom 651

See PUBLIC GAMBLING ACT 1867 ss 1 3
I L R 38 All 47

"place of public resort"—

See MADRAS CITY POLICE ACT (III OF
1888) s 70 I L R 39 Mad 886

"plaintiff"—

See LIMITATION ACT (IX OF 1903)
ss 3 7 Sch I Art 14
I L R 40 Bom 561

"plantation"—

See BEWAL TENANCY ACT s 100
15 C W N 349

"positive evidence"—

See CONTEMPT OF COURT
I L R 41 Calc 173

"possession"—

See CHARGE I L R 42 Calc 957
See SHARES I L R 48 Calc 342

"premises"—

See BOMBAY CITY MUNICIPAL ACT
(III OF 1888) s 30
I L R 38 Bom 593

"presentation"—

See REGISTRATION ACT (XVI OF 1903)
ss 31 32 s 87
I L R 35 All 34

"presumption of innocence"—

See CHARGE I L R 42 Calc 957

"preservation of line of street"—

See BOMBAY CITY MUNICIPAL ACT (III
OF 1888) s 30
I L R 38 Bom 593

See BOMBAY CITY MUNICIPAL ACT (III
OF 1888) ss 297 299 301
I L R 42 Bom 462

WORDS AND PHRASES—*contd*

"price"—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 54 118

I L R 37 Mad 423

"proceeding"—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 47

I L R 39 All 267

"process"—

See EXCISE I L R 41 Calc 694

"produced"—

See SANCTION FOR PROSECUTION

I L R 44 Calc 1002

"promulgated"—

See PENAL CODE s 188

I L R 80 Mad 543

"proper courts"—

See LIMITATION ACT (IX OF 1908) ART 109 EXP II I L R 45 Bom 453

"property"—

See CIVIL PROCEDURE CODE (ACT I OF 1908) O L R 4

I L R 80 Mad 584

See HINDU LAW—PEVENSIOVER

I L R 48 Calc 536

See MINOR I L R 48 Calc 802

See PENAL CODE (ACT XLV OF 1860) s 180

I L R 3 All 128

"property of any ward"—

See UNITED PROVINCES COURT OF WARDS ACT s 48

I L R 36 All 331

"proprietor"—

See AGRA TENANCY ACT (II OF 1901) s 150

I L R 40 All 656

See NORTH WESTERN PROVINCES AND OTHER LAND REVENUE ACT (XIV OF 1833) ss 146 148 167

I L R 35 All 180

"protected interest"—

See BENGAL TENANCY ACT s 160

18 C W N 349

See LANDLORD AND TENANT

I L R 39 Calc 128

"public charitable and religious purposes"—

See CIVIL PROCEDURE CODE 188 s 539

I L R 34 All 468

"public place"—

See MADRAS CITY POLICE ACT (III OF 1885) s 75

I L R 39 Mad 886

See MADRAS TOWNS NUISANCE ACT (MAD III OF 1859) s 3 (10)

I L R 40 Mad 558

"public purpose"—

See PRESUMPTION I L R 39 Bom 279

"publication"—

See TORT I L R 39 Mad 433

"punyaha"—

See LIMITATION 23 C W N 336

WORDS AND PHRASES—*contd*

"purchaser" "certified purchaser"—

See REVENUE SALE LAW s 37

15 C W N 706

"putra"—

See HINDU LAW—INHERITANCE

I L R 37 All 604

"putra putradi"—

See JAGIR I L R 42 Calc 305

I L R 46 Calc 683

"railway"—

See RAILWAY PASSENGER

I L R 44 Calc 279

"railway administration"—

See LOSS OF GOODS

I L R 44 Calc 16

"rayat"—

See BENGAL TENANCY ACT (VIII OF 1880) ss 103B and 104H

I L R 46 Calc 80

"ready goods"—

See CONTRACT I L R 47 Calc 458

"reasonable suspicion"—

See HABEAS CORPUS

I L R 44 Calc 76

"receipt"—

See CIVIL PROCEDURE CODE (ACT I OF 1908) O L R 89 (b)

I L R 39 Mad 429

"recognised or authorised to act"—

See BENGAL TENANCY ACT s 188

15 C W N 74

"erection"—

See BUILDING I L R 39 Calc 84

"refused to take"—

See PRACTICE I L R 35 Bom 213

"relates to the suit" construction of—

See CIVIL PROCEDURE CODE 1882 s 3 J

I L R 33 Mad 102

"release"—

See STAMP ACT (II OF 1889) s 59

I L R 35 Bom 75

"religious assembly"—

See PENAL CODE (ACT XLV OF 1860) s 296

I L R 34 All 78

"reside"—

See DIVORCE ACT (IV OF 1869) s 3

I L R 32 All 203

See LUNACY I L R 43 Calc 577

See SUBSTITUTED SERVICE

I L R 34 All 394

"resides"—

See CIVIL PROCEDURE CODE 1908 O L R 1

15 C W N 293

"Restraint of Princes and Rulers"—

See BILL OF LADING

I L R 41 Mad 14

WORDS AND PHRASES—*contd*

"rights to sue"

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 AND 93

I L R 38 Mad 1084

"rikhta"

See HINDU LAW—STRIDHAN

I L R 38 Bom 424

"risk note"

See CONTRACT I L R 39 All 418

"river belonging to Government"

See MADRAS IRRIGATION CESS ACT (VII OF 1862) I L R 37 Mad 322

"rolling stock"

See RAILWAY PASSENGER

I L R 44 Cal 279

"Samanodaka"

See HINDU LAW—INHERITANCE

I L R 40 Mad 654

"same act or transaction"

See CIVIL PROCEDURE CODE 1908 O I

s 3 I L R 84 Bom 358

"same judgment-debtor"

See CIVIL PROCEDURE CODE 1882 s 295

I L R 33 Mad 485

"same transaction"

See CHARGE I L R 42 Cal 957

"sanctioned"

See BOMBAY DEVELOP AND SETTLEMENTS ACT s 25 I L R 38 Bom 290

"santan"

See HINDU WILL ACT 21 C W N 85g-

"sarkhat"

See LANDLORD AND TENANT

I L R 41 All 654

See STAMP ACT (II OF 1899) s 12 SCH I

ARTS I 5 I L R 41 All 169

"seaworthiness"

See BILL OF LADING

I L R 38 Mad 941

"secundum alia gata et probata"

See SPECIFIC RELIEF ACT (I OF 1877)

s 39 I L R 39 Bom 149

"secured creditor"

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 11 I L R 37 All 383

"series of acts of transaction"

See CIVIL PROCEDURE CODE 1908 O I

n. 3 I L R 34 Bom 358

"shwals"

See RAILWAY ACT 1890 s 75 SCH II(m)

I L R 39 Cal 1029

"single transaction"

See LOWER OF ATTORNEY

I L R 38 Mad 134

"slavery bond"

See CONTRACT 3 Pat L J 412

WORDS AND PHRASES—*contd*

"sole risk"

See LOSS OF GOODS

I L R 46 Cal 58

"son"

See HINDU LAW—ADOPTION

I L R 43 Cal 944

"standard rent"

See BOMBAY RENT (WAP RESTRICTIONS)

ACT (BOM II OF 1915) s 2 (1), cl 2

(a) (c) (d) I L R 45 Bom 744

"stating the grounds of the opinion"

See FORFEITURE I L R 41 Cal 488

"sirsant"

See MADRAS IRRIGATION CESS ACT s 3

I L R 34 Mad 290

"street"

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) s 30

I L R 43 Bom 123

See LAND ACQUISITION

I L R 44 Cal 219

"strict proof"

See LIMITATION ACT (II OF 1908) s 5 14 I L R 42 Bom 295

See PVIEW I L R 42 Cal 830

"subject matter"

See CIVIL PROCEDURE CODE (ACT V OF 1909) O XXIII s 1

I L R 42 Bom 165

"submission to Court"

See ARBITRATION I L R 43 Cal 721

"subsequent transferee"

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 51 I L R 39 Bom 507

"succeeded by another Magistrate"

See MORTGAGE I L R 39 Cal 781

"successor"

See AGRA TENANT ACT (II OF 1901) s 159 I L R 33 All 553

"sufficient cause"

See COURT FEES ACT 1860 s 46 29

3 Pat L J 74

See LAND ACQUISITION

I L R 45 Bom 725

See LIMITATION I L R 45 Cal 64

"suit for land"

See LETTERS PATENT (INVENTED) OF THE BOMBAY HIGH COURT CL 12

I L R 37 Bom 491

"suit for land or other immovable property"

See JURISDICTION I L R 42 Cal 842

"suit or other legal proceeding"

See PRESIDENCY TOWN INSOLVENCY ACT (III OF 1909) s 1, 103 104

I L R 35 Bom 63

WORDS AND PHRASES—*contd*

"Talukdar"

See OUDH ESTATES ACT (I OF 1869)

ss 2 3 5 10 22

I L R 35 All 391

"Talukdari Estate"

See GUJRAT TALUKDARS ACT s 31

I L R 34 Bom 55

"Talukdari Settlement officer"

See GUJRAT TALUKDARS ACT ss 28 29

I L R 34 Bom 142

"Talukdari Tenure"

See GUJRAT TALUKDARS ACT (Bom Act VI of 1883) s 31

I L R 35 Bom 97

"Tavazhi"

See MALABAR LAW

I L R 38 Mad 48

"tenant"

See BOMBAY RENT (WAR RESTRICTIONS) ACT (Bom II of 1918) s 2 (1) cls (a)

(c) (d) I L R 45 Bom 744

"tenure holder"

See BENGAL TENANCY ACT (VIII OF 1885) ss 103 Band 104 H

I L R 46 Calc 90

"trade"

See RECEIVER I L R 40 Calc 678

"trade mark"

See PENAL CODE (ACT XLV OF 1860)

ss 478 482 I L R 39 All 123

"trading"

See TRADING WITH THE ENEMY

I L R 42 Calc 1094

"tried again"

See AUTREPOIS ACQUIT

I L R 41 Calc 1072

"true value"

See RAILWAYS ACT (IX OF 1890) s 75

(1) (2) AND (3)

I L R 43 Bom 386

"unable"

See GUJRAT TALUKDARS ACT (Bom Act VI of 1883 AS AMENDED BY Bom Act II of 1905) ss 29 29 B (1) (2)

(3) AND 20 E I L R 36 Bom 604

"unable to maintain self"

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 488

I L R 39 Mad 957

"unlawfully and judiciously"

See CHARGE I L R 42 Calc 957

"until"

See CONTRACT FOR SALE

I L R 45 Calc 431

"up to"

See CONTRACT FOR SALE

I L R 45 Calc 431

"useless or inoperative"

See LETTERS OF ADMINISTRATION

I L R 40 Calc 50

WORDS AND PHRASES—*contd*

"using"

See PENAL CODE (ACT XLV OF 1860)

s 471 I L R 33 Mad 392

"value"

See RAILWAYS ACT (IX OF 1890) s 75

(1) (2) AND (3) I L R 43 Bom 386

"valuable security"

See PENAL CODE ACT (XLV OF 1860)

s 30 467 I L R 38 All 430

"violence"

See JURY TRIAL BY

I L R 40 Calc 367

"Wanted lands"

See GUJRAT TALUKDARS ACT (Bom Act VI of 1883) s 31

I L R 35 Bom 97

"where there has been an appeal or review"

See LIMITATION ACT 1908 SCR I Art 182

S Pat L J 119

"wilful default"

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL R 4

I L R 39 Mad 584

"withdrawal"

See CRIMINAL PROCEDURE CODE ss 248

345 20 C W N 1209

"without issue"

See HINDU LAW—ADOPTION

I L R 43 Calc 944

"witnesses for the defence"

See JURISDICTION OF MAGISTRATE

I L R 39 Calc 885

"words which are likely or may have a tendency directly or indirectly whether by inference suggestion allusion metaphor implication or otherwise" [m s 4, (1)]

See PRESS ACT (I OF 1910) ss 3 (1)

4 (1) 17 19 20 22

I L R 39 Mad 1085

"youthful offender"

See REFORMATORY SCHOOLS ACT (VIII OF 1897) s 31

I L R 39 All 141

WORK CALCULATED TO DEPRAVE MORALS

See OBSCENE PUBLICATION

I L R 39 Calc 377

WORKMAN

See WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859)

I L R 35 All 61 and 143

I L R 41 Mad 162

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

I

Special procedure under the Act not applicable to ordinary loans between master and workman. Held that the special procedure provided by Act XIII of 1859 for the recovery of money advanced in the circumstances therein described, is not applicable

WORKMAN'S BREACH OF CONTRACT ACT (XIII of 1859)—*contd*

where money is advanced to a workman not for the purpose of assisting him to complete a specific piece of work but as an ordinary loan to be repaid out of the workman's wages. In the matter of *Anusoori Sanyasi* I L R 28 Mad 37 referred to *GIGA : MUHAMMAD AMIN* (1912)

I L R 35 All 61

2 ————— Magistrate not competent to take proceedings under unless moved by the employer. The provisions of Act XIII of 1859 can only be applied at the instance of the employer. A magistrate has no jurisdiction *quo motu* to pass orders under that Act as an alternative to taking action under the Indian Penal Code. *CHHEDI : MUHAMMAD ALI* (1913)

I L R 35 All 143

3 ————— Bandsman not an artificer labourer or workman. A bandsman is not an artificer labourer or a workman within the meaning of those words in the Workman's Breach of Contract Act (XIII of 1859). *Re ROSARIO QUADROS* (1913)

I L R 38 Mad 551

4 ————— Scope of the Act—Act applicable not merely to fraudulent breaches of contract. The provisions of Act No XIII of 1859 are not applicable merely to fraudulent breaches of contract but can and must be enforced in respect to any breach of a contract within the scope of the Act. *Emperor v Bakhtawar* I L R 40 All 282 followed *AZIZ UR RAHMAN v HANSA* (1918)

I L R 40 All 670

5 ————— Scope of the Act—Workman meaning of—Status of accused proof of—Duty of complainant to prove—Absence of proof. The accused received an advance of Rs 2500 and contracted to supply coolies to a rubber estate. Under the contract he was to receive a commission of 10 per cent on the wages of the coolies and coolies and an additional Rs 25 a month if he contracted he was proceeded against under the Workman's Breach of Contract Act. On a difference of opinion between *SADASIYA AYYAR* and *PHILLIPS JJ* as to whether the accused was a workman within the meaning of the Act. Held by *AYLING J* agreeing with *SADASIYA AYYAR J*—(i) That the accused was not a workman within the meaning of the Act and (ii) that the word workman means a person who engages in manual labour of some kind whether skilled or unskilled. *Gilby v Subbu* I L R 7 Mad 100 *Calaram v Chengappa* I L R 13 Mad 351 *Manubears* in re 27 M L J 392 and *Re Rosario Quadros* I L R 38 Mad 551 followed *Powson v Hanama Meats* I L R P 1 Mad 280 and *High Court Proceedings* dated 13th July 1867 3 Mad H O R App 111V disapproved. *KUNHI MOHID : CHAKU NAIR* (1917)

I L R 41 Mad 182

Compositor an artificer—Contract to gradually work out advance from wages a contract under the Act. A compositor is an artificer if not a workman within Act XIII of 1859. An agreement by which an advance given to an artificer is to be repaid by him by periodical deductions from his wages does not merely create a relation of debtor and creditor but is a contract between master and workman within the meaning of the Act. *SOMAYAKA : CHELLAPATI PAO* (1921)

I L R 44 Mad 53

WORKMAN'S BREACH OF CONTRACT ACT (XIII of 1859)—*contd*

s 1—

See PENAL CODE s 211

I L R 43 Mad 443

1 2—Criminal Procedure Code s 250—Complaint of employer dismissed—Order for compensation to be paid to workman. It is not competent to a Magistrate when dismissing as groundless a complaint under s 1 of the Workman's Breach of Contract Act 1859 to proceed under s 250 of the Code of Criminal Procedure and order the employer to pay compensation. *JAMIL AHMAD : MUHAMMAD ISHAQ* (1919)

I L R 41 All 322

ss 1, 2 4—Indefinite contract—Advance of money to workman to be paid off out of wages at employer's option—Slavery—Contract for term certain or for specified work or otherwise meaning of—Scope of the Act. Where an advance of money made by an employer to a workman was agreed to be repaid out of the workman's wages not when the borrower chose to pay but when the employer chose to realise it. Held that the contract was indefinite and sanctioned a species of slavery and was not enforceable under the provisions of Act XIII of 1859. *Proceedings 17th Dec 1873 7 Mad H C R R 222* and *Ram Prasad v Dirigopal* I L R 3 All 774 followed. The advance was made as a loan and not on account of work contracted to be performed within the meaning of s 1 of the Act. S 4 of the Act which purports to bring within its operation all contracts and agreements whether by deed or written or verbal and whether such contract be for a term certain or for specified work or otherwise is controlled by s 1 which provides that the advance should have been made to the workman on account of any work which he shall have contracted to perform. The Act does not cover breaches of all kinds of contract between (speaking generally) employer and workman. *GOBINDA RAJWAR : H J APKAR* (1910)

15 C W N 15

s 2—

Order under—Right of appeal from the order—Proper orders to be made under s 2. No appeal lies to the Sessions Court from the order of the Magistrate under s 2 of Act XIII of 1859. The Magistrate while making an order under s 2 of Act XIII of 1859 cannot make an order of imprisonment in default but such an order could be made after there has been non-compliance with the order of repayment or carrying out the contract. *IVKIL CHAUDHARY*

ROY : KAMAR ALI SIEDAR (1913)

18 C W N 1271

Advance given by employer on agreement by workman to work for him for a certain specified period—Breach of agreement. A workman living in Cawnpore took an advance of Rs 10 from his employer and entered into an agreement to work for him for ten months on the understanding that one rupee was to be deducted from his wages each month. Held that such a contract contained nothing repugnant to Act XIII of 1859 and was capable of being enforced under the provisions of ss 1 and 3 of that Act. *Lucas v Imam Singh* Criminal Revision No 23 of 1910 decided on the 21st July 1910 followed. *LINGEOR : BAKHTAWAR* (1918)

I L R 40 All 282

WORKMAN'S BREACH OF CONTRACT ACT
(XIII OF 1859)—*concl.*— 2.—*concl.*

Summary trial—Offence
—Criminal Procedure Code s 260 4 (o) A case under s 2 of the Workmen's Breach of Contract Act 1859 is triable summarily under the provisions of s 260 of the Code of Criminal Procedure *Queen Empress v Indarjit* I L R 11 All 96^o referred to *Emperor v Dhondu* I L R 33 Bom 2^o and *Emperor v Balu Salvi* I L R 23 Bom 25 dissented from *Pollard v Mathial* I L R 4 Mad 231 and *Queen Empress v Kattayan* I L R 20 Mad 235 distinguished *Andis SAMAD v LUTTY* I L R 43 All 281

High Court's power to interfere under ss 435 and 439 of the Criminal Procedure Code (Act V of 1898)—Contract to carry logs of timber for long distances—Contract does not fall under the Act The High Court has power under ss 435 and 439 of the Criminal Procedure Code 1898 to revise an order passed by a Magistrate directing either return of the advance or specific performance of the contract under para 1 of s 2 of the Workmen's Breach of Contract Act 1859. The accused entered into an agreement with the complainant engaging to remove 100 logs of timber from a forest to a forest depot a distance of 2½ miles, and received an advance of Rs 440. The accused having failed to carry out the contract was tried under s 2 of the Workmen's Breach of Contract Act 1859 and was ordered to repay the advance. On application under criminal revisional jurisdiction—*Held* that the contract in question was not a contract of an artificer workman or labourer and did not fall within the purview of the Act *EMPEROR v DEVAPPA PAMAPPA* (1918)

I L R 43 Bom 807

ss 2—3—Contract between master and workman containing covenant for compensation for breach of agreement by workman—Operation of Act not thereby excluded An employer of labour is not precluded from availing himself of the provisions of Act No XIII of 1859 merely because in the contract of service between himself and his workmen there is stipulated penalty capable of enforcement by a civil suit in the event of breach of the contract on the part of the workmen which penalty has admittedly not been enforced nor payment of the same tendered on the part of the workmen *Queen Empress v Indarjit* I L R 11 All 232 referred to *Emperor v Muhammad Din* 22 Indian Cases 74 and *Emperor v Khuda Baksh* 27 Indian Cases 901 not followed *EMPEROR v RAM LAL* (1919)

I L R 41 All 390

WORSHIP

— turn of—

See **TURNS OF WORSHIP**See **USUFRUCTUARY MORTGAGE**

I L R 39 Calc 227

— right to worship a deity according to one's own belief—

See **CIVIL PROCEDURE CODE 1908 s 9**

I L R 44 Bom 410

— of image—

See **HINDU LAW—ENDOWMENT**

I L R 41 Calc 57

WORSHIP—*concl.***Worshippers' right of, suit of—**See **CIVIL PROCEDURE CODE (ACT V OF 1908) s 9** I L R 40 Mad 212**WRIST-WATCH BAND**See **DESIGN** I L R 45 Calc 605**WRIT**See **HABEAS CORPUS** I L R 44 Calc 459

— of possession—

See **BAILEY** I L R 42 Calc 313See **LEGAL CODE s 323**
19 C W N 273**WRITTEN STATEMENT**See **CHARGE** I L R 42 Calc 957See **CRIMINAL PROCEDURE CODE s 143**
14 C W N 80See **LEGAL CODE s 80**
19 C W N 1043

— refusing application to file—

See **APPEAL** I L R 43 Calc 818

— filing of by accused
The practice of filing written statements on behalf of accused persons continued. **DAILY LEGAL REMEMBRANCE: MATLADHARI SINGH** (1915)
20 C W N 129

— practice Though written statements may be accepted from the accused in accordance with the universal practice in the Courts under the Calcutta High Court they do not take the place of evidence nor of such examination of the accused as is contemplated by s 342 of the Code of Criminal Procedure *Emperor v Inauja* (1903) All N 1 dissented from *AMRITA LAL HAZRA v EMPEROR* (1915)
I L R 42 Calc 957

WRONGFUL ACTSSee **MORTGAGE** I L R 44 Calc 388**WRONGFUL ATTACHMENT**See **APPEAL** I L R 37 Calc 426**WRONGFUL CONFINEMENT**See **REJOINDER OF PARTIES**

I L R 42 Calc 760

See **PENAL CODE (ACT XLV OF 1860) s 343** I L R 42 Bom 181

— Detention of suspended police officer in lock up under an illegal Circular order of the Commissioner of Police published in the Calcutta Police Gazette—Mistake of fact and not of law—Good faith—**PENAL CODE (ACT XLV OF 1860) ss 76 79 a 341**—Pecision of orders of acquittal—**Criminal Procedure Code (Act V of 1898) ss 423 439** Where a Deputy Commissioner of Police sent a head constable placed under suspension to the lock up without malice and in conformity with a Circular order of the Commissioner of Police published in the Calcutta Police Gazette the property of the Government of Bengal and the medium of communication of all orders and regulations ordinarily having the sanction of law issued by the Commissioner for the guidance of police

WRONGFUL CONFINEMENT—*could*

officers and carried out by them which Circular order had been consistently followed for 15 months but was invalid as not having been approved of by the Bengal Government under s 9 of the Calcutta Police Act (Beng IV of 1866) of which fact however the accused Deputy Commissioner was not aware. *Held* that he was justified in assuming that the said Circular order had received the sanction of the Government of Bengal and that as he by reason of a mistake of fact and not of law in good faith believed himself to be bound by law to obey the instructions of the Commissioner of Police and to be justified by law in sending the head constable to such custody he was protected by s 46 and 79 of the Penal Code. The High Court does not on revision interfere with an order of acquittal unless such interference is urgently demanded in the interest of public justice. *Faydar Thakur v. K. Choudhury* 1 L R 42 Calc 612 referred to PRAMATHA NATH BARAT v P C LALMI (1920)

1 L R 47 Calc 818

WRONGFUL DISMISSAL

S & DISMISSAL

See DAMAGES 1 L R 46 I. A. 314

Suit for wrongful dismissal against Crown, if lies—Dismissal—Government service for commercial undertakings—Agreement of service—Notice in terms of agreement—Payment of wages for period under notice—Crown power of dismissal of Government servants civil and military—21 and 22 Vic c 106 s 65. A servant who had received his notice of dismissal and got his wages for the remainder of the term covered by the notice cannot maintain an action for wrongful dismissal. The Crown in the absence of Statutory provisions can dismiss any servant in its civil or military employ exactly as the East India Company could under s 3 of 3 and 4 Will IV Ch 83 and therefore a suit for wrongful dismissal at the instance of a dismissed servant does not lie against the Secretary of State for India in Council under s 65 of 21 & 22 Vic Ch 106. *King v. Secretary of State for India* (1908)

15 C W N 486

WRONGFUL POSSESSION

See SHERIFF 1 L R 42 Calc 244

WRONGFUL RESTRAINT

See PENAL CODE (ACT XLV OF 1860), ss 341 109 1 L R 43 Bom 531

WRONGFUL SEIZURE

See ARREST OF SHIP 1 L R 42 Calc 85

Y**YAJMAN**

See HINDU LAW—HEREDITARY PRIEST 1 L R 36 Bom 94

See VATANDAR JOSHI 1 L R 40 Bom 112

YATI

See HINDU LAW—ADOPTION 1 L R 40 Mad 846

Z**ZAMINDAR**

S MADRAS ESTATES LAND ACT (I OF 1905) s 6 SUBS (5), 8.

1 L R 39 Mad 944

engagement by with Government—

S MADRAS IRRIGATION CESS ACT (MAD VII OF 1860) s 1 PROVISOS 1 AND 2

1 L R 40 Mad 586

grant by—

S MINES AND MINERALS

1 L R 47 Calc 85

grant by to his wife and minor son—

S TRANSFER OF PROPERTY ACT (IV OF 1855) s 10

1 L R 38 Mad 867

liability of, for unlawful acts of his servants—

S SECURITY FOR GOOD BEHAVIOUR

1 L R 38 Calc 156

rights of—

S NAVIGABLE RIVER

1 L R 46 Calc 390

service to—

See MADRAS REGULATION (XXV OF 1902) s 4

1 L R 38 Mad 620

ZAMINDAR AND INAMDAR

pre-emption as to—

See MADRAS ESTATES LAND ACT (I OF 1905) s 8

1 L R 38 Mad 608

ZAMINDAR OR MITTADAR

right of, to a charge—assignment of Jodi—

S INAMDAR 1 L R 40 Mad 83

ZAMINDARI

impartible—

See HINDU LAW—JOINT FAMILY 1 L R 41 Mad 78

See HINDU LAW—ADOPTION 1 L R 38 Mad 1105

sale of—

See EXECUTION OF DECREE 1 L R 38 All 89

settled in Permanent Settlement—

See MADRAS IRRIGATION CESS ACT (MAD VII OF 1860) s 1 AND PROVISOS 1 AND 2

1 L R 40 Mad 586

ZAMINDARI LANDS

See MADRAS ESTATES LAND ACT (I OF 1905), ss 6 SUBS (5), 8.

1 L R 39 Mad 944

See MADRAS WATER CESS ACT (VII OF 1863)

1 L R 39 Mad 67

ZAMINDARI RIGHTS

See KUPSTRA STATE OF 1 L R 39 Calc 711

ZAMINDARI SALE.

— in execution—Whether entire zamindars or only amindars life estates sold—Mixed question of law and fact depending on entire evidence in the case—State of then law as to the amindars interest therein not conclusive—Conduct of parties important evidence. A question as to whether the entire estate in a zamindari and not only the life interest of the zamindar was sold in execution and brought by the purchaser is a question of mixed law and fact to be determined by the evidence in each case. All that *Abdul Khan v Appaya sams Vaicler* I L R 27 Mad 131 142 decided in reference to the above question was that the state of the law as understood at the time of sale as to the rights of the zamindar in regard to the zamindari was evidence to be considered along with other evidence in the case it is not alone conclusive on the question. In determining the question of what the Court intended to sell and the purchaser understood he bought evidence as to how the parties affected by the transaction themselves viewed it at the time is of much greater value than evidence which may be procurable some twenty years after the transaction took place. On the evidence in the case their Lordships held that the sale which took place in 1830 was of the whole zamindari and that the purchaser bought the whole zamindari in execution. *Veera chandra Aijar v Harudaga Na hiar* I L R 34 Mad 183 referred to. *Veera Soorappa Nayani v Errappa Vaidu* I L R 29 Mad 481 490 explained. *ALAGARAYA GOUNDER v RAMANUSJA VAIDU* (1911) I L R 37 Mad 22

ZAMINDARS AND RAJAS

— rights of waters of rivers passing through their lands—

See MADRAS IRRIGATION CESS ACT (VII of 1895) I L R 37 Mad 322

ZERAIF

See LANDLORD AND TENANT
I L R 38 Cal. 432

ZINA

See MAHOMEDAN LAW—LEGITIMACY
I L R 33 Bom 111

ZURPESHGI LEASE

See BENGAL TENANCY ACT 5 (5),
15 C W N 345

See LANDLORD AND TENANT
I L R 38 Cal. 432

See MORTGAGE 16 C W N 505

— Occupancy right rayats interest acquisition of—Previous possession as rayat—Subsequent urpeshgi lease effect of. The plaintiff's suit was for recovery of possession of land which had been given in zurpeshgi to the defendant for a term of 15 years from 1301 to 1315 F S the terms of the urpeshgi being as follows. It is desired that the said sahib ticca dar should take possession of the said land make proper cultivation himself or get it cultivated by others grow indigo seeds or any other indigo crop by using the land as his khas erant or by settling the same with tenants according to his own desire and shall continue appropriating the proceeds thereof till the term of the ticca. He shall year by year deduct the said fixed jama in payment of the principal and interest of his urpeshgi as per account given below and shall pay the remainder the amount of lessor's rights payable to us towards the end of the term of the ticca on talim receipts therefor from us. He shall conveniently cut and recover the indigo crops grown and standing on any quantity of land in 1315 F S when the term of the ticca pottah comes to an end and shall pay ten annas rent for 1910 F S at Rs 6 3 0 per bigha and shall give up possession of the said land. Held that the urpeshgi pottah did not create any rayati interest in the defendant far less a right of occupancy and on the expiry of the term of the pottah the plaintiff were entitled to get khas possession. That a rayat by taking a urpeshgi lease of land of which he was previously in possession as a rayat does not lose his rayati status or divest himself of his right to acquire a right of occupancy in the land. *LAL BHADUR SAHNI v MACKENZIE* (1913) 19 C W N 229

WRONGFUL CONFINEMENT

officers and carried out in order had been considered but was invalid as not sanctioned by the Bengal Government. Calcutta Police Act (B) fact however the accused was not aware. *Hell* assuming that the sanction of the Government as he by reason of a law in good faith believed to obey the instructions of Police and to be the head constable protected by ss 76 and 7. High Court does not give an order of acquittal. Urgently demanded in justice. *Faujdar Thakur* I L R 42 Cal 61 NATH BARAT P C LAL

WRONGFUL DISMISSAL

See DISMISSAL

See DAMAGE

Suit for Wages Crown, *Hell*—*Dismissal for commercial service*—Notice in terms of wages for period under dismissal of Government—21 and 22 Vict. 100 had received his wages for the remainder of the notice cannot maintain dismissal. The Crown in its provisions can dismiss military employ even if pay could under the law and therefore a suit for wages in instance of a dismissal by the Secretary of State for India 60 of 21 & 22 Vict. 100 TAPES OF STATE FOR INDIA

WRONGFUL POSSESSION

See SUEBATT

WRONGFUL RESTRAINT

See PENAL CODE (ss 341 100)

WRONGFUL SEIZURE

See ARREST OF SUSPECT

Y**YAJMAN**

See HINDU LAW

See YATANDAR

YATI

See HINDU LAW

ZAMINDARI SALE.

in execution—Whether entire zamindari or only amindar's life estates sold—Mixed question of law and fact depending on entire evidence in the case—State of then law as to the amindar's interest therein not conclusive—Conduct of parties important evidence. A question as to whether the entire estate in a zamindari and not only the life interest of the zamindar was sold in execution and brought by the purchaser is a question of mixed law and fact to be determined by the evidence in each case. All that *Abdul A. Khan v Appaya sami Vaidar* I L R 37 Mad 131 142 decided in reference to the above question was that the state of the law as understood at the time of sale as to the rights of the zamindar in regard to the zamindari was evidence to be considered along with other evidence in the case it is not alone conclusive on the question. In determining the question of what the Court intended to sell and the purchaser understood he bought evidence as to how the parties affected by the transaction themselves viewed it at the time is of much greater value than evidence which may be procurable soon twenty years after the transaction took place. On the evidence in the case their Lordships held that the sale which took place in 1890 was of the whole zamindari and that the purchaser bought the whole zamindari in execution. *Veera thadra Aiyar v Marudaya Na hiar* I L R 33 Mad 188 referred to. *Veera Soorappa Vajani v Errappa Vaidu* I L R 20 Mad 493 490 explained. *Atigahaya Gounder v Panayota Vaidu* (1911) I L R 37 Mad 22

ZAMINDARS AND RAJAS

rights of waters of rivers passing through their lands—

S. v. Madras Irrigation Cess Act (VII of 1855) I L R 37 Mad 322

ZERAIF

See LANDLORD AND TENANT
I L R 38 Cal. 432

ZINA

See MAHOMEDAN LAW—LEGITIMACY
I L R 34 Bom 111

ZURPESHGI LEASE

See BENGAL TENANCY ACT s 5 (5);
15 C W N 345

See LANDLORD AND TENANT
I L R 38 Cal. 432

See MORTGAGE
10 C W N 505

Occupancy right raiyats not rest acquisition of—Previous possession as raiyat—Subsequent zurpeshgi lease effect of. The plaintiff's suit was for recovery of possession of land which had been given in zurpeshgi to the defendant for a term of 15 years from 1301 to 1315 F S the terms of the zurpeshgi being as follow. It is desired that the said sahib ticcadar should take possession of the said land make proper cultivation himself or get it cultivated by others grow indigo seeds or any other indigo crop by using the land as his khas eras or by settling the same with tenants according to his own desire and shall continue appropriating the proceeds thereof till the term of the ticca. He shall year by year deduct the said fixed jama in payment of the principal and interest of his zurpeshgi as per account given below and shall pay the remainder the amount of lessor's rights payable to us towards the end of the term of the ticca on taking receipts therefor from us. He shall conveniently cut and recover the indigo crops grown and standing on any quantity of land in 1315 F S when the term of the ticca pottah comes to an end and shall pay ten annas rent for 1916 F S at Rs 6 30 per bigha and shall give up possession of the said land. Held that the zurpeshgi pottah did not create any raiyati interest in the defendant far less a right of occupancy and on the expiry of the term of the pottah the plaintiffs were entitled to get khas possession. That a raiyat by taking a zurpeshgi lease of land of which he was previously in possession as a raiyat does not lose his raiyati status or divest himself of his right to acquire a right of occupancy in the land. *LAL BHADUR SARI v MACKENZIE* (1913) 19 C W N 229

WRONGFUL CONFINEMENT—contd

officers and carried out by them which Circular order had been consistently followed for 18 months but was invalid as not having been approved of by the Bengal Government under s 9 of the Calcutta Police Act (Beng IV of 1866) of which fact however the accused Deputy Commissioner was not aware *Held* that he was justified in assuming that the said Circular order had received the sanction of the Government of Bengal and that as he by reason of a mistake of fact and not of law in good faith believed himself to be bound by law to obey the instructions of the Commissioner of Police and to be justified by law in sending the head constable to such custody he was protected by ss 76 and 79 of the Penal Code The High Court does not on revision, interfere with an order of acquittal unless such interference is urgently demanded in the interest of public justice *Faujdar Thalur v Kasi Choudhury* I L R 42 Cal 612 referred to: PRAMATHA NATH BARAT: P C LAHIRI (1920)

I L R 47 Cal 818

WRONGFUL DISMISSAL

See DISMISSAL.

See DAMAGES I L R 46 I A 314

Suit for wrongful dismissal against Crown if *leg*—Dismissal—Government servant for commercial undertakings—Agreement of service—Notice in terms of agreement—Payment of wages for period under notice—Crown power of dismissal of Government servants civil and military—21 and 22 Vict c 106 s 65 A servant who had received his notice of dismissal and got his wages for the remainder of the term covered by the notice cannot maintain an action for wrongful dismissal The Crown in the absence of Statutory provisions can dismiss any servant in its civil or military employ exactly as the East India Company could under s 75 of 3 and 4 Will IV Ch 85 and therefore a suit for wrongful dismissal at the instance of a dismissed servant does not lie against the Secretary of State for India in Council under s 65 of 21 & 22 Vict Ch 106 *King v Secre- TARY OF STATE FOR INDIA* (1908)

15 C W N 486

WRONGFUL POSSESSION

See SHERATT I L R 42 Cal 244

WRONGFUL RESTRAINT

See PENAL CODE (ACT XLV OF 1860)
= 341 100 I L R 43 Bom 531

WRONGFUL SEIZURE

See ARREST OF SHIP

I L R 42 Cal 85

Y**YAJMAN**

See HINDU LAW—HEREDITARY PRIEST
I L R 33 Bom 94

See YATANDAR JOSHI
I L R 40 Bom 112

YATI

See HINDU LAW—ADOPTION
I L R 40 Mad 846

Z**ZAMINDAR**

See MADRAS ESTATES LAND ACT (I OF 1908) s. 6 SUBS (6) 8

I L R 39 Mad 944

engagement by with Government—

See MADRAS IRRIGATION CESS ACT (MAD- VII OF 1865) s 1 PROVISOS 1 AND 2

I L R 40 Mad 886

grant by—

See MINES AND MINERALS

I L R 47 Cal 95

grant by to his wife and minor

son—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 10

I L R 38 Mad 867

liability of, for unlawful acts of his servants—

See SECURITY FOR GOOD BEHAVIOUR.

I L R 38 Cal 156

rights of—

See NAVIGABLE RIVER

I L R 46 Cal 390

service to—

See MADRAS REGULATION (XXV OF 1802) s 4

I L R 38 Mad 620

ZAMINDAR AND INAMDAR

pre-emption as to—

See MADRAS ESTATES LAND ACT (I OF 1908) s 8

I L R 38 Mad 608

ZAMINDAR OF MITTADAR

right of to a charge—assignment of Jodi—

See INAMDAR I L R 40 Mad 93

ZAMINDARI

impartible—

See HINDU LAW—JOINT FAMILY
I L R 41 Mad 778

See HINDU LAW—ADOPTION
I L R 38 Mad 1105

sale of—

See EXECUTION OF DECREE.
I L R 38 ALL 89

settled as Permanent Settlement—

See MADRAS IRRIGATION CESS ACT (MAD- VII OF 1865) s 1 AND PROVISOS. 1 AND 2

I L R 40 Mad 886

ZAMINDARI LANDS

See MADRAS ESTATES LAND ACT (I OF 1908) ss 6 SUBS (6) 8

I L R 39 Mad 944

See MADRAS WATER CESS ACT (VII OF 1863)

I L R 38 Mad 67

ZAMINDARI RIGHTS

See KUNGPURA STATE OF
I L R 39 Cal 711

WORDS AND PHRASES—*contd*

- "Taluqdar"—
See OUDH ESTATES ACT (I OF 1869)
 ss 2 3 8 10 22
 I L R 35 All 391
- "Taluqdari Estate"—
See GUJRATH TALUQDARS ACT s 31
 I L R 34 Bom 55
- "Taluqdari Settlement officer"—
See GUJRATH TALUQDARS ACT ss 28 29
 I L R 34 Bom 142
- "Taluqdari Tenure"—
See GUJRATH TALUQDARS ACT (BOM
 ACT VI OF 1888) s 31
 I L R 35 Bom 97
- "Tavazhi"—
See MALABAR LAW
 I L R 38 Mad 48
- "tenan"—
See BOMBAY RENT (WAR RESTRICTION) s
 ACT (BOM. II OF 1916) s 3(1) CLS (a)
 (c) (d) I L R 45 Bom 744
- "tenure holder"—
See BENGAL TENANCY ACT (VIII OF
 1885) ss 103 B and 104 H
 I L R 46 Calc 90
- "trade"—
See RECEIVER I L R 40 Calc 678
- "trade mark"—
See PENAL CODE (ACT XLV OF 1860)
 ss 478 482 I L R 39 All 123
- "trading"—
See TRADING WITH THE ENEMY
 I L R 42 Calc 1094
- "tried again"—
See AUTREFOIS ACQUIT
 I L R 41 Calc 1072
- "true value"—
See RAILWAYS ACT (IX OF 1860) s. 75
 (1) (2) AND (3)
 I L R 43 Bom 386
- "unable"—
See GUJRATH TALUQDARS ACT (BOM ACT
 VI OF 1888 AS AMENDED BY BOM
 ACT II OF 1905) ss 29 29 B (1) (2)
 (3) AND 30 E I L R 35 Bom 604
- "unable to maintain 'self'"—
See CRIMINAL PROCEDURE CODE (ACT V
 OF 1898) s 488
 I L R 39 Mad 957
- "unlawfully and judiciously"—
See CHARGE I L R 42 Calc 957
- "until"—
See CONTRACT FOR SALE
 I L R 45 Calc 481
- "up to"—
See CONTRACT FOR SALE
 I L R 45 Calc 491
- "useless or inoperative"—
See LETTERS OF ADMINISTRATION
 I L R 40 Calc 80

WORDS AND PHRASES—*contd*

- "using"—
See PENAL CODE (ACT XLV OF 1860)
 s 471 I L R 33 Mad 392
- "value"—
See RAILWAYS ACT (IX OF 1860) s 75
 (1) (2) AND (3) I L R 43 Bom 386
- "valuable security"—
See PENAL CODE ACT (XLV OF 1860)
 ss 30 467 I L R 38 All 430
- "violence"—
See JURY TRIAL BY
 I L R 40 Calc 367
- "Wants lands"—
See GUJRATH TALUQDARS ACT (BOM ACT
 VI OF 1888) s 31
 I L R 35 Bom 97
- "where there has been an appeal
 or review"—
See LIMITATION ACT 1908 SCH I ART
 182
 3 Pat L J 119
- "wilful default"—
See CIVIL PROCEDURE CODE (ACT V OF
 1908) O XL R 4
 I L R 39 Mad 584
- "withdrawal"—
See CRIMINAL PROCEDURE CODE ss 248
 345
 20 C W N 1209
- "without issue"—
See HINDU LAW—ADOPTION
 I L R 43 Calc 944
- "witnesses for the defence"—
See JURISDICTION OF MAGISTRATE
 I L R 39 Calc 885
- "words which are likely or may
 have a tendency directly or indirectly
 whether by inference suggestion, allusion
 metaphor implication or otherwise" (in
 s 4 (1))—
See PRESS ACT (I OF 1910) ss 3 (1)
 4 (1) 17 19 20 22
 I L R 39 Mad 1085
- "youthful offender"—
See REFORMATORY SCHOOLS ACT (VIII
 OF 1897) s 31 I L R 39 All 141
- WORK CALCULATED TO DEPRAVE MORALS
See OBSCENE PUBLICATION
 I L R 39 Calc 377
- WORKMAN
See WORKMAN'S BREACH OF CONTRACT
 ACT (XIII OF 1859)
 I L R 35 All 61 and 143
 I L R 41 Mad 182
- WORKMAN'S BREACH OF CONTRACT ACT
 (XIII OF 1859)
 I. ———— Procedure—
*Special procedure under the Act not applicable to
 ordinary loans between master and workman. Held
 that the special procedure provided by Act XIII
 of 1859 for the recovery of money advanced in the
 circumstances therein described is not applicable*

WORDS AND PHRASES—*contd*

- "rights to sue"—
See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 92 AND 93
 I L R 38 Mad 1064
- "rikhta"—
See HINDU LAW—STRIDHAN
 I L R 36 Bom 424
- "risk note"—
See CONTRACT I L R 39 All 418
- "river belonging to Government"—
See MADRAS IRRIGATION CESS ACT (VII OF 1865) I L R 37 Mad 322
- "rolling stock"—
See RAILWAY PASSENGER
 I L R 44 Calc 279
- "Samanodaka"—
See HINDU LAW—INHERITANCE
 I L R 40 Mad 654
- "same act or transaction"—
See CIVIL PROCEDURE CODE 1908 O I R 3 I L R 34 Bom 358
- "same judgment debtor"—
See CIVIL PROCEDURE CODE 1882 s 295
 I L R 33 Mad 465
- "same transaction"—
See CHAPOR I L R 42 Calc 957
- "sanctioned"—
See BOMBAY SURVEY AND SETTLEMENT ACT s 22 I L R 36 Bom 290
- "santan"—
See HINDU WILL ACT 21 C W N 854
- "sarkhat"—
See LANDLORD AND TENANT
 I L R 41 All 654
- *See* STAMP ACT (II OF 1890) s 12 Sch I Arts 1 5 I L R 41 All 169
- "seaworthiness"—
See BILL OF LADING
 I L R 38 Mad 941
- "secundum alia gata et probata"—
See SPECIFIC RELIEF ACT (I OF 1877) s 39 I L R 39 Bom 149
- "secured creditor"—
See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 31 I L R 37 All 383
- "series of acts of transaction"—
See CIVIL PROCEDURE CODE 1908 O I R 3 I L R 34 Bom 358
- "shawls"—
See RAILWAY ACT 1890 s 70 Sch II(m)
 I L R 39 Calc 1029
- "single transaction"—
See LOWER OF ATTORNEY
 I L R 33 Mad 134
- "slavery bond"—
See CONTRACT 3 Pat L J 412

WORDS AND PHRASES—*contd*

- "sole risk"—
See LOSS OF GOODS
 I L R 46 Calc 58
- "son"—
See HINDU LAW—ADOPTION
 I L R 33 Calc 944
- "stands d rent"—
See BOMBAY RENT (WAR RESTRICTIONS) ACT (BOM II OF 1918) s 2 (1) cls (a) (c) (d) I L R 45 Bom 744
- "stating the grounds of its opinion"—
See FORFEITURE I L R 41 Calc 466
- "stream"—
See MADRAS IRRIGATION CESS ACT s 2
 I L R 34 Mad 283
- "street"—
See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) s 303
 I L R 43 Bom 122
- *See* LAND ACQUISITION
 I L R 44 Calc 219
- "strict proof"—
See LIMITATION ACT (IX OF 1908) ss 5 14 I L R 42 Bom 295
- *See* REVIEW I L R 42 Calc 830
- "subject matter"—
See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII s 1
 I L R 42 Bom 155
- "submission to Court"—
See ARBITRATION I L R 46 Calc 721
- "subsequent transferee"—
See TRANSFER OF PROPERTY ACT (IV OF 1882) s 63 I L R 39 Bom 507
- "succeeded by another Magistrate"—
See RIOTING I L R 39 Calc 781
- "successor"—
See AGRA TENANCY ACT (II OF 1901) s 159 I L R 33 All 553
- "sufficient cause"—
See COURT FEES ACT 1870 ss 4 6 7
 3 Pat L J 74
- *See* LAND ACQUISITION
 I L R 45 Bom 725
- *See* LIMITATION I L R 45 Calc 94
- "suit for land"—
See LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT CL 12
 I L R 37 Bom 491
- "suit for land or other immovable property"—
See JURISDICTION I L R 42 Calc 912
- "suit or other legal proceeding"—
See RESIDENCY TOWN INSOLVENCY ACT (III OF 1909) ss 17 103 104
 I L R 35 Bom 63

WORDS AND PHRASES—*contd*

- "Taluqdar"—
 See OUDH ESTATES ACT (I OF 1869)
 ss 2 3 & 10 22
 I L R 35 All 391
- "Taluqdari Estate"—
 See GUJRATH TALUQDARS ACT s 31
 I L R 34 Bom 55
- "Taluqdari Settlement officer"—
 See GUJRATH TALUQDARS ACT ss 28 29
 I L R 34 Bom 142
- "Taluqdari Tenure"—
 See GUJRATH TALUQDARS ACT (BOM
 ACT VI OF 1888) s 31
 I L R 35 Bom 97
- "Tayazhi"—
 See MALABAR LAW
 I L R 38 Mad 48
- "tenant"—
 See BOMBAY RENT (WAR RESTRICTIONS)
 ACT (BOM II OF 1918) s 2 (1) cls (a)
 () (d) I L R 45 Bom 744
- "tenure holder"—
 See BENGAL TENANCY ACT (VIII OF
 1885) ss 103 B and 104 H
 I L R 48 Calc 90
- "trade"—
 See PECKIVER I L R 40 Calc 678
- "trade mark"—
 See PENAL CODE (ACT XLV OF 1860)
 ss 478 482 I L R 39 All 123
- "trading"—
 See TRADING WITH THE ENEMY
 I L R 42 Calc 1084
- "tried again"—
 See AUTREFOIS ACQUIT
 I L R 41 Calc 1072
- "true value"—
 See RAILWAYS ACT (IX OF 1890) s. 75
 (1) (2) AND (3)
 I L R 43 Bom 386
- "unable"—
 See GUJRAT TALUQDARS ACT (BOM ACT
 VI OF 1888 AS AMENDED BY BOM
 ACT II OF 1905) ss 29 29 B (1) (2)
 (3) AND 29 E I L R 38 Bom 604
- "unable to maintain self"—
 See CRIMINAL PROCEDURE CODE (ACT V
 OF 1898) s. 488
 I L R 39 Mad 957
- "unlawfully and judiciously"—
 See CHABOE I L R 42 Calc 957
- "until"—
 See CONTRACT FOR SALE
 I L R 45 Calc 431
- "up to"—
 See CONTRACT FOR SALE
 I L R 45 Calc 431
- "useless or inoperative"—
 See LETTERS OF ADMINISTRATION
 I L R 40 Calc 50

WORDS AND PHRASES—*contd*

- "using"—
 See PENAL CODE (ACT XLV OF 1860)
 s 471 I L R 33 Mad 392
- "value"—
 See RAILWAYS ACT (IX OF 1890) s 75
 (1) (2) AND (3) I L R 43 Bom 386
- "valuable security"—
 See PENAL CODE ACT (XLV OF 1860)
 ss 30 467 I L R 38 All 430
- "violence"—
 See JURY TRIAL B1
 I L R 40 Calc 367
- "Wants lands"—
 See GUJRAT TALUQDARS ACT (BOM ACT
 VI OF 1888) s 31
 I L R 35 Bom 97
- "where there has been an appeal
 or review"—
 See LIMITATION ACT 1908 SCH I ART
 182 3 Pat L J 119
- "wilful default"—
 See CIVIL PROCEDURE CODE (ACT V OF
 1908) O XL P 4
 I L R 39 Mad. 584
- "withdrawal"—
 See CRIMINAL PROCEDURE CODE ss 248
 245 20 C W N 1209
- "without issue"—
 See HINDU LAW—ADOPTION
 I L R 43 Calc 844
- "witnesses for the defence"—
 See JURISDICTION OF MAGISTRATE
 I L R 39 Calc 885
- "words which are likely or may
 have a tendency directly or indirectly
 whether by inference suggestion, allusion
 metaphor implication or otherwise" [in
 s 4 (1)]—
 S PRESS ACT (I OF 1910) ss 3 (1)
 4 (1) 17 19 20
 I L R 39 Mad. 1085
- "youthful offender"—
 See REFORMATORY SCHOOLS ACT (VIII
 OF 1897) s 31 I L R 39 All 141
- WORK CALCULATED TO DEPRAVE MORALS
 See OBSCENE PUBLICATION
 I L R 39 Calc 377
- WORKMAN
 See WORKMAN'S BREACH OF CONTRACT
 ACT (XIII OF 1859)
 I L R 35 All. III and 143
 I L R. 41 Mad. 182
- WORKMAN'S BREACH OF CONTRACT ACT
 (XIII OF 1859)
 I. ———— Procedure—
 Special procedure under the Act not applicable to
 ordinary loans between master and workman. Held
 that the special procedure provided by Act XIII
 of 1859 for the recovery of money advanced in the
 circumstances therein described, is not applicable

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*contd*

where money is advanced to a workman not for the purpose of assisting him to complete a specific piece of work but as an ordinary loan to be repaid out of the workman's wages. *In the matter of Anusoori Sanyasi* I L R 28 Mad 37 referred to GIGA v MUHAMMAD AMIN (1912)

I L R 35 All 61

2 ————— *Magistrate not competent to take proceedings under unless moved by the employer* The provisions of Act XIII of 1859 can only be applied at the instance of the employer. A magistrate has no jurisdiction *suo motu* to pass orders under that Act as an alternative to taking action under the Indian Penal Code. CHHEDI v MUHAMMAD ALI (1913)

I L R 35 All 143

3 ————— *Bandsman not an artificer labourer or workman* A bandsman is not an artificer labourer or a workman within the meaning of those words in the Workman's Breach of Contract Act (XIII of 1859). *Re ROSARIO QUADROS* (1913)

I L R 38 Mad 551

4 ————— *Scope of the Act—Act applicable not merely to fraudulent breaches of contract* The provisions of Act No XIII of 1859 are not applicable merely to fraudulent breaches of contract but can and must be enforced in respect to any breach of a contract within the scope of the Act. *Emperor v Baikhtawar* I L R 40 All 282 followed. *AZIZ UR RAHMAN v HANSA* (1918)

I L R 40 All 670

5 ————— *Scope of the Act—Workman meaning of—Status of accused proof of—Duty of complainant to prove—Absence of proof* The accused received an advance of Rs 2500 and contracted to supply coolies to a rubber estate. Under the contract he was to receive a commission of 10 per cent on the wages of the coolies and coolies and an additional Rs 25 a month if he contracted he was proceeded against under the Workman's Breach of Contract Act. On a difference of opinion between SADASIVA AYYAR and PHILLIPS JJ as to whether the accused was a workman within the meaning of the Act. *Held* by AYLING J agreeing with SADASIVA AYYAR J —(i) That the accused was not a workman within the meaning of the Act and (ii) that the word workman means a person who engages in manual labour of some kind whether skilled or unskilled. *Gilby v Subbu I L R 7 Mad 100 Calarum v Chengappa* I L R 13 Mad 351 *Mansuabari in re* 27 M L J 392 and *Pe. Rosario Quadros* I L R 38 Mad 551 followed. *Powson v Hanama Mestri* I L R 1 Mad 280 and *High Court Proceedings dated 13th July 1867* 3 Mad H C R App XXV disapproved. *KUCHI MOIDIK v CHANU NAIR* (1917)

I L R 41 Mad 182

6 ————— *Compositor an artificer—Contract to gradually work out advance from wages a contract under the Act* A compositor is an artificer if not a workman within Act XIII of 1859. An agreement by which an advance given to an artificer is to be repaid by him by periodical deductions from his wages does not merely create a relation of debtor and creditor but is a contract between master and workman within the meaning of the Act. *SOMANNA v CHELLAPATHI RAO* (1921)

I L R 44 Mad 53

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*contd*

s 1—

See PENAL CODE, s 211

I L R 43 Mad 443

ss 1 2—*Criminal Procedure Code s 250—Complaint of employer dismissed—Order for compensation to be paid to workman* It is not competent to a Magistrate when dismissing as groundless a complaint under s 1 of the Workman's Breach of Contract Act 1859 to proceed under s 250 of the Code of Criminal Procedure and order the employer to pay compensation. *JAMIL AHMAD v MUHAMMAD ISHAQ* (1919)

I L R 41 All 322

ss 1 2 4—*Indefinite contract—Advance of money to workman to be paid off out of wages at employer's option—Slavery—Contract for term certain or for specified work or otherwise meaning of—Scope of the Act* Where an advance of money made by an employer to a workman was agreed to be repaid out of the workman's wages not when the borrower chose to pay but when the employer chose to realise it. *Held* that the contract was indefinite and sanctioned a species of slavery and was not enforceable under the provisions of Act XIII of 1859. *Proceedings 12th Dec 1873* 7 Mad H C R Rl xxx and *Ram Prasad v Dirigopal* I L R 3 All 774 followed. The advance was made as a loan and not on account of work contracted to be performed within the meaning of s 1 of the Act. S 4 of the Act which purports to bring within its operation all contracts and agreements whether by deed or written or verbal and whether such contract be for a term certain or for specified work or otherwise is controlled by s 1 which provides that the advance should have been made to the workman on account of any work which he shall have contracted to perform. The Act does not cover breaches of all kinds of contract between (speaking generally) employer and workman. *COBINTA RAJWAR v H J AFKAR* (1910)

15 C W N 15

s 2—

Order under—Right of appeal from the order—Proper orders to be made under s 2 No appeal lies to the Sessions Court from the order of the Magistrate under s 2 of Act XIII of 1859. The Magistrate while making an order under s 2 of Act XIII of 1859 cannot make an order of imprisonment in default but such an order could be made after there has been non-compliance with the order of repayment or carrying out the contract. *ABDALL CHAKIFA ROY v KAMAR ALI SIRDAR* (1913)

18 C W N 1271

Advance given by employer on agreement by workman to work for him for a certain specified period—Breach of agreement A workman living in Cawnpore took an advance of Rs 10 from his employer and entered into an agreement to work for him for ten months on the understanding that one rupee was to be deducted from his wages each month. *Held* that such a contract contained nothing repugnant to the Act XIII of 1859 and was valid. It is not covered by the provisions of s 2 and 3 of that Act. *Juras v Jamas Singh* Criminal Revision No 23 of 1910 decided on the 21st July 1910 followed. *LAFREOR v BAKHTAWAR* (1914)

I L R 40 All 252

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*concl'd*

— s. 2—*concl'd*

Summary trial—Offence
—Criminal Procedure Code s 260 4 (o) A case under s 2 of the Workmen's Breach of Contract Act 1859 is triable summarily under the provisions of s 260 of the Code of Criminal Procedure *Queen Empress v Indarjit I L R 11 All 260* referred to *Emperor v Dhondu I L R 33 Bom 29* and *Emperor v Balu Saluja I L R 93 Bom 25* dis sented from *Pollard v Mothial I L R 4 Mad 234* and *Queen Empress v Kattayan I L R 20 Mad 235* distinguished *ANDUS SAMAD v YUSUF I L R 43 All 281*

High Court's power to interfere under ss 435 and 439 of the Criminal Procedure Code (Act I of 1898)—Contract to carry logs of timber for long distances—Contract does not fall under the Act The High Court has power under ss 435 and 439 of the Criminal Procedure Code 1898 to revise an order passed by a Magistrate directing either return of the advance or specific performance of the contract under para 1 of s 2 of the Workmen's Breach of Contract Act 1859. The accused entered into an agreement with the complainant engaging to remove 100 logs of timber from a forest to a forest depot at a distance of 23 miles, and received an advance of Rs 440. The accused having failed to carry out the contract was tried under s 2 of the Workmen's Breach of Contract Act 1859 and was ordered to repay the advance. On application under criminal revisional jurisdiction—*Held* that the contract in question was not a contract of an artificer workman or labourer and did not fall within the purview of the Act *EMPEROR v DEVAPPA RAMAPPA (1918)*

I L R 43 Bom 607

ss 2 3—Contract between master and workman containing covenant for compensation for breach of agreement by workman—Operation of Act not thereby excluded. An employer of labour is not precluded from availing himself of the provisions of Act No XIII of 1859 merely because in the contract of service between himself and his workmen there is a stipulated penalty capable of enforcement by a civil suit in the event of breach of the contract on the part of the workmen, which penalty has admittedly not been enforced nor payment of the same tendered on the part of the workmen *Queen Empress v Indarjit I L R 11 All 237* referred to *Emperor v Muhammad Din 2 Indian Cases 749* and *Emperor v Khuda Balshah 27 Indian Cases 901* not followed *EMPEROR v RAM LAL (1919)*

I L R 41 All 390

WORSHIP

— turn of—

See TURNS OF WORSHIP

See USUFRUCTUARY MORTGAGE

I L R 39 Calc. 227

— right to worship a deity according to one's own belief—

See CIVIL PROCEDURE CODE 1908 s 9

I L R 44 Bom. 410

— of image—

See HINDU LAW—ENDOWMENT

I L R 41 Calc 57

WORSHIP—*cont'd*

Worshippers' right of suit of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 40 Mad 212

WRIST WATCH BAND

See DESIGN I L R 45 Calc 603

WRIT

See HABEAS CORPUS

I L R 44 Calc 459

— of possession—

See BAILIFF I L R 42 Calc 313

See PENAL CODE s 323

19 C W N 273

WRITTEN STATEMENT

See CHARGE I L R 42 Calc 957

See CRIMINAL PROCEDURE CODE s 145

14 C W N 80

See PENAL CODE s 80

19 C W N 1043

— refusing application to file—

See APPEAL I L R 45 Calc 818

— filing of by accused

The practice of filing written statements on behalf of accused persons condemned *DEPUTY LEGAL MEMORANDUM : MATTELDHARI SING (1915)*

10 C W N 128

Practice Though written statements may be accepted from the accused in accordance with the universal practice in the Courts under the Calcutta High Court they do not take the place of evidence nor of such examination of the accused as is contemplated by s 342 of the Code of Criminal Procedure *Emperor v Ansuya (1903) All W N 1* dissented from *AMRITA LAL HAZI v EMEROR (1915)*

I L R 42 Calc 957

WRONGFUL ACTS

See MORTGAGE I L R 44 Calc 388

WRONGFUL ATTACHMENT

See APPEAL I L R 37 Calc 426

WRONGFUL CONFINEMENT

See MISJOINDER OF PARTIES

I L R 42 Calc 760

See PENAL CODE (ACT XLV OF 1860)

s 343 I L R 42 Bom. 181

Detention of suspended police-officer in lock up under an illegal Circular order of the Commissioner of Police published in the Calcutta Police Gazette—*Held* that of fact and not of law—Good faith—*Pe of Code (Act XLV of 1860) ss 76 9 and 34*—*Peculiar* of orders of acquittal—*Criminal Procedure Code (Act I of 1895) ss 4 3 439* Where a Deputy Commissioner of Police sent a head constable placed under suspension to the lock up without malice and in conformity with a Circular order of the Commissioner of Police published in the Calcutta Police Gazette the property of the Government of Bengal and the medium of communication of all orders and regulations ordinarily having the sanction of law issued by the Commissioner for the guidance of police

WRONGFUL CONFINEMENT—could

officers and carried out by them which Circular order had been consistently followed for 18 months but was invalid as not having been approved of by the Bengal Government under s 9 of the Calcutta Police Act (Beng IV of 1866) of which fact however the accused Deputy Commissioner was not aware. *Held* that he was justified in assuming that the said Circular order had received the sanction of the Government of Bengal and that as he by reason of a mistake of fact and not of law, in good faith believed himself to be bound by law to obey the instructions of the Commissioner of Police and to be justified by law in sending the head constable to such custody, he was protected by ss 76 and 79 of the Penal Code. The High Court does not on revision interfere with an order of acquittal unless such interference is urgently demanded in the interest of public justice. *Faujdar Thakur v Kazi Choudhury* I L R 42 Calc 612 referred to PRANATHA NATH BARAT P C LAHRI (1920)

I L R 47 Calc 818

WRONGFUL DISMISSAL

See DISMISSAL

See DAMAGES L R 48 I A 314

Suit for wrongful dismissal against Crown, if lies—Dismissal—Government service for commercial undertakings—Agreement of service—Notice in terms of agreement—Payment of wages for period under notice—Crown power of dismissal of Government servants civil and military—21 and 22 Vict c 106 s 65 A servant who had received his notice of dismissal and got his wages for the remainder of the term covered by the notice cannot maintain an action for wrongful dismissal. The Crown in the absence of Statutory provisions can dismiss any servant in its civil or military employ exactly as the East India Company could under s 75 of 3 and 4 Will IV Ch 85 and therefore a suit for wrongful dismissal at the instance of a dismissed servant does not lie against the Secretary of State for India in Council under s 65 of 21 & 22 Vict Ch 106 KING SECRETARY OF STATE FOR INDIA (1909)

15 C W N 480

WRONGFUL POSSESSION

See SHERAIT I L R 42 Calc 244

WRONGFUL RESTRAINTSee PENAL CODE (ACT XLV OF 1860)
ss 341 100 I L R 43 Bom. 531**WRONGFUL SEIZURE**See ARREST OF SHIP
I L R 42 Calc. 85**Y****YAJMAN**See HINDU LAW—HEREDITARY INTEREST
I L R. 36 Bom. 94See YATANDAR JOSHI
I L R 40 Bom. 112**YATIL**See HINDU LAW—ADOPTION
I L R 40 Mad. 846**Z****ZAMINDAR**

See MADRAS ESTATES LAND ACT (I OF 1908) ss 6 SUBS (C) 8

I L R 39 Mad. 944

engagement by with Government—

See MADRAS IRRIGATION CESS ACT (MAD. VII OF 1865) s 1 PROVISOS 1 AND 2
I L R 40 Mad. 886

grant by—

See MINES AND MINERALS

I L R 47 Calc. 95

grant by, to his wife and minor son—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 10

I L R 38 Mad. 867

liability of for unlawful acts of his servants—

See SECURITY FOR GOOD BEHAVIOUR
I L R 38 Calc 156

rights of—

See NAVIGABLE RIVER

I L R 46 Calc 390

service to—

See MADRAS REGULATION (XXV OF 1802) s 4 I L R 38 Mad 829

ZAMINDAR AND INAMDAR

pre-emption as to—

See MADRAS ESTATES LAND ACT (I OF 1908) s 8

I L R 38 Mad. 608

ZAMINDAR OR MITTADAR

right of to a charge—assignment of Jodi—

See INAMDAR I L R 40 Mad. 93

ZAMINDARI

impartible—

See HINDU LAW—JOINT FAMILY
I L R 41 Mad. 778See HINDU LAW—ADOPTION
I L R 38 Mad. 1105

sale of—

See EXECUTION OF DECREE
I L R 38 ALL 59

settled at Permanent Settlement—

See MADRAS IRRIGATION CESS ACT (MAD. VII OF 1865) s 1 AND PROVISOS 1 AND 2
I L R. 40 Mad. 856**ZAMINDARI LANDS**See MADRAS ESTATES LAND ACT (I OF 1908) ss. 6 SUBS (C) 8.
I L R. 39 Mad. 944See MADRAS WATER CESS ACT (VII OF 1865)
I L R 39 Mad. 67**ZAMINDARI RIGHTS**See ANAPURA STATE OF
I L R 39 Calc. 711

ZAMINDARI SALE.

in execution—Whether entire zamindari or only amindar's life estates sold—Mixed question of law and fact depending on entire evidence in the case—State of then law as to the amindar's interest therein not conclusive—Conduct of parties important evidence. A question as to whether the entire estate in a zamindari and not only the life interest of the zamindar was sold in execution and brought by the purchaser is a question of mixed law and fact to be determined by the evidence in each case. All that *Abdul Ali Khan v Appaya samsaiaier* I L R 27 Mad 131 142 decided in reference to the above question was that the state of the law as understood at the time of sale as to the rights of the zamindar in regard to the zamindari was evidence to be considered along with other evidence in the case it is not alone conclusive on the question. In determining the question of what the Court intended to sell and the purchaser understood he bought evidence as to how the parties affected by the transaction themselves viewed it at the time is of much greater value than evidence which may be procurable soon twenty years after the transaction took place. On the evidence in the case their Lordships held that the sale which took place in 1830 was of the whole zamindari and that the purchaser bought the whole zamindari in execution. *Veera shadra Aijar v Marudaga Narhar* I L R 34 Mad 183 referred to. *Veera Soorappa Vajani v Errappa Vaidu* I L R 29 Mad 484 490 explained. *ALAGARAYA GOUNDER v RAMANUJA VAIIDU* (1911) I L R 37 Mad 22

ZAMINDARS AND RAJAS

rights of, waters of rivers passing through their lands—

See MADRAS IRRIGATION CESS ACT (VII of 1865) I L R 37 Mad 322

ZERAIT

See LANDLORD AND TENANT (I L R 38 Calc. 432

ZINA

See MAHOMEDAN LAW—LEGITIMACY
I L R 34 Bom 111

ZURPESHGI LEASE

See BENGAL TENANCY ACT s 5 (5)¹
15 C W N 345

See LANDLORD AND TENANT
I L R 38 Calc 432

See MORTGAGE 16 C W N 505

Occupancy right rayat's interest acquisition of—Previous possession as rayat—Subsequent zurpeshgi lease effect of The plaintiff's suit was for recovery of possession of land which had been given in zurpeshgi to the defendant for a term of 15 years from 1301 to 1315 F S the terms of the zurpeshgi being as follow. It is decreed that the said sahib ticca dar should take possession of the said land make proper cultivation himself or get it cultivated by others grow indigo seeds or any other indigo crop by using the land as his khas erait or by settling the same with tenants according to his own desire and shall continue appropriating the proceeds thereof till the term of the ticca. He shall year by year deduct the said fixed jama in payment of the principal and interest of his zurpeshgi as per account given below and shall pay the remainder the amount of lessor's rights payable to us towards the end of the term of the ticca on taking receipts therefor from us. He shall conveniently cut and recover the indigo crops grown and standing on any quantity of land in 1315 F S when the term of the ticca pottah comes to an end and shall pay ten annas rent for 1916 F S at Ps 630 per bigha and shall give up possession of the said land. Held that the zurpeshgi pottah did not create any rayat's interest in the defendant far less a right of occupancy and on the expiry of the term of the pottah the plaintiffs were entitled to get khas possession. That a rayat by taking a zurpeshgi lease of land of which he was previously in possession as a rayat does not lose his rayat's status or divest himself of his right to acquire a right of occupancy in the land. *LAL BAHADUR SAHNI v MACKENZIE* (1913) 19 C W N 229

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